IN THE DISTRICT COURT OF JERUSALEM

Criminal Case No. 40/61

Before His Honour JUDGE MOSHE LANDAU (Presiding)
His Honour JUDGE BENJAMIN HALEVI
His Honour JUDGE YITZCHAK RAVEH

For the Prosecution: THE ATTORNEY GENERAL

The Accused: ADOLF, son of Karl Adolf, EICHMANN

J U D G M E N T

The references in the Judgment are to the official record in Hebrew.

Adolf Eichmann has been brought to trial in this Court on charges of unsurpassed gravity - charges of crimes against the Jewish People, crimes against humanity, and war crimes. The period of the crimes ascribed to him, and their historical background, is that of the Hitler regime in Germany and in Europe, and the counts of the indictment encompass the catastrophe which befell the Jewish People during that period - a story of bloodshed and suffering which will be remembered to the end of time.

This is not the first time that the Holocaust has been discussed in court proceedings. It was dealt with extensively at the International Military Tribunal at Nuremberg during the Trial of the Major War Criminals, and also at several of the trials which followed; but this time it has occupied the central place in the Court proceedings, and it is this fact which has distinguished this trial from those which preceded it. Hence also the trend noticed during and around the trial, to widen its range. The desire was felt - understandable in itself - to give, within the trial, a comprehensive and exhaustive historical description of events which occurred during the Holocaust, and in so doing, to emphasize also the inconceivable feats of heroism performed by ghetto-fighters, by those who mutinied in the camps, and by Jewish partisans.

There are also those who sought to regard this trial as a forum for the clarification of questions of great import, some of which arose from the Holocaust, while others, of long standing but which have now emerged once again in more acute form, because of the unprecedented sufferings which were visited upon the Jewish People and the world as a whole in the middle of the Twentieth Century.

How could this happen in the light of day, and why was it just the German people from which this great evil sprang? Could the Nazis have carried out their evil designs without the help given them by other peoples in whose midst the Jews dwelt? Would it have been possible to avert the Holocaust, at least in part, if the Allies had displayed a greater will to assist the persecuted Jews? Did the Jewish People in the lands of freedom do all in its power to rally to the rescue of its brethren and to sound the alarm for help? What are the

psychological and social causes of the group-hatred which is known as anti-Semitism? Can this ancient disease be cured, and by what means? What is the lesson which the Jews and other nations must draw from all this, as well as every person in his relationship to others? There are many other questions of various kinds which cannot even all be listed.

2. In this maze of insistent questions, the path of the Court was and remains clear. It cannot allow itself to be enticed into provinces which are outside its sphere. The judicial process has ways of its own, laid down by law, and which do not change, whatever the subject of the trial may be. Otherwise, the processes of law and of court procedure are bound to be impaired, whereas they must be adhered to punctiliously, since they are in themselves of considerable social and educational significance, and the trial would otherwise resemble a rudderless ship tossed about by the waves.

It is the purpose of every criminal trial to clarify whether the charges in the prosecution's indictment against the accused who is on trial are true, and if the accused is convicted, to mete out due punishment to him. Everything which requires clarification in order that these purposes may be achieved, must be determined at the trial, and everything which is foreign to these purposes must be entirely eliminated from the court procedure. Not only is any pretension to overstep these limits forbidden to the court - it would certainly end in complete failure. The court does not have at its disposal the tools required for the investigation of general questions of the kind referred to above. For example, in connection with the description of the historical background of the Holocaust, a great amount of material was brought before us in the form of documents and evidence, collected most painstakingly, and certainly in a genuine attempt to delineate as complete a picture as possible. Even so, all this material is but a tiny fraction of all that is extant on this subject. According to our legal system, the court is by its very nature “passive,” for it does not itself initiate the bringing of proof before it, as is the custom with an enquiry commission. Accordingly, its ability to describe general events is inevitably limited. As for questions of principle which are outside the realm of law, no one has made us judges of them, and therefore no greater weight is to be attached to our opinion on them than to that of any person devoting study and thought to these questions. These prefatory remarks do not mean that we are unaware of the great educational value, implicit in the very holding of this trial, for those who live in Israel as well as for those beyond the confines of this state. To the extent that this result has been achieved in the course of the proceedings, it is to be welcomed. Without a doubt, the testimony given at this trial by survivors of the Holocaust, who poured out their hearts as they stood in the witness box, will provide valuable material for research workers and historians, but as far as this Court is concerned, they are to be regarded as by-products of the trial.

3. Before we deal with the case itself, we desire to express our appreciation to the representatives of both parties, who laboured in the presentation of this case. The Attorney General, Mr. Hausner, and his assistants, Dr. Robinson, Mr. Bar-Or, Mr. Bach, and Mr. Terlo, who helped in the conduct of the case, carried an enormous burden on their shoulders, and displayed absolute mastery of the huge amount of legal and factual material prepared for them by the police investigators, who toiled before them in a manner which also deserves praise. The Attorney General himself emerged honourably

from the dilemma, to which we alluded above, and which he, too, certainly felt in all its full impact. In spite of a slight deviation here and there from the narrow path which the Court saw as its duty to set, Mr. Hausner conducted the prosecution in its stages as a jurist and on a very high professional level. In his brilliant opening speech, which was eloquent and broad in perspective, and again in his concluding statement, he gave vent also to the deep feelings which stir the entire nation. Similarly, we wish to express our appreciation to Counsel for the Defence, Dr. Servatius, and his assistant, Mr. D. Wechtenbruch. Dr. Servatius, who stood almost alone in this strenuous legal battle, in an unfamiliar environment, always directed himself to the essence of the matter, and refrained from unnecessary controversy over matters which did not seem vital to him for the defence of his client, thereby affording valuable assistance to the Court. Thus even some uncalled-for notes in his concluding speech, which jarred on our ears, could not detract from the worthy and serious impression made by his arguments for the Defence as a whole.

4. At the outset, we must state the reasons for our Decision (No. 3 given on 17 April 1961, Session 6) relating to our jurisdiction to try this case. It is the duty of the Court to examine its competence ex officio even without the question having been raised by the Accused; indeed, even if the Accused had consented to be tried by this Court, we would not have been entitled to try him unless the law empowers us so to do. The law which confers on us jurisdiction to try the Accused in this case is the Nazis and Nazi Collaborators (Punishment) Law 5710-1950 (hereinafter referred to, for short, as "the Israeli Law," "the Law in question"or "the Law").

Section 1(a) of the Law provides:

> "A person who has committed one of the following offences
>
> > (1) during the period of the Nazi regime in a hostile country, carried out an act constituting a crime against the Jewish People;
> >
> > (2) during the period of the Nazi regime, carried out an act constituting a crime against humanity, in a hostile country;
> >
> > (3) during the period of the Second World War, carried out an act constituting a war crime, in a hostile country;
>
> is liable to the death penalty."

The three above-mentioned classes of crimes - crime against the Jewish People, crime against humanity, war crime - are defined in Section 1(b) (see infra) -

Section 3(a) provides:

> "A person who, during the period of the Nazi regime, was a member of, or held any post or exercised any function, in a hostile organization, in a hostile country, is liable to imprisonment for a term not exceeding seven years."

"A hostile organization" is defined in Section 3(b) (see infra). Section 16 defines the terms "the period of the Nazi regime," "the period of the Second World War," and "a hostile country."

5. In Criminal Appeal 22/52, Honigman v. Attorney General (7 Piske Din 296, 303), Justice Cheshin stated:

> "The Law in question is designed to make it possible to try in Israel Nazis, their associates and their collaborators for the murder of the Jewish People...and for crimes against humanity as a whole...this particular legislation is totally different from any other usual legislation in criminal codes: The Law is retroactive and extra-territorial..."

Indeed, the expressions "in a hostile country," "during the period of the Nazi regime" and "during the period of the Second World War," which define the application of the Law in point of place and in point of time, indicate unequivocally that the crimes are "foreign crimes" and that the Law has retroactive application. These two elements do indeed diverge from the characteristics of usual criminal legislation which generally looks to the future and not - or at least not only - to the past; to the home country and not - or at least not only - abroad; but these elements necessarily derive from the very object of the Law for the Punishment of Nazis and their Collaborators.

6. Under Sections 6 and 7 of the Criminal Code Ordinance, 1936, the ordinary jurisdiction of the courts of Israel extends to any act committed in whole or in part within the boundaries of the state or within the three nautical miles territorial coastal limit, but Section 3(b) adds that nothing in the Ordinance shall derogate from the "liability of any persons to be tried and punished for any offence according to the provisions of the law on the jurisdiction of the Israeli courts with respect to acts committed outside the ordinary jurisdiction of these courts." One of the laws which establishes the jurisdiction of Israeli courts with respect to certain classes of offences committed abroad is the Criminal Law Amendment (Foreign Offences) Law, 5716- 1955. Another law of this order is the Law in question here.

7. The question as to whether the Israeli legislator may enact a criminal law with retroactive effect was considered in the first criminal case heard in this District Court after the establishment of the State and in the first appeal lodged with the Supreme Court of Israel, Criminal Appeal 1/48, Sylvester v. Attorney General (Pesakim I, 513, 528). Justice Smoira, the first President of the Supreme Court, said in his judgment, inter alia:

"As regards the distinction between retroactive laws and ex post facto laws... I now revert to the judgment of Justice Willes in Phillips v. Eyre (L.Q. (1871) 6 Q.B. 1, at p. 25). He stated:

'Justice Blackstone (Comm. 46) describes laws ex post facto of this objectionable class as those by which `after an action indifferent in itself is committed, the legislator then for the first time declares it to have been a crime, and inflicts a punishment upon the person who has committed it. Here it is impossible that the party could foresee that an action, innocent when it was done, should be afterwards converted to guilt by a subsequent law; he had, therefore, no cause to abstain from it and all punishment for not abstaining must of consequence be cruel and unjust...' In fine, allowing the general inexpediency of retrospective legislation, it cannot be pronounced naturally or necessarily unjust. There may be occasions and circumstances involving the safety of the state, or even the conduct of individual subjects, the justice of which prospective laws, made for ordinary occasions and the usual exigencies of society, for want of prevision fail to meet, and in which the execution of the law as it stood at the time may involve practical public inconvenience and wrong, summum jus summa injuria. Whether the circumstances of the particular case are such as to call for special and exceptional remedy is a question which must in each case involve matter of policy and discretion fit for debate and decision in the parliament which would have had jurisdiction to deal with the subject matter by preliminary legislation, and as to which a court of ordinary municipal law is not commissioned to inquire or adjudicate."

"... I am unable to add with gratification," continued the President, "that in acknowledging the retroactive effect of the law in question I am far from acknowledging a `barbaric' law, for it is precisely in pursuance with Justice Blackstone's definition that I hold that it cannot be said that the act of which the appellant was accused was `an action indifferent in itself, and only subsequently the legislator declared it for the first time to have been a crime.' The legislation with retrospective effect, here dealt with, has not created a new crime which had not hitherto been known in the Occupied Area of Jerusalem, and it cannot therefore be said that the person who commits the act of which the appellant is accused did not have a criminal intent (mens rea), because he did not and could not know that the act he was doing was a criminal act. On the contrary, it stands to reason that he who has actually committed such an act knew that an act of this kind is a crime. I, therefore, hold that by concluding that the Official Secrets Ordinance has retroactive effect, I do not come in conflict with the rules of natural justice or elementary equity."

The President gave his judgment before the enactment of the Nazis and Nazi Collaborators (Punishment) Law, but his remarks are apt and relevant to our case. There is no subject of which it can be said with greater justice that "the usual laws enacted in

ordinary circumstances and for the usual needs of society fall short of meeting the dictates of justice and law" (ibid., p. 532) than the subject of the Nazi crimes against humanity in general, and the Jewish People in particular. Not one of the crimes defined in the Law in question was, in the words of Blackstone, "an indifferent action when committed, and subsequently declared for the first time by the legislator to have been a crime." Neither has the retroactive legislation herein dealt with "created a new crime which had not hitherto been known" in Germany or German-occupied territories. On the contrary, all the above-mentioned crimes constituted crimes under the laws of all civilized nations, including the German people, before and after the Nazi regime, while the "law"; and criminal decrees of Hitler and his regime are not laws, and have been set aside with retroactive effect even by the German courts themselves (see infra).

It cannot be said that the perpetrators of the crimes defined in the Law in question "could not have a mens rea because they did not and could not know that what they were doing was a criminal act" (ibid). The extensive measures taken by the Nazis to efface the traces of their crimes, such as the disinterment of the dead bodies of the murdered and their cremation into ashes, or the destruction of the Gestapo archives before the collapse of the Reich, clearly prove that the Nazis knew well the criminal character of their enormities. A law that authorizes the punishment of Nazis and their collaborators does not "conflict," through its retroactive application, "with the rules of natural justice," in the words of the President; on the contrary, it enforces the dictates of elementary justice.

8. Learned Counsel does not ignore the fact that the Israeli Law applicable to the acts attributed to the Accused vests in us the jurisdiction to try this case. His contention against the jurisdiction of the Court is not based on this Law, but on international law. He contends -

> (a) that the Israeli Law, by inflicting punishment for acts committed outside the boundaries of the state and before its establishment, against persons who were not Israeli citizens, and by a person who acted in the course of duty on behalf of a foreign country ("Act of State") conflicts with international law and exceeds the powers of the Israeli legislator;
>
> (b) that the prosecution of the Accused in Israel upon his abduction from a foreign country conflicts with international law and exceeds the jurisdiction of the Court.

9. Before entering upon an analysis of these two contentions and the legal questions involved, we will clarify the relation between them.

These two contentions are independent of each other. The first contention, which negates the jurisdiction of the Court to try the Accused for offences against the Law in question, is not bound up with, or conditional upon, the circumstances under which he was brought to Israel. Even had the Accused come to this country of his own free will, say as a tourist under an assumed name, and had he been arrested here upon the verification of his true identity, the first contention of Counsel that the Israeli Court has no jurisdiction to try

him for any offences against the Law in question would still stand. The second, additional, contention is that no matter what the jurisdiction of the Israeli Court is to try offences attributed to the Accused in ordinary circumstances, that jurisdiction is in any case negated by reason of the special circumstances connected with the abduction of the Accused in a foreign country and his prosecution in Israel. We will therefore deal with these two questions seriatim.

10. The first contention of Counsel that Israel Law is in conflict with international law, and that therefore it cannot vest jurisdiction in this Court, raises the preliminary question as to the validity of international law in Israel and as to whether, in the event of a conflict between it and the laws of the land, it is to be preferred to the laws of the land. The law in force in Israel resembles that which is in force in England in this regard. See Oppenheim (Lauterpacht), International Law, 8th Ed., 1955, para. 21a, p. 39:

> "As regards Great Britain, the following points must be noted: (a) All such rules of customary international law as are either universally recognized or have, at any rate, received the assent of this country are per se part of the law of the land. To that extent there is still valid in England the common law doctrine, to which Blackstone gave expression in a striking passage, that the Law of Nations is part of the law of the land."

But on the other hand (p. 41):

> "English statutory law is absolutely binding upon English courts, even if in conflict with international law, although in doubtful cases there is a presumption that an Act of Parliament did not intend to overrule international law. The fact that international law is part of the law of the land and is binding directly on courts and individuals does not mean that English law recognizes in all circumstances the supremacy of international law.

(Note 3) It is of importance not to confuse, as many do, the question of the supremacy of international law and of the direct operation of its rules within the municipal sphere. It is possible to deny the former while fully affirming the latter."

See also - Croft v. Dunphy (1933) A.C. 156 (p. 164):

> "Legislation of the Imperial Parliament, even in contravention of generally acknowledged principles of international law, is binding upon and must be enforced by the courts of this country, for in these courts the legislation of the Imperial Parliament cannot be challenged as ultra vires (Mortensen v. Peters)."

And also Polites v. Commonwealth of Australia (1945) 70 C.L.R. 60 (Annual Digest, 1943-1945, Case No. 61):

> "The Commonwealth Parliament can legislate on these matters in breach of international law, taking the risk of international complications. This is recognized as being the position in Great Britain... The position is the same in the United States of America... It must be held that legislation otherwise within the power of the Commonwealth Parliament does not become invalid because it conflicts with a rule of international law, though every effort should be made to construe Commonwealth statutes so as to avoid breaches of international law and of international comity."

As regards Israel, the Deputy President, Justice Cheshin, said in Criminal Appeal 174/54 (10 Piske Din, 5,p.17):

> "As regards the question of the adoption by the national law of the principles of international law, we may safely rely on Blackstone's view in his Commentaries on the Laws of England (Book IV, Chap. 5):
>
> > `In England...the law of nations...is...adopted in its full extent by the common law, and is held to be part of the law of the land...without which it must cease to be a part of the civilized world.'
>
> And that is the case in other countries, such as the U.S.A., France, Belgium, and Switzerland, where the usages of international law have been acknowledged as part of the law of the land..."

With respect to statutory law, Justice Agranat said in High Court Case 279/51 (6 Piske Din 945, p. 966):

> "It is a well known rule that a local statutory law must be construed in accordance with the rules of public international law, unless its tenor requires another interpretation."

And in Criminal Appeal 5/51 (5 iske Din 1061), Justice Sussman said (p. 1065):

> "It is a well-known rule that in interpreting the law, the court shall endeavour, as far as possible, to avoid a clash between the national law and the rules of international law which are binding upon the state; but this rule is only one of the rules of interpretation. When we are not dealing with the common law, but with statutory law, where the will of the legislator is clear from its wording, the will of the legislator must be enforced without regard to any contradiction between that statutory law and international law... Moreover, the courts of this country derive their jurisdiction not from the system of international law but from the laws of the land."

Our jurisdiction to try this case is based on the Nazis and Nazi Collaborators (Punishment) Law, a statutory law the provisions of which are unequivocal. The Court has to give effect to the law of the Knesset, and we cannot entertain the contention that this law conflicts with the principles of international law. For this reason alone, Counsel's first contention must be rejected.

11. But we have also perused the sources of international law, including the numerous authorities mentioned by learned Counsel in his comprehensive written brief upon which he based his oral pleadings, and by the learned Attorney General in his comprehensive oral pleadings, and have failed to find any foundation for the contention that Israeli law is in conflict with the principles of international law. On the contrary, we have reached the conclusion that the Law in question conforms to the best traditions of the law of nations.

The power of the State of Israel to enact the Law in question or Israel's "right to punish" is based, with respect to the offences in question, from the point of view of international law, on a dual foundation: The universal character of the crimes in question and their specific character as being designed to exterminate the Jewish People. In what follows, we shall deal with each of these two aspects separately.

12. The abhorrent crimes defined in this Law are crimes not under Israeli law alone. These crimes which offended the whole of mankind and shocked the conscience of nations are grave offences against the law of nations itself ("delicta juris gentium"). Therefore, so far from international law negating or limiting the jurisdiction of countries with respect to such crimes, in the absence of an International Court, the international law is in need of the judicial and legislative authorities of every country, to give effect to its penal injunctions and to bring criminals to trial. The jurisdiction to try crimes under international law is universal.

13. This universal authority, namely the authority of the "forum deprehensionis" (the court of the country in which the accused is actually held in custody) was already mentioned in the Corpus Juris Civilis (see: C. 3, 15, "ubi de criminibus agi oportet"), and the towns of northern Italy had already in the Middle Ages taken to trying specific types of dangerous criminals ("banniti, vagabundi, assassini") who happened to be within their area of jurisdiction, without regard to the place in which the crimes in question were committed (see Donnedieu de Vabres Les Principes Modernes du Droit Penal International, 1928, p. 136). Maritime nations have also since time immemorial enforced the principle of universal jurisdiction in dealing with pirates, whose crime is known in English law as "piracy jure gentium." See Blackstone, Commentaries on the Laws of England, Book IV, Chap. 5 "Of Offences against the Law of Nations," p. 68:

> "The principal offences against the law of nations, animadverted on as such by the municipal laws of England, are of three kinds... 3. Piracy." p. 71:
>
> "Lastly, the crime of piracy, or robbery and depredation upon the high seas, is an offence against the universal law of society; a pirate being,

> according to Sir Edward Coke (3 Inst. 113) hostis humani generis. As, therefore, he has renounced all the benefits of society and government, and has reduced himself afresh to the savage state of nature, by declaring war against all mankind, all mankind must declare war against him; so that every community hath a right by the rule of self-defence, to inflict that punishment upon him which every individual would in a state of nature have been otherwise entitled to do, for any invasion of his person or personal property."

See also In re Piracy Jure Gentium, (1934) A.C. 586 (per Viscount Sankey L.C.):

> "With regard to crimes as defined by international law, that law has no means of trying or punishing them. The recognition of them as constituting crimes, and the trial and punishment of the criminals, are left to the municipal law of each country. But whereas according to international law the criminal jurisdiction of municipal law is ordinarily restricted to crimes by its own nationals wherever committed, it is also recognized as extending to piracy committed on the high seas by any national on any ship, because a person guilty of such piracy has placed himself beyond the protection of any state. He is no longer a national, but hostis humani generis, and as such he is justiciable by any state anywhere."

14. Hugo Grotius had already in 1625 raised in his famous book De Jure Belli ac Pacis (On the Law of War and Peace) the basic question of the "right to punish" under international law, the very question learned Counsel raised.

In Book Two, chapter 20 "De Poenis" (On Punishment), the author says, inter alia:

> "Qui punit, ut recte puniat, jus habere debet ad puniendum, quod jus ex delicto nocentis nascitur." (In order that he who punishes may duly punish, he must possess the right to punish, a right deriving from the criminal's crime.)

In the writer's view, the object of punishment may be the good of the criminal, the good of the victim, or the good of the community. According to natural justice, the victim may take the law into his hand and himself punish the criminal, and it is also permissible for any person of integrity to inflict punishment upon the criminal; but all such natural rights have been limited by organized society and have been delegated to the courts of law. The learned author here adds these important words (our emphasis):

> "Sciendum quoque est reges, et qui par regibus jus obtinent, jus habere poenas poscendi non tantum ob injurias in se aut subditos suos commissas, sed et ob eas quae ipsos peculiariter non tangunt, sed in quibusvis personis jus naturae aut gentium immaniter violantibus." (It must also be known that kings, and any who have rights equal to the rights of kings, may

> demand that punishment be imposed not only for wrongs committed against them or their subjects, but also for all such wrongs as do not specifically concern them, but violate in extreme formin relation to any persons, the law of nature or the law of nations."

And he goes on to explain:

> "Nam libertas humanae societati per poenas consulendi, quae initio ut diximus penes singulos fuerat, civitatibus ac judiciis institutis penes summas potestates resedit, non proprie quo aliis imperant, sed qua nemini parent. Nam subjectio aliis id jus abstulit." (For the liberty to serve the welfare of human society by imposing penalties which had at first been, as already stated, in the hands of the individuals, has been exercised since the constitution of states and courts, by those with the supreme authority, not because they dominate others, but because they are subject to no one. For subjection to government has taken this right away from others.)

It is therefore the moral duty of every sovereign state (of "kings and any who have rights equal to the rights of kings") to enforce the natural right to punish, possessed by the victims of the crime whoever they may be, against criminals whose acts have "violated in extreme form the law of nature or the law of nations." By these pronouncements the father of international law laid the foundations for the future definition of the "crime against humanity" as a "crime under the law of nations" and to universal jurisdiction over such crimes.

15. Vattel says in his book Le Droit des Gens (1758) Book I, chap. 19, paragraphs 232-233, inter alia: "Car la Nature ne donne aux hommes et aux Nations le droit de punir, que pour leur defence et leur surete, d'ou il suit que l'on ne peut punir que ceux par qui on a ete lese.

> "Mais cette raison meme fait voir, que si la Justice de chaque Etat doit en general se borner a punir les crimes commis dans son territoire, il faut excepter de la regle ces scelerats, qui, par la qualite et la frequence habituelle de leurs crimes, violent toute surete publique, et se declarent les ennemis du Genre- humain. Les empoisonneurs, les assassins, les incendiaires de profession peuvent etre extermines partout ou on les saisit; car ils attaquent et outragent toutes les Nations, en foulant aux pieds les fondemens de leur surete commune. C'est ainsi que les Pirates sons envoyes a la potence par les premiers entre les mains de qui ils tombent."

Wheaton states in his Elements of International Law, 5th English Ed., 1916, p. 104 (our emphasis):

> "The judicial power of every independent state...extends ...to the punishment of piracy and other offences against the law of nations, by whomsoever and wheresoever committed."

Hyde states in his International Law (Chiefly as Interpreted and Applied by the United States), Vol. 1, 2nd Ed. (1947) in paragraph 241 (p. 804):

> "In order to justify the criminal prosecution by a state of an alien on account of an act committed and consummated by him in a place outside of its territory...it needs to be established that there is a close and definite connection between that act and the prosecutor, and one which is commonly acknowledged to excuse the exercise of jurisdiction. There are few situations where the requisite connection is deemed to exist... The connection is, however, apparent when the act of the individual is one which the law of nations itself renders internationally illegal or regards as one which any member of the international society is free to oppose and thwart."

It must be added that the learned author, who (in keeping with the Anglo-Saxon tradition) is generally meticulous and rigid in his pronouncements on the question of criminal jurisdiction with respect to crimes committed by foreigners abroad (see also his further remarks, ibid., p. 805, and his supporting reference to the dissenting opinion of Justice Moore in the "Lotus" case), specifically favours a clear exception with respect to "offences under the law of nations." See also ibid., para. 11(a) (p. 33):

> "The commission of particular acts, regardless of the character of the actors, may be so detrimental to the welfare of the international society that its international law may either clothe a state with the privilege of punishing the offender, or impose upon it the obligation to endeavour to do so... In both situations, it is not unscientific to declare that he is guilty of conduct which the law of nations itself brands as internationally illegal. For it is by virtue of that law that such sovereign acquires the right to punish and is also burdened with the duty to prevent or prosecute."

Glaser in Infraction Internationale, 1957, defines each of the crimes dealt with here, especially the crime against humanity" and the "genocide crime" as "infraction internationale" or "crime d'ordre international" (p. 69), and states (p. 31)

> "Les infractions internationales sont soumises, aussi longtemps qu'une jurisdiction criminelle internationale n'existe pas, au regime de la repression ou de la competence universelle. Dans ce regime, les auteurs de pareilles infractions peuvent etre poursuivis et punis en quelque pays que ce soit, donc sans egard au lieu ou l'infraction a ete commise: Ubi te invenero, ibi te judicabo."

Cowles, in "Universality of Jurisdiction over War Crimes," 33 California Law Review (1945), p. 177, et seq., states in the following terms the reasons for the rule of law as to the "universality of jurisdiction over war crimes," which was adopted and determined by the United Nations War Crimes Commission (See: Law Reports of Trials of War Criminals, Vol. 1, p. 53):

> "The general doctrine recently expounded and called `universality of jurisdiction over war crimes,' which has the support of the United Nations War Crimes Commission and according to which every independent state has, under international law, jurisdiction to punish not only pirates but also war criminals in its custody, regardless of the nationality of the victim or of the place where the offence was committed, particularly where, for some reason, the criminal would otherwise go unpunished."

Instances of the extensive use made by the Allied Military Tribunals of the principle of universality of jurisdiction of war crimes of all classes (including "crimes against humanity") will be found in Vols. 1-15 of the Law Reports of Trials of War Criminals.

16. We have said that the crimes dealt with in this case are not crimes under Israeli law alone, but are in essence offences against the law of nations. Indeed, the crimes in question are not a free creation of the legislator who enacted the law for the punishment of Nazis and Nazi collaborators, but have been stated and defined in that law according to a precise pattern of international laws and conventions which define crimes under the law of nations.

The "crime against the Jewish People" is defined on the pattern of the genocide crime defined in the "Convention for the prevention and punishment of genocide" which was adopted by the United Nations Assembly on 9 December 1948. The "crime against humanity" and the "war crime" are defined on the pattern of crimes of identical designations defined in the Charter of the International Military Tribunal (which is the Statute of the Nuremberg Court) annexed to the Four- Power Agreement of 8 August 1945 on the subject of the trial of the principal war criminals (the London Agreement), and also in Law No. 10 of the Control Council of Germany of 20 December 1945. The offence of "membership of a hostile organization" is defined by the pronouncement in the judgment of the Nuremberg Tribunal, according to its Charter, declaring the organizations in question to be "criminal organizations," and is also patterned on the Control Council Law No. 10. For purposes of comparison, we shall set forth in what follows the parallel articles and clauses side by side.

Section 1(b) of the Israeli Law provides:

In this section --

> "Crime against the Jewish People" means any of the following acts, committed with intent to destroy the Jewish People in whole or in part:
>
> (1) killing Jews;
>
> (2) causing serious bodily or mental harm to Jews;
>
> (3) placing Jews in living conditions calculated to bring about their physical destruction;

(4) devising measures intended to prevent births among Jews"

(Subsections (5) to (7) have no relevance to this case).

Article II of the Convention for the Prevention and Punishment of the Crime of Genocide provides:

> "In the present Convention genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic or religious group as such:
>
> (a) killing members of the group;
>
> (b) causing serious bodily or mental harm to members of the group;
>
> (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) imposing measures intended to prevent births within the group;
>
> (e) forcibly transferring children of the group to another group."

Section 1(b) of the Israeli Law also provides:

> "Crime against humanity" means any of the following acts: murder, extermination, enslavement, starvation or deportation and other inhumane acts committed against any civilian population, and persecution on national, racial, religious or political grounds."

Article 6 of the Charter of the Nuremberg Tribunal provides, inter alia:

> "The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:
>
> (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 connexion with any crime within the jurisdiction of the Tribunal whether or not in violation of the domestic law of the country where perpetrated."

Article II of Control Council Law No. 10 provides:

> "1. Each of the following acts is recognized as a crime:

(c) Crimes against humanity. Atrocities and offences, including, but not limited to, murder, extermination enslavement, deportation, imprisonment, torture, rape or other inhuman acts committed against any civilian population or persecution on political, racial or religious grounds, whether or not in violation of the domestic laws of the country where perpetrated."

Section 1(b) of the Israeli Law provides:

"War crime" means any of the following acts:

Murder, ill-treatment or deportation to forced 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, and devastation not justified by military necessity."

Article 6 of the Nuremberg Tribunal Charter provides:

"(b) War crimes, namely violation of the laws of 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."

Article II of Control Council Law No. 10 provides:

"(b) War Crimes. Atrocities or offences against persons or property constituting violations of the laws or customs of war, including, but not limited to, murder, ill-treatment or deportation to slave labour or for any other purpose, of civilian population from 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."

Section 3(b) of the Israeli Law provides:

"In this section, "hostile organization" means:

(1) A body of persons which, under Article 9 of the Charter of the International Military Tribunal, annexed to the Four_Power Agreement of 8 August 1945 on the trial of the major war criminals, has been declared, by a judgment of that Tribunal, to be a criminal organization."

Article 9 of the International Military Tribunal Charter provides, inter alia:

> "At the trial of any individual member of any group or organization the Tribunal may declare (in connexion with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization."

Article 10 of the same statute proceeds to add:

> "In cases where a group or organization 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 organization is considered proved and shall not be questioned."

Article II of Control Council Law No. 10 provides:

> "(d) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal."

17. The crime of "genocide" was first defined by Raphael Lemkin in his book Axis Rule in Occupied Europe (1944), in view of the methodical extermination of peoples and populations, and primarily the Jewish People by the Nazis and their satellites (after the learned author had already moved, at the Madrid 1933 International Congress for the Consolidation of International Law, that the extermination of racial, religious or social groups be declared "a crime against international law"). On 11 December 1946, after the International Military Tribunal pronounced its judgment against the principal German criminals, the United Nations Assembly, by its Resolution No. 96 (I), unanimously declared that "genocide" is a crime against the law of nations. That resolution said:

> Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these groups, and is contrary to moral law and to the spirit and aims of the United Nations.
>
> Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.
>
> The punishment of the crime of genocide is a matter of international concern.
>
> THE GENERAL ASSEMBLY, THEREFORE, AFFIRMS that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices - whether private individuals, public officials or statesmen, and whether the crime is

committed on religious, racial, political or any other grounds - are punishable;

INVITES the Member States to enact the necessary legislation for the prevention and punishment of this crime;

RECOMMENDS that international co-operation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide, and, to this end,

REQUESTS the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly."

On 9 December 1948, the United Nations Assembly unanimously adopted the Convention for the Prevention and Punishment of the Crime of Genocide. The preamble and the first Article of the Convention read as follows:

"The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96(1) dated 11 December 1946 that Genocide is a crime under international law contrary to the spirit and aims of the United Nations and condemned by the civilized world;

Recognizing that at all periods of history Genocide has inflicted great losses on humanity; and

Being convinced that in order to liberate mankind from such an odious scourge international co-operation is required Hereby agree as hereinafter provided:

Article 1

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war is a crime under international law, which they undertake to prevent and to punish.

18. On 28 May 1951, the International Court of Justice gave, at the request of the United Nations Assembly, an Advisory Opinion on the question of the reservations to that Convention on the Prevention and Punishment of the Crime of Genocide. The Advisory Opinion stated, inter alia (p. 23):

"The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as `a crime under

> international law' involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations (Resolution 96 (1) of the General Assembly, December 11th, 1946). The first consequence arising from this conception is that the principles underlying the Convention are recognized by civilized nations as binding on States, even without any conventional obligation. A second consequence is the universal character both of the condemnation `in order to liberate mankind from such an odious scourge' (Preamble to the Convention). The Genocide Convention was therefore intended by the General Assembly and by the contracting parties to be definitely universal in scope. It was in fact approved on December 9th, 1948, by a resolution which was unanimously adopted by fifty- six States."

19. In the light of the repeated affirmation by the United Nations in the 1946 Assembly resolution and in the 1948 Convention, and in the light of the Advisory Opinion of the International Court of Justice, there is no doubt that genocide has been recognized as a crime under international law in the full legal meaning of this term, ex tunc; that is to say: The crimes of genocide committed against the Jewish People and other peoples were crimes under international law. It follows, therefore, in the light of the acknowledged principles of international law, that the jurisdiction to try such crimes is universal.

20. This conclusion encounters a serious objection in the light of Article 6 of the Convention which provides that:

> "Persons charged with genocide or any of the other acts enumerated in Article 3 shall be tried by a competent tribunal of the States in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction."

Prima facie this provision might appear to yield support for an argumentum e contrario, the very contention voiced by learned Counsel against the applicability of the principle of universal jurisdiction, and even against any exterritorial jurisdiction with respect to the crime in question: If the United Nations failed to give their support to universal jurisdiction by each country to try a crime of genocide committed outside its boundaries, but has expressly provided that, in the absence of an international criminal tribunal, those accused of this crime shall be tried by "a competent court of the country in whose territory the act was committed," how may Israel try the Accused for a crime that constitutes "genocide"?

21. In order to answer this objection, we must direct attention to the distinction between the rules of customary and the rules of conventional international law, a distinction which also found expression in the Advisory Opinion of the International Court of Justice with respect to the Convention in question. That Convention fulfils two roles simultaneously:

In the sphere of customary law it re-affirms the deep conviction of all peoples that "genocide, whether in times of peace or in times of war, is a crime under international law" (Article 1). That confirmation which, as stressed in the Advisory Opinion of the International Court of Justice, was given "unanimously by fifty-six countries" is of "universal character," and the purport of which is that "the principles inherent in the Convention are acknowledged by the civilized nations as binding on the country even without a conventional obligation" (ibid). "

The principles inherent in the convention" are, inter alia, the criminal character of the acts defined in Article 2 (that is, the article upon which the definition of "a crime against the Jewish People" in the Israeli Law has been patterned), the penal liability for any form of participation in this crime (Article 3), the lack of immunity from penal liability for rulers and public officials (Article 4), and the fact that for purposes of extradition no political "character" may be attributed to any such crime (Article 7). These principles are "recognized by civilized nations," according to the conclusion of the International Court of Justice, and are "binding on the countries even without a conventional obligation"; that is to say, they constitute part of customary international law. The words "approve" in Article 1 of the Convention and "recognize" in the Advisory Opinion indicate approval and recognition ex tunc, namely the recognition and confirmation that the above-mentioned principles had already been part of the customary international law at the time of the perpetration of the shocking crimes which led to the United Nations' resolution and the drafting of the Convention - crimes of genocide which were perpetrated by the Nazis. So much for the first aspect of the Convention (and the important one with respect to this judgment) - the confirmation of certain principles as established rules of law in customary international law.

22. The second aspect of the Convention - the practical object for which it was concluded - is the determination of the conventional obligations between the contracting parties to the Convention for the prevention of such crimes in future and the punishment therefor in the event of their being committed. Already in UN Resolution 96(I) there came, after the "confirmation" that the crime of genocide constitutes a crime under international law, an "invitation," to all Member States of the United Nations "to enact the necessary legislation for the prevention and punishment of this crime," together with a recommendation to organize "international co-operation" between the countries with a view to facilitating the "prevention and swift punishment of the crime of genocide," and to this end the Economic and Social Council was charged with the preparation of the draft Convention. Accordingly, the "affirmation" that genocide, whether committed in time of peace or in time of war, constitutes a crime under international law is followed in Article 1 of the Convention by the obligation assumed by the contracting parties who "undertake to prevent and punish it," and by Article 5 they "undertake to pass the necessary legislation to this end."

In the wake of these obligations of the contracting parties to prevent the perpetration of genocide by suitable legislation and enforce such legislation against future perpetrators of the crime, comes Article 6 which determines the courts which will try those accused of this crime. It is clear that Article 6, like all other articles which determine the

conventional obligations of the contracting parties, is intended for cases of genocide which will occur in future, after the ratification of the treaty or adherence thereto by the country or countries concerned. It cannot be assumed, in the absence of an express provision in the Convention itself, that any of the conventional obligations, including Article 6, will apply to crimes perpetrated in the past.

It is of the essence of conventional obligations, as distinct from the confirmation of existing principles, that unless another intention is implicit, their application shall be ex nunc and not ex tunc. Article 6 of the Convention is a purely pragmatic provision and does not presume to confirm a subsisting principle. Therefore, we must draw a clear line of distinction between the provision in the first part of Article 1, which says that "the contracting parties confirm that genocide, whether in times of peace or in times of war, is a crime under international law," i.e., a general provision which confirms the principle of customary international law that "is binding on all countries even without conventional obligation," and the provision of Article 6 which is a special provision in which the contracting parties pledged themselves to the trial of crimes that may be committed in future. Whatever may be the purport of this obligation within the meaning of the Convention (and in the event of differences of opinion as to the interpretation thereof the contracting party may, under Article 9, appeal to the International Court of Justice), it is certain that it constitutes no part of the principles of customary international law, which are also binding outside the contractual application of the Convention.

23. Moreover, even within the ambit of the contractual application of the Convention, it cannot be assumed that Article 6 is designed to limit the jurisdiction of countries to try genocide crimes by the principle of territoriality. Without entering into the general question of the limits of municipal criminal jurisdiction, it may be said that there is general agreement that customary international law does not prohibit a state from trying its citizens for offences they have committed abroad (and in the light of subsisting legislation in many countries against the extradition of their citizens the existence of such an authority is essential to prevent criminals from behaving in a "hit and run" manner, by fleeing to their own country).

Had Article 6 meant to provide that those accused of genocide shall be tried only by "a competent court of the country in whose territory the crime was committed" (or by an "international court" which has not been constituted), then that article would have foiled the very object of the Convention "to prevent genocide and inflict punishment therefor." In the Sixth Committee, the delegates of several countries pointed to such a case, as well as to other cases of well- established jurisdiction in many states, such as the commission of crimes against the citizens of the state, and after a lengthy debate it was agreed to append the following statement to the report of the Committee:

> "The first part of Article 6 contemplates the obligation of the State in whose territory acts of genocide have been committed. Thus, in particular, it does not affect the right of any State to bring to trial before its own tribunals any of its nationals for acts committed outside the State." (U.N. Doc. A/C. 6/SR.. 134 p. 5)

The words “in particular” are designed neither to negate nor to affirm jurisdiction in other cases.

N. Robinson, who refers to the resolution of the Sixth Committee, adds in his The Genocide Convention, 1960, on p. 84:

> “The legal validity of this statement is, however, open to question. It was the opinion of many delegations that `Article 6 was not intended to solve questions of conflicting competence in regard to the trial of persons charged with Genocide; that would be a long process. Its purpose was merely to establish the obligations of the State in which an act of Genocide was committed' F (A/C.6/SR. 132, p. 9).
>
> However, as the chairman rightly pointed out, the report of the Sixth Committee could only state that a majority of the Committee placed a certain interpretation on the text; that interpretation could not be binding on the delegations which had opposed it. `Interpretation of texts had only such value as might be accorded to them by the preponderance of opinion in their favor' F (A/C.6/SR. 132, p. 10). It is obvious that the Convention would be open to interpretation by the parties thereto; should disputes relating to the interpretation arise, the International Court of Justice would be called upon to decide what is the correct interpretation. In dealing with such problems the Court could obviously use the history of the disputed article.”

P.N. Drost, states in The Crime of State, Vol. II: Genocide (1959) (pp. 101-102):

> “In the discussions many delegations expressed the opinion that Article 6 was not meant to solve questions of conflicting or concurrent criminal jurisdiction. Its purpose was merely to lay down the duty of punishment of the State in whose territory the act of genocide was committed (U.N. Doc. A/C. 6/SR. 132)... It seems clear that the Article does not forbid a Contracting Power to exercise jurisdiction in accordance with its national rules on the criminal competence of its domestic courts. General international law does not prohibit a state to punish aliens for acts committed abroad against nationals.”

The learned author proceeds to say on p. 131:

> “Also the courts of the country to which the criminals belong by reason of nationality, were expressly mentioned in the debates as being competent, if the lex fori so admits, to exercise penal jurisdiction in cases arising abroad. The forum patriae rei was recognized as equally competent under the domestic law, applying in such case the principle of active personality. But then, many states apply in certain cases the principle of protective jurisdiction which authorizes the exercise of jurisdiction over aliens in

> respect of crimes committed abroad when the interests of the state are seriously involved. When the victim of physical crime is a national of the state which has arrested the culprit, the principle of passive personality may come into play and the forum patriae victimae may be competent to try the case.
>
> By way of exception - and the crime of genocide surely must be considered exceptional in this respect - the principle of universal repression is applied to crimes which have been committed neither by nor against nationals, nor against public interests nor on the territory of the state whose courts are considered competent nevertheless to exercise criminal jurisdiction by reason of the international concern of the crime or the international interest of its repression. None of these forms of complementary competence additional to the territorial jurisdiction as basic competence of the domestic courts has been excluded under Article 6 of the present Convention. There was no need to stipulate these jurisdictional powers which all states possess unless particular provisions of international law prohibit or limit the exercise."

This Convention may be contrasted with four Geneva Conventions of 12 August 1949:

(Geneva Conventions for (1) the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, (2) of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, (3) Relative to the Treatment of Prisoners at War, (4) Relative to the Protection of Civilian Persons in Time of War).

These Conventions provide that -

> "Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches (of the Convention as defined in the following Article), and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case."

(Article 49 of Convention No. 1, article 50 of Convention No. 2, article 129 of Convention No. 3 and article 146 of Convention No. 4). This establishes the principle of "universality of jurisdiction with respect to war crimes," as obligatory jurisdiction of the High Contracting Parties, an obligation from which none of them may withdraw and which none of them may waive (as expressly stated in the above_mentioned Conventions). That obligation is binding not only on the belligerents, but also on the neutral parties to the Conventions. See British Manual of Military Law, Part III (The Law of War on Land), 1958, para. 282, note 2. M. Greenspan, The Modern Law of Land Warfare 1959, p. 503.

25. On the other hand, in the Convention for the Prevention and Punishment of Genocide, Member States of the United Nations did not reach quite so far-reaching an agreement, but contented themselves with the determination of territorial jurisdiction as a compulsory minimum. It is the consensus of opinion that the absence from this Convention of a provision establishing the principle of universality (and, with that, the failure to constitute an international criminal tribunal) is a grave defect in the Convention which is likely to weaken the joint efforts for the prevention of the commission of this abhorrent crime and the punishment of its perpetrators, but there is nothing in this defect to make us deduce any tendency against the principle of the universality of jurisdiction with respect to the crime in question.

It is clear that the reference in Article 6 to territorial jurisdiction, apart from the jurisdiction of the non-existent international tribunal, is not exhaustive, and every sovereign state may exercise its existing powers within the limits of customary international law, and there is nothing in the adherence of a state to the Convention to waive powers which are not mentioned in Article 6. It is in conformity with this view that the Law for the Prevention and Punishment of Genocide, 5710-1950, provided in section 5 that "any person who committed an act outside of Israel which is an offence under this law may be tried and punished in Israel as though he committed the act inside Israel."

This Law does not apply with retroactive effect and does not therefore pertain to the offences dealt with in this case. Our view as to the universality of jurisdiction is not based on this Law or on this interpretation of Article 6 of the Convention, but derives from the basic nature of the crime of genocide as a crime of utmost gravity under international law.

The significance and relevance of the Convention to this case lies in the confirmation of the international nature of the crime, a confirmation which was unanimously given by the United Nations Assembly and which was adhered to, among other peoples, by the German people as well (in 1954 the German Federal Republic adhered to the Convention and enacted a law - BGBL II, 729 - which gave effect to the Convention in Germany and added to the German criminal law article 220A against genocide - Voelkermord - a crime defined according to Article 2 of the Convention). The "crime against the Jewish People" under section 1 of the Israeli Law constitutes a crime of "genocide" within the meaning of Article 2 of the Convention, and inasmuch as it is a crime under the law of nations, Israel's legislative authority and judicial jurisdiction in this matter is based upon the law of nations.

26. As to the crimes defined in Article 6 of the Charter of the International Military Tribunal, that Tribunal said in its judgment on "the principal war criminals" (IMT, Vol. 1, p. 218) inter alia :

> "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."

As regards the crimes defined in Control Council Law No. 10, which was taken as a basis, among other cases, for twelve important cases tried by the United States Military Tribunals in Nuremberg, it was stated in the judgment passed on the "Jurists" ("Justice Case," Trials of War Criminals, Vol. III, 954 ff (p. 968) that:

> "The IMT Charter, the IMT Judgment, and Control Council Law 10 are merely `great new cases in the book of international law.' ...Surely C.C. Law 10, which was enacted by the authorized representatives of the four greatest powers on earth, is entitled to judicial respect when it states: `Each of the following acts is recognized as a crime.' Surely the requisite international approval and acquiescence is established when 23 states, including all of the great powers, have approved the London Agreement and the IMT Charter, without dissent from any state. Surely the IMT Charter must be deemed declaratory of the principles of international law, in view of its recognition as such by the General Assembly of the United Nations."

The judgment then proceeds to quote the resolution which was unanimously adopted on 11 December 1946 by the United Nations Assembly that:

> "The General Assembly...affirms the principles of international law recognized by the Charter of the Nuernberg Tribunal and the judgment of the Tribunal."

Further on, the judgment draws a distinction between the substantive principles of international law which lay down that "war crimes" and "crimes against humanity" are crimes whenever and wherever they were committed, and the actual enforcement of these universal principles which may come up against barriers of national sovereignty:

> "We are empowered to determine the guilt or innocence of persons accused of acts described as "war crimes" and "crimes against humanity" under rules of international law. At this point, in connection with cherished doctrines of national sovereignty, it is important to distinguish between the rules of common international law which are of universal and superior authority on the one hand, and the provisions for enforcement of those rules which are by no means universal on the other...
>
> As to the punishment of persons guilty of violating the laws and customs of war (war crimes in the narrow sense), it has always been recognized that tribunals may be established and punishment imposed by the state into whose hands the perpetrators fall. These rules of international law were recognized as paramount, and jurisdiction to enforce them by the injured belligerent government, whether within the territorial boundaries of the state or in occupied territory, has been unquestioned. (Ex parte Quirin, 317 U.S. 1; In re: Yamashita, 327 U.S. 1, 90 L Ed.)

> However, enforcement of international law has been traditionally subject to practical limitation. Within the territorial boundaries of a state having a recognized, functioning government presently in the exercise of sovereign power throughout its territory, a violator of the rules of international law could be punished only by the authority of the officials of that state. The law is universal, but such a state reserves unto itself the exclusive power within its boundaries to apply or withhold sanctions... Applying these principles, it appears that the power to punish violators of international law in Germany is not solely dependent on the enactment of rules of substantive penal law applicable only in Germany... Only by giving consideration to the extraordinary and temporary situation in Germany can the procedure here be harmonized with established principles of national sovereignty.
>
> In Germany an international body (the Control Council) has assumed and exercised the power to establish judicial machinery for the punishment of those who have violated the rules of the common international law, a power which no international authority without consent could assume or exercise within a state having a national government presently in the exercise of its sovereign powers."

It is clear from these pronouncements that the contention that the Nuremberg International Military Tribunal and the tribunals which were established in Germany by virtue of the Control Council Law No. 10 derive their jurisdiction from the capitulation and lack of sovereignty of Germany at that time, is true only with respect to the direct exercise of criminal territorial jurisdiction in Germany, such as was exercised by the above-mentioned tribunals, but it has adopted for itself substantive rules of universal validity in the law under discussion, the rules of international law on the subject of "war crimes" and "crimes against humanity". The judgment proceeds to say (p. 983):

> "Whether the crime against humanity is the product of statute or of common international law, or, as we believe, of both, we find no injustice to persons tried for such crimes. They are chargeable with knowledge that such acts were wrong and were punishable when committed."

It is hardly necessary to add that the "crime against the Jewish People," which constitutes the crime of "genocide" is nothing but the gravest type of "crime against humanity" (and all the more so because both under Israeli law and under the Convention a special intention is requisite for its commission of a "crime against humanity"). Therefore, all that has been said in the Nuremberg principles on the "crime against humanity" applies a fortiori to the "crime against the Jewish People." If authority is needed for this, we find it in the same judgment, which says:

> "As the prime illustration of a crime against humanity under C.C. Law 10, which by reason of its magnitude and its international repercussions has

> been recognized as a violation of common international law, we cite `genocide'..."

It is not necessary to recapitulate in Jerusalem, fifteen years after Nuremberg, the grounds for the legal rule on the "crime against humanity," for these terms are written in blood, in the torrents of the blood of the Jewish People which was shed. "That law," said Aroneanu in 1948, "was born in the crematoria, and woe to him who will try to stifle it"

(Cette loi est nee dans les fours crematoires; et malheur a celui qui tenterait de l'etouffer).

(Quoted by Boissarie in his introduction to Eugene Aroneanu, Le Crime contre l'Humanite, 1961.) The judgment against the "Operations Units" of 10 April 1948 (Einsatzgruppen Case), TWC IV, 411 ff. (p. 498) says on the same subject:

> "Although the Nuernberg trials represent the first time that international tribunals have adjudicated crimes against humanity as an international offence, this does not, as already indicated, mean that a new offence has been added to the list of transgressions of man. Nuernberg has only demonstrated how humanity can be defended in court, and it is inconceivable that with this precedent extant, the law of humanity should ever lack for a tribunal. Where law exists a court will rise. Thus, the court of humanity, if it may be so termed, will never adjourn."

27. We have already dealt with the `principle of legality' that postulates "nullum crimen sine lege, nulla poena sine lege," and what has been stated above with respect to the municipal law is also applicable to international law. In the judgment against the "Major War Criminals" it is stated (p. 219):

> "In the first place, it is to be observed that the maxim nullum crimen sine lege is not a limitation of sovereignty, but it is in general a principle of justice."

That is to say, the penal jurisdiction of a state with respect to crimes committed by `foreign offenders,' insofar as it does not conflict on other grounds with the principles of international law, is not limited by the prohibition of retroactive effect.

> It is indeed difficult to find a more convincing instance of just retroactive legislation than the legislation providing for the punishment of war criminals and criminals against humanity and against the Jewish People, and all the reasons justifying the Nuremberg judgments justify eo ipse the retroactive legislation of the Israel legislator. We have already referred to the decisive ground of the existence of a `criminal intent' (mens rea), and this ground recurs in all the Nuremberg judgments. The Accused in this case is charged with the implementation of the plan for the "Final Solution of the Jewish Question." Can anyone in his right mind doubt the absolute

> criminality of such acts? As stated in the judgment in the case of "Operations Units" (p. 459):
>
> "...There is (not) any taint of ex-post-facto-ism in the law of murder."

The Netherlands Law of 10 July 1947 which amends the preceding law (of 22 October 1943) may serve as an example of municipal retroactive legislation, in that it added Article 27(A) which provides:

> "He who during the time of the present war and while in the forces of service of the enemy state is guilty of a war crime or any crime against humanity as defined in Art. 6 under (b) or (c) of the Charter belonging to the London Agreement of 8th August, 1945...shall, if such crime contains at the same time the elements of an act punishable according to Netherlands law, receive the punishment laid down for such act."

On the strength of such retroactive adoption of the definition of crimes according to the Nuremberg Charter, the Higher S.S. and Police Leader in Holland, Rauter, was sentenced to death by a Special Tribunal, and his appeal was dismissed by the Special Court of Cassation (see LRTWC XIV pp. 89 ff). The double contention nullum crimen, nulla poena sine lege was dismissed by the Court of Cassation on the grounds that the Netherlands legislator had abrogated this rule (which is expressly laid down in sec. 1 of the Netherlands Criminal Law) with respect to crimes of this kind, and that indeed that rule was not adequate for these crimes. On p. 120 (ibid.) it is stated:

> "From what appears above, it follows that neither Art. 27(A) of the Extraordinary Penal Law Decree nor Art. 6 of the Charter of London to which the said Netherlands provision of law refers, had, as the result of an altered conception with regard to the unlawfulness thereof, declared after the event to be a crime an act thus far permitted;...these provisions have only further defined the jurisdiction as well as the limits of penal liability and the imposition of punishment in respect of acts which already before (their commission) were not permitted by international law and were regarded as crimes..."
>
> "Insofar as the appellant considers punishment unlawful because his actions, although illegal and criminal, lacked a legal sanction provided against them precisely outlined and previously prescribed, his objection also failed.
>
> "The principle that no act is punishable except in virtue of a legal penal provision which had preceded it, has as its object the creation of a guarantee of legal security and individual liberty, which legal interests would be endangered if acts about which doubts could exist as to their deserving punishment were to be considered punishable after the event.

> "This principle, however, bears no absolute character, in the sense that its operation may be affected by that of other principles with the recognition of which equally important interests of justice are concerned.
>
> "These latter interests do not tolerate that extremely serious violations of the generally accepted principles of international law, the criminal...character of which was already established beyond doubt at the time they were committed, should not be considered punishable on the sole ground that a previous threat of punishment was lacking. It is for this reason that neither the London Charter of 1945 nor the judgment of the International Military Tribunal (at Nuremberg) in the case of the Major German War Criminals have accepted this plea which is contrary to the international concept of justice, and which has since been also rejected by the Netherlands legislator, as appears from Art. 27(A) of the Extraordinary Penal Law Decree."

The courts in Germany, too, have rejected the contention that the crimes of the Nazis were not prohibited at the time, and that their perpetrators did not have the requisite criminal intent. It is stated in the judgment of the Supreme Federal Tribunal 1 St/R 563/51 that the expulsions of the Jews, the object of which was the death of the deportees, were a continuous crime committed by the principal planners and executants, something of which all other executants should have been conscious, for it cannot be admitted that they were not aware of the basic principles on which human society is based, and which are the common legacy of all civilized nations.

See also BGH 1 St.R 404/60 (NJW 1961, 276), a judgment of 6 December 1960 which deals with the murder of mentally deranged persons on Hitler's orders. The judgment says inter alia (pp. 277, 278) that in 1940, at the latest, it was clear to any person who was not too naive, certainly to anyone who was part of the leadership machinery, that the Nazi regime did not refrain from the commission of crimes, and anyone taking part in these crimes could not contend that he had mistakenly assumed that a forbidden act was permissible, seeing that these crimes violated basic principles of the rule of law.

The Hebrew rule, "No one may be punished unless he has been forewarned," which corresponds to the principle of legality according to the Roman rule, hints at the importance of warning that a certain action is prohibited. During the World War, Allied governments gave the Nazi criminals recurrent warnings that they would be punished, but these were of no avail. Henry Stimson was right when he said, as cited in the judgment on "The Jurists" (p. 976):

> "It was the Nazi confidence that we would never chase and catch them, and not a misunderstanding of our opinion of them, that led them to commit their crimes. Our offence was thus that of the man who passed by on the other side. That we have finally recognized our negligence and named the criminals for what they are is a piece of righteousness too long delayed by fear."

28. Learned Counsel seeks to negate the jurisdiction of the state by contending that the crimes attributed to the Accused in Counts 1-12 had been committed, according to the indictment itself, in the course of duty, and constitute `Acts of State,' acts for which according to his contention, only the German state is responsible. In this contention Counsel bases himself mainly on the theory of Kelsen, as explained in his works:

> "Collective and Individual Responsibility in International Law with Particular Regard to the Punishment of War Criminals" (1943), 33 California Law Review 530 ff;
>
> Peace through Law (1944) p. 71 ff;
>
> Principles of International Law (1952), p. 235 ff.

Learned Counsel basis himself on the rule par in parem non habet imperium - that is to say, a sovereign state does not exercise dominion over, and does not sit in judgment against, another sovereign state - and deduces therefrom that a state may not try a person for a criminal act that constitutes an `act of state' of another state, without the consent of such other state to that person's trial. In the view of Kelsen, only the state in whose behalf the `organ' (ruler or official) had acted is responsible for the violation, through such act, of international law, while the perpetrator himself is not responsible (with the two exceptions of espionage and war treason).

The theory of `act of state' was repudiated by the International Military Tribunal at Nuremberg, when it said (pp. 222-223):

> "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 recognized. In the recent case of Ex Parte Quirin (1942), 317 U.S. 1, before the Supreme Court of the United States, persons were charged during the war with landing in the United States for purposes of spying and sabotage. The late Chief Justice Stone, speaking for the court, said:
>
> "`From the very beginning of its history, this court has applied the law of war as including that part of the law of nations which prescribes for the conduct of war, the status, rights, and duties of enemy nations as well as enemy individuals.'
>
> "He went on to give a list of cases tried by the courts, where individual offenders were charged with offences against the laws of nations, and particularly the laws of war. 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... The principle of international law which, under certain circumstances, protects the representatives of a state, cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings. Article 7 of the Charter expressly declares:
>
> "'The official position of defendants, whether as heads of states, or responsible officials in government departments, shall not be considered as freeing them from responsibility, or mitigating punishment.'
>
> "On the other hand, the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state, if the state, in authorizing action, moves outside its competence under international law."

It is clear from the context that the last sentence was not meant, as Counsel contends, to limit the rule of the "violation of the laws of war" alone. The court expressly said, as quoted above, that "the principle of international law which under certain circumstances protects the representatives of a state, cannot be applied to acts which are condemned as criminal by international law."

Indeed, the theory of Kelsen and his disciples (See Defence Counsel's written submissions, Vol. I, pp. 532-539), and also the `limited' theories referred to by Learned Counsel (ibid.) are inadmissible. The precedents adduced as authorities for this theory, e.g., Schooner Exchange v. McFaddon (1812) 7 Cranch 116, the memorandum of the American Secretary of State on the subject of the "Caroline," i.e., People v. McLeod (See Moore, Digest of International Law II, paragraph 175), and other precedents, do not fit the realities in Nazi Germany. A state that plans and implements a "Final Solution" cannot be treated as par in parem, but only as a gang of criminals. In the judgment on "The Jurists," it is said (p. 984):

> "The very essence of the prosecution case is that the laws, the Hitlerian decrees and the Draconic, corrupt and perverted Nazi judicial system themselves constituted the substance of war crimes and crimes against humanity, and that participating in the enactment and enforcement of them amounts to complicity in crime. We have pointed out that governmental participation is a material element of the crime against humanity. Only when official organs of sovereignty participated in atrocities and persecutions did those crimes assume international proportions. It can

> scarcely be said that governmental participation, the proof of which is necessary for conviction, can also be a defence in the charge."

Drost says in his The Crime of State (Humanicide), pp. 310- 311 (under the caption - "State Crime as Act of State"):

> "Any state officer irrespective of his rank or function would necessarily go unpunished if his acts of state were considered internationally as the sovereign acts of a legal person. The person who really acted on behalf of the state would be twice removed from penal justice, since the entity whom he represented, by its very nature would be doubly immune from punishment, once physically and once legally. The natural person escapes scot-free between the legal loopholes of state personality and state sovereignty. But then, this reasoning in respect of these too much laboured juristic conceptions should not be carried into the province of penal law." "Immunity for acts of state constitutes the negation of international criminal law which indeed derives the necessity of its existence exactly from the very fact that acts of state often have a criminal character for which the morally responsible officer of state should be made penally liable."

The contention of Learned Counsel that it is not the Accused but the state on whose behalf he had acted that is responsible for his criminal acts, is only true in its second part. It is true that under international law Germany bears not only moral, but also legal, responsibility for all the crimes that were committed as its own `Acts of State,' including the crimes attributed to the Accused. But that responsibility does not detract one iota from the personal responsibility of the Accused for his acts. See Oppenheim-Lauterpacht, paragraph 156 b:

> "The responsibility of states is not limited to restitution or to damages of a penal character. The state, and those acting on its behalf, bear criminal responsibility for such violations of international law as by reason of their gravity, their ruthlessness, and their contempt for human life place them within the category of criminal acts as generally understood in the law of civilized countries. Thus if the government of a state were to order the wholesale massacre of aliens resident within its territory, the responsibility of the state and of the individuals responsible for the ordering and the execution of the outrage would be of a criminal character." "...It is impossible to admit that individuals, by grouping themselves into states and thus increasing immeasurably their potentialities for evil, can confer upon themselves a degree of immunity from criminal liability and its consequences which they do not enjoy when acting in isolation. Moreover, the extreme drastic consequences of criminal responsibility of states are capable of modification in the sense that such responsibility is additional to, and not exclusive of, the international criminal liability of the individuals guilty of crimes committed in violation of International Law."

See also ibid., paragraph 153a (p. 341):

> "...No innovation was implied in the Charter annexed to the Agreement of August 8, 1945, for the punishment of the Major War Criminals of the European Axis inasmuch as it decreed individual responsibility for war crimes proper and for what it described as crimes against humanity. For the laws of humanity which are not dependent upon positive enactment, are binding, by their very nature, upon human beings as such."

The repudiation of the contention as to an `Act of State' is one of the principles of international law that were acknowledged by the Charter and Judgment of the Nuremberg Tribunal, and were unanimously affirmed by the United Nations Assembly in its Resolution of 11 December 1946. In the formulation (on the directions of the Assembly in its Resolution No. II 177) by the International Law Commission of the United Nations, of these acknowledged principles, this principle appears as Principle No. 3:

> "The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible government official does not relieve him from responsibility under international law."

In Resolution No. 96(i) of 11 December 1946, too, in which the UN Assembly unanimously affirmed that `genocide' is a `crime under international law,' it is stated that "principal offenders and associates, whether private individuals, public officials or statesmen" must be punished for the commission of this crime, while the Convention for the Prevention and Punishment of Genocide expressly provides in Art 4:

> "Persons committing genocide or any of the other acts enumerated in Art 3 shall be punished whether they are constitutionally responsible rulers or private individuals."

This article affirms a principle acknowledged by all civilized nations, in the words of the International Court of Justice in its Advisory Opinion referred to, and inasmuch as Germany, too, has adhered to this Convention, it is possible that even according to Kelsen, who requires an international Convention or the consent of the state concerned, there is no longer any ground for pleading an 'Act of State.' But the rejection of this plea does not depend on the affirmation of this principle by Germany, for the plea had already been invalidated by the law of nations.

For these reasons we dismiss the contention as to 'Act of State.'

29. In his written submissions (Volume I, pp. 550-552), learned Counsel has based himself on the strict interpretation of the term `crime against humanity' given by the Nuremberg International Tribunal according to Art 6(1) of the Charter, which excludes from its jurisdiction many crimes of this kind which had been committed by Germany before the outbreak of the War. In its judgment on the Major War Criminals, the Tribunal said (p. 254):

> "To constitute Crimes against Humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal. The Tribunal is of the opinion that, revolting and horrible as many of these crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with, any such crime. The Tribunal therefore cannot make a general declaration that the acts before 1939 were Crimes against Humanity within the meaning of the Charter."

It is our view that no conclusion may be drawn from this interpretation of the Charter, for it is based on an express proviso to Art. 6(c) of the Charter, which does not appear in the definition of "crime against humanity" in Art. II 1(c) of Control Council Law No. 10. The last words in the passage cited above: "crimes against humanity within the meaning of the Charter" indicate that, but for the special proviso to Art. 6(c), the Tribunal would have deemed these crimes "crimes against humanity." It is true that, notwithstanding the conspicuous omission of this proviso from Control Council Law No. 10, two of the American Military Tribunals decided in subsequent cases (the `Flick Case' and the `Ministries Case') to apply the above- mentioned proviso to the last-mentioned law; but two other Tribunals have expressed a contrary opinion (in the `Operations Units' and the `Jurists' cases), and we think that their opinion, which conforms to the letter of the law, is correct. See also the reasons - which we find convincing - advanced by the Chief American Prosecutor, General Taylor, in his argument in the `Jurists' case. It must be noted that judgments under Control Council Law No. 10 applied the definition of "crime against humanity" to all crimes of this order which were committed during the period of the Nazi regime, i.e., from 30 January 1933. See H. Meyerowitz, La Repression par les Tribunaux Allemands des Crimes contre l'Humanite, 1960, p. 233.

No great practical importance attaches to this question for the purpose of this case, seeing that most of the crimes attributed to the Accused were committed during the War or in connection with it (according to the Nuremberg judgment, Hitler's invasions of Austria and Czechoslovakia constitute "crimes within the jurisdiction of the Tribunal," within the meaning of the proviso to Art. 6(c) [of the Charter]; see ibid., Vol. 22, pp. 643, 662). At all events, it seems to us, in the light of the general definition in Control Council Law No. 10, of "a crime against humanity," that the proviso to Art. 6(c) of the Charter does not limit the substantive nature of a "crime against humanity" under international law, but has only limited the jurisdiction of the Nuremberg Tribunal to try crimes of this kind which are bound up with "war crimes" or "crimes against peace." See also Oppenheim-Lauterpacht (7th ed.) II, para. 257, p. 579, note (5) and authorities there cited.

30. We have discussed at length the international character of the crimes in question because this offers the broadest possible, though not the only, basis for Israel's jurisdiction according to the law of nations. No less important from the point of view of international law is the special connection the State of Israel has with such crimes, seeing that the People of Israel (Am Yisrael) - the Jewish People (Ha'am Ha'Yehudi - to use the term in the Israel legislation) constituted the target and the victim of most of the crimes in question.

The State of Israel's "right to punish" the Accused derives, in our view, from two cumulative sources: a universal source (pertaining to the whole of mankind) which vests the right to prosecute and punish crimes of this order in every state within the family of nations; and a specific or national source which gives the victim nation the right to try any who assault its existence.

This second foundation of penal jurisdiction conforms, according to the acknowledged terminology, to the protective principle (the competence reelle). In England, which until a short time ago was considered a country that does not rely on such jurisdiction (see still in "Harvard Research in International Law, Jurisdiction with Respect to Crime," 1935, AJIL, Vol. 35 (Suppl.) 544) where it was stated in Joyce v. D.P.P. (1946) A.C. 347 (p. 372):

> "The second point of appeal...was that in any case no English court has jurisdiction to try an alien for a crime committed abroad... There is, I think, a short answer to this point. The statute in question deals with the crime of treason committed within or...without the realm... No principle of comity demands that a state should ignore the crime of treason committed against it outside its territory. On the contrary, a proper regard for its own security requires that all those who commit that crime, whether they commit it within or without the realm, should be amenable to its laws."

Oppenheim-Lauterpacht I para. 147, p. 333, says that the penal jurisdiction of the state includes "crimes injuring its subjects or serious crimes against its own safety."

Most European countries go much farther than this (See "Harvard Research," ibid., p. 546 et seq.). 31. Dahm says in his Zur Problematik des Voelkerstrafrechts, 1956, p. 28, that the protective principle is not confined to foreign offences that threaten the "vital interests" of the state, and goes on to explain (pp. 38-39) in his reference to "immanent limitations" of the jurisdiction of the state that a departure therefrom would constitute an "abuse" of its sovereignty. He says:

> "Penal jurisdiction is not a matter for everyone to exercise. There must be a "linking point," a legal connection that links the punisher with the punished. The State may, insofar as international law does not contain rules contradicting this, punish only persons and acts which concern it more than they concern other States" (author's italics).

Learned Counsel summed up his pleadings against the jurisdiction of the Israel legislator by stressing (Session 5, Vol. 1, pp.56-59) that under international law there must be a connection between the state and the person who committed the crime, and that, in the absence of an "acknowledged linking point," it was ultra vires for the state to inflict punishment for foreign offences.

The doctrine of the "linking point" is not new. Dahm (ibid.) bases himself on Mendelssohn-Bartholdy, Vergleichende Darstellung des deutschen und auslaendischen

Strafrechts, Allg. Teil VI (1908) 111 ff. And Mendelssohn- Bartholdy himself (ibid.) quotes Rolin-Jaquemins as having said in 1874:

> "Tout le monde est d'accord sur ce point qu'il faut un lien de droit entre celui qui punit et celui qui subit le chatiment."

32. We have already stated above the view of Grotius on "the right to punish," a view which is also based on a "linking point" between the criminal and his victim: Grotius holds that the very commission of the crime creates a legal connection between the offender and the victim which vests in the victim the right to punish the offender or demand his punishment. According to natural justice, the victim may himself punish the offender, but the organization of society has delegated that natural right to the sovereign state. One of the main objects of the punishment is - continues the author of The Law of Peace and War (Book 2, chapter 20) - to ensure that

> "the victim shall not in future suffer a similar infliction at the hands of the same person or at the hands of others" (ne post hac tale quid patiatur aut ab eodem aut ab aliis).

Grotius also quotes an ancient authority who said that the punishment is necessary to

> "defend the honour or the authority of him who was hurt by the offence, so that the failure to punish may not cause his degradation" (dignitas auctoritasve ejus in quem est peccatum tuenda est, ne praetermissa animadversio contemtum ejus pariat et honorem levet),

and he adds that all that has been said of the jurisdiction applies to the infringement of all his rights. And again:

> "Ne ab aliis laedatur qui laesus est punitione non quavis, sed aperta atque conspicua quae ad exemplum pertinet obtinetur" (In order that the victim may not be hurt by others, there must be no mere punishment but a public and striking punishment that will serve as an example.)

Not all jurists use the term "linking point" in an equal connotation. Thus, Mendelssohn-Bartholdy holds the opinion that the sovereignty of a country in determining its penal jurisdiction is unlimited, and he resorts to the "linking point" doctrine solely as a scientific device for the classification of the offences specified in positive law: "The number of linking points is as large as the number of offences" (ibid., p. 112). On the other hand, Hyde (ibid., p. 804) demands, as already mentioned

> "a close and definite connection between that act and the prosecutor, and one which is commonly acknowledged to excuse the exercise of jurisdiction. There are few situations where the requisite connection is deemed to exist... The connection...is... apparent when the act complained

> of is to be fairly regarded as directed against the safety of the prosecuting State."

Between these two extreme views is the view of Dahm (ibid.). Notwithstanding the difference of opinion as to the closeness of the requisite link, the very term "connection" or "linking point" is useful for the elucidation of the problem before us. The question is: What is the special connection between the State of Israel and the offences attributed to the Accused, and whether this connection is sufficiently close to form a foundation for Israel's right of punishment against the Accused. This is no merely technical question but a wide and universal one; for the principles of international law are wide and universal principles and not articles in an express code.

33. When the question is presented in its wider form, as stated above, it seems to us that there can be no doubt what the answer will be. The "linking point" between Israel and the Accused (and for that matter between Israel and any person accused of a crime against the Jewish People under this law) is striking in the "crime against the Jewish People," a crime that postulates an intention to exterminate the Jewish People in whole or in part. Indeed, even without such specific definition - and it must be noted that the draft law only defined "crimes against humanity" and "war crimes" (Bills of the Year 5710 No. 36, p. 119) - there was a subsisting "linking point," since most of the Nazi crimes of this kind were perpetrated against the Jewish People; but viewed in the light of the definition of "crime against the Jewish People," as defined in the Law, constitutes in effect an attempt to exterminate the Jewish People, or a partial extermination of the Jewish People. If there is an effective link (and not necessarily identity) between the State of Israel and the Jewish People, then a crime intended to exterminate the Jewish People has an obvious connection with the State of Israel.

34. The connection between the State of Israel and the Jewish People needs no explanation. The State of Israel was established and recognized as the State of the Jews. The proclamation of 5 Iyar 5708 (14 May 1948) (Official Gazette No. 1) opens with the words: "It was in the Land of Israel that the Jewish People was born," dwells on the history of the Jewish People from ancient times until the Second World War, refers to the Resolution of the United Nations Assembly of 29 November 1947 which calls for the establishment of a Jewish State in the Land of Israel, determines the "natural right of the Jewish People to be, like every other people, self-governing, in its sovereign state." It would appear that there is no need for any further proof of the obvious connection between the Jewish People and the State of Israel: This is the sovereign state of the Jewish People.

Moreover, the Declaration of the Establishment of the State of Israel makes mention of the specific tragic link between the Nazi crimes which form the subject of the Law in question, and the establishment of the state:

> "The catastrophe which recently befell the Jewish People - the massacre of millions of Jews in Europe - was another clear demonstration of the urgency of solving the problem of its homelessmess by re- establishing in

> the Land of Israel the Jewish State, which would open the gates of the homeland wide to every Jew, and confer upon the Jewish People the status of a fully privileged member of the comity of nations. "Survivors of the Nazi Holocaust in Europe, as well as Jews from other parts of the world, continued to migrate to the Land of Israel, undaunted by difficulties, restrictions and dangers, and never ceased to claim their right to a life of dignity, freedom and honest toil in their national homeland. "In the Second World War, the Jewish community of this country contributed its full share to the struggle of the freedom- and peace-loving nations against the forces of Nazi wickedness and, by the blood of its soldiers and its war effort, gained the right to be reckoned among the peoples who founded the United Nations."

These words are no mere rhetoric, but historical facts which international law does not ignore.

In the light of the recognition by the United Nations of the right of the Jewish People to establish their State, and in the light of the recognition of the established Jewish State by the family of nations, the connection between the Jewish People and the State of Israel constitutes an integral part of the law of nations.

The massacre of millions of Jews by the Nazi criminals that very nearly led to the extinction of the Jewish People in Europe, was one of the tremendous causes for the establishment of the State of the survivors. The State cannot be cut off from its roots which also lie deep within the Holocaust of European Jewry.

Half of the citizens of the State have immigrated from Europe in recent years, some before and some after the Nazi massacre. There is hardly one of them who has not lost parents, brothers and sisters, and many lost their spouses and their offspring in the Nazi hell.

Under these circumstances, which are without precedent in the annals of any other nation, can there be any one who would contend that there is no sufficient "linking point" between the crime of the extermination of the Jews of Europe and the State of Israel?

35. Learned Counsel contends that in the absence of a "recognized linking point" only the principle of territoriality is valid with respect to the crimes attributed to the Accused. On this principle, at least eighteen countries may try the Accused for the offences specified in the indictment, and had one or several of such countries prosecuted the Accused for the extermination of the Jews who resided there, the Accused would not have had any argument against the jurisdiction of the Court. In other words, eighteen nations do have the right to punish the Accused for the murder of Jews who resided in their territories, but the nation of those who were murdered has no right to inflict such punishment because those persons were not exterminated on its territory.

But the people is one and the crime is one: The crime attributed to the Accused is "the killing of millions of Jews with intent to exterminate the Jewish People." The Jewish population now residing in the State of Israel, or the Jewish "Yishuv" which lived in Palestine before the establishment of the State, too, is part of the Jewish People whom the Accused sought, according to the indictment, to exterminate. Although that part of the people was rescued, it was in danger of extermination, as the history of the World War shows. At all events, the extermination of European Jewry which was carried out with intent to annihilate the Jewish People, was directed not only against those Jews who were exterminated, but against the entire Jewish People, including the Jewish "Yishuv" in Palestine. To argue that there is no connection, is like cutting away the roots and branches of a tree and saying to its trunk: I have not hurt you.

Indeed, this crime very deeply concerns the vital interests of the State of Israel, and pursuant to the "protective principle," this State has the right to punish the criminals. In terms of Dahm's thesis, the acts in question referred to in this Law of the State of Israel "concern Israel more than they concern other states," and therefore, according to this author's thesis, too, there exists a "linking point." The punishment of Nazi criminals does not derive from the arbitrariness of a country "abusing" its sovereignty, but is a legitimate and reasonable exercise of a right in penal jurisdiction.

The very existence of a people who can be murdered with impunity is in danger, to say nothing of the danger to its "honour and authority" (Grotius). This has been the curse of the diaspora and the want of sovereignty of the Jewish People, upon whom any criminal could commit his outrages without fear of being punished by the people outraged. Hitler and his associates exploited the defenceless position of the Jewish People in its dispersion, in order to perpetrate the total murder of that People in cold blood. It was also in order to provide some measure of redress for the terrible injustice of the Holocaust that the sovereign state of the Jews, which enables the survivors of the Holocaust to defend its existence by the means at the disposal of a state, was established on the recommendation of the United Nations. One of the means therefor is the punishment of the murderers who did Hitler's contemptible work. It is for this reason that the Law in question has been enacted.

36. Counsel contended that the protective principle cannot apply to this case because that principle is designed to protect only an existing state, its security and its interests, while the State of Israel had not existed at the time of the commission of the crime. He further submitted that the same contention applies to the principle of "passive personality" which stemmed from the protective principle, and of which some states have made use for the protection of their citizens abroad through their penal legislation. Counsel pointed out that, in view of the absence of a sovereign Jewish State at the time of the Holocaust, the victims of the Nazis were not, at the time they were murdered, citizens of the State of Israel.

In our view, learned Counsel errs when he examines the protective principle in this retroactive Law according to the time of the commission of the crimes, as is the case in an ordinary law. This Law was enacted in 1950 with a view to its application to a

specified period which had terminated five years before its enactment. The protected interest of the State recognized by the protective principle is, in this case, the interest existing at the time of the enactment of the Law, and we have already dwelt on the importance of the moral and protective task which this Law is designed to achieve in the State of Israel.

37. The retroactive application of the Law to a period precedent to the establishment of the State of Israel is not, in respect to the Accused (and, for that matter, to any accused under this Law), a problem different from that of the usual retrospectivity on which we have already dwelt above. Goodhart states in his "The Legality of the Nuremberg Trial," Juridical Review, April 1946, (p. 8), inter alia:

> "Many of the national courts now functioning in the liberated countries have been established recently, but no one has argued that they are not competent to try the cases that arose before their establishment... No defendant can complain that he is being tried by a court which did not exist when he committed the act."

What is said here of a court which did not exist at the time of the commission of the crime, is also valid with respect to a state which was not sovereign at the time of the commission of the crime. The whole political landscape of the continent of occupied Europe has changed after the War; boundaries have changed, as has also changed the very identity of states that had existed before. But all this does not concern the Accused.

38. All this is said in relation to the Accused; but may a new state try crimes at all that were committed before it was established? The reply to this question was given in Katz-Cohen v. Attorney General, C.A. 3/48 (Pesakim II, p. 225) where it was decided that the Israeli courts have full jurisdiction to try offences committed before the establishment of the State, and that "in spite of the changes in sovereignty, there subsisted a continuity of law." "I cannot see," said President Smoira, "why that community in the country against whom the crime was committed should not demand the punishment of the offender solely because that community is now governed by the Government of Israel, instead of by the Mandatory Power."

This was said with respect to a crime committed in the country, but there is no reason to assume that the law would be different with respect to foreign offences. Had the Mandatory legislator enacted at the time an extraterritorial law for the punishment of war criminals (as, to give one example, the Australian legislator did in the War Criminals Act, 1945, see Section 12), it is clear that the Israeli court would have been competent to try under such law offences which were committed abroad prior to the establishment of the State. The principle of continuity also applies to the power to legislate: The Israeli legislator is empowered to amend or supplement the Mandatory legislation retroactively by enacting laws applicable to criminal acts which were committed prior to the establishment of the State.

Indeed, this retroactive law is designed to supplement a gap in the laws of Mandatory Palestine, and the interests protected by this law existed also during the period of the Jewish National Home. The Balfour Declaration and the Palestine Mandate given by the League of Nations to Great Britain constituted an international recognition of the Jewish People (see N. Feinberg, "The Recognition of the Jewish People in International Law," Jewish Yearbook of International Law 1948, p. 15, and authorities there cited), the historical link of the Jewish People with the Land of Israel and their right to reestablish their National Home in that country. The Jewish People actually made use of that right, and the National Home has grown and developed until it reached a sovereign status.

During the period preceding the establishment of the sovereign State, the Jewish National Home may be seen as reflecting the rule nasciturus pro jam nato habetur (see Feinberg, ibid.). The Jewish "Yishuv" in Palestine constituted during that period a "state-on-the-way," which in due time reached a sovereign status. The lack of sovereignty made it impossible for the Jewish "Yishuv" in the country to enact a criminal law against the Nazi crimes at the time of their commission, but these crimes were also directed against that "Yishuv" which constituted an integral part of the Jewish People, and the enactment with retroactive application of the Law in question by the State of Israel answered the need which had already existed previously.

The historical facts explain the background of the legislation in question; but it seems to us that, from a legal point of view, the power of the new State to enact retroactive legislation does not depend on that background alone, and is not conditioned by the continuity of law between Palestine and the State of Israel. Let us take an extreme example and assume that the Gypsy survivors - an ethnic group or a nation who were also, like the Jewish People, victims of the "crime of genocide" - would have gathered after the War and established a sovereign state in any part of the world. It seems to us that no principle of international law could have denied the new state the natural power to put on trial all those killers of their people who fell into their hands. The right of the injured group to punish offenders derives directly, as Grotius explained (see supra) from the crime committed against them by the offender, and it was only want of sovereignty that denied them the power to try and punish the offender. If the injured group or people thereafter reaches political sovereignty in any territory, it may make use of such sovereignty for the enforcement of its natural right to punish the offender who injured it.

All this holds good in respect to the crime of genocide (including the crime against the Jewish People) which, it is true, is committed by the killing of the individuals, but is intended to exterminate the nation as a group. According to Hitler's murderous racialism, the Nazis singled out Jews from all other citizens in all the countries of their domination, and carried the Jews to their death solely because of their racial affiliation. Even as the Jewish People constituted the object against which the crime was directed, so it is now the competent subject to place on trial those who assailed its existence. The fact that this People changed after the Holocaust from object to subject, and from the victim of a racial crime to the wielder of authority to punish the criminals, is a great historic right that cannot be dismissed. The State of Israel, the sovereign State of the Jewish People, performs through its legislation the task of carrying into effect the right of the Jewish

People to punish the criminals who killed its sons with intent to put an end to the survival of this people. We are convinced that this power conforms to existing principles of the law of nations.

For all these reasons we have dismissed the first submission of Counsel against the jurisdiction of this Court.

39. We should add that the well-known judgment of the International Court of Justice at The Hague in the "Lotus Case" ruled that the principle of territoriality does not limit the power of the state to try crimes and, moreover, any argument against such power must point to a specific rule in international law which negates that power. We have not guided ourselves by this rule which devolves, as it were, the "onus of proof" upon him who contends against such power, but have preferred to base ourselves on positive grounds which establish the jurisdiction of the State of Israel.

40. The second contention of learned Counsel for the Defence was that the trial in Israel of the Accused, following upon his capture in a foreign land, is in conflict with international law and takes away the jurisdiction of the Court. Counsel pleaded that the Accused, who had resided in Argentina under an assumed name, was kidnapped on 11 May 1960 by the agents of the State of Israel, and was forcibly brought to Israel. He requested that two witnesses be heard in proof of his contention that the kidnappers of the Accused acted on orders they received from the Government of Israel or its representatives, a contention to which learned Counsel attached considerable importance, in an effort to prove that he was brought to Israel's area of jurisdiction in violation of international law. He summed up his contentions by submitting that the Court ought not to lend its support to an illegal act of the State, and that in these circumstances the Court has no jurisdiction to try the Accused.

On the other hand, the learned Attorney General pleaded that the jurisdiction of the Court was based upon the Nazis and Nazi Collaborators (Punishment) Law which applied to the Accused and to the acts attributed to him in the indictment; that it is the duty of the Court to do no other than try such crimes; and that in accordance with established judicial precedents in England, the United States and Israel, the Court is not to enter into the circumstances of the arrest of the Accused and of his transference to the area of jurisdiction of the State, these questions having no bearing on the jurisdiction of the Court to try the Accused for the offences for which he is being prosecuted, but only on the foreign relations of the State. The Attorney General added that, with reference to the circumstances of the arrest of the Accused and his transference to Israel, the Republic of Argentina had lodged a complaint with the Security Council of the United Nations, which resolved on 23 June 1960 as follows (document S/4349) (Exhibit T/1):

> "The Security Council,
>
> Having examined the complaint that the transfer of Adolf Eichmann to the territory of Israel constitutes a violation of the sovereignty of the Argentine Republic,

Considering that the violation of the sovereignty of a Member State is incompatible with the Charter of the United Nations,

Having regard to the fact that reciprocal respect for and the mutual protection of the sovereign rights of States are an essential condition for their harmonious coexistence,

Noting that the repetition of acts such as that giving rise to this situation would involve a breach of the principles upon which international order is founded, creating an atmosphere of insecurity and distrust incompatible with the preservation of peace,

Mindful of the universal condemnation of the persecution of the Jews under the Nazis and of the concern of people in all countries that Eichmann should be brought to appropriate justice for the crimes of which he is accused,

Noting at the same time that this resolution should in no way be interpreted as condoning the odious crimes of which Eichmann is accused,

1. Declares that acts such as that under consideration, which affect the sovereignty of a Member State and therefore cause international friction, may, if repeated, endanger international peace and security;

2. Requests the Government of Israel to make appropriate reparation in accordance with the Charter of the United Nations and the rules of international law;

3. Expresses the hope that the traditionally friendly relations between Argentina and Israel will be advanced."

Pursuant to this Resolution, the two governments reached an agreement on the settlement of the dispute between them, and on 3 August 1960 issued the following joint communique (T/4):

"Los Gobiernos de la Republica Argentina e Israel, animados por el proposito de dar cumplimiento a la resolucion del Consejo de Seguridad del dia 23 de Junio de 1960 en cuanto expresa la esperanza de que mejoren las relaciones tradicionalmente amistosas entre ambos paises, resuelven considerar concluido el incidente originado en la accion cometida por nacionales israelies en perjuicio de derechos fundamentales del Estado argentino" (The Governments of Argentina and Israel, actuated by an intention to put into effect the resolution of the Security Council of 23 June 1960, insofar as it gives expression to the hope for the improvement of the relations of traditional friendship between the two countries, resolve to view as settled the incident which was caused in the wake of the action

> of citizens of Israel which violated the basic rights of the State of Argentina).

By our Decision No. 3 of 17 April 1961 (Session 6, Vol. I, p. 60), we dismissed Counsel's objections to the jurisdiction of the Court, and ruled that there is no need to hear the witnesses summoned with reference to his second contention. The following are the reasons for our ruling:

41. It is an established rule of law that a person standing trial for an offence against the laws of a state may not oppose his being tried by reason of the illegality of his arrest, or of the means whereby he was brought to the area of jurisdiction of the state. The courts in England, the United States and Israel have ruled continuously that the circumstances of the arrest and the mode of bringing of the accused into the area of the state have no relevance to his trial, and they consistently refused in all cases to enter into an examination of these circumstances.

The principle was first established in Ex parte Susanna Scott (1829) 9 B. & C. 446; 109 E.R. 106. The applicant was charged in England with the misdemeanour of perjury. A British police officer, in executing the warrant of arrest, specifically addressed to him by Lord Chief Justice Tenterden, arrested the applicant in Belgium. The applicant appealed to the British Ambassador in Belgium, who refused to intervene, and the police officer brought her to England, where an order was issued for her imprisonment pending her trial. She then filed an application for her release by way of abeas corpus. Lord Chief Justice Tenterden dismissed the application, saying:

> "I consider the present question to be the same as if the party were now brought into Court under the warrant granted for her apprehension... The question, therefore, is this, whether if a person charged with a crime is found in this country, it is the duty of the Court to take care that such a party shall be amenable to justice, or whether we are to consider the circumstances under which she was brought here. I thought, and still continue to think, that we cannot inquire into them. If the act complained of were done against the law of a foreign country, that country might have vindicated its own law. If it gave her a right of action, she may sue upon it... For these reasons, I am of opinion that the rule must be discharged."

In his summing up to the jury in the case R. v. Nelson and Brand (1867), the Lord Chief Justice, Sir Alexander Cockburn, said (as quoted in O'Higgins, "Unlawful Seizure and Irregular Extradition," 36 British Yearbook of International Law, 1960, p. 285):

> "Suppose a man were to commit a crime in this country, say murder, and that before he can be apprehended he escapes into some country with which we have not got an extradition treaty, so that we could not get him delivered up to us by the authorities, and suppose that an English police officer were to pursue the malefactor, and finding him in some place where he could lay his hands upon him, and from which he could easily

> reach the sea, got him on board a ship and brought him before a magistrate, the magistrate could not refuse to commit him. If he were brought here for trial, it would not be a plea to the jurisdiction of the Court that he had escaped from justice, and that by some illegal means he had been brought back. It would be said, `Nay, you are here; you are charged with having committed a crime, and you must stand your trial. We leave you to settle with the party who may have done an illegal act in bringing you into this position; settle that with him'."

In Ex parte Elliott, 1 All E.R. 373, the court heard an application for habeas corpus of a British soldier who deserted his unit in 1946, was arrested in 1948 in Belgium by two British military officers escorted by two Belgian police officers, was transferred by the British military authorities to England, and was there held in custody pending his trial for desertion. Counsel for applicant pleaded inter alia that the British authorities in Belgium had no power to arrest the applicant, and that he was arrested contrary to Belgian law. Lord Goddard dismissed the application, saying in his judgment (p. 376):

> "The point with regard to the arrest in Belgium is entirely false. If a person is arrested abroad and he is brought before a court in this country charged with an offence which that court has jurisdiction to hear, it is no answer for him to say, he being then in lawful custody in this country: `I was arrested contrary to the laws of the State of A or the State of B where I was actually arrested.' He is in custody before the court which has jurisdiction to try him. What is it suggested that the court can do? The court cannot dismiss the charge at once without its being heard. He is charged with an offence against English law, the law applicable to the case."

The Lord Chief Justice concluded his pronouncement on this issue by saying (p. 377):

> "We have no power to go into the question, once a prisoner is in lawful custody in this country, of the circumstances in which he may have been brought here. The circumstances in which the applicant may have been arrested in Belgium are no concern of this court."

42. The principle is also acknowledged in Palestine judicial precedent. In the application for habeas corpus by Isaac Katz (on behalf of Chaim Novik against the General Officer Commanding the Polish Forces in Palestine, High Court of Justice 71/44 (Palestine Law Reports, Vol. 11, p. 355), Advocate Olshan (as he then was) submitted that Novik, who was tried for desertion by a Polish military tribunal, was brought before that exterritorial tribunal without any decision by a civil court of Palestine, as is required under the Allied Forces Act, was directly surrendered to the Polish forces and was tried. The Chief Justice dismissed the application on the ground that (p. 358) "Provided the Court Martial is properly constituted, and provided the accused, who is before it, is subject to its jurisdiction, the circumstances in which he was arrested and arrived before the Court are not relevant to the question of the jurisdiction of the Court."

In the appeal of Mahmoud Hassan Yassin, known as Afuna v. Attorney General, Criminal Appeal 14/42 (PLR, Vol. 9, p. 63), the Supreme Court heard the case of a "fugitive criminal" who was arrested in Syria by a Palestine Police Sergeant, was forcibly returned to the country, and was sentenced to death by the Court of Criminal Assizes. Counsel for appellant pleaded that by reason of the non- enforcement of the extradition agreement obtaining between the two countries, his client's arrest in Syria and forcible transfer to Palestine were unlawful and the Jerusalem court had no jurisdiction to convict him. The Court of Appeal dismissed the contention on the ground that:

> "In our opinion, the law is correctly stated in volume 4 of Moore's Digest of International Law, at page 311. The authority cited is an American (State) case which, of course, is not binding on this Court. Nevertheless we adopt the language used, which is as follows: `Where a fugitive is brought back by kidnapping, or by other irregular means, and not under an extradition treaty, he cannot, although an extradition treaty exists between the two countries, set up in answer to the indictment the unlawful manner in which he was brought within the jurisdiction of the court. It belongs exclusively to the government from whose territory he was wrongfully taken to complain of the violation of its rights.'
>
> "Accepting that view of the law, we think that there is no substance in the extradition point."

The precedent quoted in Moore (ibid.) and referred to in that judgment as "an American (State) case" is no other than Ker v. Illinois, 119, U.S. 436, the leading case in the United States Supreme Court on this issue. At all events, it must be stressed that the American ruling, as summed up by Moore, was in this case expressly "adopted" by the Supreme Court of Palestine.

43. Before we proceed, in the wake of this "adoption," to American judicial precedent, we would dwell briefly on the import of the judgments we have hitherto surveyed from the point of view of international law. The question which presents itself from this point of view is - whether the principle of Ex parte Scott and Ex parte Elliott that the accused may not oppose his being tried by reason of the illegality of his arrest or of the means whereby he was brought to the area of jurisdiction, is limited to the illegality of those means in the sense of the municipal law of the country in question, or is general and also applies to the use of means which are a violation of international law, namely a violation of the sovereignty of a foreign state. The recently published article of O'Higgins quoted above is devoted to the analysis of these judgments, especially the English judgments, from this point of view. The learned author's conclusion is as follows (p. 319):

A British court will probably exercise jurisdiction over a criminal brought before it as the result of a violation of international law. There is, however, no precedent which binds any British court to adopt this view."

This careful evaluation is based on the learned author's view that most English precedents do not, in effect, deal with cases of violation of international law, and that although in Emperor v. Vinayak Damodar Savarkar (1910), I.L.R. 35 Bombay 225 (228) the principle of Ex parte Scott and R.V. Nelson and Brand, was applied in effect to a case where the accused pleaded violation of international law (ibid., p. 286), Lord Reading had expressed a reservation on this issue in R. v. Garrett (1917), 86 L.J. (K.B.) 894, 898.

44. American judicial precedent on this issue is more unequivocal (and this is apparently the reason why the Supreme Court of Palestine, in Criminal Appeal 14/42, (Afuna v. A.G.) preferred to base themselves on this established rule as summed up in Moore's book, rather than on Ex parte Scott (see p. 66 of that judgment). American judgments expressly establish that it makes no difference whether or not the measures whereby the accused was brought into the area of jurisdiction were unlawful in the sense of municipal law or of international law: The uniform rule is that the court will not enter into an examination of this question which is not relevant to the trial of the accused. The ratio of this ruling is that the right to plead violation of the sovereignty of a state is the exclusive right of that state.

Only the sovereign state may raise, or waive, that contention, and the accused has no right to represent the rights of that state. That principle found expression also in English judgments, and indeed American judgments view Ex parte Scott as one of their own precedents.

That principle was well explained by Travers, author of the well-known work Droit Penal International, in his article: “Des arrestations au cas de venue involontaire sur le territoire,” 13 Revue de Droit International Prive et de Droit Penal International (1917), 627 et seq.

The learned author, who supports that doctrine as established in the United States, says (p. 643):

> “Mais - et c'est un point que nous tenons a mettre en relief - si l'Etat, dont les agents ont ete fautifs, peut, par courtoisie internationale et pour eviter toute tension de rapports, agir d'office, c'est-a-dire ordonner l'elargissement immediat et exprimer des regrets; si l'Etat, dont le territoire a ete viole, peut, de son co66te, adresser toutes protestations et exiger toutes satisfactions, les personnes arre66tees n'ont, par contre, aucun droit de reclamation.
>
> “Elles ne peuvent se faire un titre de l'irregularite commise et profiter de sa perpetration pour obtenir la cessation de leur detention.
>
> “La raison en est double.
>
> “D'abord, l'individu arrete n'a aucune qualite pour parler au nom de la souverainete etrangere; il n'en est pas le representant.

> "En second lieu, l'Etat etranger qui, maitre de sa souverainete, peut faire telles concessions qu'il juge convenables; est libre de ratifier tous actes irreguliers. Son silence constitue, tout au moins, une presomption de ratification."

Considerable importance attaches to this pronouncement for the present case, in view of the settlement of the dispute between Argentina and Israel. Whatever we may think of the general legal problem, now that the Governments of Argentina and Israel have issued their joint communique of 3 August 1960 to the effect that both governments have decided to view as liquidated the "incident" whereby the sovereignty of Argentina was violated, the Accused in this case can certainly retain no right to base himself on the "violated sovereignty" of the State of Argentina. The indictment in this case was presented after Argentina had forgiven Israel for that violation of her sovereignty, so that there no longer subsisted any violation of international law. In these circumstances, the Accused cannot presume to be speaking on behalf of Argentina and cannot claim rights which that sovereign state has waived. As Travers said in summing up his article (p. 646):

> "Les Etats etant seuls juges des exigences de leur droit de souverainete, le vice, existant en ce cas, ne peut etre invoque que par le gouvernement lese. Il ne saurait appartenir a un malfaiteur quelconque de parler au nom de la souverainete violee."

45. The first judgment that spoke of a (possible) violation of the sovereignty of another state and laid down an express ruling on this matter was the American judgment (1835) in State v. Brewster 7, Vt. 118, given by the Supreme Court of the State of Vermont. The respondent, a foreigner, who was found guilty of theft by one of the courts of that state, pleaded before the Supreme Court of the State that he was forcibly and against his will carried from Canada, the country of his domicile, by citizens of Vermont and brought to that state to be placed on trial, and that in these circumstances the court had no jurisdiction to try him. The Supreme Court dismissed the respondent's contention on the following grounds:

> "The respondent, although a foreigner, is, if guilty, equally subject to our jurisdiction with our own citizens. His escape into Canada did not purge the offence, nor oust our jurisdiction. Being retaken and brought in fact within our jurisdiction, it is not for us to inquire by what means, or in what precise manner, he may have been brought within the reach of justice. It becomes then immaterial, whether the prisoner was brought out of Canada with the assent of the authorities of that country or not. If there were anything improper in the transaction, it was not that the prisoner was entitled to protection on his own account. The illegality, if any, consists in a violation of the sovereignty of an independent nation. If that nation complain, it is a matter which concerns the political relations of the two countries, and in that aspect is a subject not within the constitutional powers of this court. Whether the authorities of Canada would have

> surrendered the prisoners, upon due application, is a question of national comity, resting in discretion. The power to do so will not be questioned. If they have the power to surrender him, they may permit him to be taken. If they waive the invasion of their sovereignty, it is not for the respondent to object, inasmuch as for this offence, he is, by the law of nations, amenable to our laws."

Here was established for the first time the principle which guided American judgments, namely that a basic distinction must be drawn between the rights of the accused and the rights of the sovereign state from which the accused was kidnapped or carried forcibly. "

The illegality (if any) is in the violation of the sovereignty of an independent nation" who may "complain" of or "waive the violation." If it complains, that would be a matter at issue between two sovereign states, which is not within the jurisdiction of the court. If it does not complain, it may be assumed that it has waived the invasion of its sovereignty. It is true that the reference to the possibility that the Canadian authorities "waived the invasion of their sovereignty" refers, in the context of the judgment, to a waiver at the time of the act, namely to the possible consent of the Canadian authorities to the apprehension of the respondent.

But the principle has valid application to any waiver by a state of the invasion of its sovereignty, whether by abstaining from lodging a complaint, or by the abandoning of such a complaint, or by the amicable settlement of the dispute between the two countries. At all events, the accused has no right to oppose his trial, since in accordance with international law he is subject to the laws of the state which he violated. In that brief judgment of 1835 are embodied all the foundations requisite for the resolution of the question at issue in the present case.

46. On 6 December 1886 the United States Supreme Court gave "twin" judgments, namely in United States v. Rauscher (1886), 119 U.S. 407 (30 L. Ed. 425) and Ker v. Illinois (1886), 119 U.S. 436 (30 L. Ed. 421), which laid down basic rulings for cases of "fugitive offenders." It is hardly necessary to add that, as regards the legal issue under discussion, the same rule applies to a "foreign offender" as to a "fugitive offender" (see Chandler v. U.S. (1949), 171 F 2d 921, Gillars v. U.S. (1950), 182 F 2d 962). In U.S. v. Rauscher, the Court heard the case of a fugitive offender who was extradited to the United States by Great Britain under an extradition agreement of 1842 between the two countries. The judgment laid down the principle that (p. 432) -

> "The weight of authority and of sound principle are in favor of the proposition that a person who has been brought within the jurisdiction of the court by virtue of proceedings under an extradition treaty can only be tried for one of the offenses described in that treaty, and for the offense with which he is charged in the proceedings for his extradition, until a reasonable time and opportunity have been given him, after his release or trial upon such charge, to return to the country from whose asylum he had been forcibly taken under those proceedings."

This principle, known as the "specialty principle" in the extradition laws of most countries (cf. section 19 of the English Extradition Law of 1870, section 24 of the Extradition Law 5714-1954), limits the jurisdiction of the court to such offence or such offences as have been the subject of the extradition in the specific case, and thereby vests personal immunity in the accused not to be tried (nor to be extradited to a third state) for any other offence committed prior to his extradition. The reason for this principle has been explained as follows in U.S. v. Rauscher (p. 432):

> "As this right of transfer, the right to demand it, the obligation to grant it, the proceedings under which it takes place, all show that it is for a limited and defined purpose that the transfer is made, it is impossible to conceive of the exercise of jurisdiction in such a case for any other purpose than that mentioned in the treaty, and ascertained by the proceedings under which the party is extradited, without an implication of fraud upon the rights of the party extradited and of bad faith to the country which permitted his extradition. No such view of solemn public treaties between the great nations of the earth can be sustained by a tribunal called upon to give judicial construction to them."

On the other hand, in Ker v. Illinois the court held that the principle of immunity does not apply to the case of a fugitive offender (a foreign offender, see supra) who has not been extradited to a country, but has arrived in the area of its jurisdiction by any other way, even by an unlawful way, such as kidnapping from a foreign country. The applicant in Ker v. Illinois pleaded that he was kidnapped by an agent of the United States in a sovereign country (Peru), was forcibly brought to the State of Illinois, was tried for theft and found guilty of embezzlement. The Supreme Court of Illinois rejected his contention against the jurisdiction of the court that convicted him, and the United States Supreme Court refused to interfere with that decision, saying (p. 424):

> "The question of how far his forcible seizure in another country, and transfer by violence, force or fraud to this country, could be made available to resist trial in the state court, for the offense now charged upon him is one which we do not feel called upon to decide, for in that transaction we do not see that the Constitution, or laws, or treaties, of the United States guarantee him any protection. There are authorities of the highest respectability which hold that such forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offense, and presents no valid objection to this trial in such a court. Among the authorities which support the proposition are the following: Ex parte Scott, 9 Barn & C. 446 (1829);... State v. Brewster, 7 Vt. 118 (1835)..."

Counsel for applicant sought to base himself indirectly on the extradition treaty between the United States and Peru (which had not been given effect to in the case) by pleading that any extradition treaty between two countries limits the powers of the two countries with respect to any fugitive offender who found asylum in either of these countries, by

giving the offender a positive right, valid in both countries, to remain in the land of his asylum, unless duly and lawfully extradited to the country demanding his extradition pursuant to the extant treaty. The United States Supreme Court squarely dismissed that contention when it said (p. 424):

> "There is no language in this treaty, or in any other treaty made by this country on the subject of extradition, of which we are aware, which says in terms that a party fleeing from the United States to escape punishment for crime becomes thereby entitled to an asylum in the country to which he has fled; indeed, the absurdity of such a proposition would at once prevent the making of a treaty of that kind. It will not be for a moment contended that the Government of Peru could not have ordered Ker out of the country on his arrival, or at any period of his residence there.
>
> "The right of the Government of Peru voluntarily to give a party in Ker's condition an asylum in that country is quite a different thing from the right in him to demand and insist upon security in such an asylum.
>
> "In the case of United States v. Rauscher, just decided, and considered with this, the effect of extradition proceedings under a treaty was very fully considered; and it was there held that, when a party was duly surrendered, by proper proceedings, under the Treaty of 1842 with Great Britain, he came to this country clothed with the protection which the nature of such proceedings and the true construction of the treaty gave him. One of the rights with which he was thus clothed, both in regard to himself and in good faith to the country which had sent him here, was that he should be tried for no other offense than the one for which he was delivered under the extradition proceedings... But it is quite a different case when the plaintiff in error comes to this country in the manner in which he was brought here, clothed with no rights which a proceeding under the treaty could have given him, and no duty which this country owes to Peru or to him under the treaty."

These principles have been applied by the courts of the United States in a continuous and consistent line of precedents until today. See, the following, among others: Mahon v. Justice, 127 U.S. 700 (32 L.E. 283); Lascelles v. Georgia (1892), 148 U.S. 537 (37 L.E. 549); Pettibone v. Nichols (1906), 203 U.S. 192 (51 L.E. 148); Frisbie v. Collins (1952), 342 U.S. 519 (96 L.E. 591); United States v. Sobell (1957), 244 F. 2d 520 (524).

47. An analysis of these judgments reveals that the doctrine is not confined to the infringement of municipal laws, as distinct from international law, but the principle is general and comprehensive, as was summed up in Moore (ibid.) and adopted in Criminal Appeal 14/42 supra, or as summed up in 35 Corpus Juris Secundum para. 47 (p. 374):

> "Even though a person has been brought into the country by force or stratagem, and without reference to an extradition treaty, he is within the

> jurisdiction of domestic courts so as to be liable to trial on a regular indictment and imprisonment under a valid judgment and sentence."

See also Hackworth, Digest of International Law (Department of State Publication), (1942) IV para. 345, pp. 224-228; Hyde, International Law (1947), II 1032:

> "Whatever be the right of the State from which he has been withdrawn, the prisoner is not entitled to his release from custody merely by reason of the irregular process by which he was brought into the State of prosecution."

In United States v. Unverzagt (1924), 299 Fed. 1015, (1017) the accused pleaded that he was abducted from British Columbia by American officials. The District Court dismissed his application for habeas corpus, stating (p. 1017):

> "The defendant states he is a citizen of the United States. He is now before the courts of the United States. Canada is not making any application to this court in his behalf or its behalf because of any unlawful acts charged, and if Canada or British Columbia desire to protest, the question undoubtedly is a political matter, which must be conducted through diplomatic channels. The defendant cannot before the court invoke the right of asylum in British Columbia."

In Ex parte Lopez (1934) 6 F.Supp. 342, the court heard the application for habeas corpus by a man who was abducted from Mexico to the United States and there charged with an offence under United States laws. The Government of Mexico interfered in the judicial proceedings on the ground that Mexico's sovereignty was violated through the abduction, and asked that the applicant be surrendered to them with a view to their holding him in custody in Mexico pending the hearing of the application for extradition (if any) under the extradition treaty between the two countries. The District Court, basing itself on Ker. v. Illinois and subsequent precedents, dismissed the applicant's application and also, relying on State v. Brewster (supra), rejected Mexico's intervention, saying:

> "The intervention of the government of Mexico raises serious questions, involving the claimed violation of its sovereignty, which may well be presented to the Executive Department of the United States, but of which this court has no jurisdiction. State v. Brewster, 7 Vt. 121."

See also United States v. Insull (1934) 8 Federal Suppl. 310 (313).

48. The Anglo-Saxon doctrine was accepted by continental jurists as well. We have already referred above to the views of Travers. See also Dahm, Voelkerrecht (1958), who says, basing himself on Ex parte Elliott, Ex parte Lopez, U.S. v. Insull, and Afuna v. A.G. (Criminal 14/42), that "even if... the accused arrived in the area of jurisdiction by irregular means such as kidnapping or mistake, it is not he, the accused, but only the country wronged which can invoke irregularities of this type, and this does not concern his trial" (p. 280, note 26).

So far as we have been able to examine legal literature, we found only one conflicting precedent, namely, In re Jolis (Annual Digest 1933-34, Case No. 77, a judgment given by a French Criminal Court of First Instance (tribunal correctionnel) of 1933. The accused, a Belgian citizen, visited a cafe in a French village and, following upon his visit, cash was missing from the till. The owner of the cafe suspected the accused and called in two village constables, and together with them pursued the accused until they apprehended him across the border. The Belgian government lodged an official protest with the French government against the arrest which was effected in Belgium by French policemen and demanded the return of the accused. The Court of Avesnes decided to release the accused on the ground that:

> "The arrest, effected by French officers on foreign territory, could have no legal effect whatsoever, and was completely null and void. This nullity being of a public nature, the judge must take judicial notice thereof. The information leading to the proceedings of arrest...and all that followed thereon must therefore be annulled."

49. Criticism of British and American judgments from the point of view of international law was levelled by Dickinson, "Jurisdiction Following Seizure or Arrest in Violation of International Law, 28 American Journal of International Law (1934), 231, and Morgenstern, "Jurisdiction in Seizures Effected in Violation of International Law," 29 British Yearbook of International Law (1952), 265.

See also Lauterpacht in 64 Law Quarterly Review (1948), p. 100, note (14). It is not for us to enter into this controversy between scholars of international law, but we would draw attention to two points which are important to the present case. (1) The critics admit that established judicial precedent is as summed up above; (2) To the case before us that controversy is immaterial.

In his above-mentioned article on the principles involved, Professor Dickinson proposes that the ruling in Ker v. Illinois be set aside, and to apply the ruling in U.S. v. Rauscher also to cases of seizure in violation of international law, and states his view (p. 239) that

> "In principle, in the international cases, there should be no jurisdiction to prosecute one who has been arrested abroad in violation of treaty or international law."

In conformity with that view, the learned author proposes the following provision (p. 653, our emphasis) in the Harvard Research for which he is responsible, as part of the "Draft Convention on Jurisdiction with Respect to Crime," Article 16. Apprehension in Violation of International Law.

> "In exercising jurisdiction under this Convention, no State shall prosecute or punish any person who has been brought within its territory or a place subject to its authority by recourse to measures in violation of international law or international convention without first obtaining the

> consent of the State or States whose rights have been violated by such measures."

In his observations on that article the author says (p.624):

> "...It is frankly conceded that the present article is in part of the nature of legislation," and adds (p. 628): "In Great Britain, the United States, and perhaps elsewhere, the national law is not in accord with this article in cases in which a person has been brought within the State or a place subject to its authority by recourse to measures in violation of customary international law."

He proposes this article de lege ferenda to ensure "an additional and highly desirable sanction for international law" (p. 624).

It appears from the learned author's exposition that the proposed "sanction" of the limitation on the jurisdictional power of the state forms no part of positive customary international law. What is more, it is worthy of note that, also under the proposed Article 16, the jurisdictional power would not be limited by the right or for the benefit of the accused, but only by the right and for the benefit of the injured state; for after receiving the consent of the state, "the rights of which have been violated by the above_mentioned measures," the state within whose limits the accused is found will also under this proposal have jurisdiction to try the accused. The "sanction" is thus designed to lead to direct negotiations between the two countries concerned at the proper international level, to the end of making good the violation of the sovereignty of the one, and the regularization of the jurisdiction of the other, by mutual consent - and the results of the negotiations between the two countries are binding upon the accused. Indeed, it is stated in the explanatory notes (p. 624, our emphasis):

> "And if, peradventure, the custody of a fugitive has been obtained by unlawful methods, the present article indicates an appropriate procedure for correcting what has been done and removing the bar to prosecution and punishment."

This proposal in the Harvard Research proves, in our view, that even he who subjects the rule in force to criticism and proposes changes in judicial decisions or by legislation, does not negate the basic view that, in substance, the violation by one country of the sovereignty of the other is susceptible of redress as between the two countries and cannot vest in the accused rights of his own.

50. Indeed, there can be no escaping the conclusion that the violation of international law through the mode of the bringing of the accused into the territory of the country pertains to the international level, namely the relations between the two countries concerned only, and must find its solution at such level. The violation of the international law of this kind constitutes an international tort to which the usual rules of customary international law apply. The two important rules in this matter are (see Schwarzenberger, Manual of International Law, 1960, I 162) -

(a) “The commission of an international tort involves the duty to make reparations”;

(b) “By consent or acquiescence, an international claim in tort may be waived and, in this way, the breach of any international obligation be healed.”

Through the joint decision of the Governments of Argentina and Israel of 3 August 1960 “to view as settled the incident which was caused through the action of citizens of Israel that has violated the basic rights of the State of Argentina,” the country whose sovereignty was violated has waived its claims, including the claim for the return of the Accused, and any violation of international law which might have been linked with the incident in question has been “cured.”

Therefore, according to the principles of international law, no doubt can be cast on the jurisdiction of Israel to bring the Accused to trial after 3 August 1960. After that date, no cause remains on the score of a violation of international law which could have been adduced by him in support of any contention against his trial in Israel.

We have said above that, in our view, so far as this case is concerned, it is immaterial how this controversy is to be determined, and we might add that even the slight doubt as to the import of English judicial precedent which was raised by O'Higgins has no practical relevance to this case. The Accused was brought to trial after the “violation of international law,” upon which the learned Counsel bases his pleadings, had been made the subject of negotiations between the two countries concerned, and had been settled by their mutual consent.

Therefore, Counsel had not in effect any foundation in international law for his contention, even if the premise be true that the Accused was abducted by agents of the State of Israel. Insofar as Argentina's sovereignty had been impaired, “the incident has been settled,” and thereupon the episode of the kidnapping of the Accused descended from the level of international law to the level of municipal law (in the sense of the distinction between the two as made by Morgenstern, Dickinson and O'Higgins). Following upon the settlement of the incident between the two countries prior to the bringing of the Accused to trial, the judgment may be based without hesitation on the whole chain of British, Palestinian and American continuous judicial precedents, beginning from Ex parte Scott to Frisbie v. Collins et seq.

If the violation of Argentina's sovereignty is excluded from consideration, then the abduction of the Accused is not different from any unlawful abduction, whether it constituted a contravention of Argentine law or Israeli law or both. Thus, after the enactment of the Federal Kidnaping Act, the United States Supreme Court ruled unanimously in Frisbie v. Collins (1952) 342 U.S. 512 (96 L. Ed. 541), p. 545):

“This Court has never departed from the rule announced in Ker v. Illinois, 119 US 436, 444, that the power of a court to try a person for crime is not

> impaired by the fact that he had been brought within the court's jurisdiction by reason of a `forcible abduction.' No persuasive reasons are now presented to justify overruling this line of cases. They rest on the sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will.
>
> "Despite our prior decisions, the Court of Appeals, relying on the Federal Kidnaping Act, held that respondent was entitled to the writ if he could prove the facts he alleged. The Court thought that to hold otherwise after the passage of the Kidnaping Act 'would in practical effect lend encouragement to the commission of criminal acts by those sworn to enforce the law.' In considering whether the law of our prior cases has been changed by the Federal Kidnaping Act, we assume, without intimating that it is so, that the Michigan officers would have violated it if the facts are as alleged.
>
> "This Act prescribes in some detail the severe sanctions Congress wanted it to have. Persons who have violated it can be imprisoned for a term of years or for life; under some circumstances violators can be given the death sentence. We think the Act cannot fairly be construed so as to add to the list of sanctions detailed, a sanction barring a state from prosecuting persons wrongfully brought to it by its officers. It may be that Congress could add such a sanction. We cannot."

On the solid ground of municipal law, the Accused can have no argument against the jurisdiction of the Court, while his contention based on the "violation of international law" is untenable because such ground did not exist, at all events, at the time when he was put on trial.

51. The fact that the Accused had no immunity, following upon Argentina's assent to view the incident as settled, may also be deduced from United States ex rel. Donnelly v. Mulligan, (1935) 76 F (2d) 511. The appellant was extradited from France to the United States and, before the thirty day period of immunity prescribed in the extradition treaty between the two countries, had elapsed, the appellant was arrested anew for extradition to Canada. In their first decision (74 F (2d) 220), the Court of Appeals decided to release, pursuant to the ruling in U.S. v. Rauscher. Subsequent to that decision, the President of the French Republic issued an order authorizing the United States to surrender the appellant to Canada. When the case came to be reheard, the Court of Appeals decided that the new order of France had deprived the appellant of his immunity under the above-mentioned extradition treaty. Stating its reasons for the judgment, the Court said inter alia (p. 512):

> "The appellant cannot complain if France acted under the treaty, nor can he complain if it acted independent of the treaty as an act of international comity. The French decree consents to his re-extradition; moreover, it may be regarded as a consent given independently of the treaty and as an act of international comity. If under the treaty, it is conclusive upon the appellant. France had the right to give or withhold the asylum accorded him as it saw fit. And it has withheld asylum for the purpose of re-extradition to Canada. The appellant cannot question this action on the part of France."

page 513:

> "Extradition treaties are for the benefit of the contracting parties and are a means of providing for their social security and protection against criminal acts, and it is for this reason that rights of asylum and immunity belong to the state of refuge and not to the criminal."

If the immunity of that appellant which was assured by the extradition treaty whereby France surrendered him to the United States was taken away through France's assent and the withdrawal of her protection of him, there is all the less reason for the present Accused, who was never protected by the principle of U.S. v. Rauscher, to claim personal immunity (for this is what his contention against jurisdiction really amounts to), by reason of the violation of the sovereignty of a country that has waived all her claims with reference to such violation and has not extended any protection to the Accused. See also statements made in Ker v. Illinois (above) on the difference between the right of a sovereign country to offer an offender asylum within its territory and the demand of the offender for the grant of such asylum. In the words of the summing up in U.S. v. Mulligan, "the rights of asylum and immunity belong to the land of the asylum and not to the offender."

The above-mentioned precedent, which is also cited by Hyde (ibid.) p. 1035 and Oppenheim (Lauterpacht) (ibid.) p. 702, conforms to the principles of current international law. See Moore, Extradition (1891) Vol. 1, p. 251:

> "... The immunity of the extradited person...rests upon a contract between the two governments... His immunity is within the control of the surrendering government, and he could not be permitted to set it up, if that government should waive it."

page 279

> "The character of a fugitive from justice cannot confer upon him any immunities."

See also Harvard Research in International Law, Draft Convention on Extradition, 29 AJIL (Suppl.) 1935, p. 213 (our emphasis):

> “Part V: Limitations upon the Requesting State
>
> Article 23. Trial, Punishment and Surrender of Extradited Person.
>
> (1) A State to which a person has been extradited shall not, without the consent of the State which extradited such person:
>
> > (a) Prosecute or punish such person for any act committed prior to his extradition, other than that for which he was extradited; (b) Surrender such person to another State for prosecution or punishment...”

Also section 24 of the Extradition Law 5714-1954:

> “Persons extradited to Israel”
>
> “Where a person is extradited to Israel by a foreign country, such person shall not be held in custody or prosecuted for any other offence he committed prior to his extradition, nor be extradited to another country for an offence committed prior to his extradition, unless such foreign country had given its consent in writing to such action, or if such person failed to leave Israel within sixty days after having been enabled, upon his extradition, so to do, or if he left Israel upon his extradition and returned thereto of his own free will.”

Kelsen was right, therefore, when he stated in his General Theory of Law and State (1949) p. 237, that: “Extradition treaties establish duties and rights of the contracting States only.” and so was Schwarzenberger when he said in 3 Current Legal Problems (1950) p. 272:

> “It would be...a travesty of the real situation to imagine that States intended an extradition treaty to be the Magna Carta of the criminal profession, or to be based on any principles of international law which prisoners are `entitled to invoke in their own right'.”

The words “entitled to invoke in their own right” are directed against the views of Lauterpacht, in 64 Law Quarterly Review (1948) p. 100. There is no doubt that Schwarzenberger represents the dominant view and the rule of law in force on this issue. It is also acknowledged on the continent of Europe, including Germany: see Dahm (ibid.), pp. 279-280, and is in actual usage and application in the judicial decisions of most countries (see ibid., note 26).

52. On the subject of the want of immunity of a fugitive offender in his own right, as distinct from an immunity ensuing from a contractual commitment between sovereign countries, we find some interesting observations in Chandler v. United States (1949) 171 F. 2d 921, where it is said (p. 935):

> "Nor was Chandler's arrest in Germany a violation of any `right of asylum' conferred by international law. In the absence of treaty a State may, without violating any recognized international obligation, decline to surrender to a demanding State a fugitive offender against the laws of the latter... Particularly as regards fugitive political offenders - including, presumably, persons charged with treason... - it has long been the general practice of States to give asylum. But the right is that of the State voluntarily to offer asylum, not that of the fugitive to insist upon it. An asylum State might, for reasons of policy, surrender a fugitive political offender - for example, a State might choose to turn over to a wartime ally a traitor who had given aid and comfort to their common enemy - in such a case we think that the accused would have no immunity from prosecution in the courts of the demanding State, and we know of no authority indicating the contrary... One can appreciate the considerations which ordinarily would make a State reluctant to give affirmative assistance to a sister State in the apprehension and prosecution of a fugitive charged with a political offence. But these considerations are inapplicable to the wronged State, which naturally would have no qualm or scruple against bringing a fugitive traitor to trial if it could lay hands on him without breaking faith with the asylum State."

It is hardly necessary to state, with reference to the above, that the Accused is not at all a "political" criminal; the reverse is the case: The crimes which are attributed to the Accused have been condemned by all nations as "abhorrent crimes" whose perpetrators do not deserve any asylum, "political" or other. We have already referred above to Article 7 of the International Convention for the Prevention and Punishment of Genocide which lays down the principle that the "extermination of a people and other acts set out...will not be deemed political crimes for the purpose of extradition."

Moreover, the United Nations Assembly enjoined in repeated Resolutions (Resolutions of 12- 13.2.46 and 31.10.47) all states, whether or not Member States of the United Nations, to arrest the war criminals and the perpetrators of crimes against humanity wherever they may hide, and to surrender them, even without resort to extradition, with a view to their expeditious prosecution. (See History of War Crimes Commission, pp. 411-414.) There is considerable foundation for the view that the grant by any country of asylum to a person accused of a major crime of this type and the prevention of his prosecution, constitute an abuse of the sovereignty of the country, contrary to its obligation under international law (see Oppenheim-Lauterpacht, ibid., Vol. 2, p. 588).

See also the Resolution passed in Mexico City in March 1945 by the "Inter- American Conference on the problem of War and Peace," also the article by H. Silving, "In Re Eichmann: A Dilemma of Law and Morality," in 55 AJIL (1961) 307, p. 324.

In the Note addressed on 8 June 1960 by Argentina to Israel, which was published by the Security Council in Security Council Official Records, Suppl. for April, May and June 1960, p. 24, document S/4334, the Argentinian nation expressed:

> "its most emphatic condemnation of the mass crimes committed by the agents of Hitlerism, crimes which cost the lives of millions of innocent beings belonging to the Jewish People and many other peoples of Europe,"

and proceeded to say:

> "The fact that one of the aforesaid agents, precisely the one who is accused of having conceived and directed the cold_blooded execution of a vast plan of extermination, should have entered and settled in Argentine territory under a false name and false documents, in obviously irregular circumstances in no way covered by the conditions for territorial asylum or refuge, does not justify the gratuitous assertion that many Nazis live in Argentina."

The question as to whether or not other Nazis reside in Argentina has no relevance to this case, and if we cite from the above-mentioned Note, it is only to show that the position taken by the Government of Argentina is that Argentina has not given asylum or refuge to the Accused who entered her territory and settled therein "under a false name and false documents," in "obviously irregular" circumstances which do not in any way tally with "conditions for territorial asylum or refuge."

That position conforms to the principles of international law and the Resolution of the Inter-American Conference referred to above. The Accused is not a "political" criminal, and Argentina has given him no right of "refuge" in her territory, and all that has been said in our precedents on the subject of the want of the right of refuge of a "political criminal" applies to the Accused a fortiori.

See also Criminal Appeal 2/41 Youssef Sa'id Abou Durrah v. Attorney General (PLR Vol. 8, p. 43) in which the appellant was extradited by Transjordan to Palestine under the Extradition Agreement of 1934 between the two governments, was charged with murder and sentenced to death by the Court of Criminal Assizes in Jerusalem. Counsel for appellant pleaded (a) that the extradition was effected contrary to the provisions of the Extradition Agreement; (b) that the offence was "political" (and therefore not "extraditable"). The Supreme Court decided (pp. 44-45):

> "It is argued, in the first place, that the extradition proceedings were improper and that therefore the Assize Court had no jurisdiction to try the man... If the Government concerned is satisfied that the provisions of Articles 4, 5 and 6 have been carried out, that, we think, must be the end of the matter, except that possibly the Courts of this country are not entitled to try the man for an offence different from that on which his extradition was obtained. "Finally, it is said that this is a political offence. Under the law of this country, murder is murder pure and simple, whatever the motives may be which inspired it. We know of nothing in the criminal law of this country or of England that creates a special offence called political murder. In any case, even supposing it were a political murder,

nothing prevents the man, if he is within the jurisdiction of this country, from being tried for it."

To sum up, the contention of the Accused against the jurisdiction of the Court by reason of his abduction from Argentina is in essence nothing but a plea for immunity by a fugitive offender on the strength of the refuge given him by a sovereign state.

That contention does not avail the Accused for two reasons:

(a) According to the established rule of law, there is no immunity for a fugitive offender save in the one and only case where he has been extradited by the country of asylum to the country applying for extradition by reason of a specific offence, which is not the offence for which he is being tried. The Accused was not surrendered to Israel by Argentina, and the State of Israel is not bound by any agreement with Argentina to try the Accused for any other specific offence, or not to try him for the offences tried in this case.

(b) The rights of asylum and immunity belong to the country of asylum and not to the offender, and the Accused cannot compel a foreign sovereign country to give him protection against its will. The Accused was a wanted war criminal when he escaped to Argentina by concealing his true identity. It was only after he was captured and brought to Israel that his identity has been revealed, and after negotiations between the two governments, the Government of Argentina waived its demand for his return and declared that it viewed the incident as settled. The Government of Argentina thereby refused definitively to give the Accused any sort of protection. The Accused has been brought to trial before a court of a state which accuses him of grave offences against its laws. The Accused has no immunity against this trial and must stand his trial in accordance with the indictment.

For all the above-mentioned reasons we have dismissed the second contention of Counsel and his application to hear witnesses on this point.

53. At the conclusion of his summing up, learned Counsel added another plea connected with the whole range of legal issues dealt with above, namely the plea of prescription under Argentine law. The Attorney General had already mentioned (Session 4, Vol. I, p. 49) that a competent Argentinian court had decided on 18 July 1960 to dismiss the application for the extradition of one Jan Durcansky, who was wanted by Czechoslovakia as a war criminal, on the ground that the period for prescription under Argentine law - fifteen years from the time of the commission of the crime - had elapsed. Counsel pleaded in his summing up (Session 114, Vol. IV, pp. 43-44) that with respect to the crimes attributed to the Accused, the period of prescription of fifteen years had elapsed on "5 May 1960, shortly before his capture," and that therefore it would be just "to place the Accused in the same position as though he had been duly and properly extradited," after the period of prescription, by Argentina to Israel, to quash the case and set him free in accordance with the Argentine law of prescription.

This surprising contention is thoroughly untenable, and the short reply to it is that, even had the Accused been extradited by Argentina to Israel, pursuant to the hypothetical premise of Counsel, the Argentine law of prescription would not avail him in Israel. That law could have been of help to him only in Argentina itself to the end of preventing (assuming the Durcansky precedent to be applicable to this case) his extradition to Israel or to any other country. But once his extradition was completed, no country (neither Israel nor any other country) would have heeded the law of prescription of a foreign country and given the Accused immunity - and this is in effect what he is asking for - because a foreign country had surrendered him contrary to its laws. See Criminal Appeal 2/41 (Abou Durrah v. A.G.) above.

The Extradition Law 5714-1954 contains many provisions, including those in section 8(2), on the subject of prescription "according to the laws of the applying country; but there is only one section which lays down exclusively the law on "how to deal with a person extradited to Israel," namely section 24, which establishes the "speciality" principle (see supra). To put it in another way: Apart from the speciality principle which gives the person extradited immunity against his being charged with another offence which he committed prior to extradition, the extradited person has no privilege when standing his trial for an offence against the laws of the land. This legal position is established in most countries (see section 19 of the English Extradition Act of 1870, and para. 23 of the Harvard Research on Extradition, referred to above).

The basic reasons for this state of the law are elucidated in the explanatory observations of Sir Francis Piggott, in Extradition (1910), p. 170 et seq (which observations may shed further light on statements made in preceding sections of this judgment), as follows:

> "The point which has been so much insisted on in the preliminary discussions, that the Act, except in s. 19, does not deal with the surrender of fugitives to England by foreign countries, must now be considered...
>
> The constitutional principle, cardinal to the subject, is that legislation is only necessary in connexion with treaties when the law of the land would be interfered with in carrying out the treaty obligations. With the fact that the King has entered into an arrangement with a foreign Sovereign that he will surrender fugitives from English justice the law has no concern; for the moment such a person comes within the area of English jurisdiction, he may be arrested as a person accused or convicted of a crime against the law of this country. If legislation is necessary in the foreign country, that is no concern of ours.
>
> Supposing however a limitation on the powers of prosecution to be imported into the treaty, then legislation at once becomes necessary, for here there is an interference with the law. Such a limitation is introduced by the reciprocal arrangement that fugitives when surrendered shall only be tried for the offence in respect of which they were surrendered. This is insisted on in s. 3(2), in the case of surrenders by this country; it is

> obvious that the same condition will be insisted on by the foreign country; therefore provision is made in s. 19 of the Act approving of its being fulfilled... That is the only condition imposed on the foreign country, it is the only condition imposed on us by the foreign country, which in any way interferes with the law. The restriction in s. 3(1) with regard to political offences is a check on the surrender of fugitives, not a restriction on trial after they are surrendered."

Section 3(1) of the English Extradition Act, which forbids extradition of a fugitive offender where the extradition offence is of a political character, is parallel to Section 2(2) of the Israel Extradition Law, and what has been explained by the learned author on this subject also applies to the question of prescription under Section 8(2): All these conditions and limitations in the Extradition Law are, as it were, "one way" arrangements, namely they operate only in the country to which application is made, and do not avail the Accused upon his having been extradited to the country making the application which tries him for offences against its laws.

See also R. v. Corrigan (1931) 1 K.B. 527; 22 Cr.A.R.106, where the Court of Criminal Appeals stresses that section 19 of the English Extradition Act creates a statutory departure from the Court's usual jurisdiction, so that an accused who has not proved beyond doubt that he was indeed extradited to England in accordance with the Extradition Treaty in force with France, could not rely on this exception. It is there stated on p. 533:

> "It must always be borne in mind that the burden of proving such facts as will establish his contention in law rests upon the accused, who was before the Central Criminal Court...in lawful custody upon the lawful committal of a metropolitan magistrate... The burden was upon him to show beyond reasonable doubt that such facts existed as would render his trial by the law of England illegal and improper."

Therefore, any plea which assumed that the trial of a fugitive offender or a foreign offender, whether he arrived in the country of his own free will, or was extradited to that country, or was forcibly carried to it, is based on any discretion - is mistaken. The duty of the court to try any accused brought before it for offences against the laws of the land is based on the rule of law, so that if an accused cannot show that the special circumstances upon which he bases himself give him lawful immunity, the court must try him in accordance with the indictment.

The crimes attributed to the Accused in this case are offences against the Nazis and Nazi Collaborators (Punishment) Law which provides in Section 12 (a) that "the established laws of prescription" (with respect to ordinary offences) "shall not apply to offences under this law." Because of the extreme gravity of the crime against the Jewish People, the crime against humanity and war crime, the Israeli legislator has provided that such crimes shall never prescribe, while the crime of membership in a hostile organization shall be prescribed on the lapse of twenty years.

The Argentinian sovereign legislator is at liberty to determine periods of prescription as he sees fit, but the jurisdiction of the Israeli court derives from a violation of Israeli law by the Accused, and the view of the Argentinian legislator on the gravity of the crimes in question and the period of their prescription is not relevant to this case. The fact that he resided for a number of years in any country of asylum (and the length of his residence in that country makes no difference with respect to the application of the Argentinian law of prescription) cannot shorten the lawful period of prescription, or else it would have been sufficient for a fugitive offender to set foot on the soil of a country that has a brief period of prescription, to enjoy the benefit of that prescription all over the world, including the country or countries the laws of which he violated by his crimes.

For all these reasons the plea of prescription, insofar as it is based on Argentine law, has to be dismissed. 54. The bulk of the evidence brought before this Court can be divided into five categories:

> (a) The testimony of witnesses for the Prosecution and the testimony of the Accused given in the usual way in Court. (b) Affidavits on oath and without oath, and records of evidence given in previous trials by persons who are no longer alive, including war criminals who were punished, and also from living persons. We admitted this evidence by virtue of the special authority vested in this Court by sec. 15 of the Nazi and Nazi Collaborators (Punishment) Law, 5710-1950, and in every such instance we gave our reasons for the admission of the evidence, as required by this section. Obviously, the weight which is to be given to evidence admitted in this way still remains a matter for careful consideration by the Court, depending upon the person who gave the evidence or the affidavit, whether he was a partner to the crime, the special interest he could have had in diverting blame from himself to the Accused, the lack of opportunity for cross-examination by the Accused, etc. (c) Evidence taken from witnesses abroad, by courts in Germany, Austria and Italy, in accordance with requests for taking evidence on commission addressed to them by this Court. Amongst these were witnesses whose previous affidavits or records of evidence were submitted to us by the Prosecution, and these were regarded as witnesses for the Prosecution whose cross-examination by Counsel for the Defence was made possible in this way.
>
> Other witnesses were interrogated abroad at the request of the Defence without the previous submission by the Prosecution of any affidavit or evidence given by such a witness. All these witnesses were interrogated by courts of law according to detailed questionnaires which had been first approved by this Court, and all of them (except the witnesses Hoettl, Novak and Slawik, whose testimony was taken in Austria) in the presence of representatives of both parties, with the addition of questions which arose from the replies to the questions in the questionnaire. These were witnesses who could not come here to give evidence, because they were in detention abroad or did not wish to come, some of them after the Attorney

General had announced that he intended to put them on trial for crimes against the Jewish People, and others also without any such announcement having been made in regard to them.

Obviously, for the elucidation of the truth, it would have been preferable had all the witnesses, those for the Prosecution and those for the Defence, given their evidence before us here, but since there was no practical possibility of taking this course, it seems to us that the procedure we followed was quite efficient. Indeed, some of these testimonies throw additional light on the questions in dispute, if one uses them with the requisite caution - and this we intend to do. It is unnecessary to add that if we place reliance on statements made by these witnesses, some of whom were convicted for war crimes and some of whom are suspected of crimes, this does not mean that the stamp of veracity is put on their evidence as a whole.

(d) The fourth set of evidence is represented by hundreds of documents which were submitted to us and from which the Accused's activities during the period of the Third Reich appear in their true light through letters, memoranda, and official minutes recorded at the time of action or close to it. Although the files of the Accused's Section are missing, because those were burned by the Accused and his colleagues at the end of the World War together with the rest of the files of the Gestapo Headquarters in Berlin (T/37, p. 307), nevertheless, the remnants of the files of other offices also constitute important proof. These documents were submitted with a statement of their sources, and in most cases their authenticity is not in dispute. In those instances in which the Defence denied the authenticity of some of these documents, we shall decide the matter in its proper place as we proceed.

(e) Finally, we have before us in evidence the detailed Statement made by the Accused to Superintendent Less of the Israeli police, which extends to over 3,500 printed columns (exhibit T/37), and in addition various notes which he wrote while in detention in Israel before his trial. There is no doubt that the Statement was given by the Accused of his own free will, and the same applies to the written notes. Nor does the Accused deny this, but in regard to a number of passages in the Statement which might incriminate him, he argued that he had made a mistake at the time in saying what he had said, and that only later on, after studying all the documents, had he realized his error. Insofar as this argument requires a decision on our part, it will be dealt with at the appropriate time.

The Prosecution sought to bring in evidence also a reprint which contained, according to their argument, a statement made by the Accused in 1957 to a Dutch journalist by the name of Sassen. We rejected this request by a majority in a reasoned decision (Decision No. 79, Vol. III, p. 1353). At a later stage, during the Accused's evidence in Court, the

Attorney General elicited from him that he had in fact made, at the time, some of the statements recorded in the Sassen document, and these therefore became part of his evidence before us, to the extent that he admitted to them, either fully or with reservations.

55. The persecution of the Jews by Hitler's Germany developed in three principal stages. The first stage was from the rise of Hitler to power in 1933 until the outbreak of the World War in 1939; the second stage from 1939 to mid_1941, and the third and final stage from mid-1941 to the collapse of the Third Reich in May 1945. We shall now describe each of these three stages in general outline, according to the evidence brought before us. As stated above, it is neither our intention nor within our power to aim at throwing full light upon all the iniquities of the Hitler regime against the Jewish People.

The purpose of the survey is solely to establish the place of the Accused and the degree of his personal responsibility within the regime of persecutions, because these cannot be understood except against the background of these events. The method we have chosen to recount the facts is generally chronological, and in each of the above-mentioned stages we shall speak first of the general background of the events and afterwards of the Accused's activity during that stage. In the last stage, that of the physical extermination, the story widens out in many directions. After completing the factual description, we shall analyse the legal significance of the facts we have established.

Later, we shall deal with the counts in the indictment which refer to the Accused's activities against persons of other nations and his membership in hostile organizations.

In the final part of the judgment we shall deal with the arguments put forward by the Defence by which the Accused sought to justify his deeds.

THE FIRST STAGE
THE PERSECUTION OF THE JEWS IN GERMANY

56. Extreme anti-Semitism was from the outset a main tenet in the programme of the National Socialist Party. Paragraph four of the programme declares that a Jew cannot be a citizen of the German state, since he does not belong to the German people. Paragraph eight demands that all those who are not Germans and immigrated into Germany after 2 August 1914 shall be compelled to leave Reich territory immediately (T/1403).

With the rise of Hitler to power, the persecution of the Jews became official policy and took on quasi-legal form through laws and regulations published by the government of the Reich, in accordance with legislative powers delegated to it by the Reichstag on 24 March 1933 (Session 14, Vol. I, p. 215 [where it is erroneously dated 23 March 1933]), and through direct acts of violence organized by the regime against the persons and property of the Jews.

The purpose of these actions carried out in the first stage was to deprive the Jews of citizen rights, to degrade them and to strike fear into their hearts, to separate them from

the rest of the inhabitants, to oust them from the economic and cultural life of the state, and to close off their sources of livelihood.

The trends became sharper as the years went on, until the outbreak of the War. Already before German Jewry suffered the first large-scale shock on 1 April 1933, when Jewish businesses were boycotted, arrests of Jews had begun and Jews were sent to concentration camps. Mr. Benno Cohn, one of the leaders of the Jewish Community, who gave evidence about this period, told of women who received by post urns containing the ashes of their husbands who had been killed in the concentration camps, accompanied by a letter which read as follows:

> "Your husband died of a heart attack. We are sending you the ashes. The Post Office fee is three and a half marks." (Session 14, Vol. I, p. 212.)

The series of laws and regulations commenced with the "Law for the Reorganization of the Professional Civil Service," dated 7 April 1933 (T/61), as a result of which non-Aryan (i.e. Jewish, in accordance with the race theory) civil servants were dismissed, with a few exceptions. Licenses held by Jews to engage in the liberal professions were cancelled (Session 14, Vol. I, p. 214). Jewish artists were forbidden to appear before non-Jews (Session 14, Vol. I, p. 216). Books by Jewish writers were burned in public.

In September 1935 the Nuremberg Race Laws were published (The Citizenship Law and the Law for the Protection of German Blood and Honour), which turned the Jews into citizens of an inferior grade and forbade marriage and sexual relations between persons belonging to the two peoples (T/67). The Citizenship Law also served as the main basis for the discriminatory legislation against the Jews, which followed afterwards.

57. On 27 October 1938 the Germans for the first time carried out an act of mass expulsion against Jews. Thousands of Jews of Polish nationality living in German cities were arrested simultaneously, transported by rail to the Polish border in the region of Zbaszyn and cruelly expelled and forced to cross the border (Session 14, Vol. I, p. 207; Session 17, Vol. I p. 226). Amongst them was the witness Zyndel Grynszpan, who had been living in Hanover since 1911, with his wife and two of his children. Another of his sons, Hirsch Feivel Grynszpan, shot the Counsellor of the German Embassy in Paris, vom Rath. After this act, the wave of persecution swelled up against the Jews in general.

On 9 November 1938 news came that vom Rath had died of his wounds, and immediately the signal was given for pogroms against the Jews on the same night (the eve of 10 November 1938), known as "Crystal Night." In the cities of Germany organized gangs burst into Jewish shops and apartments on orders from above, committed acts of violence against Jews, destroyed and plundered everything that fell into their hands. One hundred and ninety-one synagogues went up in flames and another seventy-six synagogues were demolished. The day after, throughout the Reich, there began the arrests of thousands of male Jews, who were brought to concentration camps.

On 12 November 1938, Goering, who was in charge of the Four Year Plan, issued an order for the payment by the Jews of Germany of a billion marks as “expiation money.” This order was carried out by levying twenty-five per cent of the value of Jewish property (T/634). He also issued a second order on the same day forbidding Jews, inter alia, to maintain retail establishments and to work as independent craftsmen (T/76).

During the same period regulations were issued for the “Aryanization” of Jewish businesses and other assets, that is to say, for their forced transfer to non- Jews at unrealistic prices (T/79). Simultaneously with the persecution of the Jews as individuals came the control by the German state over their autonomous institutions. In March 1938, their status as public bodies was withdrawn from the Jewish communities, which thereby lost their authority to levy taxes, and on 4 July 1939 the Jews were organized compulsorily in the “Reich Association of the Jews in Germany” (Reichsvereinigung) which was placed under the control of the Minister of the Interior (T/81).

The minister was also authorized to disband existing Jewish organizations or to merge them in the Reich Association. Such a merger of an organization involved a transfer of its assets to the Reich Association. Thus a convenient instrument was created for total control by the Reich Government of the public property of German Jewry.

58. In the same Order of July 1939, it was stated that the purpose of the Reich Association was “to promote the emigration of the Jews.” In fact, during that period the Reich Government regarded as a desirable solution the emigration of the Jews from Reich territory and from the territories which had meanwhile been annexed to the Reich (Austria and the Bohemia-Moravia Protectorate).

Actually, this had been the trend already from the beginning of the National Socialist regime; but whereas in the first years this trend found expression, to some extent, in the encouragement of voluntary emigration, accompanied by the granting of certain concessions in regard to the transfer of Jewish capital abroad, the line taken changed afterwards to forced emigration under pressure and was accompanied by the robbing of the emigrants' property (Session 15, Vol. I, p. 226).

Thus the German Foreign Ministry notifies its representatives abroad on 8 July 1938 that the transfer of Jewish property abroad is not to be facilitated. And on 8 December 1938 the American Ambassador in Berlin reports a statement by the German Minister for Foreign Affairs, Ribbentrop, who said that:

> “The Jews in Germany without exception were pickpockets, murderers and thieves. The property they possessed was acquired illegally. The German Government has therefore decided to equate their status with the criminal element of the population. The property they acquired illegally will be taken from them.” (T/115).

In accordance with this, it became official policy first of all to put pressure upon Jews without means to emigrate from the Reich (T/123, at the end of page 2). This policy was

first put into practice in Austria and the Protectorate, and introduced only later in the territory of the Old Reich. This policy is bound up with the Centres for Jewish Emigration in Vienna, Prague and Berlin, in the organization of which the Accused played a decisive part. Accordingly, we shall interrupt at this point the description of the general background of the first stage and survey the Accused's biography to the point at which he appears as the person in charge of the Emigration Centre in Vienna.

Biographical details of the Accused up to his entry into the SD.

59. Particulars of the Accused's youth are known to us from his Statement made before Superintendent Less (T/37) and from memoirs which he also wrote while under detention in Israel (T/44).

Adolf Eichmann (full name: Otto Adolf Eichmann - T/37, p. 3), born in 1906 in Solingen in the Rhineland in Germany, the first-born son of his father Adolf Karl Eichmann, and his mother, Maria, nee Schefferling. His father, a devout Evangelical Christian, was a bookkeeper in the local electricity company.

In 1914 the family moved to Austria, to the town of Linz, where the father continued to work as commercial manager in the electricity company in that town. The Accused grew up in Linz, went to elementary school there, and after that studied for four years at high school. He then attended a vocational school, which he also left after two years, without completing his studies. In the meantime his father lost his money in business, at which he tried his hand without success. Amongst other things he set up a mining company in which the Accused worked for some time as a miner. The Accused later became a salesman in an electricity supplies firm, and finally a travelling agent for the Austrian Socony Vacuum Company.

At first the Accused joined the “Front-Fighters” Association, an Austrian nationalistic organization. In 1932 he joined the National Socialist Party under the influence of his acquaintance, Ernst Kaltenbrunner, who was later to become the head of the Head Office for Reich Security. In the same year, he also entered the Austrian SS (Schutzstaffeln der NSDAP).

In 1933 he was dismissed from his post in the Socony Vacuum Company, and shortly afterwards, with Hitler's rise to power, he left Austria for Germany. In November 1933, he enlisted for military service in the Austrian SS unit in exile and underwent military training in the SS camps in Lechfeld and Dachau, in Bavaria. After attaining the rank of Scharfuehrer (Corporal), he volunteered, in October 1934, for service at the Head Office of the Security Service (SD) in Berlin.

The Structure of the SD and the RSHA

60. Before we continue to describe the Accused's career, we shall review in brief the complicated structure of the SD and the other organizations in which the Accused was active in the course of the years.

The SD, or to use its full name, the “Security Service of the Reichsfuehrer-SS,” was originally the intelligence service of the SS and later of the entire National Socialist Party. At its head stood Reinhard Heydrich. In 1936 Heydrich was appointed also to head the Security Police, which was a state organization comprising the State Secret Police (Gestapo) with its local Gestapo offices, and the Criminal Police (T/93). This appointment was given to Heydrich by Himmler in his capacity as head of the entire German police, within the framework of the Ministry of the Interior. Himmler took upon himself the position of head of the German police, which he united with his original post as leader of the SS; hence his full title: “Reichsfuehrer-SS and Head of the German Police.”

The unification of the central institutions of the SD with the Security Police was completed by an order from Himmler on 27 September 1939 (T/96), creating the Head Office for Reich Security (Reichssicherheitshauptamt, henceforth the RSHA), with Heydrich in charge. It had six (later seven) offices. The Gestapo was merged into this new setup as Department IV of the RSHA, headed by Heinrich Mueller. The task of Department IV was defined as “combating opponents.” The Criminal Police was transformed into Department V and the intelligence duties of the SD were transferred to Departments II, III, VI in the RSHA (T/647, T/99; see also the comparative table of division of duties, at the end of exhibit T/99. This table was erroneously attached to the main document T/99 at the principal Nuremberg Trial, because it clearly relates to the time when the RSHA was set up at the end of 1939, whereas the main document relates to the period after March 1941). This unification was effective only at the Centre in Berlin.

In the field, the activities of the Gestapo, the Criminal Police and the SD were co_ordinated by Commanders of the Security Police and SD (IdS) and in the conquered areas by the Senior Commander of the Security Police and SD (BdS) (T/83, T/95). These acted as representatives of the head of the RSHA, and it was from the RSHA that they took their orders. As has been said, Heydrich was the head of the RSHA when it was founded. He held this position until his death in June 1942. In December 1942, Kaltenbrunner was appointed in his place.

Formally the RSHA was affiliated to the Ministry of the Interior, and Himmler himself also acted within the framework of that ministry, in terms of his authority as head of the German police. In August 1943, Himmler was also appointed to the post of Minister of the Interior (T/1428). At the same time, the RSHA was also one of the twelve main offices of the SS, which included, amongst others, the SS Economic-Administrative Head Office, headed by Pohl, and the Head Office of the Public Order Police (Ordnungspolizei), headed by Daluege.

As leader of the SS, Himmler controlled all these twelve main offices. The RSHA as a whole became an SS institution also in terms of personnel, by virtue of the fact that in November 1939 all officials of the Gestapo and the Criminal Police received SS titles in accordance with their ranks (T/83, p. 2). In the Reich districts, and later also in the conquered areas, Himmler appointed Senior SS and Police Commanders who acted as his

personal representatives. Their duty was to co-ordinate in their areas the activities of the Order Police, the Security Police and the SD, in addition to the armed SS and general SS units (T/98).

The Accused in the SD - until his arrival in Vienna

61. As stated above, the Accused came to the Head Office of the SD in Berlin in October 1934. At first he worked in the Department for Research into the Freemasons, but after a few months, at the beginning of 1935, he was moved to Department II 112 - "Jews," and from then on, until the end of the Third Reich, he never ceased to be engaged in combating the Jews. He worked in this Department in Berlin for about three years, until March 1938, and was appointed "Referent" (Specialist Officer) for Zionist affairs.

The Department dealt in intelligence work, in close co-operation with the parallel "Jewish Department" in the Gestapo (II 4 B), which had the authority to take executive action (T/107; T/123, p. 2). He did well at this work, and at the end of 1937 was promoted to officer's rank (Untersturmfuehrer). In a personal report of the year 1937 (included in T/55 (3)), written by Dieter Wisliceny, who was then his superior, it is stated:

> "Eichmann has acquired comprehensive knowledge of the methods of organization and ideology of the opponent, Jewry... His National Socialist outlook is the basis for his standing both within the service and outside it."

(In the course of time, the Accused was promoted over the head of his own chief, and Wisliceny became one of his main assistants.)

The Accused tried to learn Hebrew by the "self-taught" method. His request to his superiors for permission to continue studying the language with a rabbi was rejected (T/55 (11)). He learned to read Yiddish to the extent of being able to understand the newspaper Haint (T/44, p. 49). At this point we may mention also the legend cultivated by the Accused himself that he had been born in the Templar Colony in Sarona in Palestine (Session 16, Vol. I, p. 254; Session 41, Vol. II, p. 738).

The Accused wrote an instructional booklet on Zionist affairs for SS men (T/ 44, p. 41), and lectured to SS and army commanders on "the World Zionist organization, its structure and aims," and also on "the New Zionist organization" (T/44, p. 48). In 1937, he was sent to the National Socialist Party rally in Nuremberg to make contacts with persons from abroad, in order to stimulate anti-Jewish propaganda (T/121).

In November 1937, he travelled to Palestine and Egypt, together with his superior, Hagen, on an espionage mission, chiefly amongst the Jews. He was instructed, inter alia, to establish contact with the Mufti of Jerusalem, Hajj Amin al-Husseini. Their boat anchored at Haifa, and the Accused went ashore. From there the journey continued to Egypt. While they were there, they requested an entry permit to Palestine, but came up against difficulties on the part of the British authorities, and therefore had to be satisfied

with information given to them in Cairo by their informants. A detailed report of their journey has been submitted to us (T/124). We shall quote two passages which illustrate its general tenor.

With regard to the proposal to increase emigration opportunities for German Jews by way of capital transfer in the form of goods, the report states:

> "Since the above-mentioned emigration of 50,000 Jews per year would chiefly strengthen Jewry in Palestine, this plan is out of the question, in view of the fact that it is the policy of the Reich to avoid the creation of an independent Jewish State in Palestine."

We now move from high policy to trivial matters. With regard to a German who sought to obtain an agency in Palestine for the German Aviation Company, the report mentions "his unsuitability from a professional and personal point of view and because of his personal philosophy," and that it is typical of the man's true political attitude that "the travel agency which he manages sends greetings to all its Jewish customers on the occasion of the Jewish New Year"!

When the Accused was cross-examined about this report, he alleged that it had been written by Hagen, and therefore he was not responsible for its contents (Session 75, Vol. IV, p. xxxx97 et seq.). It is true that, according to the dictation initials, Hagen appears to have been the author of the report, but the Accused introduced corrections in his own handwriting, and there is no doubt that the report was written in the name of both of them and that the Accused identified himself with its contents. This is what he states to Superintendent Less:

> "We wrote a report about this (the journey), a very detailed report, yes. I had to give a thoroughly negative report, negative from a material point of view" (T/37, p. 93).

> "Certainly, ... I must take responsibility (for the report) - I have no option but to agree to this" (es bleibt mir nichts anderes uebrig). (Supra, p. 346.)

62. As stated above, during this period of his service in the Head Office of the SD, the Accused was engaged in pure intelligence work. His contacts with Jews were only for the purpose of this work. Thus, the witness Cohn remembers the presence of the Accused as an observer at a Zionist meeting in Berlin in 1937 (Session 15, Vol. I, p. 220-221), and the witness Dr. Franz Meyer, who was at the time acting chairman of the Zionist organization in Germany, tells us that the Accused sought detailed information from him about various Jewish organizations. Of the Accused's behaviour up to the end of 1937, Dr. Meyer says:

> "I thought that he was a quiet person, who behaved in an ordinary fashion...simply cold, correct." (Session 17, Vol. I, p. 266.)

Interesting evidence of the Accused's attitude towards the solution of the Jewish Question at that time is to be found in document T/111, in which he noted down for himself some points for a memorandum which he had to prepare. It says there:

> "In at least another ten years there will be only about 60,000 Jews left in Germany, if the present trend continues. After the emigration of those without means will come the turn of the capitalists, who by then will lose their capital gradually as a result of economic measures, assisted by State Police measures" (Stapomassnahmen).

In simple words: The Jews would all be compelled to emigrate, but the capitalists would emigrate only after they had been robbed of their capital by terrorist measures.

The Accused's activities in the Central Offices for Emigration in Vienna, Prague and Berlin

63. After the annexation of Austria to the Reich in March 1938, the Accused was sent to Vienna to deal with the forced emigration of Austrian Jewry. It was his duty to administer the Central Office for the Emigration of Austrian Jews. His superior there was the Security Police and SD Commander, Stahlecker (later one of the Operations Units' commanders). At this point, the Accused ceased, in effect, to be engaged in intelligence work, although from the personnel point of view he always remained an SD man (T/37, 1544 et seq., Session 90, Vol. IV, p.xxxx14), and he began to deal with executive measures.

This work gave the Accused an opportunity to carry out his theories in practice, at an increased pace. He began to display new qualities. He now began to reveal his organizational skill, by simplifying the bureaucratic procedures connected with the emigration of Jews from the country, through the device of assembling representatives of the various authorities concerned under one roof.

As for his activities and his appearance before the Jews during that period, the Accused sought in his Statement before Superintendent Less and his evidence in Court, to describe them as an idyll of fair co-operation between him and the leaders of the Jewish Community, with both sides striving towards a common aim in a spirit of mutual understanding. He also takes credit for the release of these Jewish leaders after they had been arrested by the Gestapo, and the re-opening of the Jewish institutions which had been closed down by the Gestapo (T/37, p. 97 et seq.; Session 90, Vol. IV, p.xxxx8 et seq.). He does, however, admit that the general line was that of forced emigration, but asserts that he was not responsible for this line, which was determined from above.

This is the claim made by the Accused. But witnesses and the documents speak otherwise and contradict his version. Dr. Meyer, whose testimony we have just mentioned, saw the Accused again during his Viennese period, when the leaders of German Jewry were summoned to Vienna in February 1939, in order to become acquainted there with the

methods of operation of the Central Office for Emigration, with the view to copying them in Berlin. And this is how the witness describes that meeting (Session 17, Vol. I, p. 268):

> "... I immediately told my friends that I do not know whether I am meeting the same man. So terrible was the change ...in the whole approach...previously I thought that here was a minor official, what they call a `clerk_bureaucrat' who carries out duties, writes reports, and so on. Now, here was this man with the attitude of an autocrat controlling life and death; he received us impudently and crudely..."

And this is the impression gained by the witness after seeing the arrangements at the Vienna Central Office for Emigration and speaking with the Jewish leaders there (Session 17, Vol. I, p. 269):

> "This is like an automatic factory, like a flour mill connected to some bakery. You put in at the one end a Jew who still has capital and has, let us say, a factory or a shop or an account in a bank, and he passes through the entire building from counter to counter, from office to office, and he comes out at the other end without any money, without any rights, with only a passport in which is written: "You must leave the country within a two weeks, if you fail to do so, you will go to a concentration camp!"

Another German Jewish communal worker, Mr. Aaron Lindenstrauss, confirms this statement in a description of the same visit to Vienna (Session 15, Vol. I, p. 234):

> "...I still remember that these officials of the Jewish Community and the Palestine Office seemed to me like disciplined soldiers who stood to attention all the time and dared not utter a word..."

Further confirmation of this is found in a letter written by the Accused, when he was still in the early stages of his work in Vienna, to his friend and colleague, Hagen (T/130):

> "At any rate, I keep these gentlemen here on the run, this you can believe me..."

And again:

> "I have them completely in my hands, they dare not take a step without first consulting me. That is as it should be, because then much better control is possible."

These were not just empty words, for in fact this is how the affairs of the Jewish institutions were administered, as evidenced by the memoranda prepared by Dr. Loewenherz, Chairman of the Jewish Community in Vienna, and the chief representative of Austrian Jewry in negotiations with the Accused (T/148, T/152, etc.).

64. The Jews of Austria lived in an atmosphere of terror ever since the entry of Hitler into Vienna. Mr. Fleischmann, one of the Jewish leaders in Vienna at the time, tells us how he was compelled by the SS to scrub the pavement (Session 17, Vol. I, p. 260).

But the Accused did not content himself with the general feeling of fear for the advancement of his aim - to "purge" Vienna and the whole of Austria of Jews in the shortest possible time. He added threats of his own in order to increase the pressure on the leaders who came to him on behalf of the Jewish Community.

It has not been proved to us that he took part in organizing the Crystal Night pogroms, on the eve of 10 November 1938, in Austria (behind which were the Gestapo and the SD), though the very same night information about the events was transmitted to him through service channels (T/138, T/140, N/34). But it is a fact that he exploited for his own purposes the panic which reigned amongst the Jews because of these events, in order to speed up the process of forced emigration. Mr. Fleischmann described the speech made by the Accused to the Jews who crowded into the Palestine Office in Vienna on the day following Crystal Night:

> "He (the Accused) spoke about the unsatisfactory rate of the disappearance of Jews from Vienna. He said that entirely different ways and measures would have to be used, and that he would see to that." (Session 17, Vol. I, p. 262.) And so we read in the general report describing the activities of Dr. Loewenherz about a conversation which took place in March 1939, when the Accused said to him, "that the number of applications for emigration had gone down considerably in the last few days, and if the number of applications did not go up within two days, he would propose the adoption of measures which could take on the same form for everyone as in November 1938" (T/154, p. 9; Session 90, Vol. IV, pp.xxxx15, 16; with regard to the authentication of the report, see Mr. Zidon's affidavit, T/37 (233)).
>
> A similar threat was uttered by the Accused to the representatives of German Jewry after their visit to Vienna, when it displeased him that, while there, they contacted the Jews of Vienna of their own accord.
>
> > " "If this happens again, you will go to the Konzertlager" (instead of Konzentrationslager - concentration camp). (Session 15, Vol. I, p. 228.)

The Accused also takes credit for having organized the financial arrangements connected with Jewish emigration by means of the Central Office for Emigration. But the outcome of all these arrangements was that a Jew who was forced to emigrate to another country was allowed to take with him, in addition to his personal effects, only the sum of money which was needed to obtain the entry permit to the country to which he was immigrating (Vorzeigegeld). The rest of his property he had to make over to the German Reich (Session 9, Vol. I, p. 126).

To enable those without means to emigrate, people of means were compelled to pay an extremely exaggerated rate of exchange for this sum of money, and this was transferred to the “Emigration Fund,” set up at the Emigration Centre (T/37, p. 104; T/135). This fund was also supported by gifts in foreign exchange obtained by Austrian Jews from their brethren abroad, with the Accused's encouragement, in order to make mass emigration possible (T/152, para. 3). (Of course, the reference here is to emigration during the first stage, i.e., overseas).

The communal property of the Jewish organizations in Austria was also concentrated in the hands of the state (T/147). The Accused's absolute control over the funds which were gathered in this way becomes apparent from Dr. Loewenherz' memoranda and from his final report (T/154).

65. It is true that the Accused set the Jewish organizations in Vienna functioning again after they had been closed down by the Gestapo immediately after the annexation of Austria to the Reich. But this was nothing else but the beginning of the system of “indirect rule” which the Accused developed so cleverly - a system which saved the German ruler manpower and turned the Jewish organizations against their will into an instrument in the hands of the ruler, for the realization of his sinister plans which increased in harshness from stage to stage.

Through the pressure of the terror exercised against the Jews, the Accused succeeded in bringing about the emigration of a considerable part of Austrian Jewry (close to 150,000 persons - T/185, p. 4). At a meeting presided over by Goering immediately after the Crystal Night, Heydrich boasts of the activity of the Central Office for Emigration in Vienna which had succeeded until then in bringing about the emigration of 50,000 Austrian Jews (T/114, pp. 19-22). At the same meeting it was agreed to set up a similar office also in the area of the Old Reich.

The practical result was an instruction from Goering to the Minister of the Interior, dated 24 January 1939, to set up the Reich Central Office for Jewish Emigration (T/125). The directives contained in this letter show that the experience gained in the Central Office for Emigration in Vienna under the Accused's direction was now used for the setting up of this central authority. Its administration was entrusted by Goering to Heydrich himself as head of the Security Police. Heydrich, in turn, put Mueller, the head of the Gestapo, in charge of the Central Office (T/116).

The Accused argues that at that period he was not active in this central authority. But Mr. Cohn and Mr. Meyer gave evidence that already in March 1939 the Accused visited Berlin and told the Jewish representatives there, after their visit to Vienna, that in Berlin, too, a Central Office for Emigration would be set up along the lines of the Central Office in Vienna, and he demanded of them, in the harsh style which he had developed in the meantime, that they co-operate with this Central Office (Session 15, Vol. I, pp. 228-230; Session 17, Vol. I, p. 268).

It appears, therefore, that the Accused, as the emigration expert, already began to deal, in fact, with matters belonging to the Reich Central Office for Jewish Emigration in Berlin a short time after its establishment, though it is possible that in the spring of 1939 he had not yet been formally appointed to direct the affairs of this Centre. From the Chart N/2, which he himself drew up, it appears that he received the formal appointment at the beginning of October 1939 (see also T/43, p. 5).

66. In the meantime, Hitler established his domination over Bohemia and Moravia - first, in the autumn of 1938, over Sudetenland, and later, in March 1939, also over the interior of the country - and the Protectorate was set up there. Thus the Jews of Bohemia and Moravia also were caught in the trap. The Accused moved from Vienna to Prague, together with his superior, Stahlecker, and was given the task of setting up there also a Central Office for Emigration like the one in Vienna.

We heard from Dr. Paul Meretz, who was then chairman of the Czech Zionist Organization, about the activity of this Central Office in the short period from its establishment to the outbreak of war. Here, too, great pressure was exercised upon the Jews to emigrate to other countries, legally or illegally. After paying taxes (the `flight' tax and the `Jewish' tax), the emigrant had also to pay the full value of the movable goods which he was allowed to take with him. He also had to hand over his apartment and was compelled to give a Power of Attorney to a bank in respect of the rest of his property, so that he left the country bare of all his property, with the exception of baggage weighing a few kilogrammes (Session 19, Vol. I, p. 294-295, and see also the evidence of Mrs. Walli Zimet, supra, p. 297).

67. After the outbreak of war, in the autumn of 1939, the Accused was recalled to Berlin. In the meantime he had risen to the rank of Hauptsturmfuehrer (Captain). To conclude our survey of this period, of the setting-up of the Central Offices for Emigration, we quote from personnel reports about the Accused - first from one of the reports contained in exhibit T/55 (3):

> “Special qualities and abilities: to conduct negotiations, to speak, to organize.
>
> “...An energetic and impulsive man, with great talents in the administration of his area of activity...a recognized expert in his field.”

And from another, later, report, signed by the head of the Personnel Department in the RSHA (contained in exhibit T/55 (12)), in which he proposes that the Accused be promoted:

> “on the basis of the exceptionally fine achievements of Eichmann, who had already distinguished himself by purging the Ostmark (Austria) of Jews, when he was in charge of the Central Office for Jewish Emigration. Thanks to Eichmann's work, tremendous assets were secured for the German Reich. Similarly, Eichmann's work was excellent in the

> Protectorate, where he displayed striking initiative and the requisite stubbornness."

If we translate these words of praise into ordinary language, we can agree, on the basis of the evidence before us, that the Accused played a major role in forcing the Jews to emigrate, especially from Austria and the Protectorate area, while robbing them of their private property and that of their institutions. These Jews, in tens of thousands, were thus saved a much more bitter fate, but the Attorney General is right in emphasizing that it was not in order to rescue them that the Accused carried out his work, but because at that time he, too, did not yet know what fate was in store for those who did not manage to escape in time.

Thus the Accused returned to Berlin, crowned with success in the eyes of his superiors, and especially of his commander, Heydrich. It is not surprising, therefore, that from then on central responsibilities were placed upon him in regard to the battle against the opponent - Jewry.

THE SECOND STAGE
FROM THE OUTBREAK OF THE WORLD WAR TO MID-1941

68. When war broke out in early September 1939, and Poland was immediately divided between Germany and the Soviet Union, persecution of the Jews reached a new stage which was continued until Hitler attacked the Soviet Union in June 1941. At this stage, there are various conflicting attitudes in regard to this matter amongst the German rulers. It soon became evident that there was no hope of "purging" the German-ruled territory of its Jews by emigration across the seas, after masses of Jews had been added to them in the Eastern Occupied Territories. This was a period of mass deportations without a uniform aim, except the desire to get rid of the Jews by all means.

69. In September 1939, Polish Jewry as far as the demarcation line were handed over to the Germans, over two million souls, and the first wave of mass murders and other atrocities was set loose, carried out mainly by the SS Operations Units of the time, who entered Polish towns and villages in the wake of the advancing army. We heard about these atrocities from the witnesses Ada Lichtmann, Zvi Pachter and others (see also T/358). This was the first implementation of Hitler's threat in his speech to the Reichstag on 30 January 1939 (T/117):

> "If international financial Jewry, in and outside Europe, should succeed in plunging the nations once again into a world war, then the result will not be a Bolshevized world and thereby a victory for the Jews, but the annihilation of the Jewish race in Europe."

This trend is confirmed by the testimony of Lahousen, of the German counter-espionage, at the trial of the major war criminals at Nuremberg. He said there that, already in September 1939, Hitler decided upon the massacre of Polish Jewry (N/109, N/109a).

The truth seems to be - and the Attorney General did not contend otherwise - that Hitler had already decided to exterminate European Jewry as soon as he laid hands on them, and the decision was already known to a small circle at the head of the regime, but it had not yet been finally crystallized, and the explicit and comprehensive order for its implementation had not yet been given. This conclusion is confirmed by a minute of a meeting convened by Heydrich on 27 September 1939 and attended by his chief assistants (T/164).

Another document was also submitted to us, addressed to the heads of the Operations Units of the Security Police, in which Heydrich sums up the directives he gave at that meeting (T/165). Heydrich distinguishes there between "the final aim (requiring longer periods of time)" and "the stages for achieving this final aim (to be carried out within short periods)." The final aim must be treated as top secret (vide, p. 1). What this "final aim" meant was not said there. It is possible that this referred to mass expulsion of the Jews from German-ruled territory. This is hinted at by the words on page 3 of T/164: "Expulsion [of the Jews] across the border was confirmed by the Fuehrer."

But there is ground also for another and more far-reaching assumption, viz., that the aim at the time was already the future physical extermination of the Jews. The Accused supports this latter view in his Statement before Superintendent Less, as follows (T/37, p. 3141; Session 91, Vol. IV, p. xxxx9):

> "...After I read through this, I say to myself today that, according to this, the order for the physical extermination of Jewry was given by or came from Hitler, not near the beginning of the German-Russian War, as I had believed until now, but this basic idea was already rooted in the minds of the higher leaders of the men at the very top at the time these directives were drafted" (this in reference to the above-mentioned directives of Heydrich).

70. The Accused appears in the list of those present at the consultation held by Heydrich as "SS Hauptsturmfuehrer Eichmann (Central Office for Jewish Emigration)." The Accused did not deny his presence there in his Statement to Superintendent Less ("I cannot recall that I took part in this consultation. Of course, there can be no doubt of it, since my name appears there"; p. 3151). In Court, after he had had time to realize the serious implication of this matter, he tried to exclude himself from this meeting, by denying the correctness of the document, and using the excuse that at the time he had not yet been transferred to Berlin (Session 88, Vol. IV p.xxxx32; Session 91, Vol. IV p.xxxx9). We do not accept this excuse.

In either case, whether the regular place of residence of the Accused on that day was Berlin or not, he was already handling the affairs of the Reich Central Office for Jewish Emigration, and his presence at this consultation was natural, even though he held the lowest rank of all the participants.

The final aim had not yet reached the stage of implementation, and these are the directives which Heydrich announced were to be acted upon within a short time:

> (a) the concentration of the Jews in ghettos in the large cities, “in order to have better control, and later for evacuation” (T/164, p. 4);
>
> (b) the setting up of Councils of Jewish Elders;
>
> (c) the deportation of Jews from the Reich to Poland (the area of the Generalgouvernement) on freight trains.

71. From amongst these objectives, the Accused was to be charged with a central task of organizing transports from the Reich to Poland, as we shall see presently. In the meantime, he continued to direct the activities of the Central Office for Emigration in Vienna, Prague and Berlin, through the organization of emigration overseas (T/798 of 19.12.39, section 5). After the outbreak of war, emigration possibilities became limited. During the first few months, an opening for emigration still remained via Russia and Japan, and also via Sweden (T/665, p. 4).

The Nisko Chapter

72. The first transports dealt with by the Accused were connected with the Nisko Plan, which he himself devised as far back as September 1939, together with Stahlecker, and he supervised its implementation in person. Nisko is situated on the San river in the Radom district of what was the area of the Generalgouvernement, not far from the border.

The idea of the Accused, according to his Statement, was to set up a kind of Jewish state in the Radom district, after the evacuation of the Poles from that area. But from the very beginning his intention was not a permanent settlement, but a temporary concentration of the Jews, prior to their deportation to another place. This is what he notes in exhibit T/43, p. 4:

> “I said: Give me a sufficient subsistence area; then it will be possible to set up an autonomous Jewish pre- state (Judenvorstaat) from which gradual emigration could be carried out.”

and in T/37, p. 124:

> “We said to ourselves...this can be a solution for some time, at least for some time, so that meanwhile there will be no fire under our fingernails.”

It is, therefore, likely that this concentration of Jews near the demarcation line was planned as the first step towards their expulsion across the lines, in accordance with the Fuehrer's order, announced by Heydrich on 21 September 1939, as mentioned above.

Heydrich supported this plan, and in October 1939 the Accused began to carry it out. The first transport of 1,000 men was sent from Moravska Ostrava to Nisko, as a sort of pioneer corps intended to prepare the place for those who would follow them. The witnesses Max Burger (Session 19, Vol. I, p. 299) and Dr. Hugo Kratky (Session 20, Vol. I, p. 309) were with this transport, and from their description it transpires clearly that the talk about a grandiose plan is far removed from the grim reality - the Accused acted with complete disregard for the health and life of the deportees. They relate that people were brought to a hill open to the four winds, where they were addressed as follows by an officer of the SS:

> "Some seven to eight kilometres from here, across the San, the Fuehrer has promised the Jews a new homeland. There are no dwellings and no houses; if you carry out the construction you will have a roof over your heads. There is no water, the wells all around carry disease; cholera, dysentery and typhoid are rampant. If you start digging and find water, then you will have water."

From the testimonies of Burger and Dr. Kratky, there is much reason to believe that the speaker was the Accused himself. In any case, even if the speaker was someone else, this was the spirit that reigned there.

About a quarter of the number of those transported were expelled on the following morning towards the East, on foot, with the warning that anyone returning would be shot. Dr. Kratky was one of those. We heard from him about the misery which he and his friends suffered, as they walked a distance of 120-150 kilometres through the forests, until they reached Lublin, and thence still further towards the East. Of the fate which befell those who remained in the camp, we heard from Mr. Burger (Session 19, Vol. I, p. 300).

After the camp was set up, additional transports of Jews arrived from Moravska Ostrava and from Vienna. Some of them were not even permitted to enter the camp, but were driven on immediately, without the luggage they had brought with them. A transport of one thousand extremely old Jews arrived. The cold was unusual that winter and touched 40 degrees below zero.

In the spring of 1940, the whole plan was liquidated, because of the objections of Hans Frank, the Governor General of Poland (Generalgouvernement area), who did not want additional Jews in his territory. The survivors from amongst the deportees were returned to where they had come from. Of the one thousand people who started off with Burger and Dr. Kratky from Moravska Ostrava, three hundred returned there. The others were expelled or escaped across the border, into Russian territory, and most of them were caught there by the Germans after the German-Russian war broke out. The Accused ordered that those who returned to Vienna from Nisko should be registered in the police records as "returning from vocational training" (Umschichtung) (T/801). The responsibility for the entire operation, including all the human suffering which went with it, falls directly upon the Accused.

Deportation from the Warthe District, etc.

73. On 7 October 1939, Himmler received from Hitler an appointment to a new task, in addition to his other duties. He was charged with bringing Germans back from abroad and resettling them in place of "parts of the population foreign to the nation, who are a danger to the Reich and to the community of the German people." In this office, as "Reich Commissioner for the consolidation of the German people," Himmler immediately began expelling the Jews, and part of the Polish population, en masse, from the areas annexed to the Reich in the East (the Warthe District, East Prussia, Upper Eastern Silesia, and Western Prussia (T/206).

The deported Jews were sent to the Generalgouvernement area, between the Vistula and the Bug, and in their stead "people of German origin" (Volksdeutsche) were brought from the Baltic countries and from Volhynia. This plan for resettlement (Umsiedlung) caused a kind of "organized" migration of peoples, which was conducted with extreme cruelty towards its victims.

The implementation of the expulsion was entrusted by Himmler to Heydrich's Security Police (N/8, p. 1), and on 21 December 1939 the latter set up a special section in Department IV of the RSHA for the "central handling of Security Police matters connected with the carrying out of evacuation within the Eastern Territory," and appointed the Accused to head this section as "Special Referent" (T/170). Later, in January 1940, this special section was converted to Section IVD4, and its tasks were "emigration, evacuation" (T/647, see also T/166, p. 1).

The RSHA drew up a general expulsion plan, to be carried out in stages (N/8, p. 2). The property of the deportees was, of course, stolen from them for the benefit of the Reich. For this purpose, Goering set up a special office, and as usual a high-sounding name was given, to cover its real aim: "The Trusteeship Office East" (T/205).

At a meeting held on 8 January 1940, presided over by the Accused, it is reported by the official in charge in the Generalgouvernement area, that it had happened that people were held in locked carriages for eight days without being permitted to satisfy their physiological needs. One hundred persons froze to death while being transported (T/171). In Hans Frank's diary we read (T/253, p. 28) that during that period

> "Freight trains loaded with people rolled daily to the Generalgouvernement, including carriages crammed to the top with dead bodies."

The Accused contends that such cases happened even before he took over, and that he was appointed to avoid similar "mishaps." Yet he admits that

> "it is possible that in this or that case, due to local difficulties, further mishaps occurred, but a thorough effort was made to avoid such

> happenings and the possibility of their recurrence." (Session 98, Vol. IV, pp.xxxx9-10.)

But this same document in which the cases of freezing to death are reported (T/171) shows that there was, in any case, no radical change in the manner of carrying out deportations, as far as the lack of consideration for human life was concerned. The Accused merely gave directions for the future:

> "...to protect women and children (emphasized in the original) from freezing during severe cold, whilst being transported; women and children are to be loaded into passenger coaches as far as possible, and men into freight cars."

This, then, was the measure of the Accused's regard for the lives of human beings at the time: Men would go on freezing to death; the freezing to death of women and children was to be avoided as far as possible. It should be pointed out here that, at a later period, even this last spark left the Accused, and in all directives he gave, there is no longer any mention of any consideration for women and children.

We shall return later to discuss again the deportation of Poles, which was also dealt with by Section IVD4 as from this period.

74. The Accused maintains, in respect of this stage as well, the contention which he repeats over and over again later in connection with the deportation at the stage of the Final Solution, namely that he dealt with transport matters only, and that other authorities participated in these deportations.

But here a distinction must be made between expulsion of the Jews and expulsion of the Poles. Actions against Poles were more complicated; there, for instance, it was necessary to sort out the deportees according to the race to which they belonged, in accordance with the National Socialist race theory. This sorting out was apparently carried out by Department III of the RSHA, with the assistance of the "Resettlement Centres" (Umwandererzentralen) (T/166, p. 7).

As far as the Jews were concerned, no such problem existed; they were to be seized in their places of residence and taken to the places of deportation. The Accused admits transporting them, and as far as their seizure is concerned, this was eminently a matter within the province of the local Security Police and SD branches (see for instance, T/1405, at the top of p. 7), and these branches were under the direct supervision of the Accused in his capacity as Special Referent in this matter.

The Deportation of the Jews of Stettin

75. At the same time, the Jews of Stettin were being deported to the Generalgouvernement area. This action (as well as similar action against the Jews of Schneidemuehl) was out of the ordinary at this stage in the development of affairs,

because here, for the first time, Jews of German nationality were deported from the Old Reich, and not from territories in the East recently annexed to the Reich.

The first indication of this we find in the minutes of the above meeting dated 30 January 1940 (exhibit T/166), at which Heydrich stated that "in the middle of February, one thousand Jews will be deported from Stettin, since their apartments are urgently required for reasons connected with the war economy, and they, too, will be sent to the Generalgouvernement area" (see p.7 supra).

The deportation from Stettin was carried out during one single night in the early hours of 13 February 1940. The Jews were taken from their apartments. They were allowed to take one suitcase with them. Every head of family had to sign a waiver in respect of all his property. They were not allowed to take with them provisions for the journey. One thousand three hundred persons were evacuated; amongst them children and old people. If anyone was unable to walk, he was taken to the railway station on a stretcher.

Twenty- four hours later, the first corpses were removed from the train. The deportees were taken to Lublin, and from there all of them - men, women and children - were taken on foot to villages at a distance of 26-30 kilometres from the town. The temperature was 22 degrees below zero and the snow was deep. During this march, which lasted fourteen hours, seventy-two persons fell by the way, and most of these froze to death. In one of the reports from which these details are taken (T/666; T/669), we read about a woman who was found frozen on the road with a child of three in her arms, whom she had tried to protect with her clothes from the cold.

Most of those who reached the three villages were housed in stables and farms, under terrible hygienic conditions. By 12 March 1940, 230 people of this transport had died. When the Accused was questioned in connection with the reports on this deportation, this was his reaction:

> "There is a grain of truth in this information. The reason is the exaggerated speed with which these deportations and expulsions were ordered to be carried out. Only fifteen days elapsed from the day the order was given until the expulsion was carried out." (Session 76, Vol. IV, pp. xxxx116-120.)

The deportation of Jews from the Reich to the Generalgouvernement area again aroused resistance from Frank. In March 1940, Goering responded to his pressure and prohibited further deportations without his and Frank's consent (T/383). But in a later document (T/384), we see that at the beginning of 1941, and until March 1941, once again Jews were deported from Eastern Territories annexed to the Reich, and also from Vienna, to the Generalgouvernement area. The Accused bears responsibility for all the deportations to the Generalgouvernement area described above, because of the role of "central direction" which he played in this matter, in accordance with the appointment he had received from Heydrich. When cross-examined by the Attorney General, he finally

admits and says, in connection with the Stettin deportation (Session 98, Vol. IV, p.xxxx15):

> "This was divided into a number of parts, this was not one independent matter. A number of authorities participated. As far as I was competent to do so, I had to carry this out."

The Madagascar Plan

76. This was a plan for the total deportation of the Jews from German-ruled territory, which occupied the Accused considerably sometime later in the year 1940. The idea of deporting European Jewry to this far-off island and isolating them there was not a brainchild of the Accused. This idea had already been floating around in the world of anti-Semitic thought for a number of years. Already when he was in Department II 112 at the SD Head Office, in March 1938, the Accused was commissioned to examine the possibilities latent in this idea (T/111).

When the armistice was signed with France, the idea received a new impetus towards realization, for here the chance offered itself of obtaining Madagascar for this purpose from the French in the peace treaty which was to be drawn up. Until this idea was shelved, the Madagascar Plan was sometimes referred to by the German rulers as the "Final Solution" of the Jewish Question.

In a memorandum written by Luther of the German Ministry for Foreign Affairs, in August 1942 (T/196), we read that the first initiative for the preparation of the actual plan originated there in July 1940. Luther continues (p. 2, supra):

> "The Madagascar Plan was received by the Head Office for Reich Security with enthusiasm. The Foreign Ministry is of the opinion that this is the only office capable, because of its experience and technically, to implement the evacuation of the Jews on a large scale and to guarantee control of the evacuees. Therefore, the competent department worked out a detailed plan for the evacuation of the Jews to Madagascar and their settlement there, and the plan was approved by the Reichsfuhrer-SS."

The "competent department" mentioned here was that of the Accused. His assistant, Dannecker, worked out, together with him, the detailed plan which is before us (T/174). In his Statement, T/37, and in his testimony before us, the Accused described the plan in rosy colours, as if the main purpose was only to put "solid ground under the feet of the Jews," by the setting up of a state of their own. This, he claimed, was his own aspiration no less than that of the Jews themselves, and for its fulfilment he spared himself no trouble, until he finally succeeded in obtaining the consent of all the authorities concerned to the implementation of the plan. Had the plan materialized, everything would have been in perfect order to the satisfaction of the Germans and the Jews; hence, his great disappointment when a change in political circumstances caused the plan to be shelved.

Here, too, the Accused's version is far from the truth. Of course, even deportation to Madagascar would have been preferable to the physical extermination which later befell European Jewry. But here again, the Madagascar Plan must be viewed in terms of the pre-extermination period. It is sufficient to glance through the details of the written plan, in order to discover its true significance: The deportation of four million Jews - the whole of Jewry at that time under the rule of the Hitler regime - within four years into exile, and their complete isolation from the outer world.

It is stated there explicitly that organizing Jews as an independent state is out of the question, but that this would be a "police state," supervised by the RSHA (ibid., p. 5). A Council of Jewish Elders would be set up, attached to the German Resettlement Head Office, and would have to fulfil orders given to it, "because this system of work proved to be the most efficient in the operation of the Central Offices for Jewish Emigration, and shifts most of the work on to the Jews themselves" (p. 12).

Apparently, economic means of livelihood for millions of Jews in their new place of residence did not worry the authors of the plan particularly. They had in mind employing them for many years on public works, such as the draining of swamps and building roads for communication - that is to say, on forced labour under the supervision of the German masters of the island.

Moreover, the control authorities would not have to worry about the health of these forced labourers in the difficult climate of the island, for "the Jewish authorities must see to the correct posting of all the doctors they have, in the various districts, in order to ensure hygienic conditions to a certain extent (einigermassen) (p. 13). As for finance, this would in part come from the property of the Jews themselves, which would be confiscated when they left their places of residence and would be transferred to "a central settlement fund," while the rest would be raised by imposing a tax on Jewish citizens in the countries of the Western Powers, payment to be guaranteed by the peace treaty (p. 13). The Jews of the West would also pay for the transport of the deportees to Madagascar, as "reparations for damage caused to the German nation by the Jews economically and otherwise as a result of the Versailles Treaty" (p. 11).

This was the RSHA version of the "Jewish State" plan, the very same plan which the Accused dared mention in one and the same breath with the name of Herzl from whom, so he says, he drew his inspiration. In fact, there is a direct line leading from the forced emigration organized by the Central Office for Emigration set up by the Accused, via the Nisko Plan, to this plan for isolating the Jews in a slave state - a line of increasing severity.

The Expulsion of the Jews of Baden

77. In October 1940, another expulsion took place, this time westward. All the Jews of the district of Baden and the Saar Palatinate (Saarpfalz), 7,450 in all, were deported to the area of unoccupied France. This was done in accordance with the proposal of the governors of those districts. In the report found in the files of the German Foreign

Ministry (T/674), we read of the customary cruelty in carrying out this deportation. All Jews, young and old (the report mentions a man 92 years old), were taken out of their beds at dawn. They were given a respite of a quarter of an hour to two hours to get ready for the journey. They had to leave all their belongings behind, and this is how they were taken to France. They were put into the Gurs camp at the foot of the Pyrenees under the worst possible conditions (Session 41, Vol. II, p. 699).

The Accused's Section IVD4 participated in the execution of this deportation, too, by organizing the transport of the Jews in sealed carriages. Moreover, the Accused personally played an additional part at a critical moment, when the French had to be convinced that they should allow the entry of the trains into the unoccupied area of France - something which they were not obliged to permit by the terms of the armistice (T/37, p. 143; T/637). In his testimony, he told the Court how he succeeded in convincing the French station master at the border railway station that these were German military transports, and thus succeeded in casting the Jews across the border (Session 77, Vol. IV, pp. xxxx26-30).

The Organization Plan for Jewish Affairs in the RSHA

78. In March 1941, the organization chart in the RSHA was revised, and the Accused was put in charge of Section IVB4, which was to deal with “Jewish affairs, evacuation affairs” (T/99). In November 1941, he reached the rank of Obersturmbannfuhrer (Lieutenant Colonel) in the SS.

Here, we must review briefly the organizational side of the handling of Jewish affairs within the framework of the RSHA, as it developed in the course of time. At the beginning, there were two aspects to this, intelligence work and executive measures. At the SD Head Office, intelligence work in connection with Jewish affairs was in the hands of the Accused's old Department II 112, and with the setting up of the RSHA, this Department was brought within the new framework as Section IIB2. Additional duties of intelligence against Jews abroad were carried out by Section VIH2 of the RSHA, “Judaism and Anti-Semitism”, headed by Hagen, the Accused's former colleague (T/99, pp. 24, 26 and T/647).

As mentioned above, in December 1939, the Accused was transferred to Department IV of the RSHA, that is the Gestapo, which was the office which occupied itself with executive police duties (T/170). Thus, the gradual transformation of the Accused from an intelligence officer to an executive officer, which began with his activities at the Central Office for Emigration in Vienna, was completed.

In January 1940, his department was absorbed within the regular framework of Department IV as Section IVD4, “Emigration and Evacuation” (T/647). Jewish affairs, as such were still handled in another section of Department IV, namely Section IVD3, headed by a man named Schroeder. Of course, this does not detract from the fact that during this period the Accused was already dealing with Jewish matters within the framework of his own Section, “Emigration and Evacuation.” As already mentioned, in

March 1941 Jewish affairs as such were also specifically handed over to him within the framework of Section IVB4, in addition to his previous task of “evacuations.”

In this same organization chart (T/99), Jewish affairs appear also in Department VII - a new department set up in the meantime for the “Research and Evaluation of Foreign Ideologies,” - in other words, intelligence matters, in Section VIIBi, “Freemasons and Jews.” No Referent was appointed to this Section (p. 22, supra). Therefore, from now on, the Accused's Section dealt centrally with all matters in the RSHA connected with operations against Jews.

An additional stage in the development of these matters we see in the organization chart dated 1 October 1943 (T/104). Here, the Accused, as head of Section IVB4, also took over matters concerning “confiscation of property of persons hostile to the people and the state, and the cancellation of German nationality,” which was previously within the jurisdiction of Section IIA5 (T/99, p. 8). This change-over was dictated by the circumstances, since confiscation of property and cancellation of nationality mainly affected the Jews. The intelligence side was now represented by Section VIIB2, “Judaism,” headed by one Ballensiefen (see exhibit T/104 in extenso, which appears in vol. 38 of the Nuremberg Documents, German edition, at p. 60 et seq.).

In the last stage, in 1944, the Accused's Section was given a new designation, IVA4 (T/55 (14), evidence of Huppenkothen, p. 14). In the meantime, the handling of church matters was also transferred to his Section (T/37, pp. 261/2).

The person directly in charge of the Accused from the time he joined Department IV was the head of the department, SS Gruppenfuhrer and Police Lt. General Mueller, but it is not disputed that, in fact, the Accused had direct access to Mueller, thus by-passing the head of the Group.

THE THIRD STAGE - THE FINAL SOLUTION
FROM THE INVASION OF RUSSIA TO THE WANNSEE CONFERENCE

79. On 22 June 1941 Hitler began the war against the Soviet Union. At the same time, came the transition of the third and final stage in the persecution of the Jews within the area of German influence, namely the stage of total extermination. From then onwards, all German actions against Jews in their places of abode, and their deportation to the East, were aimed towards extermination, which was by now regarded by all German authorities dealing with Jewish affairs as the Final Solution of the Jewish Question.

The order for extermination was given by Hitler himself at a time close to the date of the invasion of Russia. We do not know if the original order was ever put in writing. At the Wannsee Conference - upon which we shall dwell later - Heydrich speaks of the extermination order in disguised language (“the evacuation of the Jews to the East”) as having been confirmed by the Fuehrer as a possible solution instead of emigration (T/186, p. 5). Also Luther, a Foreign Ministry official, states in a memorandum T/196, quoting Heydrich, that the order for “evacuation to the East” was Hitler's order.

The first victims of the total extermination were the Jews, who were murdered en masse by shooting by the RSHA Operations Units. These Units were set up already before the invasion of Russia, and launched upon their murderous activities as soon as the invasion began, in the rear of the advancing German army. We shall come back later to the activities of these groups (paras. 120-121). At this stage, we shall first describe the actions taken against the Jews within the Reich itself and within other countries of Europe in the area of German influence, outside Eastern Europe. In general, no direct extermination actions were committed within those countries and on German soil, but their Jews were rounded up and deported to the East, there to find their death.

80. The implementation of the "Final Solution," in the sense of total extermination, is to a certain extent connected with the stoppage of emigration of Jews from territories under German influence. In his Statement T/37, the Accused says (on p. 171):

> "As soon as the war against Russia began, Himmler forbade all emigration, even when opportunities existed for it." (See also the Accused's Memoirs, T/44 at pp. 93, 101.)

Mr. Max Plaut, in his affidavit, T/665, also puts the date of the prohibition of emigration at the outbreak of war against Russia (p. 4 supra). In fact, the final order for the cessation of emigration seems to have been given by Himmler only in October 1941 (see T/394; T/395). All emigration of Jews was prohibited as from that date, except in special, individual cases. But it is correct that from the outbreak of war with Russia, practical emigration possibilities for Jews from German-influenced territories were limited to such an extent that during the months until October 1941 emigration proceeded only in "a tiny trickle" (see T/683). From the evidence given by Mrs. Henschel, it appears that the last transport of emigrants from Germany left for Lisbon on 15 October 1941, or one day earlier (Session 37, Vol. II, p. 668).

Heydrich's Appointment by Goering

81. We have stressed the connection between the cessation of emigration and the extermination order, because this is important for the understanding of document T/179, which is one of the basic documents in the history of the extermination. This is Heydrich's letter of appointment from Goering. In the copy submitted to us, the letter is dated July 1941, without specifying the day, but it is clear from other documents (T/180, T/181) that the date of appointment was 31 July 1941. And this is the text of the letter:

> "In addition to the task with which you were already charged by an order dated 24.1.39, namely to bring the Jewish problem to a suitable solution, as far as possible, according to prevailing conditions, by emigration or evacuation, I further direct you hereby to make all the necessary organizational, substantive and material preparations for the general solution of the Jewish problem within the area of German influence in Europe.

> To the extent that the competence of other central authorities be involved in this matter, they should be asked to co-operate.
>
> I also order you to supply me shortly with a general proposal in regard to preliminary organizational, substantive and material steps to be taken for the implementation of the desired Final Solution of the Jewish Question"

The letter, dated 24 January 1939, is document T/125, mentioned above, wherein Heydrich was appointed to head the Reich Central Office for Jewish Emigration.

In the above memorandum by Luther (T/196), Heydrich is quoted as saying that this letter of appointment, too, was given to Heydrich by Goering in accordance with an order from Hitler (supra, p. 5).

A comparison of the two documents (T/179 and T/125) shows that this time (in document T/179) reference is made to "a general solution of the Jewish question within the area under German influence in Europe" and to "the desired Final Solution of the Jewish Question." These expressions were missing in the previous document (T/125). The principal material difference lies in the word "evacuation," which appears in T/179 and does not appear in T/125. But in T/179, as well, there is no mention of the word extermination. However, there is no mistaking the true meaning, as the Accused himself confirms in his statement T/37, p. 168. The date of the letter T/179 (not shown to the Accused at the time) was not known to him, and he ascribed it to a later period. But he is conversant with its implication, for this is what he says of the letter of appointment:

> "We can attribute it to the period when emigration was no longer possible, and the radical solution began."

Thus, at the time of this appointment, emigration had ceased to be a practical solution for the removal of masses of Jews, whose numbers had increased in the meantime because of new conquests in the East. Accordingly, the stress in the letter of appointment is on "evacuation," which means extermination.

The Jewish Badge

82. To facilitate the activities of isolating the Jews and their concentration for deportation, they were obliged to wear the Jewish Badge. On 21 August 194,1 Rademacher, the Referent on Jewish affairs at the time in the German Foreign Ministry, prepared a memorandum intended for the Under-Secretary of State, Luther, for the purpose of receiving a decision from the Minister for Foreign Affairs, Ribbentrop. It read (T/682):

> "Sturmbannfuehrer Eichmann of the RSHA telephoned me and informed me confidentially that he (Heydrich) received a cable from the Fuehrer's headquarters, according to which the Fuehrer agreed that the Jews in

> Germany bear a distinguishing mark. Eichmann asked my opinion as to whether this could be applied to Jews of foreign nationality..."

Already on 1 September 1941 (T/635) a "Police Regulation in Regard to the Marking of Jews," signed by Heydrich on behalf of the Minister of the Interior of the Reich, was published in the German Official Gazette. This Regulation obliged Jews of German nationality within the Reich and the Protectorate to carry the Jewish Badge (a star bearing the word "Jew") from the age of six, and forbade them to leave the district of their residence without special permit.

To implement this "Police Regulation," two urgent letters (T/209) were dispatched from the Accused's office on 15 September 1941 for action or information, to a considerable number of central and local institutions.

Paragraph 4 of the original Regulation (T/635) provided:

> "(a) Anyone wilfully or negligently acting against the prohibition contained in paragraphs 1 and 2 will be punished by a fine of up to 150 Reichsmark or by arrest of up to six weeks.
>
> "(b) This does not exclude far-reaching police security measures or regulations according to which a more severe punishment may be inflicted."

On the other hand, two letters, included in exhibit T/209, mention in connection with "offences" regarding the wearing of the Jewish Badge, "wilful violation of the Regulation or of the executive orders...are punishable on principle by protective custody" - that is, by deporting the Jew to a concentration camp. The instructions, which were phrased in extreme language according to T/209, were passed on to their recipients in secret, with special emphasis that they were not to be made public.

The First Expulsions within the Framework of the "Final Solution"

83. On 10 October 1941 a meeting held in Prague was attended, amongst others, by Heydrich (to whom in the meantime had been entrusted - in addition to his tasks as head of the Head Office for Reich Security - effective rule in the Protectorate) and the Accused. A memorandum of this meeting has been preserved and was submitted to us as exhibit T/294.

At this meeting, a programme was set for future action for the solution of the Jewish question in the Protectorate and the territory of the Old Reich, but measures already taken were also mentioned. The main points may be summed up thus:

> (a) The date for the beginning of evacuation had already been set earlier for 15 October 1941.

(b) Reference was made to difficulties with the authorities in Lodz (the Lodz Ghetto was intended to be one of the main places of reception for deported Jews).

(c) 50,000 Jews were to be sent to Minsk and Riga.

(d) “SS Brigadefuehrer Nebe and Rasch could also receive Jews in camps for Communist detainees within the operations areas. This had already begun, as was reported by SS Sturmbannfuehrer Eichmann.”

In connection with paragraphs (c) and (d), we shall see presently that Riga was the centre for Operations Unit A, commanded by Stahlecker, that Nebe commanded Operations Unit B (with Minsk as its centre), and that Rasch was commander of Operations Unit C.

(e) Terezin (Theresienstadt) was decided upon as the place for the concentration of Jews from the Protectorate, and the memorandum includes many details in connection with the carrying out of the concentration and the administration of the ghetto to be set up there. (We shall devote a separate chapter to this later on.)

(f) Gypsies were to be transferred to Riga.

At the end of the memorandum, there is a remark:

“Since the Fuehrer's wish is that, by the end of the year, the Jews be removed, to the extent possible, from the German area, all pending problems are to be solved immediately. Even the problem of transportation is not to present difficulties in this matter.”

First, Jews were expelled to Lodz. On 30 September 1941, Brunner, one of the Accused's assistants, who at the time was in charge of the Central Office for Jewish Emigration in Vienna, informs Dr. Loewenherz that:

“because of the need of the Aryan population to change their residences, due to air raids, some of the Jews from the Old Reich, from the Protectorate and Vienna must be removed to Lodz.”

A quota of 5,000 people was fixed. They were permitted to take with them luggage up to 50 kilogrammes and 100 Reichsmark only. Thus, from 15 October up to 2 November 1941, 5,002 people were deported (Loewenherz Report, T/154, pp. 35, 36 of the original).

We have received a series of documents (T/200, dated 9.10.41; T/243, dated 11.10.41; T/222, dated 19.10.41, and T/244 - the date is not clear, but appears to be 22.10.41), all of which show that as from 15 October 1941, 20,000 Jews, including 5,000 Jews of Vienna, were deported from the Reich to the Lodz Ghetto, and also 5,000 Gypsies. As far as we

know, these were the first expulsions from Reich territory after Hitler issued the order for the Final Solution.

The Loewenherz Report (T/154) also describes the deportations to Riga and Minsk. Dr. Loewenherz received information on this from Brunner on 27.10.41, and on 25.11.41, 28.11.41 and 2.12.41, 3,000 Jews were deported from Vienna to Riga and Minsk.

Amongst the deportees from Vienna to Riga was the witness Liona Neumann (Session 30, Vol. I, p. 508), who was deported in January 1942.

84. The documents submitted to us illustrate the method of carrying out these expulsions to Riga and Minsk, as follows:

> (a) T/714, on 24 October 1941, the head of the Order Police (Ordnungspolizei) in Berlin (General Daluege) writes to the commanders of the Order Police of the Reich in Vienna, Prague and Riga that, during the period 1 November 1941 - 4 December 1941, the Security Police will expel 50,000 Jews from the Old Reich, from Austria and the Protectorate, to the East to the vicinity of Riga and Minsk, and continues: “According to what has been agreed with the head of the SD and the Security Police, the Order Police undertakes to guard the deportation trains by posting an escort...details should be worked out in co-operation with the local SD authorities. The duty of the escorting guards ends with the handing over of the transports in due order at the places of destination to the competent authorities of the Security Police ...”

(b) Document T/720 shows, by way of example, how the plan was carried out at the local level. On 11 November 1941, the Nuremberg Gestapo office sends to its affiliated authorities organizational instructions for the evacuation of Jews on 29 November 1941. The instructions were given in reliance upon a decree by the Reichsfuehrer-SS (Himmler) dated 31 October 1941, bearing the reference number of the Accused's Section IVB4, and therefore issued from this Section.

The directives were styled with the accuracy of a military operation order and allocated the various duties - who would receive the Jews arriving from other places; who would transfer them to the place of concentration; who would guard them until they were loaded on to the freight cars of the train. Nor was the robbery of the evacuees' property forgotten. This, too, would be carried out according to plan. On a certain date, Jews were to be informed that, retroactively as from 15 October 1941, all their property was considered as confiscated by the State Police, and that they were to draw up a full list of their property for this purpose. On the day of expulsion, their apartments were to be closed and sealed by the police. A search was to be carried out upon the persons of the evacuees, and every object of value was to be taken away, except a watch and a wedding ring.

(c) Document T/719 includes three letters dated 27.11.41, 3.12.41 and 11.12.41 sent from the Accused's office and signed by Heydrich and Mueller. They contain instructions to prevent the irregular transfer of property by Jewish evacuees.

(d) In document T/302 (December 1941), the local authority in Duesseldorf informs the Accused's Section - for the attention of the Accused or his deputy, and the commander of the SD and Security Police, Operations Unit A in Riga, that on 11 December 1941 a train with 1,007 Jews left the Duesseldorf railway station for Riga. Handwritten notes are attached to this document which cannot fail to stir the heart of the reader. They show the composition of the transport, according to age, sex and profession. 1,007 personal tragedies found their expression in lines - one line per man, woman or child, four straight lines cut by one slanting line, until the full number is reached.

The document is continued in exhibit T/303 dated 26 December 1941, in which Police Captain Salitter, the commander of this transport, reports on the journey, up to the handing over of the unheated train at its destination in a temperature of 12 degrees below zero on the night of 13-14 December. According to the report, there were in Riga previously 35,000 Jews who had been transferred to the ghetto, and he continues:

> "Now, from what I have heard, there are in this ghetto only 2,500 male Jews exploited as manpower. The other Jews were directed to some other suitable occupation (Verwendung) or shot to death by the Latvians."

85. During the period of these expulsions, Regulation No. 11 was published under the Reich Nationality Law (exhibit T/637), dated 25 November 1941. According to para. 1 of this regulation:

> "a Jew whose regular place of sojourn is abroad cannot be a German national. The regular place of sojourn is abroad when a Jew stays abroad under circumstances which show that he is not staying there only temporarily."

Para. 3 provided that the property of a Jew, who lost his German nationality according to these regulations, is confiscated for the benefit of the Reich. The sting in these regulations - "the legal trick," to use the expression of Counsel for the Defence - lies in the fact that this "legal" arrangement was used also against Jews expelled from the Reich territory, as if they moved their places of residence of their own will to the place to which they were expelled.

The Wannsee Conference

86. Now we pass on, in chronological order, to the central event in the history of the Final Solution which, on the one hand, sums up the events of the period from the beginning of the German-Russian war, and, on the other, serves as a starting point for all the events which follow - that is the Wannsee Conference.

On 29 November 1941, identically phrased, but personally styled invitations went out from the Accused's office, signed by Heydrich, to a number of persons of the rank of State Secretary, or holding similar ranks. Two such invitations were submitted to us, exhibits T/180 and T/181, sent to Under-Secretary of State Luther at the Foreign Ministry, and to Gruppenfuehrer Hoffman at the Head Office for Race and Resettlement. In this invitation, Heydrich refers to Goering's letter of appointment, dated 31 July 1941, (T/179) and attaches a photocopy of this letter, and he continues:

> "Considering the extraordinary significance which is to be attached to these questions, and in order to reach an understanding amongst all central authorities concerned with the operations yet to be carried out in connection with this final solution, I propose to bring up these problems as a subject for joint discussion, especially because of the fact that, since 15 October 1941, Jews are being evacuated in regular transports from the Reich territory, including the Protectorate of Bohemia and Moravia - to the East."

The date set for the conference is 9 December 1941, and the letter concludes with a list of the other persons to whom an identical invitation was extended.

Special invitations were sent to Buehler (State Secretary in the Generalgouvernement area) and to Krueger (Senior Commanding Officer of the SS and the Police in the Generalgouvernement). It transpires from document T/182, that Heydrich instructed the Accused to invite them, too, after learning from a conversation with Krueger that "from measures taken in the area of the Generalgouvernement lately in this sphere, it can be seen with increasing clarity that the Governor General (Frank) aspires to take upon himself the entire handling of the Jewish Question."

At the last moment, the conference was deferred - perhaps because of the outbreak of war with the United States - and on 8 January 1942 new invitations were sent for 20 January 1942.

87. At this conference, State Secretaries and S.S. officers and senior officials of the same rank, or near that rank, participated, representing Reich and Party offices, the official in charge of the Four-Year-Plan (Goering's office), the Foreign Ministry and of the Ministry of the Interior, the Ministry of Justice, the Ministry for the Eastern Occupied Territories and the Governor General in Poland. Offices controlled by Himmler were represented by a representative of the Race and Resettlement Head Office, and by Heydrich, Mueller, and the Accused, as well as by the Commander of the SD and the Security Police in the Government General, and by the Commander of the Security Police and the SD of the "Reich Ostland Administration" (the latter five, naturally, were RSHA men). Only one amongst all those present (the representative of the "Ostland" Security Police Command) was of a rank lower than that of the Accused, and all the others were of higher rank (see the conference minutes, exhibit T/185).

Heydrich opened the conference with a speech, reviewing achievements in the field of emigration. Summing up, he says:

> "In the meantime, emigration was banned (by Himmler), because of the dangers of emigration in wartime, and taking into consideration the possibilities in the East."

And he continues:

> "Instead of emigration, evacuation of the Jews to the East now comes as an additional possible solution, after prior appropriate approval by the Fuehrer. But these operations are to be regarded only as passing possibilities. The results of these practical experiences are already being collected, since they are invaluable in view of the approaching Final Solution of the Jewish Question" (supra, p. 5).

A statistical survey follows, in which the number of Jews throughout Europe (also including countries not under German rule) is estimated at eleven million; and now come the decisive sentences:

> "Under suitable direction, the Jews should be brought to the East in the course of the Final Solution, for use as labour. In large labour gangs, with the sexes separated, the Jews capable of work will be transported to those areas and set to road-building, in the course of which, without doubt, a large part of them (ein Grossteil) will fall away through natural losses. The surviving remnant, surely those with the greatest powers of resistance, will be given special treatment, since, if freed, they would constitute the germinal cell for the re-creation of Jewry, they being the result of natural selection, as history has proved" (supra, pp. 7-8).

The intention behind this convoluted language is clear and simple: The Jews of Europe were to be expelled to the East and put to hard labour; the weak would die from overwork and the strong would be killed.

In connection with questions of implementation, Heydrich gives the following information, inter alia:

> (a) Europe will be combed from the West to the East, giving priority to the Reich and the Protectorate.
>
> (b) A "ghetto for the aged" will be set up in Terezin, which will also take Jewish war invalids and those who hold medals for distinguished service.
>
> (c) "The 'Central Authority' (Federfuehrung) for the handling of the Final Solution of the Jewish Question will be in the hands of the Reichsfuehrer-SS and the head of the German Police (the head of the Security Police and

> the SD - viz. Heydrich himself), without regard to geographical borders" (supra, p. 3).
>
> (d) "In regard to the handling of the Final Solution in the territories occupied by us and those under our influence, it has been suggested that the officials dealing with the matter at the Foreign Ministry contact the authorized Referent of the Security Police and the SD" (viz., the Accused) (supra at p.9).

88. Not one of those present expressed any reservations to what Heydrich said. On the contrary, there was a complete consensus of opinion. The contribution to the discussion made by Buehler, representing the Generalgouvernement, is worthy of mention:

> "He (Buehler) stated that the Generalgouvernement would be glad if the Final Solution of this Question were launched in the area of the Generalgouvernement, since transport was not a serious problem there and labour considerations were not likely to disturb the smooth running of such an action. Jews must be removed from the Generalgouvernement area as quickly as possible, since it was here that the Jew represented a blatant danger as the carrier of diseases, and he was always upsetting the country's economy by continuous profiteering. Moreover, out of the two and a half million Jews to be handled, most were unfit for work" (supra, p. 14).

And this is how the discussion ended:

> "In conclusion, various types of possible solutions were discussed, and the attitude taken (by representatives of the Ministry for the Eastern Occupied Territories and of the Generalgouvernement) was that they themselves would immediately make certain preparations to bring about the Final Solution in the areas concerned. At the same time, the creation of unrest amongst the population should be avoided" (supra, p. 15).

When the Accused was asked in cross-examination in this Court what was the meaning of the words "various types of possible solutions" discussed towards the end of the conference, he answered simply: "Various ways of killing were discussed" (Session 106, Vol. IV, p. xxxx11).

According to the Accused, his role at the Wannsee Conference was threefold: (a) sending invitations in accordance with particulars given to him by Heydrich; (b) supplying Heydrich with material for the preparation of his opening speech; (c) taking the minutes.

When the conference was over, Heydrich, Mueller and the Accused remained behind for a chat "by the fireside." When asked why he, too, was asked to join in this intimate gathering, he replied that Heydrich gave him instructions in connection with the preparation of the minutes.

But the Wannsee Conference carried a more important meaning also for the Accused personally, for it was there that his position as the authorized Referent of the RSHA in matters connected with the Final Solution of the Jewish Question was confirmed in the presence of representatives of all the other authorities. This much we gather also from a letter sent by Heydrich to Luther (T/186) at the end of February 1942. He notes there with satisfaction that the basic policy for the practical implementation of the Final Solution had now been laid down with the full consent of all the authorities concerned, and he invites Luther to send his representative to a discussion on details of implementation. He requests that Luther's representative contact “my authorized Referent, SS Obersturmbannfuehrer Eichmann” for this purpose.

The Implementation of the Final Solution after the Wannsee Conference

89. We shall now review the implementation of the Final Solution in various countries and begin with those countries in which Jews were rounded-up, brought to assembly points, and expelled to places of mass extermination in the East. We shall go from country to country and note briefly the background of events, emphasizing certain facts, the description of which is necessary to lay the ground for the evaluation of the Accused's responsibility, which will be made later on. We wish to emphasize at this point again that we are neither require or able to take upon ourselves the task of the historian, and those matters of which we will mention will be made, out of the whole complicated web of events of the years of the Holocaust, will necessarily be fragmentary, and they are not cited here for the purpose of exhaustive historical description.

90. Again, we begin with Germany itself, because the actions there served as the prototype for what happened in the other countries from which Jews were expelled to the East, both in regard to the anti-Jewish legislation which preceded the expulsion, and also in regard to the carrying out of the expulsions themselves, naturally with changes necessitated by special conditions in each country.

Of the later anti-Jewish legislation in Germany, mention should be made of:

> (a) The order for the marking of Jewish apartments, issued in March [1942] (T/640), in order to complete the isolation of the Jews from the rest of the population. As with other anti-Jewish decrees of this kind, this order was not published in the usual way, but handed to the Jewish organizations, which had to publish it in a bulletin intended for Jews only.
>
> (b) A Jew was no longer considered fit to keep domestic animals (dogs, cats and birds), according to special instructions published on 15 May 1942 (T/642).
>
> (c) Regulation No. 11 “legalized” the robbery of Jewish property only if the expulsion was to a place beyond the Reich borders. When the expulsion was to a place within the Reich - for instance Terezin, or in the case of a Jew who had died before crossing the borders of the Reich -

other ways were found, so that everything should proceed in a proper and orderly manner. One of the ways is described in detail in a circular issued by the Accused's Section, signed by Suhr, the Section's expert in such matters (T/729). The law dated 14 July 1933 (T/65) was invoked, enabling the confiscation of property devoted to aspirations “hostile to the nation and to the state,” as defined by the Minister of the Interior. The Minister of the Interior published an overall definition on 2 March 1942, which stated that the aspirations of all deported Jews were hostile to the nation and to the state.

(d) On 18 September 1942, a conversation took place between Himmler and Thierack, the then Minister of Justice, drastically limiting legal proceedings and the ordinary processes of punishment. It was agreed between them, inter alia, that “unsocial elements would be excluded from the operation of penal procedure and handed over to the Reichsfuehrer-SS for extermination through labour.” Those mentioned included all those under protective custody - Jews, Gypsies, Russians and Ukrainians (T/197).

In other words, a Jew, a Gypsy, a Russian or a Ukrainian who was sentenced to imprisonment for any offence, would be handed over to the SS for “extermination through labour.” The open use of this term should be noted, in contrast to the method customary in the Nazi regime, of euphemistically distorting the usual meaning of words. Thierack again returns to this matter in his letter to Bormann, dated 13 October 1942 (T/198). These discussions culminated in Regulation No. 13 under the Law of Nationality, published on 1 July 1943, according to which only the police was competent to deal with crimes committed by Jews (T/643). This completed, also according to the letter of the “law,” the process of putting the Jew outside the pale of the law, which had been a matter of practice long before this.

How expulsions from Reich territory were carried out during the period after the Wannsee Conference, we shall illustrate by a Duesseldorf Gestapo file submitted to us (exhibits T/1395-1398). The first document in this file (T/1395) is a circular dated 31 January 1942, issued by the Accused's office and bearing his signature. The reference number is IVB4-2093/42g (391), which henceforth is the special marking for all transports of Jews from the Reich. The circular includes instructions defining certain categories of Jews, such as foreign nationals, which are not to be included in the deportations.

For the time being, the purpose of the circular is to fix the number of people to be expelled. According to the circular, the Duesseldorf office collects the necessary data and transfers them to the Accused's office on 9 February 1942. Then, file T/1395 includes “instructions for the technical implementation of the evacuation of Jews to the

Generalgouvernement (Trawniki near Lublin).” The part played by the local Gestapo authorities was defined thus:

> “The rounding-up and arrest of individuals to be evacuated, the transport of these Jews in special trains of the Reich Railways according to a timetable laid down by the Head Office for Reich Security, in co-ordination with the Ministry of Transport, and also the transfer of property.”

Each train will carry one thousand Jews. Each person is permitted to take with him fifty Reichsmark, one suitcase, a complete outfit (good shoes), bedding, food for two weeks, eating utensils (a plate or a pot) and a spoon. The document continues:

> “The Commander of the Security Police and the SD in Cracow is responsible for the reception of the evacuees in the Generalgouvernement, and for this purpose he will avail himself of the units of the Commander of the SS and the Police in the Lublin district...the departure of a deportation train is to be communicated immediately by means of the attached form...to the Head Office for Reich Security, Section IVB4, (b) to the Commander of the Security Police and the SD, SS Oberfuehrer Dr. Schoengarth, in Cracow, (c) to the Commander of the SS and the Police in the Lublin district, SS Brigadefuehrer Globocnik.
>
> The arrival and orderly reception of transports at the place of destination, will be reported by the receiving authority (Commander of the SS and the Police in the Lublin district) to the Head Office for Reich Security, Section IVB4, by means of the attached form... On the completion of the operation, a general report containing numerical data (division according to sex, age and profession) is to be supplied to the Head Office for Reich Security by both the forwarding authority and the receiving authority.” (These instructions were submitted as exhibit T/737.)
>
> File T/1395 also included a copy of the above circular, T/729, in connection with the handling of the property of evacuated Jews, and also document T/724, which deals with the setting up of the Special Account “W.”

91. Special Account “W” was the name of a cunning device invented by the Accused's Section for the transfer of money from evacuated Jews to its own direct disposal (T/734). Perhaps this device was rather aimed against other Reich authorities which might benefit from Jewish property than against the Jews themselves, for they lost their property in any case.

The procedure used was an instruction to the Reich Association of Jews in Germany, to ensure that each evacuated Jew “contribute” not less than twenty-five per cent of his cash to the Special Account “W.” The Accused in his testimony explained (Session 77, Vol.

IV, p.xxxx71) that the account was used to finance the expulsion of the Jewish “contributors” themselves. Even if this explanation is correct, the balance left over after the expulsion was completed in any case finally passed into the hands of the RSHA, all the accounts of the Association of Jews having been blocked in favour of the RSHA from the outset (T/665, p. 9).

This is the directive transmitted by the Accused's office to the District Gestapo at Duesseldorf, which in turn writes on 17 March 1942 to its local branches, conveying to them instructions requiring action by them. On 10 April 1942, a telephone message is received from the Accused's office stating that a transport is likely to leave Duesseldorf on 22 April 1942. Accordingly, the action is planned in Dusseldorf: The timetable, the men to handle the matter and their duties are fixed along the lines of the instructions issued at Nuremberg (T/620), as mentioned above. The Gestapo man at Duesseldorf is charged with additional tasks before the transport leaves:

He must see to it that two execution officers are present to hand the confiscation orders to the Jews; he has to meet with the local railway authorities to co-ordinate sub-transports from various points; he also has to overcome difficulties made by the local labour authority which is reluctant to release Jews employed in enterprises important to the war effort. In this connection, a telephone conversation takes place with Novak, one of the Accused's assistants.

Three Jews escaped and another three committed suicide. And thus the transport rolled eastwards.

On 22 April 1942 - too late - another cable was received from the Accused, which was typical of the methods of evacuation. Not too many local communal workers of the Association of Jews, or of the local communities, are to be evacuated, in order not to endanger the implementation of the tasks the Jewish organizations were required to carry out, and their liquidation. These communal workers are only to be evacuated gradually.

The required reports sent to the Accused's office (for his attention or that of his deputy), as well as to Lublin and to Cracow, are dated 22 April 1942. They state that a train carrying 941 Jews left Duesseldorf on the same day for Izbica (in the Lublin district), and that the commander of the transport holds the amount of 47,050 Reichsmark (941 multiplied by 50). The detailed report, as required in the above circular, is forwarded to the Accused's office on 29 April 1942.

92.There is much material in file T/1395 in connection with belongings, money and bank deposits confiscated from evacuated Jews. Before his evacuation, every Jew completed a very detailed “property declaration form” (T/650), and the Gestapo handed over these declarations to the Chief Finance Authority at Duesseldorf. It transpired that Regulation No. 11 did not apply to 91 Jews, and they were given confiscation orders.

93. Already on 21 May 1942 the Accused's Section demands figures in connection with an additional transport, this time directed in part to the East and in part to Terezin. The

Duesseldorf office replies on 27 May that 154 Jews can be evacuated from its district to the East and 1,735 to Terezin. The handling of this transport is continued in file exhibit T/1396, in which there are new instructions dated 4 June 1942, in connection with evacuation to the East (Izbica near Lublin). These instructions do not differ from the former instructions, and once again the reference number is IVB4-2093/42g (391).

On 18 June 1942, the Duesseldorf Gestapo informs the Accused's office that 142 Jews were evacuated, as part of a larger transport of a total of 1,003 Jews, collected from other districts in Western Germany. The handling of this transport was identical with the handling of the previous transport; only this time the inmates of a Jewish hospital for the mentally sick in the town of Seyn near Koblenz were also evacuated, as stated in a cable dated 1 June 1942 and signed by the Koblenz Gestapo. The expulsion of the mentally sick Jews is also mentioned by Dr. Plaut in his affidavit T/665 on pp. 14-16. There is no doubt that these patients were taken directly to extermination in one of the extermination camps in the Lublin area.

94. The evacuation of Jews destined for Terezin is described in file T/1397 of the same Duesseldorf Gestapo office, and since this is the first time that we come across a transport of this kind, we shall again mention a number of details here.

On 3 July 1942 the Accused's office sends a circular dated 15 May 1942, signed by the Accused's deputy Guenther, comprising directives connected with evacuation to Terezin. The categories of evacuees are:

(a) Jews above the age of 65, and sick people above the age of 55, together with their spouses and children under the age of 14;

(b) Jews who are war invalids or hold medals for distinguished service, with their spouses and children up to the age of 14;

(c) Jewish spouses of mixed marriages, in cases where the marriages no longer exist;

(d) unmarried offspring of mixed marriages who are considered as Jews.

The man responsible for the reception of the evacuated Jews at the Terezin Ghetto will be “the Commander of Security Police and SD Office, the Central Office for Jewish Emigration, Prague.” A note about the transport is to be sent to :

(a) the office of the Accused;

(b) Commander of the Security Police and the SD, the Central Office for Jewish Emigration, Prague;

(c) the Terezin Ghetto.

The Commander of the Security Police and the SD, Central Office for Jewish Emigration, Prague, has to inform the Accused about the arrival and reception of the transport.

On 21 July 1942, 965 Jews were evacuated. and on 25 July 1942, 978 Jews - 1,943 Jews in all, over and above the estimated number included in the above-mentioned letter of 27 May 1942. On 4 August 1942, the Duesseldorf Gestapo informs the Accused's office about changes in the number, since thirteen Jews committed suicide, five died and six escaped. In the concluding report, dated 15 August 1942, the total number included in the first transport is given, and it is reported that 694 were included in the second transport, making a total of 1,659 Jews evacuated to Terezin.

“Contributions” to the Special Account “W” reached the amount of 160,000 Reichsmark.

95. File T/1398 deals with those persons who survived previous evacuation and were evacuated during 1943.

The file begins with a cable sent from the Accused's office on 21 May 1943, this time signed by Kaltenbrunner, the head of the RSHA. Once again, it bears the special reference number for all transports from the Reich, IVB4a - 2093/42g (391).

The cable reports that, according to an order by Himmler, all Jews are to be evacuated from the Reich and the Protectorate to the East and to Terezin by 30 June 1943 at the very latest.

The cable confirms the previous instructions regarding the categories of evacuees, but there is a further tightening up, in order to complete the evacuation operation. Amongst other things it is stated: (a) that all sick and invalid Jews are also to be seized; (b) that all Jews still employed on the war effort are also to be evacuated (and only those in labour camps are to be left behind); (c) similarly, all employees of the Jewish organizations and the communities are to be evacuated and thus,

These institutions are in fact being liquidated. In their stead - as far as is necessary for those Jews remaining - in order to fulfil the orders of the authorities, an organization of Jews living in mixed marriages will be set up in Berlin, which will employ only the remaining spouses of mixed marriages.”

Technical instructions for transport to Auschwitz and Terezin are given, and a special postscript appears in the cable for Katowice and Lodz:

> “On the evacuation of Jews employed by the Schmelt (Forced Labour organization) and of the Jews in the Lodz Ghetto (our emphasis), Obersturmbannfuehrer Eichmann, my Referent, will decide on the spot.”
>
> On 25 May 1943, the Duesseldorf Gestapo sends information (following the usual pattern, to Berlin, Prague and Terezin) that on that day 32 Jews were evacuated to Terezin. The changes which took place in the meantime

> in the economic situation of the Jews who remained, finds expression in a minute of 6 July 1943, which states that 22 Jews (out of the 32 evacuated) did not have the permitted 50 marks and could not deposit them.

The file of the Duesseldorf Gestapo contains no material in connection with the evacuation to Auschwitz, in pursuance of the above cable of 21 May 1943, and we do not know if this material was lost or if such evacuation did not take place, because there were no Jews left for evacuation in that district. But there is in file T/1398 one more list of nine Jews evacuated to Terezin on 9 September 1943, and it seems that this completed the operation, leaving in that district only couples living in mixed marriages and offspring of those categories who were not subject to evacuation.

96. In connection with expulsions of Jews from the Reich, Austria and the Protectorate to the East and to Terezin, we wish to point out two more special phenomena:

(a) The expulsion to Terezin was called technically "change of residence" (T/850), and the plundering of the property of the Jews expelled to Terezin sometimes took on a special form. Exhibit T/854, which was submitted to us, is a sample of "a Home Purchase Contract." Such contracts were made, nominally, between the Association of Jews and the candidate for expulsion. The candidate transferred his property to the Association (in the case of T/854 over 200,000 Reichsmark) and, in consideration, the Association undertook to grant him housing in Terezin, as well as food and medical care for life.

The transfer of property to the Association of Jews amounted to confiscation, because, as has been stated, the accounts of the Association were blocked in favour of the RSHA, and when the Association was liquidated in 1943, final ownership was vested in the RSHA. This also applied to property of public institutions first transferred to the Association and to the huge "emigration funds" in Vienna and Prague which were fed, in the last analysis, from the property of the Jewish communities (vide, for instance, the original document T/154 at p. 44).

To demonstrate the authority of the Accused's Section over the public property of German Jewry, we shall mention here also exhibit T/681, containing a list of Jewish communities to be merged in the Association of Jews, and an order dated 27 May 1941, signed by the Accused, ordering that one of the communities mentioned in the list be, in fact, so merged. All the communities mentioned are in the Province of Baden, from which the Jews were evacuated already in 1940, as will be remembered. Exhibits T/745, T/746 and N/27 testify to the transfer of the Jewish hospital in Nordrach to a Nazi institution by the name of Lebensborn in the autumn of 1942. In letter T/746 it is stated that:

> "...the property belongs to the Reich Association of Jews, which is subject to the authority of Obersturmbannfuehrer Eichmann in Department IV of the RSHA, as being an institution of the Security Police."

Therefore the application for the transfer of the property is addressed to the Accused.

(b) The problem of foreign nationals amongst the Jews worried the planners of the extermination in no small measure. Two problems arose:

(1) Which foreign nationals can be expelled?

(2) Who will benefit from their property?

There is considerable exchange of correspondence between the Accused's office and the German Foreign Ministry in connection with these questions, which we shall not relate in detail. The conclusion reached at the stage of the final evacuation can be seen in circular T/761, dated 5 March 1943, emanating from the Accused's office and signed by Kaltenbrunner. The circular gives a list of countries, nationality of which will not exclude the Jew from the application of the general decrees. In 1944, Hungary was also added to the list.

In connection with property, the circular reads as follows:

> "Since it has not been possible to reach final agreement with the various foreign governments in connection with the handling of the property of Jews of foreign nationality, necessary steps should be taken in each case of evacuation of a Jew of foreign nationality, to safeguard such assets temporarily. To facilitate the administration of such property by our authorities, suitable trustees are to be appointed, insofar as this has not been done by the foreign diplomatic missions and consulates."

Other foreign nationals, who were not mentioned in circular T/761, are divided into two categories: subjects of belligerent countries and subjects of neutral countries. The letter from the Accused's office, signed by him, and dated 5 July 1943, addressed to the Foreign Ministry (T/779), shows the situation and the measures taken until then:

> "Since there have been a number of extensions of the dates set at the time - with the implied or explicit consent of this office - for foreign governments in regard to the return of their Jewish nationals to their countries, no further consent is to be given for any more extensions or concessions. At the present stage of the Final Solution of the Jewish Question within the Reich, there are now on Reich territory only Jews who have entered into mixed marriages (Jewish-German) and a number of Jews of foreign nationality. To the extent that you have agreed to the evacuation of Jews of foreign nationality, the evacuation has since been completed, and it is to be presumed that in most cases action for their repatriation was taken by the countries concerned. In order that we may reach a complete solution in this respect, a final date must be set for the governments concerned to carry out the repatriation."

There follows a list of the countries concerned, namely: Italy, Switzerland, Spain, Portugal, Denmark, Sweden, Finland, Hungary, Romania and Turkey. The letter

concludes with a proposal to grant exit visas to nationals of these countries only up to 31 July 19 July 1943, and to equate their status with that of Jews of German nationality as from 3 August 1943.

The German Foreign Ministry deals with this question according to its internal procedure and replies to the Accused's office. The result can be seen in the circular dated 23 September 1943 (T/784), bearing the mark of the Accused's Section, signed by Mueller, and sent to all offices affiliated to the RSHA in all territories under German rule. The German Foreign Ministry also sends copies of this circular on 12 October 1943 to its branches in the occupied territories and to embassies in the countries concerned (T/786). The gist of the circular is that all Jews who are subjects of the countries mentioned are to be evacuated within a few days. Men above the age of 14 are to be sent to Buchenwald, and women and children up to the age of 14 to Ravensbrueck.

97. Such is the pattern of evacuation from the Old Reich, Austria and the Protectorate, and the only difference - which is merely formal - between the implementation in these various parts of the Reich is that the executive instruments in the Old Reich were the various State Police authorities (Stapostellen, Stapoleitstellen), whilst in Austria and the Protectorate there were the Central Offices for Jewish Emigration in Vienna and Prague (see T/737, p. 1). The difference is not material, because all these authorities are affiliated to Department IV of the RSHA and received their instructions in regard to Jewish affairs from the Accused's Section.

98. Outside the Reich, the RSHA, and within it the Accused's Section, acted through the medium of “Advisers on Jewish Affairs” attached to Commanders of the Security Police (BdS) or to local diplomatic representatives, or within a similar administrative framework, as explained by the Accused on page 151 et seq. of his Statement T/37. In spite of the fact that these Advisers were subordinate to the BdS or to the local diplomatic representative, they received their substantive orders from headquarters in Berlin, and especially from the Accused's Section, to which they were directly subordinate. This is admitted by the Accused in his Statement, at p. 412, when asked about the status of these Advisers:

> “Q. ...They belonged to your Section IVB4?
>
> “A. They belonged to IVB4...as did all the others who handled Jewish affairs in the Secret State Police authorities, the Gestapostellen, if one can express it thus by way of comparison.
>
> “Q. Is it correct, that these representatives received directions for action in their territory from your Section, which was headed by you, and were later to report to you?
>
> “A. Yes.”

The accuracy of these facts was confirmed by the Accused when cross-examined by the Attorney General (Session 96, Vol. IV, pp. xxxx13-15).

The administrative variations in the respective countries were insignificant, as the Accused says in his Statement, page 152:

> "Of course, all this cannot be brought to a common denominator; but - not in each country, but almost in each country - a small variation could be found in the administrative procedures."

99. The technical implementation of the evacuations in the various countries did not differ much from that in the Reich. The differences between one country and another were more connected with creating the preliminary conditions for evacuation, and these depended on various factors, for instance the extent of German domination over the country, collaboration or the contrary, the opposition of the government institutions, and the population of each country.

For instance, the help extended by the Dutch people to the persecuted Jews was considerable, and yet the losses borne by Dutch Jewry were exceedingly heavy because of the complete domination by the Germans over that country. We do not intend to go into these matters at length. Here, too, we shall follow our usual plan and point out, in connection with each country, only those matters which in our opinion are required for the evaluation of the Accused's responsibility.

100. In Vichy France it was Abetz, Hitler's Ambassador, who first proposed measures against the Jews as early as August 1940. But Heydrich, jealous of the authority of the RSHA, immediately demands that the Security Police unit in the country be brought in (T/388). In fact, the handling of Jewish affairs is handed over to Advisers from the Accused's Section, first Dannecker, and then Roethke and Brunner. The first document written by Dannecker, in T/389, is dated 28 January 1941 and contains a proposal to set up concentration camps for Jews of foreign nationality, of whom there were many in France.

Indeed, we see that in October 1941 over seven thousand Jews had already been placed in the concentration camps of Drancy, Pithiviers and Beaune-la-Rolande, most of them stateless Jews. In a memorandum dated 22 February 1942 (exhibit T/400), Dannecker describes the continuation of preparations for evacuation, with the help of the Judenpolizei of the Vichy Government and stresses the central role which he demands for himself in all activities against the Jews of France.

On 11 June 1942, a consultation was held in the Accused's Section in Berlin, attended by the Advisers on Jewish Affairs in Paris, Brussels and The Hague. It was decided that the evacuations would include 15,000 Jews from Holland, 10,000 from Belgium and 100,000 from France (including the unoccupied territory) - see T/419. Dannecker prepares detailed instructions concerning the categories of Jews to be evacuated, and methods of carrying out the evacuation (T/425, dated 26 June 1942).

On 1 July 1942, a conversation takes place between the Accused and Dannecker, in which Himmler's order for the evacuation with all speed of all Jews from France is mentioned. There will be no difficulty in implementing the evacuation in the occupied part of France, but when it comes to the unoccupied part, the Vichy Government begins to make difficulties; therefore pressure must be put on it. In the meantime, transports will begin from the occupied territory. The proposed rate of three weekly transports of one thousand Jews each is to be increased considerably within a short time (T/428). Dannecker continues preparations for transports to Auschwitz (T/429) and agrees with representatives of the French police that the latter carry out, on 16 July 1942, a round-up of thousands of stateless Jews in Paris for the transports (T/440). On 1 July 1942, Dannecker fixes the places from which the first transports will be dispatched (minutes, attached to T/429, of a conversation with the Security Police officials).

The first train was due to leave the city of Bordeaux on 15 July, but it transpired that not enough Jews had been made ready to fill this train. Therefore, the Paris office cancelled the train (T/435). This enraged the Accused, as is evident from document T/436, which was signed by Roethke and is worthy of quotation, as evidence of the Accused's driving power and his status in the eyes of his subordinates:

On 14.7.42...SS Obersturmbannfuehrer Dr. Eichmann, Berlin, telephoned. He wanted to know why the train scheduled for 15 July 1942 was cancelled. I answered that originally the `wearers of the Star' in the provincial towns as well were to be arrested, but because of a new agreement made with the French Government, only stateless Jews were to be arrested in the meantime. The train scheduled for 15 July 1942 had to be cancelled, because, according to information received from the SD unit in Bordeaux, there were only 150 stateless Jews in Bordeaux. Because of the short time at our disposal, we could not find other Jews for this train. Eichmann pointed out that this was a matter of prestige.

This matter had necessitated drawn-out negotiations with the Reich Ministry of Transport, which had been successfully concluded, and now Paris caused the cancellation of the train. A thing like this had never happened to him. The whole business was 'disgraceful.' He would not inform Gruppenfuehrer Mueller of this at once, in order not to disgrace himself. He would have to consider whether France should not be dropped altogether, as far as evacuation was concerned. I requested that this should not be done and added that it was not the fault of our office if this train had had to be cancelled...the following trains would leave according to plan."

And indeed, the trains left, although the arrests did not bring the desired results (T/445), and on 3 September 1942 a report was submitted, showing that, up to that date, 27,000 Jews had been evacuated, of them 18,000 from the occupied territory and the remainder from the unoccupied territory (T/452).

Notice of each transport was sent to the Accused's Section and to the place of destination. Many such reports were submitted to us (T/444, T/447 (1)-(18), T/455, T/457, T/461, etc.), which refer to the period from July 1942 to March 1943. Most of the transports were directed to Auschwitz, and in such cases notices were sent to the Accused's office,

to the Inspector of Concentration Camps in Oranienburg, and to the Auschwitz camp. A number of transports were sent “in the direction of Cholm” (for instance, T/1421, T/1422), which was a railway junction near Lublin, and in these cases the notices were sent to the Accused's Section and to Commanders of the SD and Security Police in Cracow and Lublin.

We heard the testimony of Professor Wellers (Session 32, Vol. II, pp. 579-591), who was arrested in December 1941, held at the Drancy camp from June 1942, and sent on to Auschwitz in June 1944. He described the round-up of the Jews and the expulsion from the Drancy camp to the East. An especially horrifying chapter was the expulsion of 4,000 children, separated from their parents and sent off to extermination, accompanied by heart-rending scenes described to this Court by the witness. In the documents, this chapter is reflected in an enquiry from Dannecker to the Accused on 10 July 1942, asking what was to be done with these 4,000 children (T/438). On 20 July 1942, Dannecker makes notes of a telephone conversation between himself and the Accused (T/439):

> “The question of the deportation of children was discussed with Obersturmbannfuehrer Eichmann. He decided that, as soon as transports could again be dispatched to the Generalgouvernement area, transports of children would be able to roll” (Er entschied, dass sobald der Abtransport in das Generalgouvernment wieder moeglich ist, Kindertransporte rollen koennen).

On 13 August 1942, Guenther, of the Accused's Section, sends a cable (T/443), saying that the children can be included in the transports to Auschwitz.

In France, as in other countries, the Germans acted as it is written: “Thou hast murdered, and thou hast also inherited.” The looting of the victim's property was carried out here by a special unit, set up for this purpose by Alfred Rosenberg (see report T/508 and the evidence of Professor Wellers, who was employed by the Germans in this unit - Session 32, Vol. II, p. 588). Nor did the Accused leave out the Jews who escaped to the Principality of Monaco in Southern France. His Section requested the Foreign Ministry to intervene with the Government of Monaco, so that the latter extradite the Jews from that territory (exhibits T/492-495).

According to a summary dated 21 July 1943, the number of Jews evacuated had increased to 52,000 (T/488). Two factors hindered the speeding-up of evacuations: (a) Collaboration by the Vichy Government in evacuating Jews of French nationality became halfhearted; (b) the Italians refused to collaborate in the part of Southern France they had conquered, and even permitted Jews to find shelter in territories occupied by them. The Accused's Section and his representatives in France went to some trouble to remove the obstacles. (See, for instance, exhibit T/613 - a letter marked IVB4, signed by Mueller, mentioning current negotiations carried on by the Accused with the German Foreign Ministry to put an end to interference by the Italians.)

In connection with Belgium, it was planned, as already stated, in the Accused's office on 11 June 1942 that 10,000 Jews be evacuated (T/419). On 1 August 1942, the Accused instructed the representative of the Chief of the Security Police and the SD in Brussels (Ehlers, who was the first Adviser on Jewish Affairs in Belgium) to evacuate stateless Jews (T/513). By 15 September 1942, 10,000 such Jews were evacuated. By 11 November 1942, the number of those evacuated reached 15,000 (T/515). A decisive date in the fate of the Jews of Belgium was the night of 4 September 1943. In the plan for action of the Security Police for a round-up to be carried out that night (T/519), it is stated:

> "On the night of 3-4 September 1943, a large-scale operation will be carried out for the first time for the seizure of Belgian Jews, for posting to the East (Osteinsatz), as required by the Head Office for Reich Security."

In the Belgian Government's report (T/520), the round-up is described as follows (p. 28):

> "At first, the hunt affected only Jews of foreign nationality. Belgian Jews could believe at that time that they would never be molested. A promise to this effect was made by General von Falkenhausen...on the initiative of Queen Elizabeth, who was supported by Cardinal van Roy. In spite of these undertakings, on the night between the 3rd and 4th of September 1943, Gestapo men and Flemish collaborators broke into the apartments of Belgian Jews in Antwerp and removed them forcibly from their homes, to be taken in trucks to the Dossin barracks in Malines. From this date onwards, there began the Jew-hunts all over the country, although the pace was slower in Brussels, because there the Gestapo did not have the same influence upon the other German administration services as they enjoyed in other places."

From Malines, the Jews were evacuated to Auschwitz. The number of Jews evacuated from Malines was 25,437, of whom 1,276 survived (p. 30 of T/520).

101. Of the Accused's activities in Holland, we hear for the first time in December 1941, when the question arises as to the attitude to be adopted towards Jews who were members of a Dutch pro-German association. He was of the opinion that they, too, should not be allowed to emigrate, but their evacuation could be postponed, so that "their turn will come last" (T/528).

The Adviser on Jewish Affairs in Holland is Zoepf, one of the Accused's men. We have already mentioned, in connection with France, that at a meeting held in the Accused's Section on 11 June 1942 (T/419), it was decided to evacuate 15,000 Jews for the time being from Holland. On 24 September 1942, Rauter, Senior Commanding Officer of the SS and the Police in Holland, reports to Himmler that 20,000 Dutch Jews were "put on the march" to Auschwitz (T/531), adding that "on 15 October, Dutch Jewry will be declared outlawed." (Himmler marks this report with the words "very good.") The

witness Dr. Melkman describes to us in detail the large-scale round- ups which took place as a result of this plan (Session 34, Vol. II, 613-614).

On 27 April 1943, Zoepf sends in a report to the Accused's Section (T/543) concerning evacuations up to that time, which included 58,000 Jews in sixty trains “for posting to labour in the East.” The summary is found in the report made by the Reich Commissioner for Holland in July 1944, which states:

> “The Jewish Question in Holland can be regarded as solved, since the great majority of Jews have been deported from the country.”

The number of those deported, according to this report, is 113,000 (T/577).

At the end of 1943, a conflict of jurisdiction arose between the RSHA and the Reich Commissioner, Seyss-Inquart, who claimed authority to continue the handling of Jewish affairs (“especially mixed marriages, diamond Jews, etc.”).

About this, Zoepf writes in a memorandum (T/562), that:

> “The representatives of the RSHA” (that is the Accused, who was present during the discussion with Seyss- Inquart's representative) “expressed the opinion that it would be contrary to the order of the Reichsfuehrer- SS and illogical, if at this late stage other authorities again were to handle the Jewish Question after the Reich Commissioner himself had confirmed that this lay within the province of the Security Police.”

From a later cable (T/569), dated 3 February 1944, sent from the Accused's office, in which Kaltenbrunner demands that Sephardic Jews in Holland should also be included in evacuations, we learn that the RSHA had the upper hand in this dispute.

As to the plunder of the victim's property in Holland, Seyss- Inquart's report of 28 February 1944 states that he estimates the value of the property seized at 500 million Dutch Gulden (T/571). Here, too, Rosenberg's special unit was active in the robbery of the property (T/508, p. 9).

102. Expulsions from Scandinavian Countries began at the end of 1942 and continued throughout 1943. The Accused's Section sends a cable on 25 November 1942 (signed by Guenther) to the Commander of the Security Police in Oslo, ordering the immediate evacuation of Norwegian Jews via Stettin to Auschwitz. The cable contains the usual instructions regarding the categories of the evacuees (nationality, mixed marriages, etc.) and the loss of Norwegian nationality on crossing the border. The very same day, a message is sent from Oslo to Stettin that 700-900 Jews would sail the next day. Arrests are carried out on the same day and, in fact, 532 Jews are deported from Oslo to Stettin, arriving at Stettin on 30 November 1942 and at Auschwitz on 1 December 1942 (exhibit T/591).

The second wave was from 25 to 26 February 1943, and this time 158 Jews are expelled from Oslo via Stettin. The Accused's office (over his signature) instructs the local Gestapo office in Oslo to transfer these Jews to Berlin, “where they will be attached en bloc to one of the next transports of Jews to Auschwitz” (T/592). We heard from Mrs. Samuel how a similar number of Jews were saved by escaping to Sweden (Session 36, Vol. II, p. 649). In Norway, 64 Jews in all remained, all of them Jewish spouses of mixed marriages, and they were concentrated in one camp. The Swedish Government made efforts over an extended period to secure their transfer to Sweden, inter alia by granting them Swedish nationality. Already on 1 March 1943 (T/593), the Accused's Section, in a letter bearing his signature, strongly objected to these attempts, and on 2 October 1944, his Section finally rejected (over Guenther's signature) the Swedish request to have the 64 Jews transferred to Sweden (T/605).

A total of 750 Jews was evacuated from Norway, and only 13 remained alive.

103. In Denmark the action was concentrated over a few days at the end of September and the beginning of October 1943. Most of the action failed, due to a `leakage' on the German side and the active assistance of all sections of the Danish people, from the King down to simple citizens, as was related by the witness Melchior in his testimony (Session 35, Vol. II, pp. 627-641). Only 202 Jews of Copenhagen fell into German hands at the time and were sent to Germany on 3 October 1943 (T/582).

The order for expulsion came from Himmler, through the RSHA and the Accused's Section, as appears from the affidavits made by von Thadden (T/584) and Mildner (T/585); from a letter from the Foreign Ministry, dated 13 September 1943, to the Head of the Security Police, for the attention of the Accused (T/580); from a report, T/582, sent to the RSHA with a copy to the Accused's Section; and documents T/587-588, which also reflect the activity of the Accused in the matter of Danish Jewry.

According to reports by the Danish Government (T/589), the total number of those deported was about 475. They were all sent to Terezin, and thanks to the continuous interest taken by Danish institutions, their fate there was better than that of all other inmates. The number of those who died in Terezin was 53.

104. From Western and Northern Europe, we move to Central, Southern and South-Eastern Europe. We shall deal first with Slovakia which was, by the grace of Hitler, an autonomous state. Wisliceny acted as “Adviser on Jewish Affairs” in this country on behalf of the RSHA and the Accused's Section, being formally attached to Ludin, the German Ambassador in Bratislava.

Three periods can be discerned in the fate of the Jews of Slovakia:

(a) The first period was that of “relocation and Aryanization,” about which we heard from the witness Dr. Abeles. About the meaning of relocation we read in document T/1076, dated 22 October 1941:

> "The Slovakian Minister of the Interior...is planning the concentrated settlement of Jews in certain places in Slovakia, thereby achieving the complete evacuation of Jews from large areas, as well as the evacuation of the capital. This will be done by the setting up of ghettos - suggested by the German Counsellor, following the example of the Generalgouvernement."

Concerning Aryanization, Dr. Abeles stated (Session 49, Vol. II. p. 888):

> "It was the large Jewish firms which were Aryanized, primarily industrial firms, part of which were owned by Jews."

(b) The second decisive stage, that of evacuation, begins on 16 February 1942 (T/1078). On 13 March 1942, the German Embassy in Bratislava is informed that the Accused will arrive "for preliminary discussion of the evacuation of 20,000 Jews from Slovakia" (T/1079), and on 20 March 1942 (T/1080), the Foreign Ministry transmits to the German Embassy a detailed plan coming from the Head of the Security Police and the SD.

The Slovak Government is to pay the German Government the sum of 500 Reichsmark for every Jew received. The Germans justify this demand by the low work productivity of the Jews, "not yet trained for new trades," and by the fact that Jewish property in Slovakia is worth three billion Slovakian Crowns. On 29 April 1942, Ludin reports that the plan was confirmed by the Slovak Government, that three trains had already been dispatched, and that after the evacuation of 20,000 "labour Jews" the evacuation of the remainder (some 70,000 Jews (T/1081)) could be commenced.

The question of the payment of 500 Reichsmark for each evacuated Jew appears again a number of times in documents submitted, and for the last time in document T/1087, dated 2 May 1942, in which the Foreign Ministry defines the attitude of the German Government as follows:

> "The Reich Government undertakes responsibility that Jews removed from Slovakia and received by them will remain in the Eastern areas forever, and will not be given any opportunity to return to Slovakia. No claim is put forward by the Germans in regard to the property of these Jews of Slovakian nationality, except the demand for the payment of 500 Reichsmark in exchange for each Jew received. The Reich Government is to receive (abzunehmen) from Slovakia, during the month of May this year, 20,000 additional Jews, fit for labour, and send them to the East. The details will be arranged as heretofore."

On 15 May 1942, the Accused's Section (over Guenther's signature) reports on the situation to the Foreign Ministry: 20,000 Jews - most of them fit for labour - were evacuated to Auschwitz and to Lublin, and on 4 May the evacuation of 20,000 additional Jews to Lublin began, and it is intended to carry on the evacuation at the rate of from 20,000 to 25,000 persons per month (T/1089). At the end of May, the embassy in

Bratislava receives word that the Accused will pay a visit there, in order “to discuss problems connected with the operation of the evacuation of Jews from Slovakia now in progress.” The visit took place, and when in Bratislava, the Accused also met Mach, the Slovak Minister of the Interior (T/37, p. 2879 etc.).

This stage of the evacuation was concluded at the end of June 1942, and at a consultation held at the office of Prime Minister Tuka, Wisliceny announced that the Jewish Action was in its final stages, that 52,000 Jews had been evacuated, and for the time being 35,000 Jews remained (T/1101).

(c) There was a respite in evacuations up to 1944, when the Slovakians demanded that permission be granted to visit camps, as a preliminary condition for the renewal of evacuations (T/1106, dated 13.4.43; letter signed by the Accused, dated 8.1.44, T/1110; and the Foreign Ministry reply, dated 14.1.44, T/1111). The answer to this request came in a letter dated 7 February 1944, signed by the Accused (T/1112): For understandable reasons, he objects to visits by strangers to the camps in the East, and proposes instead a visit to the “Ghetto for the Aged” at Terezin, which always served to mislead foreigners, as will be mentioned later.

Evacuations from Slovakia were renewed once again after the outbreak of revolts there in the autumn of 1944. From a report dated 9 December 1944 (T/1130), it is learned that Operations Units arrested nearly 10,000 Jews, and that 7,000 were taken to German concentration camps.

The summary is to be found in the testimonies of Dr. Abeles and Dr. Steiner (Sessions 49 and 50, Vol. II). Dr. Steiner testified that from September 1944 to March 1945 over 12,000 Jews were expelled, some of them to Terezin and Sachsenhausen. According to his statement, over 70,000 out of the 90,000 Slovakian Jews were exterminated, that is some eighty per cent (Session 50, Vol. II. p. 912). 105. The second “puppet state” to be set up by the Germans was Croatia.

Anti-Jewish laws were published there already in 1941 (T/889), and on 25 February 1942, Artukovic, the Croatian Minister of the Interior, delivered a speech in parliament, calling for the purging of the state of its Jews (T/891). Evacuations began in the year 1943. On behalf of the Accused's Section (T/907 and p. 1142 of his Statement T/37), Abromeit dealt with these matters in co-operation with Helm, the Police Attache at the German Embassy in Zagreb. The concentration of Jews in preparation for the expulsion was carried out by the Croatians (Ustachis) themselves. The Croatian Government consented to pay to the Reich thirty Reichsmark for each evacuated Jew (T/903). On 19 January 1943, an agreement was drawn up between Helm and Abromeit, on the one hand, and the Croatian Government on the other (T/907). Helm and Abromeit divided the work between them, leaving Helm to supervise activities within the state, while Abromeit was responsible for the evacuation of Jews across the borders of Croatia.

On 4 March 1943 Helm cables the Foreign Ministry that the evacuation of 2,000 men is imminent and requests that the Accused be informed (T/908). On 10 April 1943, the

Accused's Section enquires (signed by Guenther) when the evacuation will begin (T/910). The evacuation is carried out. On 15 July 1943, the RSHA enquires from the Police Attache about 800 Jews who, according to rumours, are still in concentration camps, and demands action for their evacuation to the East (T/916). A further letter sent by the Accused's Section during the same period deals with 400 Jews in Croatia for whom the Jewish Agency made efforts to obtain immigration permits to Palestine. Immigration permits for 75 children from amongst these 400 Jews were already confirmed. The Accused's Section issues an order to prevent the immigration to Palestine of the 400 Jews, by their early evacuation to the East.

A part of Croatia was under Italian occupation. The Italians rounded up and arrested the Jews in the area, but did not deport them from the country (T/905-906). After the Badoglio coup, the RSHA took action in this area as well, and Abromeit was ordered to see to the evacuation of the Jews who still remained there (T/919, dated 16.9.43). For this purpose, a special Operations Unit of the RSHA, commanded by Krumey, was sent there in October (T/920, dated 15.10.43).

According to an official Yugoslav report (T/892, p. 9), only 1,500 out of 30,000 Croatian Jews remained alive.

106. As far as Serbia is concerned, we must go back to an earlier period, to the year 1941, to describe an event which is fraught with meaning for the evaluation of the Accused's general attitude, as well as for the evaluation of his evidence before us. In April 1941, Germany attacked Yugoslavia, and Serbia became German-occupied territory. In the autumn of 1941, 8,000 male Jews were rounded up in Belgrade. A series of documents was submitted to us describing the fate of these Jews. On 8 September 1941, the representative of the German Foreign Ministry in Belgrade, Benzler, proposed sending them to one of the islands in the Danube delta. This proposal is not accepted. Benzler continues his efforts to deport the Jews, and his next proposal is to send them to the Generalgouvernement area or to Russia. On the cable containing this proposal (exhibit T/874, dated 12.9.41), there is a note dated 13 September in the handwriting of Rademacher, at that time the Foreign Ministry Adviser on Jewish Affairs, which reads as follows:

According to information from Sturmbannfuehrer Eichmann RSHA IVDVI" (the reference is undoubtedly to IVB4) "there is no possibility to take them to Russia or to the Generalgouvernement. Even Jews from Germany cannot be accommodated there. Eichmann proposes to kill them by shooting" (Eichmann schlaegt Erschiessen vor).

In the year 1948, Rademacher was questioned at Nuremberg in connection with this document and said (T/875, p. 3) that he made this note while reporting on the matter to Luther (his superior in the German Foreign Ministry); and he continues:

> "I still remember distinctly that I was sitting opposite him (Luther), when I telephoned the Head Office for Reich Security, and that I wrote down in my own handwriting key words from Eichmann's reply and passed them

> over to Luther during the telephone conversation. Eichmann said words to the effect that the army were responsible for order in Serbia and that it would just have to kill the rebellious Jews by shooting. In reply to my further question, he repeated simply: 'Kill by shooting' (Erschiessen) and hung up."

The Accused categorically denied before us that he had said these words. According to his contention, Rademacher forged the document, by adding the words in question later on.

This was not the spontaneous reply given by the Accused when Superintendent Less put this document before him for the first time. Then he did not doubt the correctness of the note and said:

> "...I did not myself give the order to kill by shooting, but, as all those matters, I handled this one in the service channels, and the order by my superiors was at the time in fact: To kill by shooting." (T/37, p. 2356.)

But already on p. 2417 of his Statement, the Accused changes his contention, and in fact puts forward the same version (in a milder form), as the one he told us, namely - forgery on the part of Rademacher.

The Accused explained this version at length during his examination-in-chief (Session 83, Vol. IV, pp.xxxx16-18) and his cross-examination (Session 97, Vol. IV, p. xxxx34 et seq.). The gist of his contention was that Rademacher carried out the forgery a few days after 13 September, following differences of opinion within the Foreign Ministry about the manner of dealing with this matter.

This version is neither based on facts, nor is it logical, as the forgery could have been discovered immediately, and then (a few days later) the truth would very easily have been established. Under the circumstances, it is inconceivable that Rademacher would have taken such a risk upon himself.

Thus, what remains is the Accused's denial that he ever uttered these or similar words at all, and this denial we do not accept. Document T/874 was kept in the files of the German Foreign Ministry. Prima facie it appears that the note was made during the usual course of business; hence its truth can be assumed not only from the formal aspect, but also as regards its contents; that is to say, that the conversation with the Accused took place and that the Accused said what was noted. The Accused did not succeed in reversing this assumption, because his denials, both in his Statement and in his evidence in Court, lacked credibility, and we are convinced that the Accused expressed himself as written in T/874.

The Foreign Ministry informed Belgrade on 5 October 1941 (T/880) that a special representative of the RSHA would reach Belgrade shortly to settle the matter. This representative was to have been the Accused himself (T/881), but it was finally decided

to send two other men in his stead. One of them was Suhr, who is known to us as a member of the staff of his Section. He was accompanied by Rademacher, who submitted the report on the results of this journey.

It transpired that it was not a matter of 8,000 male Jews, but only of 4,000, and it was decided that 500 of them were needed by the German State Police to maintain health services and order in the Belgrade Ghetto. The rest "would be shot by the end of this week, thus solving the problem raised by the Embassy" (T/883).

Already in April 1941, a Special Operations Group of the Security Police, headed by a man by the name of Fuchs, was sent to operate in this country. In Belgrade, Krauss and Helm were in command of one of the sub-units of this Group. On 16 May 194l, heads of departments of the RSHA were informed accordingly (T/887). We have before us declarations about the murderous activities of this Group (T/893-896). It set up the Sajmiste concentration camp, where Jews were killed in gas vans. Some of the camp prisoners were taken off to the East. The official Yugoslav report (T/892) also describes the death of the Jews in the Sajmiste camp by disease, evacuation and gassing. This report states that of the 47,000 Serbian Jews, there were only slightly more than 5,000 survivors.

The ordinary lines of command in dealing with the Jews of Serbia did not become quite clear to us, in contrast to the situation in other countries dealt with in this chapter. Fuchs, who commanded the Special Operations Group there, says in his affidavit (T/894) that it was known to him that "a Standartenfuhrer, named Eichmann, specially appointed by the Head Office for Reich Security," used to transmit instructions to them in connection with the handling of the Jews. There is, however, no clear evidence that the Accused used to issue or transmit directives to this Operations Group right from the commencement of its activities in April 1941 (except for the proposal he put forward in connection with the 8,000 detainees, about whom we have already spoken at length.)

On the other hand, it appears from the affidavit of Meisner, Senior Commander of Police in Serbia from 1942, that a special Department for Jewish Affairs was attached to one Schefer, Senior Commander of the Security Police (BdS), who was active in Serbia in Meisner's days, and that this department received its orders from the RSHA. It has not been proved that in Serbia there was an Adviser on Jewish Affairs who belonged directly to the Accused's Section, but it is to be assumed - and thus we find - that the instructions to the Jewish Department attached to the BdS in Belgrade were transmitted to them through the Accused's Section, in accordance with the usual RSHA routine.

107. The northern part of Greece was a German military- occupied territory, named "Salonika-Aegaeis." In July 1942, the Accused's Section already shows interest in the marking of Greek Jews (T/955, signed by Suhr). Wisliceny was sent to Greece in January 1943 "to prepare and carry out the deportation of the Jews from the Salonika region as planned within the framework of the Final Solution of the Jewish Question in Europe" (T/959, dated 25.1.43, a letter from IVB4 signed by Guenther). Actual operations begin in 1943 with the carrying out of the marking. Basic "legislative" action is taken by

Merten (who testified in this case for the Defence) in the name of the German Military Governor (T/960, dated 6.2.43), and Wisliceny publishes regulations for executive measures (T/961 and T/962).

In accordance with the well-tried method, Merten appoints the Jewish community as trustee for all Jewish property in March 1943 (Order No. VII, dated 13.3.43, attached to Merten's second testimony of 7.6.61), and Wisliceny on 15 March 1943 completes the robbery by giving further instructions (T/965). Already in February 1943, the Jews of Salonika are concentrated in a ghetto (report of 26 February 1943 sent through the German Foreign Ministry to the Accused, T/970), and the expulsion of 56,000 Jews from this area to the Generalgouvernement area (T/971) began on 15 March 1943 and was completed at the end of May 1943 (Wisliceny's declaration, T/992, p. 4).

Already in March 1943, the Accused also interested himself in the deportation of the Jews who lived in Italian-occupied territory, especially those in Athens (T/991), but for the time being without results. After the coup in Italy, action did begin in Athens as well, but in the meantime most of the Jews of Athens had succeeded in hiding or escaping, so that only 1,200 Jews remained there. But the 1,200 Jews of the Island of Rhodes still fell into the hands of the murderers in June 1944 (declaration by Lentz, T/999).

As a result of the deportation, the Jewish population of Greece decreased from 77,000 to 10,000 (T/953). 108. As far as we know, the RSHA and the German Foreign Ministry both began to show keen interest in the Jews of Bulgaria in November 1942. A letter, signed by the Accused, dated 17 January 1942, to the Foreign Ministry (T/928) deserves special mention. It says:

> "I must add once again that sufficient possibilities exist for the reception of Jews from Bulgaria. I therefore consider it appropriate to approach the Bulgarian Government once again, with the aim of transferring all the Jews from Bulgaria to the Reich now, as part of the process of the general solution of the European Jewish problem. The Police Attache in Sophia will take care of the technical implementation of the deportation."

Dannecker is sent to Sophia in December 1942 as "Assistant to the Police Attache, to handle Jewish Affairs" (letter from the Accused's Section, signed by Mueller, dated 10.12.42, T/931). Dannecker reaches an agreement with Belev, the Bulgarian Commissioner for Jewish Affairs, on 22 February 1942 for the deportation of 20,000 Jews "to the Eastern areas of Germany" (T/938), and 15 March 1943 is set as the date for the beginning of the deportation (T/936, letter signed by Guenther from the Accused's office, dated 9.3.43).

On 5 April 1943, the RSHA receives a report that until then over 4,000 Jews had been evacuated from Thrace and over 7,000 from Macedonia. On the other hand, the Bulgarians objected to the evacuation of Jews from the old part of Bulgaria (T/941), and they themselves mobilized 6,000 Jews from this area for work in Bulgaria. The Accused's office, in a letter dated 17 May 1943 (T/942, signed by Guenther), objects to this change

of policy on the part of the Bulgarian Government and demands intervention by the German Foreign Ministry to ensure the renewal of deportations to the East; but later, the Bulgarian authorities are content with transferring the Jews from Sophia to the provinces (report dated 7.6.43, T/943). We know of no further deportations across the borders of Bulgaria.

109. In Italy, the position of the Jews in the national economy was impaired under the Fascist regime, but until the Badoglio coup in September 1943, they were not physically hurt (Mrs. Campagnano's evidence, Session 36, Vol. II, p. 656). During this period, the efforts of the RSHA and the Accused's Section were chiefly directed to removing obstacles put in their way by the Italians in the territories occupied by the latter, namely Southern France, Dalmatia, and Southern Greece.

The road towards execution of the Final Solution against the Jews of Italy was cleared in September 1943, when the Germans established their domination over the greater part of Italy. SS men began carrying out arrests (Mrs. Campagnano's evidence, supra, pp. 656, 657). The detainees were concentrated in camps in Northern Italy and were deported across the Italian border (Vitale's declaration, T/633).

An order was given by Himmler in October 1943 to arrest the 8,000 Jews of Rome and transfer them to Northern Italy for extermination (T/615). This task was given to the witness for the Defence, Kappler, who headed the local unit of the Security Police and the SD, and the Accused's assistant, Dannecker, who had already shown particular energy in other countries, was sent to Rome to assist him. Arrests were carried out on 17 October 1943, but the results disappointed the Germans, for only 1,259 Jews were caught, and after the release of the children of mixed marriages and foreign nationals, only 1,007 remained for deportation. Further arrests followed (evidence of Kappler, p. 38), and the detainees were sent to Northern Italy.

Kappler contends in his testimony, given in this trial, that not he, but Dannecker alone, carried out the operation in Rome. He does not deny the truth of the report on the action, signed by himself, but claims that he did not draft it (supra, p. 33). We do not need to decide exactly which part was played by each of these two men. It is clear to us that both Kappler and Dannecker took part in the action in Rome on 17 October 1943, that both of them acted in accordance with RSHA directives, and that Dannecker received his instructions from the Accused's Section.

After Mussolini's release, the Italian Government, which was under Hitler's orders, decided to concentrate all the Jews in Italian concentration camps. In all, 7,500 Jews were deported from Italy, and only just above 600 of them returned (Vitale's declaration, T/633).

Romania

110. Dr. Loewenstein Lavi gave evidence about mass extermination actions taken against the Jews of Romania in the year 1941 (Session 48, Vol. 11, p. 870):

> "During the conquest of Bessarabia and Northern Bukovina, an almost complete extermination took place... from the beginning of June 1941 to September 1941, 160,000 were killed in Bessarabia. Then this was followed by a second wave in Bukovina...the survivors were transported to Transnistria."

The RSHA Operation Group D was active in this area. On 9 July 1941, one of the Operation Units belonging to this Group reports from Czernowitz that 100 "Jewish Communists" were killed (T/1000). The Operation Group sends information in August 1941 about the killing of 3,106 more Jews in Czernowitz and the Dniester area (T/319, p. 11).

Most of those deported to Transnistria were also exterminated, so that in this period, until mid-1942, between 250,000-300,000 Jews lost their lives (pp. 872 and 876 of Dr. Loewenstein's evidence). On 18 June 1942, the Romanian Central Office of Statistics estimates that 290,000 Jews remained in Romania (excluding Transnistria) (T/1018).

An agreement was concluded between the Germans and the Romanians on 30 August 1941 in regard to the administration of the area between the Dniester and Bug rivers (Transnistria) and the area between the Bug and the Dnieper rivers (T/1002). With regard to the Jews, it is stated:

> "Deportation of Jews from Transnistria: Their deportation across the Bug is not possible at the moment. For this reason, they should be concentrated in concentration camps and put to work until it is possible to move them to the East after the [military] operations are completed."

Nonetheless, the Romanians tried to send Jews who were concentrated in Transnistria across the Bug river into German-occupied territory. A letter sent by the Accused's office, signed by him on 14 April 1941 (T/1013), shows that the RSHA and the German Ministry for Eastern Occupied Territories object to this attempt. In his letter the Accused says inter alia:

Even if there is agreement in principle to the Romanian efforts to get rid of the Jews, this seems at this stage (these words are emphasized in the original) to be undesirable for the following reasons:"

The Accused goes into security and economic reasons in detail and continues:

> "Moreover, this disorderly and premature expulsion of Romanian Jews to occupied areas in the East seriously endangers the evacuation of German Jews, which is already in full swing."

In conclusion, he states that if the Romanians continue the deportations,

> "I reserve the right to bring the Security Police into action."

The import of these last words becomes clear from a handwritten note on document T/1014, that 28,000 Jews had been exterminated, and on p. 3074 of his Statement T/37 the Accused says:

> "This is clear. If these Jews from Romania were marched here illegally now...then the appropriate authorities of the Eastern Administration made use of his (Himmler's) orders and dealt with the matter in their own way through their units."
>
> "Q. By exterminating them?
>
> "A. Yes."

The Romanian gendarmerie reports from March to June 1943 (T/1010-1012) should also be mentioned in this connection in regard to the killing of Jews by the SS police.

Richter, one of the Accused's men, acts against the Jews in other parts of Romania as an Adviser for Jewish Affairs attached to Ambassador Killinger. Two conversations take place on 12 December 1941 and on 23 January 1942 between him and Mihai Antonescu, the Romanian Deputy Prime Minister (T/1004, T/1008). The introduction of anti-Jewish legislation and the prohibition of the emigration of Jews from Romania were the subjects discussed at these talks.

The evacuation of the Jews from Romania is mentioned for the first time in a letter from the Accused's office, signed by Mueller, on 26 July 1942 (T/1021). The evacuation was to begin on 10 September 1942, and the plan was to deport them to the Lublin region,

> "where those who are fit will be put to work, while the rest is to undergo the special treatment" (T/1023).

In a memorandum by the German Foreign Ministry, dated 17 August 1942, it is stated (T/1027):

> "According to a request made by Marshal Antonescu, authority was given by the Deputy Prime Minister, Mihai Antonescu, for the evacuation of Jews from Romania to be carried out by German units..."

The German Foreign Ministry informs the Accused on 17 September 1942 that the German Embassy contacted the Romanian Government, expressing the opinion that preparatory negotiations were over, and demanding that the Romanian Government state its final attitude (T/1032). Talks were held between the RSHA representative and the representative of the German Railways on 26 and 28 September 1942, in connection with the transport of 200,000 Jews from Romania in the direction of Lvov - the final destination was to be Belzec (T/1284). A change occurred, however, in October 1942. A further conversation took place between Mihai Antonescu and Richter on 22 October, in

which it became clear to Richter that Marshal Antonescu had rejected the evacuation (T/1039).

The Accused's Section is active during the following months, with a view to preventing the immigration of Jews from Romania to Palestine (see, for example, T/1048, dated 3.3.42, signed by the Accused; T/1049, dated 10.3.43, signed by Guenther; and T/1054, dated 3.5.43, signed by the Accused). But Guenther, the Accused's deputy, on 22 May 1943 once again requests the Foreign Ministry to suggest to the Romanian Government the evacuation of the Jews of Transnistria to the East (T/1057). However, Marshal Antonescu does not yield to German pressure, and there were no more deportations from Romanian territory.

The Accused, his Section and his men, and also the German Foreign Ministry had therefore, of necessity, to limit their future activities to the prevention of emigration from Romania. Dr. Safran, the former Chief Rabbi of Romania, in his declaration (T/1072) describes how the assistance of the churches, the Red Cross and neutral countries was mobilized, in order to bring about the change in Marshal Antonescu's attitude. This is how about half of Romanian Jewry was saved from extermination at the hands of the Germans.

Hungary

111. The last act in the tragedy of European Jewry under the Hitler regime is the catastrophe which befell Hungarian Jewry. This chapter calls for a special place in the totality of events. This large Jewish community, which until then lived comparatively intact in the ocean of destruction which surrounded it, felt the heavy hand of fate which erased most of its members suddenly from the Book of Life within a few weeks. The Hungarian chapter is different from those which preceded it in other countries, also so far as the Accused's activities are concerned, as will be explained presently.

At the beginning of the Second World War, Hungarian Jewry numbered 480,000 souls, and increased during the war years to 800,000, due to the annexation of additional areas to Hungary. The official policy of the Hungarian Government was anti-Semitic even before the War broke out, and it became intensified especially after Hungary entered the War on the side of Germany in 1941. Racial legislation on the Nuremberg pattern was introduced, as well as laws aimed at ousting Jews from the economic life of the country. In the summer of 1941, a mass deportation of stateless Jews from Hungary to Galicia was carried out, and 12,000 of them were killed by the Germans at Kamenets-Podolski.

From 1940, male Jews were mobilized to work for the Hungarian army, and 60,000-80,000 Jews were sent to work in the German-occupied areas in Galicia and the Ukraine in the years 1941-1942. Of these, some 45,000-50,000 died (evidence of Pinhas Freudiger, Session 51, Vol. III, pp. 932), but in spite of this, the storm had not yet hit Hungary itself, and this land appeared to be a haven of safety for the few refugees, survivors of the Holocaust, who reached Hungary from Slovakia and Poland.

As the Red Army approached the gates of Hungary in March 1944 through the Carpathian Mountains, Hitler decided to establish his domination in Hungary. He summoned the Regent, Horthy, and by the use of threats extorted from him an agreement to replace the Kalai government, which was inclined to desert the Axis, by another government which would do the Germans' bidding. Hungary was seized by the German army on 19 March 1944, and the SS units appeared on the scene together with the army. Hungarian sovereignty became a “farce” from that day, as Horthy said in his evidence at Nuremberg (T/1246), and the Germans became masters of the state. The hour had arrived for which the Germans had waited, to implement the Final Solution also against the Jews of Hungary. Veesenmayer, whom Hitler later appointed Reich Plenipotentiary in Hungary, writes, as far back as 10 December 1943, in a report to the German Foreign Ministry:

> “It appears for a variety of reasons that the order of the day is to get a firm hold on the Jewish problem (ein gruendliches Anpacken). The liquidation of this problem is a prerequisite for involving Hungary in the war conducted by the Reich for its defence and existence” (T/1144, p. 28).

From a letter, T/1136, dated 25 September 1942, to the German Foreign Ministry, in reply to a proposal to deal separately with the Jews who escaped to Hungary, we learn about the Accused's own attitude. He objects to this proposal because

> “experience shows that the preparation and implementation of partial actions require the same effort as comprehensive plans geared to cover, as far as possible, all the Jews of that country. Therefore, I do not regard it appropriate to set in motion the whole machinery of evacuation for the sake of resettlement (Aussiedlung) of those Jews who escaped at the time to Hungary, and afterwards, without any progress in the Solution of the Jewish Question in Hungary, the action will be held up again. For these reasons, I believe that it is preferable to defer this action until Hungary is ready to include the Hungarian Jews also within the framework of these measures.”

This “strategic” approach to the matter, shown by the Accused, was fully justified by later events. The turn of Hungarian Jewry came after the Final Solution had been carried out almost to the end in the other countries in which the Accused and his men had been active. Now they were free to concentrate on the implementation of the task which still lay before them - the extermination of Hungarian Jewry.

So the Accused left his Berlin office and moved to the scene of action himself, with most of his assistants, and the “Eichmann Special Operations Unit” set up its headquarters in Budapest. There he appeared at the head of the Security Police and Order Police column, which had been formed a few days earlier in the Mauthausen camp, and entered Hungary on 19 March 1944, immediately after Horthy's surrender. The Accused brought with him Himmler's order for the expulsion of all the Jews from Hungary, after combing the country from East to West, and their deportation to Auschwitz (Session 103, Vol. IV,

p.xxxx3). The Accused did his utmost to carry out the order, and if in the end about a third of the Jews of Hungary, and in particular the Jews of Budapest, were saved, that was in spite of his obstinate efforts to complete the operation to the very last Jew.

He found loyal collaborators in Hungary, who were with him heart and soul: Endre, the State Secretary in the Hungarian Ministry of the Interior, a fanatical anti-Semite, was his chief collaborator, and with him Baky and Ferenczy of the Hungarian gendarmerie. A personal friendship also developed between Endre and the Accused.

112. The first week after the German entry into Hungary saw the implementation of anti-Jewish laws which were published in quick succession, and aimed, on the German model, at ousting the Jews from economic life, robbing them of their property, confiscating their homes, limiting their freedom, and rounding them up in readiness for deportation. The Jews in the provinces were thrown into ghettos from 16 April 1944, and in mid-May deportations to Auschwitz began. They continued at a feverish pace until 9 July 1944.

During this period of less than two months, 434,351 Jews were deported in 147 trains of sealed freight cars, about 3,000 men, women and children to each train, and the average was two to three trains daily. Ferenczy's report on 9 July 1944, which gives this total (T/1166) provides the information that:

> "The Jewish community has now been evacuated from all regions of the country, except from the capital Budapest. For the time being, only labour service men of the Honved (Hungarian armed forces) are in the country."

The Auschwitz gas chambers were working to full capacity, and could hardly cope with the pace of the transports (T/37, p. 1321).

From the minutes of a meeting which took place in Munkacs between representatives of the Hungarian gendarmerie and the German Gestapo, we learn about the transport conditions. The Hungarian officer remarks:

> "If necessary, one hundred people can be put into a single freight car. They can be packed like salt herrings, for the Germans need strong people. Those who cannot hold out will fall. Fashionable ladies are not needed there in Germany."

Thus, Veesenmeyer reports on 25 May 1944 on "the increased exploitation of the railway waggons" (staerkere Belegung der Waggons), enabling a much quicker completion of the programme of evacuation from Carpatho-Russia (T/1193).

Mr. Ze'ev Sapir gave evidence about the deportation of Jews from Munkacs. His community, 103 souls, were loaded into one freight car without food and without water for the whole three-day journey to Auschwitz (Session 53, Vol. III, pp. 971-972).

When the late Dr. Kasztner and the witness Hansi Brand came to the Accused to tell him that a hundred people had been loaded into one freight car, this is how the Accused reacted:

> "He told us we were not to worry, because this only concerned Jews from Carpatho-Russia, whose families were blessed with many children. These children, therefore, did not need so much air and so much room, and nothing would happen to them." (Session 58, Vol. III, p. 1048.)

113. The Allies landed in Normandy on 6 June 1944. Important personages, including the King of Sweden and the Pope, intervened with Horthy to stop the deportations. Budapest was bombed heavily from the air. Under the impact of these events, Horthy gathered courage and ordered that deportations be stopped at the beginning of July (T/1212; T/1113, the Kasztner Report - pp. 57, 69). This step came too late to save the Jews in the provinces, but it did, for the time being, foil the plan for the evacuation of the Jews of Budapest. That the plan for this operation was ready, we read in the report prepared by von Thadden, of the German Foreign Ministry, who visited Budapest at the end of May 1944. The information about the plan of action against the Jews was provided for him by the Accused's office (T/1194, p. 3).

Later, in a memorandum prepared by him for his superiors (T/1195), he describes a plan to evacuate all Budapest Jews within 24 hours in the middle or at the end of July in one huge operation, for which auxiliary help would be mobilized, including all the postmen and the chimney sweeps. The intention was to collect all the Jews of Budapest together on an island in the Danube, and to deport them from there.

The Accused could not reconcile himself to the cessation order, and on 14 July 1944 he tried to deport another 1,500 Jews, imprisoned in the Kistarcsa camp, near Budapest. This came to the knowledge of the Jewish leaders, and they managed to inform Horthy about this action. The latter ordered the return of the train carrying these Jews before it crossed the Hungarian border (evidence of Dr. Alexander Brody, Session 52, Vol. III, pp. 957-958).

This setback enraged the Accused, who organized the transport anew, in spite of Horthy. SS men under the command of Novak, of Eichmann's unit, appeared in the Kistarcsa camp on 19 July 1944. Novak informed the Hungarian commander of the camp that the very same 1,500 who had been brought back on 14 July would be expelled again, because "Eichmann will not tolerate his orders to be countermanded, not even by the Regent of the state himself (Evidence of Dr. Brody, supra, p. 957). SS men loaded the Jews onto trucks with great brutality and brought them to the railway station, and this time the expulsion took place.

To avoid another intervention with Horthy by prominent Jewish personalities, the Accused resorted to a ruse. He assembled all of them in his office, where they were kept by his assistant, Hunsche, for the whole day on various pretexts, and were sent home only when word was received that the train had crossed the border (evidence of Freudiger,

Session 52, pp. 947-948). About those events, as seen through the eyes of the deportees themselves, who were returned to Kistarcsa and deported a second time, this time reaching Auschwitz, we learn from the witness Elisheva Szenes (Session 53,Vol. III, p. 961 seq.).

In his evidence, the Accused claims (Session 104, Vol. IV, p.xxxx6) that all he remembers is "that a train left and returned." On further cross-examination by the Attorney General, he seeks refuge behind the naive question: If all this be correct, where did the trucks come from, in which the Jews were taken the second time from the Kistarcsa camp? (supra, p. xxxx8). When he is reminded that trucks could be obtained from the Hungarian gendarmerie, again he remembers nothing at all.

We have no doubt that the Kistarcsa incident occurred, as testified by the witnesses for the Prosecution. Witness for the Defence, Grell, who at the time served as an adviser at the German Embassy in Budapest, also confirms in his declaration (T/691, p. 8) that he heard about the Accused's resorting to some stratagem in order to deport the inmates of some camp to Germany. We are convinced that the Accused remembers his victory over Horthy quite well. The whole incident is very significant as proof of the Accused's position in Hungary, and the traits of obstinacy and cunning which characterized his actions.

114. On 14 August, the Hungarian Minister of the Interior informed the Accused that the Council of Ministers had decided to propose 25 August to Horthy as the date for the commencement of the evacuation of the Jews of Budapest. The Accused was not satisfied with this, and at his request the Minister of the Interior agreed to advance the date of the evacuation to 20 August (T/1217; T/1218). In his evidence he explains that his demand for the speeding-up of the evacuation was apparently due to an approach from the Ministry of Transport in connection with timetables (Session 86, Vol. IV, p. xxxx18). The plot failed once more because of the resistance of Horthy, who ordered instead that the Jews of Budapest be collected in camps outside the capital, but that they were not to be deported to Germany.

In Veesenmayer's report to the German Foreign Ministry on 24 August 1944 (T/1219), he adds that "Eichmann will report the matter to the RSHA and will request that he and his unit be withdrawn, since they have now become superfluous."

115. The situation again changed radically in mid-October 1944. The Germans intervened again, to avoid Horthy's surrender to the Allies, and forced him to appoint Szalasi, the extremist leader of the "Arrow Cross," as prime minister. This again opened the way for the deportation of Jews from the country. Horthy submitted to the Germans on 16 October (evidence of von dem Bach-Zelewski, p. 13). Two days later, the Accused returns to Budapest and starts negotiations for the handing over of more Jews to the Germans. Veesenmayer's cable to the German Foreign Ministry, on the same day, states that the Accused "began negotiations with the Hungarian authorities for the deportation of 50,000 able-bodied Jews on foot (im Fusstreck) to work in Germany" (T/1234).

Veesenmayer cables again on the same day (T/1235), reporting the results of the negotiations between the Accused and the Hungarian Minister of the Interior: The minister will attempt to obtain consent for the handing over of the 50,000 male Jews. Veesenmayer adds that,

> "according to top secret information, after completing the above foot march successfully, Eichmann intends to ask for another 50,000 Jews, in order to achieve the final aim of complete evacuation of the Hungarian area, while having due regard for the attitude taken on principle by Szalasi."

(Szalasi, it follows from the same cable, demanded that the Arrow Cross themselves deal with the Jews within Hungary proper.)

The idea of marching the Jews from Budapest to the Austrian frontier, some 220 kilometres distance, emerged because Allied bombing had destroyed the railway line.

This march of tens of thousands of Budapest Jews began on 10 November 1944. Mrs. Aviva Fleischmann, who took part in the march, told us about this operation, and Dr. Arye Breszlauer, who was employed by the Swiss Embassy in Budapest, saw the marchers on their way and also wrote a report on the subject at the time (Session 61, Vol. III, p. 1102; T/1237).

The Arrow Cross men assembled all the Jews from the special Jewish houses. Those taken were not only adults - mostly women, as many men were away from home on work service - but also children and old people. Thousands of Jews were crammed into the yard of a brick factory which was used as the assembly point for the marchers. There they were kept, terribly crowded, in the open and in the rain. From there, they started to march in large groups. Witness Mrs. Fleischmann spent only one night at the factory, but others stayed there two or three days until they set out on their way. The escort consisted of Arrow Cross men, who behaved cruelly towards the Jews, robbed them of all their valuables, clothes, blankets and the provisions they had taken with them.

Thus they marched for seven or eight days, without food for days on end. They slept in stables, in pigsties or even in the open, during cold November nights. No medical help was afforded them. Those who fell by the way from exhaustion were shot by the Arrow Cross men or died by the roadside. The survivors were handed over to German SS men at the Austrian frontier.

Twenty-five thousand Jews had been dispatched in this manner by 22 November 1944. Veesenmayer estimated the total number of Jews thus brought to the frontier at no more than 30,000 (T/1242). Mr. Breszlauer, in evidence, set the figures at 50,000 (Session 61, Vol. III, p. 1101).

Even SS officers who saw the marchers on their way regarded the march as an atrocity. Krumey, the Accused's assistant, discussed the march with him. The Accused's reply was

simply: “You saw nothing!”; that is to say, he ignored the matter completely and ordered Krumey also to close his eyes to it (Evidence of Krumey, on pp. 15, 16). The witness Juettner, who was an SS General, describes the sight of the marchers as shocking. He approached Winkelmann, the Higher SS and the Police Leader in Hungary, but Winkelmann said that in this matter he was helpless, since this was in the hands of the Accused's unit, and the Accused did not take orders from him [Winkelmann]. Juettner then approached the Accused's office. A young officer was sent over to him from the Accused's office to explain to him that he [Juettner] was not to interfere in the matter, as the Accused's unit took orders only from the RSHA (declaration T/692 and the evidence of Juettner in this trial).

Finally, the march was stopped by order of Himmler. The credit for this is claimed by a number of German witnesses (Becher, Juettner, Winkelmann). We need not decide whether one of them or someone else secured this order to stop the march. It should be stated that Szalasi, on his part, also ordered the stopping of the march (See Veesenmayer's cable of 21.11.44, T/1242).

116. We wish to mention two more matters from the Hungarian chapter.

(a) At the beginning of June 1944, Blaschke, the Mayor of Vienna, requested Kaltenbrunner to supply him with labourers for war work in Vienna. Kaltenbrunner replies in the affirmative on 30 June 1944 (the reference on this letter is IVB4b - the Accused's Section, managed in his absence by his deputy, Guenther). He writes there that, in the meantime, four transports with some 12,000 Jews will be sent and will arrive shortly at the Vienna-Strasshof camp. He adds that, according to his estimate, about thirty per cent of the Jews will be fit for work, and that they can be employed, provided that they can be withdrawn at any moment. As to the wives and children of those Jews, who are not fit for work, they will all be kept ready for special action (fuer eine Sonderaktion), and will therefore be removed in the future, but are to stay in the camp in the meantime, under constant guard also during the day.

Kaltenbrunner asks Blaschke to discuss further details with the representative of the State Police and with SS Obersturmbannfuehrer Krumey of the Special Operations Unit in Hungary (i.e., the Accused's unit) (T/1211). The meaning of the words “special action” need not be explained: All those Jews were to be taken away and exterminated, but in the meantime, those fit for work would be employed at the pleasure of the Mayor of Vienna, and their wives and children would wait with them as prisoners until their turn came to die.

The Accused made use of this order by Kaltenbrunner, which he had to obey, to mislead the Hungarian-Jewish leaders and to extort money from them. From the report of the Jewish Relief and Rescue Committee in Budapest written by the late Dr. Kasztner, it is apparent that the Accused made a show of agreeing to the request put to him by Jewish communal leaders to save Jewish lives by allowing the transfer of 15,000 Hungarian Jews to Austria, in order to “put them on ice.” In consideration for this simulated concession,

he demanded a large sum of money from them, alleging that this was needed for food for these Jews and for the care of the sick (see T/1113, pp. 49, 50).

When cross-examined by the Attorney General, the Accused does not deny this act of deceit. He says: “It is possible that I painted a bright picture for Kasztner” (Session 104, Vol. IV, p.xxxx6).

If some of these Jews were finally saved from the fate which was in store for them, this was not thanks to the Accused, but because extermination by gassing at Auschwitz was stopped in October or November 1944. There is proof here of the deceitful methods to which the Accused resorted in regard to his victims.

Mention should also be made of another remark by the Accused to Dr. Kasztner, to the effect that there should be no Jews from the Carpathians or from Siebenbuergen amongst the Jews to be sent to Austria, because they were “elements of much greater ethnic value and more fertile, and he was not interested in keeping them alive.” These words were confirmed by witness Mrs. Hansi Brand (Session 58, Vol. III, p. 11052).

(b) We listened to long testimony from Mr. Joel Brand and his wife, Mrs. Hansi Brand. Also documents were submitted to us about negotiations carried on between Jewish communal leaders and Himmler's agents concerning a barter of Jewish lives against goods required by the Germans, especially trucks. We do not intend to follow all the details of these complicated negotiations, which are now a matter of history, but shall only make a few comments on the Accused's contentions regarding these negotiations.

The Accused alleged that Becher, Himmler's chief agent for economic affairs in Hungary - in particular responsible for robbing Hungarian Jews of their property - trespassed into his domain, by handling matters of Jewish emigration which were reserved for the Accused, he being the expert on the subject. Moreover, Becher pressed him (the Accused) to step up deportations to Auschwitz, in order to force the Jews to hurry up with the supply of the goods. But actually, Becher dealt with these matters only in a small way - the emigration of a few thousand Jews. Becher's interference angered the Accused, for here - so he explains - comes an outsider and interferes in a field in which the Accused had become expert over the course of many years - namely Jewish emigration - and what is more, presses him to increase the pace of the despicable work of deporting Jews to Auschwitz.

That is why he, the Accused, thought up a far-reaching plan for the emigration of a million Jews, in order to have the better of Becher in this competition. And here the unbelievable happened: He is informed by Mueller, to whom he put the plan, that it has been authorized by his superiors. He therefore sends Brand to Istanbul; and now he understands the feelings of Brand, who is bitter about the failure of his mission, because of his arrest by the British Intelligence Service, and the Allies' refusal to respond to the proposal for the supply of goods. He further alleged that he stipulated with Brand - and this, too, with the consent of his superiors - that ten per cent of the total number, i.e., 100,000 Jews, would be allowed to emigrate to any country they wished, as soon as

Brand brought the consent of the other party to the supply of the goods, and even before the actual supply began. In the meantime, he was already busy working out the organizational measures involved in the transport of these 100,000 emigrants (Session 86, Vol. IV, p. xxxx15). He concludes his long explanation as follows:

> "If, later on, an obstacle was put in the way of this transaction abroad, this caused me sorrow at the time, and I permit myself to say that I can very well understand Joel Brand's fury and pain. I only hope that Joel Brand, too, in the light of the documents which now prove to him that I was not the man who carried out the extermination, understands on his part my own fury and my anger...." (supra)

We are of the opinion that this whole effort to appear now before this Court as the initiator of the above transaction is nothing but a lie.

There is no doubt that the order to begin negotiations about the exchange of Jews for goods came from Himmler himself. What caused Himmler to make this proposal, we do not know. Possibly, all this was nothing but a manoeuvre, or he was seeking to prepare an alibi for himself or wanted to show what he could achieve by obtaining essential goods for the Reich.

In any case, all these were matters of general high policy, entirely beyond the sphere of activity of the Accused, who concentrated all his efforts on the implementation of the Final Solution. On receiving the order to conduct negotiations with the Jews, he carried it out. There is proof that when Brand did not return and the whole matter collapsed, the Accused expressed satisfaction (the evidence of Hansi Brand; report by Wisliceny, T/85, p. 21).

The most that can be said is that the Accused conducted the negotiations as he was ordered, in the same way as, in accordance with orders received, he allowed the departure of 1,700 Jews from Hungary to Bergen-Belsen, and later on from there to Switzerland. But it is sheer hypocrisy to come now and testify that his reactions to the failure of the negotiations were sorrow, fury and anger, like the feelings of Joel Brand.

This entire version was invented by the Accused only after he had read Joel Brand's book, from which he thought he could find something to hold on to, in order to show himself in a more favourable light. To this end, he also exploited an error made by Joel Brand, in connection with the 100,000 Jews whom the Accused allegedly agreed to release as soon as the barter agreement was concluded, and even before the goods were supplied. In the detailed report drawn up by Mr. Moshe Sharett (Shertok) after his conversation with Brand in Aleppo (T/1176), there is no mention of such a promise, but Brand is quoted as saying that only a few thousand would be released immediately (supra, p. 4).

Incidentally, it seems to us - although Brand's evidence is borne out by that of his wife, and we do not doubt the subjective sincerity of both these witnesses - that Brand was

mistaken in regard to one further detail, namely that the Accused promised him to blow up the extermination installations at Auschwitz the moment an agreement was concluded. This, too, is not mentioned in Mr. Sharett's report, and it is inconceivable that Brand would not report two such important promises to Mr. Sharett or that Mr. Sharett would not have noted them in writing, had they been communicated to him by Brand.

When one compares the Accused's evidence in Court with what he said in Statement T/37 on the same matter, the untruthfulness of his version is glaring (supra, p. 294 et seq.). He says there that he received the order to conduct the negotiations directly from Himmler, and that he does not remember who initiated the idea, whether it was Becher, or he himself, or Himmler. And again, on p. 2905, in answer to a question by Superintendent Less as to how things got to the stage of negotiations with Brand:

> "Mr. Superintendent, this, too, I do not know; I left this matter entirely open, this I do not know. When I read the book [by Brand], I always thought to myself: I do not know who gave the order or the idea. The order, of course, came from higher up, this is clear - but the idea, if it was I, if it was the Reichsfuehrer, if it was Becher, someone must have thought of it - and in any case I was the one to send it on higher up. Whether I was the initiator of it or someone else gave me the idea and I only passed it on higher up and received the necessary instructions, this I do not know any longer; this I can no longer say." (See also pp. 1089-1090.)

It is therefore evident that he devoted much thought to this question, but he cannot give the answer - although the first hint of an effort to claim credit for the initiative already appears at this stage. Is it possible that he would not remember so important a matter, if it were indeed true that he initiated the idea of sparing the lives of one million Jews? But in his testimony in Court everything seems to have become quite clear: He, and he alone, initiated the plan, brought it before Mueller (not directly to Himmler) and received, from or through Mueller, authority to conduct the negotiations (Session 86, Vol. IV, p. xxxx13).

We learn from the documents the kind of plans the Accused was concerned with, after Brand's departure. He was not engaged in preparations for the emigration of 100,000 Jews, as he had the temerity to allege in his evidence, but in the deportation of all Hungarian Jewry to Auschwitz at an accelerated pace, that is to say, the extermination of those Jews who still remained in German hands and who were to be the subject of barter against goods. He is already preparing the evacuation of the Jews from Budapest at this very same time, that is, the second half of May 1944. This we learn from von Thadden's report mentioned above (T/1194).

117. With regard to all the Accused's activities in Hungary, he reverts to his usual tactics of shifting responsibility to other authorities, until his Counsel has to put the question to him:

> "Witness, what else remained of your activities, because I do not know what there was left for you to do?"

And the Accused answers:

> "This I already said in my Statement when questioned by the Superintendent on behalf of the Israeli Police, but I know that these things sounded incredible. In fact, the documents prove that I was associated with the preparation of the timetables, but only marginally. At first, all that was left for me to do was to report and pass on information to my superiors...I know that this is incredible, or almost incredible, but what am I to do? This is how things were." (Session 86, Vol. IV, p. xxxx11.)

Indeed, this version is not credible, because there is no truth in it. As to the relationship between the Accused and the Hungarians (especially Endre and Baky and Ferenczy of the gendarmerie), we have already said that they were his loyal partners, that their desire to get rid of the Jews was no whit less than the Accused's desire to get hold of them, in order to send them to extermination. But in this partnership the Accused was undoubtedly the one to guide and decide, both as the representative of the German conquerors and as being the expert in the Solution of the Jewish Question, who had become famed as such after his feats in other countries.

The true relationship between the partners is quite evident from Ferenczy's reports, which were submitted to us. Representatives of the Accused were present in the assembly camps, into which Jews were collected before deportation, and the deportation plans were drawn up by joint committees of Hungarian and German representatives (see, for instance, T/1160, para. 3). The Accused claims that his representatives fulfilled only one function: They were present to exclude Jews of foreign nationality from these deportations, in accordance with Veesenmayer's directives (Session 103, Vol. IV, p. xxxx6). This, also, is a false contention; for this task was kept for the German Embassy officials themselves (see T/1188, and von Thadden's report, T/1194, pp. 3, 4).

Finally, we see who was really in authority, from the report by Ferenczy, T/1163: "Mishaps" were discovered in one of the camps: The Hungarian in charge enabled Jewish notables to leave the camp, etc. It was therefore decided that German Security Police units, led by German officers - i.e., the Accused's men - would in future take over the command within the camps, as well as the technical arrangements for loading the Jews on to trains. The Hungarian gendarmerie were left to attend only to external security and security within the camps (supra, pp. 1, 2; see also T/1164, para. 2). Escorting the trains remained a function carried out by the Germans all the time, within Hungary as well. German Security Police men also prevented Jews from being rescued from the assembly camps through the call-up for labour service in Hungary; they arrested Jews who had received such call-up notices, confiscated their papers and handed them over to the Accused (T/1161, para. 2; T/1163, para. 8).

From all these details, a true picture emerges of the Accused's activities in connection with the round-up of Jews before their deportation, and also of the balance of power between him and the Hungarians. It is true that he needed the help of the Hungarian gendarmerie, because only they knew the local conditions and had the large amount of manpower required to carry out these operations. It is also true that the gendarmerie remained loyal to Regent Horthy, and this occasionally made it difficult for the Accused to carry on his activities when Horthy showed signs of independence and rebellion against the Germans. But the incident of the Kistarcsa train shows that the Accused succeeded in having his own way, even in the face of an explicit order from Horthy.

As to the German side, the Accused tried to shift responsibility in two directions: to Veesenmayer, the Reich Plenipotentiary and Ambassador, and to Winkelmann, Higher SS and Police Leader, and to Geschke of the BdS. Veesenmayer was undoubtedly very active in Jewish affairs. For instance, documents were submitted to us showing that in April 1944 he conducted negotiations with the Hungarian authorities for the handing over of 50,000 “Jews for labour” to the Reich (N/73; T/1181; N/75, and others). He put pressure on the Hungarian Government regarding the expulsion of the Jews of Budapest (declaration by Lakatos, N/106, p. 4).

Obviously, the German Embassy did not engage in the actual rounding-up and deportation of the Jews. Veesenmayer's duty in such matters was only to report to his Foreign Ministry on what had been done. Generally, reading between the lines, Ribbentrop's concern is felt about the fact that Veesenmayer is not sufficiently assertive of his authority (see, for instance, N/70). In reply to instructions couched in this spirit, Veesenmayer cables on 22 April 1944 in reassuring terms that the SD men handling Jewish affairs (i.e., the Accused's unit) are in continuous contact with the SD through a special liaison officer. In any case, it is clear that the Accused was not dependent on Veesenmayer in the carrying out of his duties. Even when it came to conducting top level negotiations with the Hungarian authorities, to prepare operations against the Jews, which, in the nature of things, was Veesenmayer's area of activity, the Accused frequently acted on his own, while Veesenmayer only sent in reports (see T/1219; T/1234).

As far as Winkelmann and Geschke are concerned, it seems that there was some formal connection between the Accused's Special Operations Unit and the BdS Geschke. But this connection was even weaker than that which existed between the Advisers on Jewish Affairs on behalf of Section IVB4 of the RSHA in various countries and the BdS in each country. The position held by the Accused, as head of a Special Operations Unit, added independence to his status as special representative of Himmler and of the head of the RSHA, Kaltenbrunner, as he received his order directly from Berlin.

In fact, there is no indication in the evidence that the Accused received any substantive instructions from Geschke or Winkelmann, except in the evidence given by the Accused himself, which is not trustworthy in this matter as well.

We wish to point out that we have reached these conclusions without having recourse to the evidence of Veesenmayer and Winkelmann themselves, since for obvious reasons they were trying to keep themselves as remote as possible from any connection with actions against Jews, or even from knowledge of them, and their statements in this matter are unreliable.

From what has been stated above, a clear picture emerges of the Accused's activities in Hungary. On the German side, which was dominant and made the decisions, the Accused was the chief stimulating force in implementing the Final Solution in Hungary. Here, in the field itself, he acted with increased energy, initiative and daring, and stubborn determination to complete the work, in spite of all the difficulties in his way. The measure of his responsibility for the catastrophe which befell the Jews of Hungary must be evaluated accordingly.

118. In connection with the Hungarian chapter, we will have to deal with the Attorney General's contention that, while in Budapest, the Accused took part in the murder of a Jewish youth named Solomon, who was engaged in forced labour in the garden of the house in which the Accused lived. One of the witnesses for the Prosecution, Mr. Avraham Gordon, testified on this matter that the Accused and his servant Slawik beat the boy to death in a tool shed at the house.

This charge does not appear as a special count of murder in the indictment, but the Attorney General wanted to bring this incident as proof of the Accused's cruelty and his attitude to the life of an individual Jew, apart from his attitude to the lives of Jews in general. Although we have no formal accusation of murder before us, we think that we should evaluate the evidence in this matter according to a criterion befitting the nature of the deed attributed to the Accused (see C.C. 232/55, Piskei Din 12, 2017, 2064). We have examined the evidence according to this criterion, and although the impression made on us by Mr. Gordon's evidence is positive, we do not consider it safe to find facts against the Accused on the basis of this evidence alone, without any corroborative evidence as to the details of the incident.

Eastern Europe

119. We must now go back and consider the stage of the Final Solution, from its beginning in mid-1941, and turn to Eastern Europe - Poland, the Baltic countries and Soviet Russia - the valley of death in which millions of Jews were slaughtered by the order of Hitler. This is where the Jews, who had been hunted down for this purpose in the other European countries, crammed into trains and brought to the East, were done to death in many different ways. Documents were submitted describing the Holocaust in the East, but the bulk of the evidence consisted of statements by witnesses, “brands plucked from the fire,” who followed each other in the witness box for days and weeks on end. They spoke simply, and the seal of truth was on their words. But there is no doubt that even they themselves could not find the words to describe their suffering in all its depth. As one of them, Judge Beisky (Session 21, Vol. I, p. 346) said, in trying to describe his

feelings whilst being forced to watch the hanging of a young boy in the presence of thousands of Jewish prisoners:

First of all, I can no longer - and I acknowledge this - after eighteen years I cannot describe this sensation of fear. This feeling of fear, today when I stand before Your Honours, does not exist any longer and I do not suppose that it is possible to define it for anyone... It is not physically possible to present the conditions of those days in the courtroom, and I do not believe, Heaven forbid, that people will not understand this, but I myself cannot explain it and I experienced this on my own person." If these be the sufferings of the individual, then the sum total of the suffering of the millions - about a third of the Jewish people, tortured and slaughtered - is certainly beyond human understanding, and who are we to try to give it adequate expression? This is a task for the great writers and poets.

Perhaps it is symbolic that even the author, who himself went through the hell named Auschwitz, could not stand the ordeal in the witness box and collapsed. Moreover, this part of the indictment is not in dispute in this case. The witnesses who gave evidence about this part were hardly questioned at all by Counsel for the Defence, and at a certain stage in the proceedings he even requested that the Court therefore waive the hearing of these witnesses. To this we could not agree because, since the Accused denied all the counts in the indictment, we had to hear also the evidence on the factual background of the Accused's responsibility, and could not break up the indictment according to a partial admission of facts by the Accused (see Decision No. 13, Session 23, Vol. I., p. 366).

Accordingly, we are obliged to sketch the background at least in brief outline, so that a fitting picture may be revealed of the crimes in which the Accused was a partner. Here and there, we have interwoven verbatim passages from the evidence. We shall begin with a general description, and afterwards examine the Accused's part in the events described.

Operations Units

120. The method used to put the victims to death varied according to the time and place at which the mass butchery was carried out. The murderers used shooting, asphyxiation by gas, fire, and such other cruel methods of killing as came to their minds. As has been mentioned already (section 69), the slaughter began by mass shootings to death right at the beginning of the war against Poland in September 1939, even before the order for total extermination was given by Hitler in 1941.

Since the Accused's connection with killings in the East at this early stage is not evident, we shall pass over the descriptions of this period and come to the slaughters carried out by the Operations Units, which were set up on the eve of Hitler's war against Russia, and acted in the rear of the advancing German army and in co- ordination with the army. The witness Avraham Aviel testified to the mass murder of the Jews of his native village of Dowgaliszuk, near Radom, between Grodno and Vilna, in May 1942 (Session 29, Vol. I, pp. 496-497):

> “Germans arrived from the direction of Lida in battledress, equipped with automatic weapons, actually dressed as if they were at the battle front... I went outside. At the entrance to the house, I saw that a crowd of Jews were walking from the end of the ghetto and were being forced along the road leading to Grodno... At that moment, several Germans entered the house. One stood at the exit while the others spread out into the rooms and began chasing out those who hadn't managed to conceal themselves. Each one passing through the opening would receive a blow on the head from a rubber truncheon, and would fall down...
>
> I bent down and managed to get out without receiving this blow, and I joined the crowd which was being led in the direction along which the earlier groups had gone... Other Jews joined us on the way. They removed more and more Jews from every house ...about one thousand... I walked with my mother... I was on her right, my brother on her left. This is how we went... They brought us to the marketplace in the centre of the village and forced us to kneel with our heads bent downwards. We were not allowed to raise our heads. Whoever did so received a bullet in the head or blows with sticks... We saw that anyone who slackened his pace was shot on the spot. We sat in the centre of the village for about an hour... Afterwards they made us stand up and led us outside the town towards the cemetery - a kilometre and a half away. When we neared the cemetery...they took us off the road and they made us kneel again, he down again with our heads down. We weren't allowed to raise our heads nor were we allowed to glance to the sides. We only heard shots from the sides. Since I was small I was able to lift my head a little without being seen. I then saw, in front of me, a long pit, about 25 metres long - perhaps 30 metres.
>
> They began to lead the Jews, row by row, towards the pit. They made them undress, and as they mounted the embankment, rounds of shots were heard, and they fell into the pit. I saw one case of a Jewish girl who put up a struggle;, she did not want, under any circumstances, to undress. They struck her and she too was shot. Children, women, family after family. Each family went up together.”

The witness Rivka Yoselewska (Session 30, Vol. I, p. 516) gave evidence of the atrocities committed by an Operations Unit against the Jews of the village of Powost in the Pinsk district, about the same time as that to which the testimony of the witness Aviel refers. She, too, tells how the Jews were led to the place of slaughter some distance out of the village:

> “There was a hill, and a little below they had dug something like a ditch. They made us walk up the hill, in rows of four, and the four whom we likened to Angels of Death shot each one of us separately... They were SS men... When we arrived at this place, we saw naked people, standing there

> already... Parents took the children, took other people's children. This was to help get through it all; to get it over with and not see the children suffer. Mothers took leave of their children, the mothers, the parents... We were lined up in fours. We stood there naked. My father didn't want to undress completely and kept on his underwear... they tore the clothes off his body and shot him. Then they took Mother. She didn't want to go, but wanted us to go first... They grabbed her and shot her. Then came the turn of father's mother, a woman of eighty...my father's sister. She, too, was shot with children in her arms... My younger sister also. She had suffered so much in the ghetto and yet at the last moment she wanted to stay alive... She was standing there naked holding on to her girl friend. So he looked at her and shot straight at her and her friend. Then another sister, then my turn came... I turned my head, and he asked me: "Whom do I shoot first, your daughter or you?" I did not answer. I felt them tearing my daughter away from me, I heard her last cry and heard how she was shot. He grabbed my hair and turned my head about... I heard a shot but didn't move. He turned me around, reloaded his pistol. Then he turned me around and shot. I fell into the pit and felt nothing."

The witness continues this tale of horror and relates how with the last ounce of strength she rose up from the grave, from amongst the corpses heaped above her.

The Accused saw with his own eyes near Minsk a slaughter of this kind at the edge of a pit, as he describes it in his Statement to the police (T/37, p. 211 et seq.):

> "Young marksmen...were shooting into the pit... I can still see a woman, her arms behind her, and then my knees gave way, and I left the place...
>
> Q. Was the pit full of corpses?
>
> A. The pit was full."

And on his way back, he saw blood spurting as if from a fountain out of another pit which had already been covered over (supra, p. 215).

This was the fate which befell the Jews whom he sent to the Operations Units commanded by Nebe and Rasch, knowing full well that their end would be death at the hands of the Operations Units (Session 98, Vol. IV, pp. xxxx29-31). We also know from the testimonies of Eliezer Karstadt (Session 29, Vol. I, p. 490) and Haim Behrendt (Session 29, Vol. I, p. 503) that Jews were deported from German cities to Riga and Minsk (Behrendt himself was deported from Berlin to Minsk in November 1941), there to be slaughtered in mass actions immediately on arrival, or a few months later. We also heard from the witness Dr. Peretz about the deportation of Jews from Vienna, Berlin, Frankfurt, Holland and Belgium at the end of 1941 to the Kovno Ghetto, where they were immediately taken to the Ninth Fort - the place of mass executions (Session 28, Vol. I, p. 481).

121. The Operations Units were set up according to an agreement between Heydrich and the military command. Their commanders were selected from the ranks of the RSHA (T/312). Their ostensible task was to defend the army's rear in the Eastern Occupied Territories, but in fact they were murder units, and their prime objective was to round up and execute Soviet Commissars and all the Jews in those areas (T/177).

For this purpose, the military command agreed to allow Operations Units "within the framework of their objective and on their own responsibility, to take the necessary steps for the execution of their plans as regards the civil population" (viz., to kill this population), as we read in an order signed by General von Brauchitsch, dated 2 May 1941 (T/175, p. 3). Four Operations Units were set up, and the occupied areas from north to south were divided amongst them. Stahlecker, whom we already came across in Vienna and Prague as the Accused's superior, commanded Group A in the north; and Nebe, Rasch and Ohlendorf commanded the other Groups during the first period (T/312). Reports on the activities of the Operations Units have been submitted to us.

In one of the many reports which reached the Accused at this time - a report dated 11 September 1941 - we read:

> "In Kamenets-Podolski, 23,400 Jews were killed by shooting within three days by the Group of the Senior Commander of the SS and the Police." (T/322)

A report from Operations Group A, in January 1942, about the actions in the north, states:

> "Estonia has already been purged of its Jews. In Latvia, there are Jews left only in Riga and in Duenaburg. The number of Jews left in Riga - 29,500 - was reduced to 2,500 by an action carried out by the Senior Commander of the SS and the Ostland Police." (T/337)

On 15 October 1941, Stahlecker reports the killing of 118,430 Jews to date in the area of Group A alone (T/304). In two days, 29-30 September 1941, 33,771 Jews were killed in Kiev (T/327). So the bloodshed continued month after month across the length and breadth of the Eastern Occupied Territories. In connection with a later period - the four months from August to November 1942 - a report sent by Himmler to Hitler about the execution of 363,211 Jews, was submitted to us. This account is headed: "Accomplices of gangs or persons suspected of taking part in gangs" (T/338). During the same period, the Reich Commissioner in Ostland (the Baltic countries) emphasizes that the liquidation of the Jews is the task of the Security Police and the SD (T/414).

Gas Killings

122. Hundreds of thousands, and perhaps a million, Jews were slaughtered by the Operations Units by shooting, but this system alone could not have achieved the Final Solution, which meant the extermination of millions, were it not for an additional method, which made possible even more efficient mass killings, and also in a "tidier"

way for those who actually dealt in the business of murder. This was the system of mass killing by means of gas. In his Statement to the police, the Accused mentions the first use of gas in the Eastern Occupied Territories, as follows:

> "Perhaps, in the Eastern Ministry circles, they said to themselves, `This must be done in a more elegant manner'." (T/37, p. 2339)

This system appeared at first in the form of vans, in which the victims were asphyxiated by exhaust gases from the engine. Evidence was given before us of the existence of a mobile unit which transferred such vans in 1942 to Belgrade and to various places in Russia, and which murdered Jews in them (T/309). This system of killing Jews was also used by the Operations Units (see T/216, declaration of Blobel, p. 4). The system was extensively and regularly used in the Chelmno (Kulmhof) extermination camp in the Warthe district. Only four Jews survived this camp, and three of them - residents of Israel - gave evidence in Court about the Chelmno camp (T/1297, remark on p. 4 of the Hebrew version).

The witness Michael Podchlewnik was taken to Chelmno at the end of 1941 from the nearby village of Kolo. He relates that, together with other Jews, he was put into a building, at one time a manor house, and locked in the cellar. Then he goes on (Session 65, Vol. III, p.1190):

> "A truck came with people... I heard somebody come out and say: `You are now going to the bathroom; then you will be given other clothes and you will go to work'... They all passed through the door and entered a corridor in the house ... We were sitting in a basement. We did not know exactly what was happening. But we heard what was going on outside ... A truck was waiting on the other side... When they saw the truck, the people did not want to board it. The SS men stood there with sticks and started beating them, they set the dogs on them and forced them to go into the truck... These were trucks into which they placed people, locked the doors, and let in gas... We heard the screams from inside the trucks. When they started the motor and let in the gas, gradually the screaming subsided, until they could no longer be heard outside...
>
> "Five of us were taken from the cellar, and we had to collect what had been left, the shoes... the rooms were already full of such articles and of shoes."

Later, the witness was taken to a forest, to which trucks came from the same building, and put to work together with other Jews on digging pits. As the trucks arrived, the bodies of those asphyxiated on the way were taken out and buried in the pits. And the witness continues to relate these horrors:

> "I had been working there for a few days, when people from my town whom I knew arrived... Among them were my wife and my two children...

> I lay down by my wife and the two children and wanted them to shoot me. The an SS man came up to me and said: `You still have strength enough, you can go on working.' He hit me twice with his stick and dragged me away to continue working."

During a later period, at the end of 1943 and in 1944, two other witnesses, Mordechai Zurawski and Shim'on Srebrnik, were held in Chelmno. At that time, the victims were still being killed in gas vans, but their bodies were burned in crematoria after the removal of their gold teeth (Srebrnik's evidence, Session 66, Vol. III, p. 1198), and the bones left unburnt were ground in a grinding machine (Zurawski's evidence, Session 65, Vol. III, p. 1193).

Jews from the surrounding area, from towns and villages of the Warthe district and especially from the Lodz Ghetto, which was also part of the Warthe district, were brought to Chelmno for extermination. These were Jews not only from Lodz itself, but also from other countries, who had been first assembled in Lodz. We have already described the deportations of Jews from the Reich to Lodz, organized by the Accused and his Section. The witness Srebrnik mentions Czech and German Jews (Session 66, Vol. III, p. 1199), and according to the official Polish report, Jews from Germany, Austria, France, Belgium, Luxemburg and Holland were exterminated in Chelmno (T/1297, p. 3 of the Hebrew translation). The total number of Jews killed in Chelmno, young and old, is estimated in this report at 300,000 (supra, p.3; 22).

The Accused visited Chelmno and saw the victims being crammed into the gas vans, the removal of the corpses from the vans, and the removal of teeth from the corpses (T/37, p. 176).

123. Like Chelmno in the Warthe area, three camps were set up in the Generalgouvernement area. Their only function was the extermination of Jews. They were: Treblinka, near the railway line from Warsaw to Bialystok; Sobibor, to the east of Lublin; and Belzec, in Eastern Galicia. In each of these camps hundreds of thousands of Jews were put to death, asphyxiated by gas. We heard witnesses, survivors of these camps (except Belzec), and official reports were submitted to us from Polish Government Main Commission for the Investigation of Nazi Crimes, which examined the facts and reached reliable conclusions.

From the evidence about Treblinka, this seems to have been the extermination process: The Jews destined for extermination were brought in overcrowded freight trains which entered the camp gate. To mislead the Jews to the very last minute, the place was given the form of a sham railway station, with a timetable, and arrows pointing in various directions to indicate trains to various towns. When the train doors were opened, the victims were ordered off the train, were beaten with rifles and whips, and made to run to the camp courtyard. Those who could not run as fast as the guards wished were shot immediately.

In the courtyard, the people were told that, since they were going to wash and would be disinfected, all their documents, valuables and money must be deposited in the "camp safe" in a hut in the yard. They were also told that, after the shower, their belongings would be returned, and they would go out to work. They all had to undress. The men undressed in the courtyard, and the women were taken to another hut where their hair was shorn. In this naked state, the victims were led along a narrow path called by the Germans "the path to heaven" (Himmelstrasse), to a building partitioned into cells measuring seven by seven metres and 1.90 metres high. Eliahu Rosenberg stated in evidence (Session 66, p. 1213-1214):

> "In the Himmelstrasse, SS men... stood there with dogs, with whips and bayonets. The people walked past in silence... They did not know where they were going. When they entered the gas chambers, two Ukrainians stood next to the entrance - one was Ivan, the other was Nikolai. They introduced the gas... The gas came from an engine, into which they put Ropa, which was a kind of oil, a crude oil, and the fumes entered the gas chambers. The people who were the last to enter the gas chambers, the very last, received stabs in their bodies from the bayonets, since the last persons already saw what was going on inside and did not want to enter. Four hundred people were put into one the small gas chamber... The outer door of the chamber was closed with difficulty. When they shut them in, we were standing on the outside. We only heard screams of `Sh'ma Yisrael,' `Father,' `Mother'; thirty-five minutes later, they were dead. Two Germans stood there listening to what was going on inside. Then they said: `They are all asleep' (Alles schlaeft)."

The corpses were taken out of the chamber and buried in pits. From 1943, after Himmler's visit to the camp, they began burning the corpses on pyres and opened the graves to burn the bodies in them. All this was done by Jewish labour units. About the gas which was let into the chambers, the witness Wiernik, who worked on the setting-up of the camp (Session 66, Vol. III, pp. 1205) adds that the gas was produced by the engine of a Soviet tank, which stood near the gas chambers, and introduced through pipes and valves into the chambers where the victims were.

One of the witnesses had to remove gold teeth from the mouths of the dead after they had been taken out of the gas chambers and before they were thrown into the pits (Session 66, Vol. III, pp. xxxx93-95). There was a special place in camp which the Germans nicknamed "Lazarett" (hospital). This was a pit where those who could not walk to the gas chambers were killed by shooting.

One of the witnesses gave evidence about two railway cars loaded with children, probably from an orphanage:

> "The children were in fact almost asphyxiated. We had to remove their clothing, and they were led - that is we led them - into the Lazarett. There the SS men ... shot them." (Session 66, p. xxxx62.)

The Treblinka extermination camp began to function in July 1942. A revolt of the Jewish forced labourers broke out in August 1943, and afterwards the camp was gradually liquidated. The Polish Government Main Commission estimates the number of those killed there during this period at over 700,000. The victims were from Warsaw and from other cities in Central Poland, from Bialystok, Grodno and Volkovysk, from Germany, Austria, Czechoslovakia, Belgium and Greece (T/1304, p. 10 of the Hebrew translation; and T/1305, minutes of the evidence of a Polish railway worker named Zawetzky).

The Accused visited Treblinka. In his Statement T/37, p. 229, he describes the sham railway station and the naked Jews being led to the gas chambers along paths surrounded by barbed wire and calls this sight "the most terrible thing I ever saw in my life."

124. We shall now quote a description by a German of the extermination in the Belzec camp, which was very similar to that of Treblinka. The writer is an SS officer named Gerstein, whose conscience gave him no peace, and who, in 1942, tried to reveal the truth about extermination camps to the world. The description from which we are about to quote was written by him immediately after the War and handed by him to officers of the Allied Forces. We shall come back to Gerstein's statements later in another context. Here we shall only say that Gerstein's words are confirmed in detail by the evidence which we heard, so that these testimonies corroborate each other. We accept Gerstein's statement as a true description of what he saw with his own eyes. He writes (T/1309):

> "On the following morning, we left for Belzec. A small special railway station, with two platforms at the foot of a yellow limestone hill, immediately north of the road and the Lublin-Lemberg railway line. To the south, near the road, there are a number of service buildings bearing the sign: 'Local Branch of the Armed SS, Belzec'...no dead were seen that day, but in the air all around, even on the road, there was a nauseating smell.
>
> "Near the small railway station, there was a large hut marked 'Cloakroom,' with a wicket marked 'Valuables.' There was also a room with a hundred barbers' chairs, and then a passage a hundred and fifty metres long in the open, fenced with barbed wire on both sides, with signs: 'To the Showers' and 'Inhalation Establishments.' We come to a house, the bath-house, which is flanked at the right and left by large concrete flower pots with geraniums and other flowers. After going up some steps, we come to three rooms to our right and three to our left, like garages, 5x4 metres in area, 1.90 metres high. At the back, not visible, there are piles of wood. A brass Star of David is on the roof. At the front of the building there was a sign which read: 'The Heckenholt Foundation.' This is all I saw that afternoon.
>
> "The following morning, a few minutes before seven, I am told that the first train will arrive in ten minutes. And, indeed, the first train from Lemberg did come a few minutes later. It was a train with forty- five cars, carrying 6,700 people, of whom 1,450 were already dead when they

arrived. Behind the small openings with barbed-wire netting, we saw children, yellow, scared children, and men and women. The train reaches the platform. Two hundred Ukrainians serving as forced labourers, push the doors open and lash the people with whips off the train.

“Then orders are given over a large loudspeaker. They must undress completely in the open, some also in a hut, and also remove artificial limbs and spectacles. Shoes are to be tied together with a small piece of string, handed to them by a Jewish boy of four. All valuable objects and money must be handed in at the 'Valuables' counter. No confirmations or receipts are given in exchange. Later, the women and young girls must go to the barber's, where their hair is cut off in two or three strokes. The hair disappears into large potato sacks 'to be used for something special, for submarines as insulation, etc.' This is the explanation given by the Unterscharfuehrer on duty.

“The march begins. Barbed wire to the right and to the left, and, at the end, two dozen Ukrainians with rifles. Heading the marchers is an unusually pretty girl - thus they approach. I am standing in front of the death chambers with Police Captain Wirth. Men, women, young girls, children, babies, amputees missing a leg - all naked, stark naked - they pass near us. An SS man stands in the corner telling the miserable people in the voice of a preacher: 'Nothing will happen to you. All you have to do is to breathe deeply. This inhalation is necessary because of infectious diseases. It is a good disinfectant.' When they ask about their fate, he explains: 'Of course, the men will have to work, to build roads and houses, but the women do not have to work. At most, if they wish, they may help around the house or in the kitchen.' In the heart of some of these doomed people, there is once again a spark of hope, enough to make them walk into the gas chambers without resistance. But most of them know: the smell carries the tidings of their fate.

“Then they go up the small steps and see the truth. Nursing mothers with babies in their arms, naked; many children of all ages, naked; they hesitate but enter the death chambers, most of them without uttering a word. They are being pushed by those behind them, and the whips of the SS men keep them on the move. A Jewess of about 40, her eyes aflame, swears that the blood of her children may be visited upon the heads of their murderers. Police Captain Wirth himself brings his whip down on her face five times, and she disappears into the gas chamber. Many pray, and others say: 'Who will cleanse us after death?' (Jewish ritual?) SS men cram the people into the chambers. Captain Wirth gives orders to 'fill up well.' The naked people stand on each other's feet, seven to eight hundred people in an area of twenty-five square metres or forty-five cubic metres. The doors are shut. Others of the same transport remain waiting, naked. I am told that they are naked in the winter as well. 'But they may die!' And the answer is

given: 'That is what they are here for.' At this moment, I grasp the meaning of the 'Heckenholt Foundation.'

"Heckenholt sets the diesel engine in motion, and the exhaust gases are used to kill the unfortunate people! SS Unterscharfuehrer Heckenholt exerts himself to get the diesel engine going, but it does not ignite. Captain Wirth comes up to him. One can see that he is scared because I am a witness to the mishap. Yes, I can see everything, and I wait. My stopwatch records everything. Fifty minutes, seventy minutes, no ignition. The people in the gas chambers wait in vain. We hear them cry. 'Like in a synagogue,' says SS Sturmbannfuehrer Professor Dr. Pfannenstiel, Professor of Hygiene at the University of Marburg on the Lahn, after listening through the wooden door. Captain Wirth is furious. He brings the whip down eleven or twelve times on the face of the Ukrainian who is helping Heckenholt. "After two hours and forty-nine minutes - my stopwatch recorded everything - the diesel engine began to function. Up to that moment, the people are alive in the four gas chambers, which are filled to capacity. Four times 750 people are living in four times forty- five cubic metres. Twenty-five minutes more pass. It is true, many have died. This can be seen through a small window by the light of the electric bulb inside the room. Twenty-eight minutes later, only a few are still alive. Finally, after thirty-two minutes, they are all dead. At the other end, Jewish labourers open the wooden doors...the dead stand erect like basalt columns, for there is no room to fall or to collapse. Even in death, one can recognize the families, holding hands. It is only with difficulty that they can be separated to make room in the chambers for the next transport...

From the report by the Polish Commission which investigated the Belzec camp (T/1316), it becomes clear that this camp was a place mainly for the extermination of Jews from south- eastern Poland, but Jews from Czechoslovakia, Austria, Romania, Hungary and Germany were also brought there for extermination (p. 13 of the Hebrew translation). The Commission estimated the number of those killed at Belzec as at least 600,000 (supra, p. 15).

125. Evidence about the Sobibor camp revealed a picture similar to that of the Treblinka and Belzec camps. Here, Jews from eastern Poland and from German-occupied territories in Soviet Russia, as well as from Czechslovakia, Slovakia, Austria and Germany were exterminated (evidence of Dov Freiberg, Session 64, Vol.III, pp. 1169; and the Polish Commission Report, T/1293, on page 78 of the Hebrew translation). This camp was liquidated after the revolt of the Jewish prisoners which broke out there in October 1943. The Polish Commission estimates the number of victims in this camp as at least 250,000 (supra, p. 7).

126. The Majdanek camp was a large concentration camp in Lublin, and also a place where Jews were exterminated by shooting and gassing. Witness Joseph Reznik gave evidence (Session 64, Vol. III, p.1160) about the mass slaughter in November 1943,

when Jews were shot in the “fifth field” at Majdanek. The Polish Commission Report (T/1289, p. 5 of the Hebrew translation) gives the number of Jews killed on one single day - 3 November 1943, as 18,000. Gas chambers were also set up at Majdanek (supra, pp. 3, 5). Jews from Poland, Slovakia, Czechoslovakia and from western and southern Europe were brought to this camp (supra, p. 16). The Commission estimates the total number of Jewish victims in Majdanek at 200,000 (p. 118). Majdanek camp had branches, one of which was Trawniki camp, already mentioned as the destination for deportations of Jews from Germany.

127. The Auschwitz-Birkenau camp was the largest of the extermination camps. Like Majdanek, this comprised a concentration camp where prisoners were worked to death, and had buildings for immediate physical extermination. We shall deal first with the second aspect of Auschwitz- Birkenau. On the extermination process, we shall quote from the notes made by the camp commander, Rudolf Hoess, when he was in Nuremberg Prison, and handed to us by the witness, Professor Gilbert, who received them from Hoess himself. Professor Gilbert was serving, at the time, as a psychologist in the American army, and it was his duty to observe the prisoners in Nuremberg Prison.

After Hoess had testified at Nuremberg that the Accused told him that over two million Jews were exterminated at Auschwitz (see T/1357, p. 2), Goering maintained in a conversation with Professor Gilbert that this was technically impossible (Session 35, Vol. III, p. 1005). Then Professor Gilbert proposed asking Hoess himself about this matter, and that was done. In answer to the question, Hoess made notes which are undoubtedly an authentic description (T/1170), and tally with what we have heard from witnesses in regard to Auschwitz. He explains that the freight trains carrying the Jews destined for extermination reached a special platform in the camp, near the extermination structures. The Accused's Section, which dispatched them, sent word in advance, and the trains were marked with certain figures and letters, to avoid their getting mixed up with transports of other detainees.

On the average, each train carried some 2,000 Jews. After the Jews were removed from the trains and counted (there were no lists of names), they all filed by two SS doctors who separated those fit for work from those who were unfit for work. The average number of those declared fit was only twenty-five per cent. The luggage of the Jews remained on the platform and was later brought to stores to be sorted out. The men amongst those unfit for work were separated from the women and children and taken to the nearest extermination installation that was empty. There they all had to undress in rooms which gave the impression of disinfecting chambers. Those who hesitated were made to hurry, so that those who came after them would not have to wait too long, and they were told to remember where they left their clothes, so that they could find them again after the shower.

From there, they were taken to the gas chamber, which was camouflaged as a washroom with showers, pipes and water taps. Once they were all inside the chamber, the door was locked, and from above, Zyklon `B' gas was let in through a special aperture. This vaporized immediately and did its work. Death came from thirteen to fifteen minutes

later. Half an hour later, the chamber was opened and the corpses were taken for burning, after the women's hair was cut off and gold teeth were removed.

There were five crematoria there, in which it was possible to burn up to ten thousand corpses per day. The ashes were ground into dust and were thrown into the Vistula river and washed away with the current. Hoess calculated that if the average number of bodies cremated daily for 27 months was 3,000, the number of people killed totalled about two and a half million. In his opinion, one and a half million, at most, were exterminated, but he adds that he has no evidence with which to prove his figure, and we shall refrain from deciding which is the correct figure.

As stated above, this horrifying description, given by the master butcher himself, in the language of a dry office report, has been fully confirmed by witnesses who testified before us (see the evidence of Yehuda Bakon, Session 68, Vol. 111, p. 1246-1248); the evidence of Nachum Hoch, Session 71, Vol. III, p. 1291-xxxx).

The Jews exterminated at Auschwitz-Birkenau were brought there from all over Europe, and mainly from central, western and southern Europe, and amongst them were Jews from the German Reich (including annexed territories in the East), from the Czech-Bohemian Protectorate, France, Belgium, Holland, Italy, Greece, Romania, Croatia, Hungary, Slovakia, and also the Generalgouvernement area (see the above note by Hoess, T/1170; and the evidence of Rajewski in the Hoess trial, T/1356).

128. Not all the Jews who were sent to Auschwitz were killed immediately. We have seen that on their arrival in the camp a “selection” was generally carried out, and those who appeared fit for work were put to hard labour until their strength gave out. And if a person did not die from hard labour or as a result of torture at the hands of the slavedrivers, then he was finally killed by gas, or by the injection of poison into his veins (T/90, p. 11). The witness Ze'ev Sapir described a selection carried out in Auschwitz thus (Session 53, Vol. III, p. 57):

> “A. I arrived there together with my parents.
>
> “Q. Did you also have brothers and a sister?
>
> “A. I arrived there with my four brothers and one sister.
>
> “Q. How old were your brothers?
>
> “A. One brother was born in 1929 - he was then 15; another brother was born in 1933 - he was then 11; my sister was born in 1936 - she was then 8; another brother was born in 1938 - he was then 6; and there was a little baby brother who was born in 1941 - he was then three 3.
>
> “Q. What happened to your parents and to all the brothers and sister whom you mentioned?

"A. After the selection had been made...the selection was very simple. A doctor stood there and, merely with a slight movement of his hand, people were to go to the right or to the left. My parents went to the right. I did not have time to take leave of them. I was amongst those sentenced who, for some reason, were destined to live; I went to the left.

"Q. And your brothers and sister?

"A. They all went with my parents.

"Q. Did you see them again, after this?

"A. No, I did not see them at all, after this."

Living Conditions in the Camps

129. We heard evidence about the reign of terror in Auschwitz in the shadow of the smoke going up from the crematoria, and in the many camps connected with Auschwitz. There was evidence, similar in content, about conditions in the Majdanek camp in the East and in the many labour and concentration camps scattered throughout eastern Europe. The system was uniform, with local variations, according to the sadistic inventiveness of the commanders and of the guards, who had the lives of the Jews at their mercy.

We shall quote witnesses on this subject, too, who suffered this regime with their own bodies. Here, too, the items we picked at random from the enormous amount of evidence brought before us will suffice to illustrate that the aim of this entire regime was to exterminate the Jew by making him work under inhuman conditions until the last drop of strength had been squeezed out of him. This applied also to the few who were kept alive in the extermination camps, to be employed for a time in the camp, until they, too, went the way of their exterminated brethren.

We heard the following about the Majdanek camp from Yisrael Gutman (Session 63, Vol. III, p. 1154):

"There stood very long huts, stables for horses, and this was where we were housed... There was a notice on the hut that it could hold fifty-two horses...we were about eight hundred people in this hut...the bunks we slept on were in three tiers. I imagine that the width of such a bunk was about 80 centimetres, perhaps 60... They made two people lied down in one bunk of this kind... Our daily work schedule was as follows: They made us get up at 4.30 for the morning roll- call... We carried stones from one place to another... The stones had to be placed in the folds of our clothes, and they used to check whether we had taken enough stones. The work had to be done at the double... They gave us wooden clogs for our feet - plain pieces of wood which had a strap of cloth one and a half or

> maybe one centimetre wide and that was a valued possession. And, on one of the early nights, one of these clogs was stolen from me, and at these roll-calls, at 4.30 in the morning - I had to stand with one foot bare - and the weather was extremely cold at the time. Some days later, I ran a high temperature."

Dr. Aharon Beilin describes the living conditions in the Auschwitz camp:

> "It was terribly overcrowded, sixteen of us lay on a ledge which was intended, more or less, for six people. We would only lie on our side, for if one of us wanted to turn over, everyone had to turn over. If someone got down during the night in order to relieve himself, he could not come back and had to lie down on the concrete floor of the block...it was too crowded, and he would annoy all the others because he would be disturbing their sleep. I remember a case where...a man got down and froze. This was during the winter and the block was not heated. The crowded condition also had an advantage - we kept each other warm. That man lay the whole night on the concrete floor - he had diarrhoea. I must point out that seventy per cent of the people in this block died in the course of these four weeks." (Session 69, Vol. III, p. 1256).

Nor did the persecutors spare the women. Judge Beisky gives evidence about the Plaszow camp in the suburbs of Cracow (Session 21, Vol. I, p. 353-354):

> "I don't know what the significance of a labour camp is. A labour camp is a different concept. For us, it was an extermination camp... There was work within the camp which was done solely by women and this was the task of dragging stones from the quarry which was below that new area being prepared for building a road. They used to load stones on to eight to ten waggons on the short railway tracks. At the end of the train, there were long ropes and along the ropes on both sides, women of the camp were harnessed. Nd in this way they would walk up a fairly steep road from the quarry below, for a distance of two and a half kilometres, up the hill, under all weather conditions for twelve hours. The most horrible thing was that the women were dressed like us, with wooden shoes which used to slip in the snow and the mud. And in this way one could visualize the picture which I am unable to describe - and I do not know whether others would be able to describe - how women walked for a whole night, stumbling and pulling these waggons."

And this is what Yitzhak Zuckerman said about forced labour of Jews from Warsaw in the Kampinos camp (Session 25, Vol. I, p. 409):

> "We were taken before dawn - a community of several hundred Jews, a weakened community...men who had not had enough to eat for a long time... When we arrived, we had to work on diverting rivers...and draining

> swamps. So we used to work for ten to twelve hours, standing in the water almost up to our necks. Afterwards we were taken back and had to sleep in the same clothes. It was Spring, cold, very cold. The same thing happened the next morning - the food was meagre - a beverage they called coffee, 15 or 20 deka of bread, and I need hardly add that, after two years of life in the Warsaw Ghetto, these Jews who had come to work populated the Kampinos cemetery already in the first few weeks - they died."

Witnesses described cruel corporal punishments - the "Stehbunker" (standing cell), a narrow cell, where a man could not turn around nor move his hands. People were kept standing there for ten to twelve hours and more, and when they emerged, tortured and dazed, they had to go back to work immediately. They related how a man was hanged in the presence of his comrades during roll-call, because of some potatoes he had taken to still his hunger. They told of endless tortures, such as marksmanship competitions among SS men, using live men as targets. Dov Freiberg says in evidence (Session 64, Vol. III, p. 1171-1172):

> "I can talk about one of the many days that passed. We were then working in the sorting camp [in Sobibor]. We began sorting out the piles that had been heaped up in the course of time. We finished taking out personal belongings from one of the sheds. Paul was then our commander. It so happened that, between the rafters and the roof, a torn umbrella had been left behind. Paul sent one of our boys to climb up and bring the umbrella down. It was seven to eight metres high - these were large sheds. The lad climbed up though the rafters, moving along on his hands. He was not agile enough, fell down and broke his limbs. For falling down, he received twenty-five strokes of the whip and Beri [Paul's dog] dealt with him. This appealed to Paul, and he went and called other Germans. I remember Oberscharfuehrer Michel, Schteufel. He called out to them: 'I have discovered parachutists amongst the Jews. Do you want to see?' They burst out laughing, and he began sending people up, one after the other, to go on to the rafters. I went over it twice - I was fairly agile; and whoever fell from fear...fell to the ground. When they fell to the ground, they were given murderous blows, and the dog bit them incessantly... After that someone invented something else...
>
> When the personal effects were piled up, there were a lot of mice. The order was given: 'Five men were to go outside, the others were to catch the mice. Everyone had to catch two mice; whoever failed to do so would be put to death'... They tied up the bottoms of the trousers of five men and we had to fill them with mice. The men were ordered to stand at attention. They could not stand that. They wriggled this way and that, and were given murderous blows. The Germans roared with laughter."

Let these examples suffice. Of course, more could be added from the stories of woe and suffering to which we listened, in order to prove that the reign of terror in the camps was bound to break a man's spirit, as well as his mental and physical powers of resistance.

130. We have listened to much evidence on living conditions in the ghettos in the East. From Lodz to Vilna, Kovno, Bialystok, Riga in the north, and Cracow, Przemysl, Kolomea and Lvov in the south, to the largest of them all, the Warsaw Ghetto, into which some half a million Jews were crammed.

The witness Zivia Lubetkin gave a description of the life of the Jews in this ghetto, which can apply to the other ghettos as well. She spoke of the economic decrees introduced by the Germans already during the first period, when they entered the city, and of later decrees affecting cultural and social life, including the prohibition of the opening of schools and libraries. She told of how synagogue services were forbidden and public bodies disbanded; and continues (Session 25, Vol. I, pp. 398-399):

> "I have already said previously that, in fact, we became the objects of anarchy. And if there had only been these laws and these restrictions, which, as we saw, were intended to depress us, degrade us, to bring us to the ignominy of starvation, we thought that, nevertheless, in spite of this, the Jews would somehow have been capable of circumventing the restrictions and carrying on with their lives. But life did not turn out this way, since, as I have already said, we had been placed beyond the law... I recall a day when I went out in the morning to attend to certain matters, and the streets were full of Jews hastening to their work, to seek a source of livelihood. Suddenly, a convoy of Germans passed by in a hurry, and for no reason at all began shooting in all directions, without distinction, and we were left lying prone on that day, at that hour, as I saw it, scores of people, women and children and men, without knowing for what or why. When this happened day after day, we realized that this was a way of frightening us, of terrorizing us, so that we should be afraid. And indeed, the Jews feared they would pay with their lives.
>
> "The second method, also beyond the scope of any law, was the kidnapping for forced labour. A person would leave his house in the morning, and would never know when he would return, and if he would return. Various formations of Germans were able to come in during the day, in the morning, or towards evening, to close a street, and with screams of such a nature, that it would be difficult today to describe them as actually being human voices, they would first of all collect people by shooting, and without regard of age or sex, seize people and take them off to work. Some of them, on their return, related that they had never engaged in any work... Again it was clear that this was a method of torture, of terror, of making our lives worthless."

The witness also gave evidence about the terrible sanitary conditions resulting from tremendous congestion, the typhus epidemic which broke out, and the hunger which struck down hundreds of victims daily.

Such were the conditions of Jewish life in the Warsaw Ghetto until the large “actions” which began in July 1942, when Jews were rounded up en masse and deported to Treblinka for extermination.

Dr. Meir Mark Dworzecki and Dr. Aharon Peretz, in their evidence, spoke about medical aspects of Jewish life in the ghetto. The rations given to the Jews had a value of 170- 200 calories per day, whereas a person who is not working needs 2,300 calories and a working man needs 3,000-5,000 calories. Dr. Dworzecki carried out research on this subject and found that, with these rations, all inhabitants of the Vilna Ghetto would starve to death within a month or two. This did not happen, because the ghetto residents succeeded in smuggling food into the ghetto, sufficient to provide 800-1,000 calories per soul per day. He further calculated that, even with the aid of smuggled food, the inmates of the Warsaw Ghetto would have died of starvation to the very last man within eight years.

A passage from the diary of Hans Frank is worth mentioning here (T/253, p. 44). It relates to a meeting of the heads of the Generalgouvernement in Cracow on 24 August 1942, when the subject on the agenda was “The absorption and feeding plan for the Generalgouvernement.” The directive of the Main Department for Nutrition and Agriculture stated there that,

> “The supply of necessities, previously geared to an estimated Jewish population of one million, now concerns only an estimated number of 300,000 Jews still working for the German cause as artisans or in other occupations...the remaining Jews, who number 1.2 million, will not receive any more means of sustenance ...”

Dr. Dworzecki also gave evidence about the diseases and epidemics raging in the ghettos, owing to poor hygienic conditions and malnutrition, scurvy, lice, typhus, tuberculosis and the swelling of the body in the last stages of starvation, as well as diarrhoea, which took toll of tens of thousands of victims in the ghettos and the concentration camps.

We heard evidence about children in the ghetto, about the dashing of a child's head against the pavement before his mother's eyes (evidence of Noah Zabludowicz, Session 21, Vol. I, pp. 335); about children torn from their mothers' arms and taken off for extermination; about the children in Lodz who were thrown from hospital balconies into trucks which came to round up the sick and the children, in order to deport them for extermination (evidence of Henryk Ross, Session 23, Vol. I, p. 380); about mass kidnapping of children in the “Children's Action” (evidence of Peretz, Session 28, Vol. I, p. 479); and about whole orphanages evacuated from Warsaw, and the children and their teachers taken to Treblinka (the evidence of Dr. Adolf Berman, Session 26, Vol. I, p. 426-427).

131. The extermination of the Jews was connected everywhere with the plunder of their property, down to their clothes and personal belongings which they brought with them on their way to extermination, and including all their other possessions. And finally, the murderers did not stop short of violating the corpses by removing the gold teeth from the victims' mouths.

Enormous quantities of clothing and personal belongings of the victims were accumulated in Auschwitz in stores known as “Canada.” The witness Gedalia Ben-Zvi, who worked in those stores, testified that twenty railway trucks, full of such articles, were sent every week from Auschwitz to Germany. This continued during his entire stay there of about one year (Session 71, Vol. III, pp. xxxx-xxxx).

The seventh count of the indictment lists the objects which were found in six “Canada” stores, found unburnt when the camp was liberated: 348,820 men's suits, 836,255 women's suits, and 38,000 pairs of men's shoes. These figures were taken from the official bulletin of the Polish Government Main Commission for the Investigation of Nazi Crimes (T/204, p. 44 in the English translation), which is a reliable description. And thus it was in the other extermination camps. Kalman Teigman, who worked on the sorting of the belongings of those killed in Treblinka, stated in evidence (Session 66, Vol. III, p. 1207):

> “[There was] an enormous quantity. There were actually heaps outside on the ground, several storeys high...clothes, personal possessions, children's toys, everything... medicines and instruments, everything.”

Exhibit T/1385 contains detailed directions about how to use the property plundered in the district of Lublin and in Auschwitz, from jewellery to spectacles, fountain pens, children's clothes and prams - nothing was forgotten. The document says that in future all these were to be referred to as “the property of thieves, receivers of stolen property and hoarders.”

In exhibit T/1387, a letter addressed to Himmler by the Economic-Administrative Head Office, the destination of each kind of article is stated. Money, jewellery, gold teeth, etc. are to go to the Reichsbank, to the account of the Economic-Administrative Head Office; articles of clothing are to be sold to public institutions in Germany; watches to SS men and submarine crews, etc. (see also T/1386, T/1387). Exhibit T/1389 is the final report by Globocnik, Commander of the SS and the Police in the Lublin area, dated 18 January 1944, on “the economic aspect of Reinhard Operation.” This was the name given to the extermination of Polish Jewry in the camps of the Lublin area.

We shall quote from this report only the final figures for textiles, plundered from the victims: 1901 railway trucks of clothing, underwear, bed feathers and rags, valued at 26 million marks; more goods of the same kind in stores were valued at 20 million marks. Industrial property (machines, raw materials, etc.) was handed over to an institution called OSTI (Ostindustrie - Industries of the East), set up by the SS for the management

and exploitation of this booty (see also the declaration by Pohl, Chief of the Economic-Administrative Head Office - T/1384).

The Activities of the Accused in the East 132. We shall now deal with the question whether, and to what extent, it has been proved that the Accused was active in connection with all those crimes committed by the Germans in eastern Europe. Certainly, such activity has been proved in regard to victims from the other countries in Europe who had been rounded up there and deported to the East by the Accused and his subordinates, to be killed there immediately or sometime later - for instance, as regards the Stettin Jews who were taken to the vicinity of Lublin and there were mixed with the local population, later to meet the same fate as their brethren. Certainly the Accused's activities were amongst the causes of their death and their suffering before their death. The same applies to the Jews sent by the Accused from the Reich to the Lodz Ghetto, to Nebe and to Rasch, to Riga, Minsk, etc., and above all, to the masses of Jews he sent to Auschwitz and to extermination camps in the Generalgouvernement area.

But what about the crimes perpetrated against the Jews of the East, in their home towns - their subjection to inhuman living conditions in camps and in ghettos, the plunder of their property, and their murder?

To give a precise answer to this question, attention must be paid to the way the Germans divided the eastern territories which fell into their hands during the War years. They annexed to the Reich vast areas of western and northern Poland; the areas previously known as the Polish Corridor, namely western Prussia, the Poznan district and additional parts of western Poland, including Lodz (Litzmannstadt), which were known as the Warthe district (Warthegau); and all the area which was Upper Silesia before World War I. But, in addition, they also annexed nearby stretches in western Poland, so that Auschwitz itself came within the Reich; and parts of Poland to the north, bordering on East Prussia and including Zichenau (Ciechanow) and Bialystok and district. In what was left of Poland up to the demarcation line with Soviet Russia in the East, the Generalgouvernement district was set up, under the rule of Hans Frank, who was given extensive administrative autonomy.

After additional conquests, which came with the outbreak of the war with Russia, eastern Galicia and Lvov were annexed to the Generalgouvernement area. As for the remaining territories conquered in the East, to the extent that they were transferred from military to civilian rule, Rosenberg was appointed as Reich Minister for the Eastern Occupied Territories. His subordinates were Lohse in the north, in charge of the Reich Ostland Administration (principally in the Baltic countries), and Koch in the south, in charge of the Reich Ukrainian Administration.

133. As to the Warthe [Warthegau] district, the Accused claims that there special orders were given for the Solution of the Jewish Question, and that the authorities in that region, headed by the Reich Governor, Greiser, dealt with the matter independently, without the participation of the Accused's Section, IVB4.

We do not accept this argument. It is possible that Greiser showed activity and enthusiasm of his own in bringing about the Final Solution, but one cannot conclude from this that the Warthe district was outside the jurisdiction of the Accused's Section in the RSHA. We have already spoken about deportations during the year 1939-1940 from the areas annexed to the Reich in the East and including the Warthe district, and have shown that the Accused, through his Section IVB4, directed these deportations by virtue of his central authority.

The Accused's authority in the Warthe district is confirmed by him personally in his Statement to Superintendent Less (T/37, p. 3083):

> "Q. If so, do I understand you correctly that the district offices of the State Police (Stapoleitstellen) in the Warthe area were also subordinate to the RSHA?
>
> "A. Yes, yes, this is self-understood.
>
> "Q. And as far as Jewish matters were concerned, were these also subject to the authority of your Section?
>
> "A. This is quite clear, yes."

As to the Lodz Ghetto - the second largest of all the ghettos, also situated in the Warthe district - we have mentioned Kaltenbrunner's cable dated 30 June 1943 (from the files of the Duesseldorf Gestapo). He there gives notice of a visit to be paid by the Accused to the Lodz Ghetto in connection with the deportation of Jews from there. Then, at a later stage, it seems at the beginning of 1944, the Accused's name appears as Kaltenbrunner's representative at talks about liquidating the Lodz Ghetto and turning it into a concentration camp, to be handed over to the Economic- Administrative Head Office (T/247).

In another document (T/248) also, we read that the Accused took part in the preparation of a report on economic enterprises in the Lodz Ghetto, together with Horn, the manager of OSTI. From these documents, we learn that the Accused held sway over the affairs of the Lodz Ghetto, since he was the person handling Jewish affairs on behalf of the RSHA.

134. As to other areas annexed to the Reich in the East , the Accused himself admits that his powers there were not different from those in the Old Reich. He confirms the contents of the statement made by Friedel (T/293, pp. 16, 21), the man in charge of the ghetto in Bialystok, that the evacuation of the Jews from the Bialystok Ghetto to Treblinka in February 1943 was carried out by Guenther, the Accused's permanent deputy. This is what he says on the subject (Session 100, Vol. IV, p.xxxx9):

> "Bialystok was within the Reich territory, that is the territories in the East annexed to the Reich. As far as I know, the order for deportation in regard

> to all those Eastern Occupied Territories were given by Himmler, and Section IVB4 had to deal with and prepare the action."

(Deportations carried out by Guenther are also mentioned by the witness Karasik, Session 28, Vol. I, p. 468-473). The deportation of 30,000 Jews from Bialystok is also mentioned in Mueller's cable of 16 December 1942, bearing the reference number of the Accused's Section (T/292).

Similarly, in relation to Ciechanow: The Accused transmits to the local Gestapo station Himmler's order for the execution by hanging of seven Jews "in the presence of members of their race." The report on the carrying out of these hangings is to be sent to the Accused's Section (T/200; see also T/201).

The Accused's Activities in the Generalgouvernement Area

135. Were the Accused and his Section active against the Jewish inhabitants of the Generalgouvernement, and to what extent? We do not include in this question the actual acts of extermination in the camps in the East, for these we shall discuss separately later. The Accused alleges that within the Generalgouvernement matters were run according to special orders from Himmler, of which he, the Accused, had no knowledge. This is not an easy question, for, on the one hand, many special factors are connected with it - factors which did not exist in other countries - whilst, on the other hand, the evidence brought before us in connection with the Generalgouvernement area and the measures adopted against the millions of Jews who lived there at the time of the Germans' entry into the area is rather scanty.

Amongst the factors mentioned, the one to be stressed particularly is the very existence of autonomous rule in that area, with a government of its own, headed by Frank. This in itself was an unfailing source of friction between Frank, who jealously guarded his prerogatives as all-powerful ruler in the area entrusted to him, and the Reich authorities, who strove to centralize power in their own hands. This competition was especially noticeable between Frank and Himmler and his representative in the Generalgouvernement area, Krueger, Senior commander of the SS and the Police, who served at the same time also as State Secretary for Security Affairs in the Frank government.

In Frank's diary (T/253), we read his statement to his government on 16 December 1941:

> "...with regard to the course of action against the Jews, we act within the general framework of the Reich..." (p. 22)

but on the other hand, on 21 September 1942, he still emphasized:

> "...all the main departments, having the interest of the Reich at heart, must pay attention to the fact that the sole responsibility for what is happening in this area, in the land of the Generalgouvernement, has not been denied

> to us by a single person to date...to my regret, I notice here and there perhaps a cautious trend in another direction. They think that now perhaps it is possible, gradually, to relax the complete and close links which exist with the Generalgouvernement, by a closer relationship with central authorities in the Reich... May I therefore remind you, Messrs. Directors of the main departments, as well as the gentlemen from the State Secretariat for Security Matters again and again, that in the unitary and complete administration of this area there has not been the slightest change." (p. 27)

At another meeting, on 25 January 1943, he protests strongly at the fact that Krueger executed Himmler's order without informing him (Frank). He adds that this is a typcial example of the way police actions are executed in accordance with the Reichsfuehrer's order, "about which I have had no knowledge, in contradiction to the Fuehrer's order, and to which I have not given my consent" (p. 31). Yet, Frank explains that the responsibility for the extermination of the Jews does not lie with the government of the Generalgouvernement area, since "the order to exterminate the Jews came from higher authorities" (p. 29).

Perhaps, in order to overcome Frank's isolationist aspirations, it was necessary for Himmler from time to time to exert his authority by issuing orders for police actions against Jews directly to his representative Krueger, and not via Heydrich and the RSHA. Krueger, for his part, would act through the police and SS commanders, such as Globocnik in the Lublin district and Katzmann in Galicia, neither of whom belonged to the RSHA establishment.

An important fact pointing in this direction is that the final report of 30 June 1943 on "The Solution of the Jewish Question in Galicia," which states that 434,329 Jews had been exterminated (T/215), came from Katzmann and was submitted by him to Krueger. This proves that these actions were carried out in accordance with orders transmitted in the line of command from Himmler to Krueger to Katzmann, and we have no evidence of RSHA participation through a line of command from Himmler to Heydrich (Eichmann) to the BdS, Cracow.

As against this, it should be said that, at any rate as from the Wannsee Conference, Heydrich's general authority in connection with the Final Solution was recognized, without territorial limitations. The representative of the Generalgouvernement, State Secretary Buehler, who participated in the conference, also fully admitted this authority when saying that:

> "The centralizing authority for the Solution of the Jewish Question in the Generalgouvernement area lies in the hands of the Head of the Security Police and the SD, and his actions are supported by the Generalgouvernement authorities." (T/185, p. 15)

Buehler was invited to the Wannsee Conference, in order to clarify this very question (see T/182), and as already stated, Heydrich won the day, when the representative of "the opponent" surrendered without a fight and admitted his authority.

136. There is no doubt that, side by side with the special orders sent from time to time to the Generalgouvernement directly from Himmler, and perhaps also from Hitler's Chancellery, there existed the authority of the RSHA, and therefore also the authority of the Accused, concerning the Generalgouvernement area. This authority could be exercised through the Commander of the Security Police and the SD (BdS) in the Generalgouvernement and its subordinate local police authorities.

Perhaps in practice a large measure of freedom of action was left in the hands of the local police, if only because of the large scale of the actions perpetrated there against Jews. But the Accused admits the fact that such an authority was possessed by the RSHA, when asked by the Superintendent Less if he had prepared orders to the Security Police in Poland as well, based on Heydrich's directives of 21 September 1939 (these are the directives concerning the concentration of Jews in towns etc., mentioned above):

> "If during the course of time there was any ambiguity, then of course the BdS was permitted to turn to the RSHA with a request for an explanation, a directive or a decision; and then the official in charge...gave the suitable information." (T/37, p. 3148)

Elsewhere, he explains that this authority was exercised only in regard to "matters beyond the horizon of the Generalgouvernement" (Session 99, Vol. IV, p. xxxx20), and in his Statement to the police, he describes these matters, with which he himself was authorized to deal, as of national importance to the Reich (reichswichtig) (T/37, p. 3128) - for instance the treatment of Jews of foreign nationality in the area of the Generalgouvernement.

We have before us the Accused's letter dated 18 February 1942 (T/267), in which he informs the Foreign Ministry that the inhabitants of the Warsaw Ghetto are to be immediately separated from the rest of the population, and he therefore proposes to treat Jews, nationals of neutral countries, in the same say as Jewish ex-Polish nationals. In a memorandum to the German Foreign Ministry dated April 1942 (T/268), we read that the Accused, as representative of the Head of the Security Police and the SD, stated that in future foreign nationals would be included in the measures taken by the Security Police within the Warsaw Ghetto to ensure public order, for instance, to halt epidemics (in other words, the extermination of these Jews).

Here, it is to be remembered that the large "actions" in the Warsaw Ghetto began in July 1942. It transpires from a later document (T/270 dated 3.9.42) that the Foreign Ministry supported the attitude of the Accused in this matter. Here, therefore, the Accused appears as a decision-maker on behalf of the RSHA in matters concerning the Warsaw Ghetto, and he certainly had authority to carry out his decisions. This is proof of the fact that he

implemented the authority which was granted to him as a result of the Wannsee Conference.

We also refer to document T/310, signed by Kaltenbrunner, dated 5 March 1943, with the designation of the Accused's Section. This document is based on a draft prepared by the Accused and his assistant Hunsche (T/271), and its contents are once again instructions that the measures taken are to be applied also against those Jews of foreign nationality of certain countries who live in the Generalgouvernement area and in occupied areas in the East. The letter is also addressed to the Commander of the Security Police and the SD in the Generalgouvernement, and notice of it is given to the Senior Commander of the SS and the Police, Krueger (see also T/784, a letter dated 23 September 1943, on the same subject, signed by Mueller and also bearing the reference IVB4).

But the Accused's Section deals not only with general instructions in the Generalgouvernement area, but also with individual cases. We have documents before us concerning a number of cases in which Section IVB4 occupied itself with cases of Jews of foreign nationality in the Generalgouvernement area, in answer to questions referred to the RSHA by the German Foreign Ministry. For instance, the Accused's Section orders the transfer of a Jew of foreign nationality and his family from the Warsaw Ghetto to a concentration camp (T/355).

The Section deals with a request by the Argentine Embassy to prevent the transfer of one of its nationals living in the Generalgouvernement area to a concentration camp. This last-mentioned case, of Gershon Willner, is worthy of mention also for another reason, for the cynical language used by the Accused when, on 9 July 1942, he reports that this Jew died on 12 April 1942 of weakness of the heart muscle “in spite of large quantities of tonics administered to him” (T/437).

The Argentine Embassy applied for the first time on 17 April 1942 (T/346). On 4 June 1942, the Commander of the Security Police in Cracow (KdS) sent word that they are about to transfer Willner to Auschwitz. It was proved by the evidence of (Gershon Willner's brother-in-law) Aaron Silbermann (Session 30, Vol. I, p. 525), that Willner was a man in good health who never had any heart trouble, and that he died in Auschwitz. Notification of his death was received by his family on 25 June 1942. A copy of a letter from the representative of the Foreign Ministry attached to the Governor General of Cracow was submitted to us (T/346). From this letter it appears that Willner was still alive early in June 1942.

It is clear that the Accused's report about the date and cause of the death or Willner was false, and that the man died an unnatural death. The excuse given by the Accused in his evidence (Session 81, Vol. IV, p. xxxx5), that all he did was to pass on a message which he received from Cracow, is not plausible, because undoubtedly he knew the value of the tale about “administration of tonics,” to which he put his signature.

Exhibits T/356, T/357 testify to another case of a Jew of foreign nationality, an inhabitant of the Generalgouvernement area, who was sent with his family to a concentration camp, according to information sent to the Foreign Ministry by the Accused's Section.

We also have before us a letter (T/266) dated 17 September 1942, signed by Mueller, marked IVB4, wherein Mueller informs the head of Himmler's personal staff that he has ordered the issue of directives to the Commander of the Security Police and the SD in Cracow that Jews employed by the Beskides Oil Company are to be evacuated only to the extent that replacements are available. It appears that these orders were given by the Accused's Section, and hence this is further confirmation that this Section was authorized to decide the fate of Jews in the Generalgouvernement area whenever the necessity for such special instructions arose. Mueller's letter gives the impression that it was written in the ordinary course of business, and not as an isolated, unusual case.

137. Evidence was also submitted in connection with the transport of Jews of the Generalgouvernement area by rail to extermination camps. This included an exchange of letters between Ganzenmueller, the State Secretary in the German Ministry of Transport, and Wolff, the head of Himmler's personal staff. Ganzenmueller informs Wolff on 28 July 1942 about a timetable of trains from Warsaw to Treblinka (one train per day, 5,000 Jews each) and from Przemysl to Belzec (one train per week, each 5,000 Jews).

He adds that the running of these trains was decided upon together with the Commander of the Security Police in Cracow, and that information was sent to Globocnik (T/251). To this, Wolff replies on 13 August 1942, expressing joy - also in the name of Himmler - at the fact that a train leaves daily with 5,000 “of the Chosen People” to Treblinka, and requests the assistance of Ganzenmueller in the matter also in future (T/252). As the Accused himself testifies (Session 100, Vol. IV, p. xxxx17 and top of p. 18), this was after the death of Heydrich, when Himmler himself was acting as Head of the Security Police and the SD. It is possible that on this occasion Himmler acted in this capacity, and that therefore this matter also passed through the RSHA channels.

On the other hand, we have before us the minutes of a conference held in Berlin on 26 and 28 September 1942, about the evacuation of 600,000 Jews within the Generalgouvernement area, and 200,000 Romanian Jews to the Generalgouvernement area (T/1284). There is no list of those who participated in the conference. It concerns urgent transports proposed by the Head of the Security Police and the SD between Warsaw and Treblinka, and between Lemberg and Belzec.

In his Statement to Superintendent Less, the Accused says (T/37, p. 3545) that possibly Novak, one of his own Section, took part in this conference, but almost in the same breath he contends (pp. 3540, 3544) that his Section never dealt with deportations within the Generalgouvernement area, and in his evidence in Court he reiterates this more strongly (Session 100, Vol. IV, p. xxxx15 et seq.). But we do not believe this denial, for in our opinion the fact that the Head of the Security Police and of the SD was concerned with the matter is decisive, and therefore it is logical that someone from the Accused's

Section - which was the Section authorized to deal with Jewish affairs - participated at this meeting on behalf of the RSHA.

The Accused was right in assuming, as he did in his Statement to Superintendent Less, that the suitable man for this was Novak, the expert in matters of transport in Section IVB4. It is to be noted that negotiations on general policy in this matter took place in Berlin, and not in Cracow, which was the seat of the Eastern Railways management, and that questions of transportation within the Generalgouvernement area were discussed at one and the same conference with matters of transport from Romania, which were, without dispute, within the competence of the Accused's Section.

The Commander of the Security Police in Cracow, mentioned in letter T/251, is also a member of the RSHA. The allegation by the Accused, in his Statement to Superintendent Less, that such matters of transport were within the scope of Globocnik's authority, is unfounded. In T/25, we see that Globocnik only received notice of matters which had been agreed upon by others, and naturally such notice had to be given to him, as he was receiving the transports of Jews in the extermination camps.

Novak himself, in his evidence for the Defence taken for his trial in Vienna (p. 8) admits that he did negotiate with the management of Eastern Railways, although he denies contact with the authorities of the Generalgouvernement.

Ludwig Rajewski, who gave evidence at the trial of Hoess in Poland, worked in the Registry Office in Auschwitz. In his evidence (T/1356), he said that Jews from the Generalgouvernement area also arrived at Auschwitz and mentions these transports together with transports from Bialystok. This is an important fact, since the Accused's Section undoubtedly dealt with the Jews of Bialystok (see supra, para. 134). Here lies the proof that the Accused's Section had a hand also in the deportation of Jews from the Generalgouvernement area to Auschwitz. From the evidence of Mrs. Rivka Kuper (Session 26, Vol. I, pp. 431-433), we also learn about the deportation of Jews from the Generalgouvernement area (Cracow) to Auschwitz.

To conclude this chapter, we find that the Accused and his Section were also authorized to deal with matters concerning the Final Solution of the Jewish Question within the area of the Generalgouvernement, and that according to the evidence they were also active, in fact, in this matter from time to time, although it would be true to say that the Accused's main activity was not here but elsewhere, whilst in the Generalgouvernement area there existed other channels of command, wherein the Accused had no part.

138. Also in regard to the activity of the Accused concerning Jews in the Eastern Occupied Territories, the Wannsee Conference is a safe point of reference, for there the representative of the Rosenberg ministry, set up to run these areas, was also present. Since there Heydrich's authority received recognition by all those present, without territorial limits, it obviously applied to those areas as well, and with it the authority of the Accused as Referent for the Final Solution of the Jewish Question.

Heydrich himself jealously guarded his authority in the Eastern Territories as is seen from his letter (T/301), in which he demands that his representatives be given the right to participate in the decision as to who is a Jew, for the purposes of applying police measures in those areas (see also T/299; N/13). The decisive proof of the activity of the Accused in the Eastern Occupied Territories is to be found in the matter of the "Brown File." These were detailed directives drafted by the Ministry for the Eastern Occupied Territories, to arrange certain matters connected with the administration of these territories (T/296). It seems that these directives were prepared separately for the Reich Ostland Administration (the Baltic countries) and for the Administration of the Ukraine. The Ukrainian draft was passed on to other authorities concerned, amongst them Himmler, for them to state their point of view.

The approach to Himmler is explained by the fact that on 17 July 1941 Hitler decided that police security measures in the Eastern Occupied Territories should be in the hands of Himmler, as Reichsfuehrer-SS and Head of the German Police (T/176). Heydrich, in Himmler's name, replies on 10 January 1942 with certain reservations as to the contents of the draft, and in connection with the directives in Jewish affairs he writes:

> "Since the Central Administration for Jewish Affairs is in the hands of the police, I suggest printing the directives on matters of Jewish questions, as laid down in the version of the Head Office for Reich Security (official in charge: SS Sturmbannfuehrer Eichmann)."

Exhibit T/297, which is before us, is a copy of a part of Heydrich's letter, the part dealing with Jewish questions. It seems that the letter was divided up at the Ministry for the Eastern Occupied Territories, and each department received the part of concern to it. (Dr. Wetzel, the man who dealt with this subject in the ministry, received the part concerning the Jews).

In his letter, Heydrich referred to the previous version of the RSHA. In fact, the language used in the letter shows that earlier discussions had already been held in connection with the Brown File for Ostland, and it seems that the RSHA had already drafted its proposals in regard to the Ostland. Further to this letter, Bilfinger, of Group IIA (Organization and Law) of the RSHA, sends to Wetzel the draft directives in connection with the Jewish Question, as approved by Heydrich (T/298). The letter is marked with the reference number SIIA2, the Section of the RSHA dealing with matters of legislation (see T/99).

The directives themselves attached to the letter do not bear a signature or a file number, and they have a handwritten note at the top: "New draft of December 1941." It appears that these were the directives which had been prepared prior to Heydrich's letter of 10 January 1942 for the Brown File of Ostland, and they were repeated for the Ukrainian file. The lack of any reference and signature is understandable, because this was only a copy of former directives.

The Accused maintained categorically that he had had no part in the preparation of these directives. It is his assumption that they were prepared in Department II of the RSHA

(Session 100, Vol. IV, pp. xxxx2-8). This version is immediately contradicted by Heydrich's unequivocable statement, included in letter T/297, that the Accused is the official in charge on behalf of the RSHA to draft directives concerning Jewish affairs. Section IIA 2 in the RSHA might have acted to centralize all material in connection with the formal drafting for the Brown File, but it stands to reason that the legal department did not lay down the substantive contents of the directives concerned with police action. This is within the scope of the authority of the official dealing with the matter itself, that is the Accused, as was stated by Heydrich.

We, therefore, find that the directives attached to the letter T/298 were composed by the Accused or in his Section. The general policy of these directives testifies to exceeding harshness in the treatment of Jews, as compared with the policy outlined in the proposals by the Ministry for the Eastern Occupied Territories. Whilst the ministry proposed that, in taking measures against the Jews, economic considerations should come first, the Accused's directives insist that no such considerations should be allowed to interfere with the implementation of the Final Solution, meaning extermination (pp. 1, 3). To the list of Jews who came to these areas from other places, the Accused adds Jews from the Reich (sent to the East on his initiative) (supra, pp. 1, 2). The ministry proposed a gradual ousting of Jews from the cultural activities of the rest of the population; the Accused decides: “Cultural activity by Jews amongst the rest of the population is out of the question.”

Another grave matter, viz., the introduction of extermination by gas in the Eastern Occupied Territories will be dealt with in detail in its turn. Here, it is to be observed that Wetzel, who prepared the drafts of the letters in the matter (T/308), emphasizes that the Accused, as the RSHA official dealing with Jewish affairs, expressed his consent to the introduction of the new method for the extermination of Jews. This is further proof of the fact that the Accused's scope of activity also included the said areas in the East.

The Accused also dealt with the matter of Jews of foreign nationality in these areas, as he did in the Generalgouvernement area. The instructions included in the above-mentioned letters T/310 and T/784, were also addressed to the Commanders of the Security Police and the SD in Ostland and in the Ukraine. He also dealt with individual cases of such foreign nationals. A long struggle developed for the life of the Jewess Jenny Cozzi, of Italian nationality, who lived in the Riga Ghetto (T/348-T/353). Influential Italian circles intervened on her behalf, but to no avail: The chapter was sealed with a short and ominous statement by the Accused, dated 25 September 1943 (T/354), saying that,

> “In view of the changes which, in the meantime, have taken place in the political situation in Italy” (the reference is to the Badoglio coup) “I refrain from going any further into the matter. I have given instructions that the Jewess Cozzi should be housed, for the time being, in the Riga concentration camp.”

139. A further question arises with regard to the Accused's activities in the East, as to whether he was directly connected with the murders committed by the Operations Units,

apart from the handing over of Jews to Nebe and Rasch, of whom we have already spoken. The Accused denied the existence of any connection of this kind (T/37, p. 1119).

At the same time, he admitted that he was present at a gathering of Operations Units' men on the eve of the war against Russia, and, as will appear later (Section 163), the Operations Units' task in regard to the extermination of the Jews was discussed there. Here, therefore, one can see the first contact between the Accused and the Operations Units. This contact continued through the receipt of reports on the activities of the Operations Units from June 1941 onwards. At a date not later than September 1941, the Accused himself visited Minsk, on orders from Mueller, and saw an Operations Unit in action at the pits (Section 120 and Section 166 infra), and on his return he reported to Mueller on what he had seen.

We know from Ohlendorf's sworn affidavit (T/312) that the Operations Units were under the command of Heydrich, in his capacity as head of the RSHA, and the question arises as to whether the line of command between Heydrich and the commanders of the Operations Units passed through the Accused.

On this point, evidence against the Accused was given by Justice Musmanno, who testified to conversations which he had at the time in Nuremberg with Schellenberg, of the RSHA, in the course of his investigations about Hitler's final fate. He heard from Schellenberg that the latter had been present, together with the Accused, at the above gathering, when Heydrich and Streckenbach, head of the Personnel Department of the RSHA, gave instructions to the men of the Operations Units (Session 39, Vol. II, pp. 712-713). Schellenberg added that the Accused personally supervised the activities of the Operations Units in regard to the extermination of Jews and controlled these operations (supra, pp. 714).

This last statement by Schellenberg with regard to the Accused's duties in relation to the Operations Units, is a far-reaching one, but it was made in very general language by a man who was a war criminal and was himself implicated in the activities of the Operations Units, and we do not have any other corroborative evidence of this statement. Accordingly, we refrain, out of caution, from basing findings of fact upon this version of Schellenberg's.

Additional evidence against the Accused is to be found in the evidence of Noske at the Einsatzgruppen trial (T/307). Noske was himself a unit commander in the Operations Units and worked from June 1942 onwards in the RSHA, collecting reports from the East. He gave evidence that, from the spring of 1942, Operations Units' reports on the killing of Jews were transmitted directly to the Accused in his Section IVB4, where these reports were collected. In our view, this statement provides a sufficient basis for drawing conclusions, especially as the Accused himself has not disputed the accuracy of Noske's testimony. This matter is dealt with in his Statement T/37, pp. 2950-2963, and though the Accused alleges there that he does not remember that his Section collected the reports on the slaughter of Jews, his final reaction to Noske's description is (supra, at p. 2963): “...I must say that it [the description] is substantially correct - that I cannot deny.”

On p. 2962 supra, he also admits that it is obvious that the Section, which collected the reports, also prepared summaries of them, for the use of its superiors.

Accordingly, we find that the Accused was in contact with the Operations Units from the commencement of their activities. From the spring of 1942, the Accused began to be active in connection with the issue of operational directives to these Groups, by collecting the material relating to the extermination of Jews and preparing summaries thereof. The preparation of summaries was obviously intended to be of assistance to those who had authority from time to time to decide upon the continuation of the activities of the Operations Units.

At a later date, we find further activity on the part of the Accused, with regard to the Operations Units. The reference is to the letter T/310, dated 5 March 1943, which we have already mentioned in discussing the Generalgouvernement area. This letter, which referred, as it will be remembered, to the fate of Jews of foreign nationality, is also addressed to Operations Units B and D. This is proof that at that time the Accused's Section also dealt with transmitting instructions to the Operations Units. The instructions in letter T/784, dated 23 September 1943, on the same subject, are also addressed, inter alia, to the commander of Operations Unit B.

140. In considering the whole question of the Accused's activity in the East, we have not taken into account the various rumours testified to by some of the witnesses who declared that they had heard of the Accused as the person responsible for what was happening in the ghettos. With regard to this evidence, we have not found it appropriate to use our power under Section 15 of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, since it is not cle

ar to us in what way those rumours reached the witnesses. 141. Has the Accused's activity in the actual extermination operations, as distinct from his activities in rounding up Jews and deporting them to the places of extermination, been proved, and to what extent? In our view, this question is only of secondary importance, because the legal and moral responsibility of a person who delivers the victim to his death is, in our opinion, no less, and maybe even greater, than the liability of the one who does the victim to death. But the question has been raised, and it is our duty to discuss it. We shall therefore consider separately the camps in the East (Treblinka, Majdanek, Sobibor, Belzec) and Auschwitz.

With regard to the extermination camps in the East, it appears that they were set up by the SS and Police Commander in the Lublin region, Globocnik, under a special order which he received direct from Himmler, or Hitler himself, in the second half of 1941. Later, after Heydrich's death, the extermination operation in these camps and the plunder of the victims' property there was known as “Operation Reinhard,” from Heydrich's first name. These camps were first put into operation at various dates in the first half of 1942. They were actually set functioning by Kriminalrat Christian Wirth, who had already specialized in the killing by gas of human beings, by exterminating mentally sick persons. This is the same Wirth who was mentioned by Gerstein in his statement about his visit to the Belzec camp, quoted above. Apparently, Wirth used to receive his orders

directly from Hitler's Chancellery (uehrerkanzlei) which had posted him for duty to Globocnik.

These facts were established before us, inter alia, by the affidavit of Morgen in the Trial of the Major War Criminals at Nuremberg (N/95). We should not be inclined to base our findings solely upon this affidavit, without further corroboration, because Morgen's purpose was to represent the whole of the SS as having had nothing to do with the extermination operations, and this tendency of his was likely to colour the statement in question as well. We did, however, find confirmation of the fact that special duties were delegated to Wirth by the Fuehrer's Chancellery in an exhibit, T/1295, dated 19 May 1943, which is a recommendation for the promotion of Wirth, put forward jointly by Buehler (of Hitler's Chancellery) and Globocnik, and not on behalf of the RSHA.

Again, in a letter from Brack, also of Hitler's Chancellery (exhibit T/1375, dated 23.6.42), we read that this office placed some of its personnel at the disposal of Globocnik "for carrying out his special task," which was called "Action Against the Jews" (Judenaktion).

The affidavit of Pohl, who was in charge of the Economic- Administrative Head Office, must also be mentioned. He says that Himmler charged Globocnik with the task of "implementing the programme known as 'Operation Reinhard' against the Jews" (T/1348, Section 2).

It should be pointed out that also in the seventh count of the indictment in this trial, which deals with the plunder of property, the name of Globocnik is mentioned in connection with "Operation Reinhard" (supra, Section 5), though it is not clear if the reference there was only to the economic aspect of the operation.

Further proof that it was Globocnik who administered the whole of "Operation Reinhard" is found in the final report which he submitted to Himmler (exhibit T/1389). In a report dated 4 November 1943, he speaks of "`Operation Reinhard' which was conducted in the Generalgouvernement area," and from a report of 10 January 1944 it is clear that "Operation Reinhard" also included the extermination which was referred to there as Aussiedlung which, it was stated, had been completed.

The deportation of Jews to Globcnik's camps did not have to be reported to Oranienburg, i.e. to Group D of the Economic- Administrative Head Office, which was responsible for the administration of the concentration camps as from March 1942 (see T/1278). For example, from exhibit T/1399 - directives issued by the Accused's Section for the evacuation of Jews to Izbica, near Lublin - it appears that the departure of the transport had to be reported to the Accused's Section, to the BdS in Cracow, and to Globocnik, and the arrival of the transports had to be reported solely to the Accused's Section (see also T/737).

These extermination camps were at no time under the supervision of the Economic-Administrative Head Office. Nor, until October 1943, when the Economic-Administrative Head Office took over the responsibility for the remaining labour camps,

was there any connection of this kind with regard to the labour camps in the Lublin area. In our opinion, the fact that Globocnik's camps were independent of the Economic-Administrative Head Office, is irrelevant to the question as to whether there was any direct administrative connection between these camps and the RSHA and the Accused's Section.

So far, the Accused's contention that the extermination in the camps in the East was carried out in accordance with special orders in which he had no part, is borne out; at any rate, it is not contradicted. It is unnecessary to emphasize again that we are now discussing what happened within the camps. The Accused's responsibility for dispatching Jews to these camps is, of course, a separate matter which is, in fact, not in dispute.

142. The question as to whether the Accused also participated in what was happening inside the camps becomes complicated because of his statements that from time to time he used to visit Globocnik and also saw the Treblinka camp under construction in the autumn of 1941 (apparently in the presence of Wirth himself), and again later when it was functioning. He describes the purpose of his visits to the East as being purely to collect information for Heydrich and Mueller, who were interested in Globocnik's activities. We find it difficult to believe that they would send the Accused on such a journey merely for such a purpose, but in the absence of further proof, we are unable to draw further conclusions from this fact by itself.

But this is not all, because he admits that on two occasions he brought Globocnik letters, each containing authority to kill 250,000 Jews in his camps. Further, he says in the Statement T/37, pp. 170-171, that it was he who brought Globocnik the news that the Fuehrer had decided upon the physical destruction of the Jews. In his testimony, he retracts somewhat and says that Globocnik already knew of the Fuehrer's decision (Session 96, Vol. Iv, pp. xxxx25-26). However, the question of the letters still remains. The Accused contends that these were retrospective authorizations, each time referring to the killing of Jews who had already been killed, and that these authorizations were given to Globocnik at the latter's request. But the language of the letters does not suggest the granting of ex post facto approval. On this subject the Accused says (T/37, p. 240) that Heydrich dictated to him the text of the letter to Globocnik in the following terms:

> “I authorize you to bring another 150,000 Jews to the Final Solution.”

(Later on he says that he thinks the number was 250,000.)

The Accused does not remember whether the letter was written by Heydrich on the letterhead of the Reichsfuehrer-SS and Head of the German Police, or on Heydrich's own letterhead, as head of the Security Police and the SD. But in the same place (p. 240), he confirms that the letter was written by Heydrich, as the person so authorized on the basis of the Wannsee Conference, i.e., not in the name of Himmler, but by virtue of his own authority. Therefore, two serious questions arise:

(1) If it is true that Globocnik acted according to a special order from Himmler, why did he request the retrospective authorization, not from him but from Heydrich? And if, indeed, Heydrich acted by virtue of the authority granted to him at the Wannsee Conference, does it not follow that Globocnik's activities in the extermination camps he administered were also under the supervision of Heydrich, as head of the RSHA? And if this is so, then this matter, too, automatically comes within the scope of the Accused's activity, since he was the RSHA Referent for matters concerned with the Final Solution.

The Accused has no convincing reply to this question. When the Attorney General asked him if it was not correct that the Final Solution of the Jewish Question in the Generalgouvernement was carried out by the RSHA, he replied:

> "No, that is not correct, Globocnik was not on the staff of the Head Office for Reich Security. On this matter an agreement was reached between the Security Police and the SD and Krueger, and they both received their orders from Himmler. This is how I remember the matter the whole time, I never heard any other description."

But when a specific question was put to him,

> "If this is so, why is it that, some months after the Wannsee Conference, on two or three occasions Globocnik asked Heydrich for retroactive orders to cover the killing of 150,000 or a quarter of a million Jews?"

The Accused had no other answer but:

> "I was not then familiar with these matters regarding complicated orders from above. I do not know and cannot furnish information about this. The fact is that the SS and police commanders in the Generalgouvernement who carried out these actions were not subordinate to the Security Police but to the Senior Commander of the SS and Police in Cracow." (Session 99, Vol. IV, pp. xxxx23-24)

We therefore come back to our problem: If this is so, why did the authorization come from Heydrich, the head of the Security Police and the SD?

(2) It is also hard to believe that, in the short time that elapsed between the time the camps in the East started functioning (approximately March 1942) and Heydrich's death in June 1942, Globocnik had already managed to kill half a million Jews, so that the authorizations given up to the time of his (Heydrich's) death would be retroactive; nor is there in the language of the authorization, as quoted by the Accused, any specific indication of retroactive validity. Is it not more reasonable to assume that these were authorizations for mass killings, given before and not after the act? And did the Accused, in fact, serve in this matter only as one who took dictation and as a messenger, and not in terms of his authority as head of Section IVB4 which, within the RSHA, was collating all matters connected with the Final Solution?

In spite of these serious doubts, we do not see a firm basis for finding facts in this matter against the Accused's version because it is only from him that we know about these letters of Heydrich's. But one conclusion may be drawn even according to his version: The handing over of these letters to Globocnik, even if they had only retroactive validity, on each occasion strengthened afresh Globocnik's readiness to continue to kill Jews en masse. These letters were important to him; otherwise, he would not have asked for them. Insofar as the Accused took part in the preparation of these letters and their transmission to Globocnik, he, too, was active in regard to the continuation of the slaughter in the camps in the East.

143.The Auschwitz-Birkenau camp was administered by Group D of the Economic-Administrative Head Office, directed by Gluecks, to whom Hoess, the first commander of the camp, who carried out most of the extermination activities there, was subordinate. The Accused argues that he had no influence on what was done inside the Auschwitz camp. He would dispatch transports of Jews to Auschwitz in accordance with the orders received, after information had come from the above-mentioned Group D, that the camps were able to receive additional Jews.

At the same time, he admits that he visited Auschwitz about five times, and that, at the time of the deportations from Hungary, he checked directly with Hoess the reception possibilities of the camp (Session 93, Vol. IV, p. xxxx25). He also admits that on one of his visits to Auschwitz he witnessed with his own eyes the mass burning of bodies on an iron grating within a pit 100 or even 180 metres long (T/37, p. 227).

The statement made by Hoess himself gives a different picture of the Accused's activities in regard to the Auschwitz camp (see his evidence before the International Tribunal at Nuremberg - T/1357; his evidence at his own trial in Poland - T/1356; and his memoirs - T/90). He states that, in the summer of 1941, Himmler informed him that Auschwitz was destined to be the main centre for extermination of the Jews, and that the Accused would visit him shortly in order to give him additional information about this. The Accused arrived to see Hoess shortly afterwards, and together they chose Birkenau as the extermination place and also conferred together about the extermination methods. (At this point, Hoess describes the introduction of Zyklon B gas at Auschwitz. We shall devote our attention to this matter later in a separate chapter of this Judgment.)

From Hoess' description, it appears that the Accused gave instructions on various matters connected with what was happening within the camp. For example, he says that the Accused brought him Himmler's order to extract gold teeth from the corpses and to cut off the women's hair. Hoess also relates that it was the view of the Accused that all the Jews arriving in the camp should be exterminated immediately and not used for labour - lest a mishap occur, such as a mass escape.

The Accused strenuously denies all these things. According to his version, the process of extermination was already a fait accompli at the time that he first visited Hoess at Auschwitz. To this end he attempts to put the date of his first visit at a later date, to the spring of 1942 (see the timetable attached to the arguments in the written summing- up of

Counsel for the Defence). But this attempt is contradicted by what he said in his Statement before Superintendent Less (p. 378), namely that his first visit to Auschwitz took place four weeks after Heydrich had informed him of Hitler's decision to exterminate the Jews physically, i.e. (according to his account), in the autumn of 1941 at the latest. And at that time the extermination of Jews in Auschwitz had not yet begun.

It is reasonable to assume that during this visit, the Accused told Hoess of what he had seen in the East and that they exchanged ideas on efficient methods of mass extermination. But we do not propose to find facts based on the evidence of Hoess without corroborative evidence. The Attorney General expressed the opinion that the need for corroboration of the evidence of an accomplice was not dispensed with by the provisions of Section 15 of the Nazis and Nazi Collaborators (Punishment) Law. We see no need to decide on this question of principle. We shall only say that, if Section 15 permits us to relax the rule in this matter, we shall not make use of our power in respect of the evidence of an accomplice who is no longer alive, because such relaxation does not appear to us to be necessary in the interests of justice.

144. We have not found any corroboration of Hoess' statement that the Accused brought him the order for the extraction of gold teeth and the cutting off of women's hair, and of his statement about the view expressed by the Accused. But in our opinion there is sufficient proof in Hoess' statements, as supported by other evidence, of the following facts: The Jews who reached the camp were divided into “Transport Jews” (Transportjuden) and others, such as Jews in protective custody.

All the Jews dispatched to Auschwitz by Section IVB4 of the RSHA - the Accused's Section - were “Transport Jews” (T/90, p. 12). Every such transport reached the camp in accordance with information from the Accused's Section and was marked with a fixed code number, viz. IVB4 with some figures added, according to the country from which the Jews came (see the evidence of Rajewski, T/1356, p. 19 of the Hebrew translation). No registration at all was made of these Jews in the camp (evidence of Raya Kagan, Session 70, Vol. III, p. 1276), but immediately upon arrival there, they passed through the selection conducted by SS doctors, and those who were unfit for work were dispatched on the spot to the gas chambers.

The execution of those who were found fit for work, and who did not die from the hard labour and the conditions which prevailed in the camp, was postponed at the discretion of the camp administration, until they, too, fell victims to one of the selections carried out periodically amongst the prisoners. From 1943 onwards, the registration of deaths of Jews who were not sent immediately to the gas chambers was also discontinued (Session 70, p. 1269).

As stated above, the Auschwitz camp belonged organizationally to the Economic-Administrative Head Office, which also controlled the forced labour of the camp prisoners.

145. It follows, therefore, that every trainload of “Transport Jews” reached the Auschwitz camp with its passengers condemned to death by a general decree given in respect of the transport as a whole by the Accused's Section. The moment the Jews passed through the camp gates, they came within the power of the camp administration, which had to carry out the death sentence. At the same time, it had authority to postpone the execution of those who were fit for work.

As time went on, the need grew for exploiting prisoners for the production of arms and other work. This we see, for example, from a cable to Himmler signed by Mueller and marked IVB4a, dated 16 December 1942, in which Mueller refers to Himmler's order for the increase of the labour force in the concentration camps and reports the dispatch of 45,000 Jews to Auschwitz, including persons unfit for work, elderly people and children. He calculates that “if a suitable criterion is used, the selection of the Jews on their arrival will produce at least 10,000 to 15,000 labourers out of the total of 45,000 (T/292). This is in accordance with the statement made by Hoess that the percentage of persons fit for work was approximately twenty-five per cent.

It has also been proved that it was within the Accused's competence to give instructions in advance that a specific transport should not be taken off for immediate extermination, but only after some time had elapsed, as laid down by him. This is what happened to a transport from Terezin which was deported to the Families' Camp in Auschwitz, with instructions that the people in this transport were to be executed six months later (see below, the chapter on Terezin).

146. Amongst the Jews who reached Auschwitz camp as detainees and not as “Transport Jews” were such as had, allegedly, committed criminal offences, such as the making of a telephone call or contravening the curfew. We heard from the witness Raya Kagan, who worked in the registration office at Auschwitz, that this group received better treatment, because they were exempted from the selections (Session 70, Vol. III, p. 1272). Jews in “protective custody” (Schutzhaftjuden) reached the camp by virtue of individual orders issued by Section IVC2 of the RSHA, which dealt with protective custody matters (see T/1280, p. 3). In his Statement T/37, p. 163, the Accused explains that the substantive examination of these individual cases was made by his Section, and Section IVC2 only issued the formal order.

From exhibit T/103 it appears that matters of release from concentration camps were also within the competence of the RSHA (supra, p. 9, para. 11(f)). But as Raya Kagan testified, as far as the Jews were concerned, this was only theoretical, because a Jew, once he entered Auschwitz, never came out again (Session 70, Vol. III, p. xx21; see also the Accused's account in his Statement T/37, pp. 223-224). The Accused was not authorized to give orders himself for the carrying out of the death sentence by way of punishment of Jews in Auschwitz and in other concentration camps. Apparently, this authority was reserved to Himmler himself, and to Mueller (see T/202, p. 1, end). But notification of the carrying out of the execution of Jews was transmitted to the Section of the Accused (T/37, p. 2101).

147. With regard to the Chelmno extermination camp, proof has been adduced before us that it was administered by a special unit commanded by one Bothmann (see T/1297, p. 12, of the Hebrew translation; T/1299). We do not have before us proof of any administrative connection between this unit and the Accused's Section.

Covering up of the Traces

148. In the autumn of 1942, Himmler ordered the opening of the mass graves of Jews previously executed in the East, the burning of the bodies, and the elimination of all traces of slaughter which had taken place in every locality. Apparently, Himmler was afraid that the advancing Red Army might discover the graves, and he thought that the disposal of the bodies would be sufficient to efface the eternal shame. The task was allotted to a special unit known as No. 1005, commanded by Standartenfuehrer Paul Blobel.

The testimonies we heard on this subject, especially from two witnesses, Dr. Leon Wells (Weliczker) and Avraham Karasik, conjured up visions of hell which were amongst the most horrifying parts of all the evidence submitted by the Prosecution. In June 1943, Dr. Wells was taken off to work in this unit in eastern Galicia. He describes the work as follows (Session 23, Vol. I, p. 370):

> "We used to uncover all the graves where there were people who had been killed during the past three years, take out the bodies, pile them up in tiers and burn these bodies; grind the bones, take out all the valuables in the ashes such as gold teeth, rings and so on - separate them...we used to throw the ashes up in the air so that they would disappear, replace the earth on the graves and plant seeds, so that nobody could recognize that there ever was a grave there."

He described the grinding machine as something like a big concrete mixer, with steel balls inside. They would put the bones into the machine and the steel balls would crush them (supra, p. 371). We have already recalled above a similar description by the witness Zurawski (Chelmno camp).

This unit was occupied not only with dead bodies, but also with living human beings who were taken to the pyre, shot there, and cast into the flames. Dr. Wells describes that, at the time of mass murder by machine guns, not all the victims were invariably killed by the bullets, and so it happened that people still alive met death in the flames. He estimates the number of those killed in this way, and whose death he witnessed himself, at 30,000, the last remnant of the Jews in that territory. This was during the last stage of the extermination of East Galician Jewry, by order of Katzmann, Commander of the SS and the Police. Dr. Wells estimates the number of bodies burned by this unit at several hundred thousand (supra, p. 51).

The witness Karasik gave similar evidence about the work of Unit 1005 in another region, in the vicinity of Bialystok and Eastern Prussia (Session 28, p. 12).

Hoess states in his memoirs (exhibit T/90, p. 6) that, some time after Himmler's visit in the summer of 1942, Standartenfuehrer Blobel "of the Eichmann Service Unit" arrived and brought with him Himmler's order for the opening of all the mass graves in Auschwitz and the burning of the bodies. He also states that Blobel received instructions from Eichmann to show him the crematorium which had been set up in the Chelmno extermination camp. T/218 is the report on Hoess' journey to Chelmno, accompanied by another two SS officers. In that report as well, mention is made of a grinding machine which was to be sent to Auschwitz. Hoess states also that from time to time he had to supply Jews for work with Unit 1005, because when the work was finished in each section, all the Jews who had been employed in the unit were shot.

Wisliceny says of Blobel's unit that it "was formally placed under Eichmann" (T/85, p. 9).

The Accused denied that he was Blobel's superior. According to him, the only connection between his Section and Blobel was that Blobel himself and some of his men were housed in the building of Section IVB4 while they were in Berlin, and his Section dealt with them only from an administrative aspect (T/37, pp. 264, 390, 3044). He also mentions strained personal relations between himself and Blobel.

We find that the evidence is not sufficient to place the responsibility for the activities of Blobel's unit on the Accused. As against Hoess' statement, it should be pointed out that Blobel himself, in the declaration which he made at Nuremberg (T/216), says in regard to his work as commander of Unit 1005:

> "I was under the control of Department IV, under the former Gruppenfuehrer Mueller. In the autumn I received instructions, as the person charged by Mueller, to travel to the Eastern Occupied Territories, to cover up the traces of the mass graves from the time that executions had been carried out by the Operations Units."

The Accused's name is not mentioned by Blobel, and also in the nature of things it does not necessarily follow that the Section of the Accused, which was occupied with carrying out the Final Solution, should also be engaged in the special operation of covering up the traces. Accordingly, the Accused will have the benefit of the doubt in this matter.

149. We have heard much testimony about the dreadful suffering which befell the Jews in the final days of the Third Reich, when the concentration camps in the East were evacuated. The exhausted and starving prisoners were marched westwards for many days, in the cold and snow, by SS guards. In those days, on the eve of liberation, tens of thousands of the survivors of the camps fell on the roads and in the fields, all along the way, from the camps in the north (evidence of Dr. Dworzecki, Karstadt, Ben-Zvi, Mrs. Neumann) to Auschwitz, which was evacuated in the middle of January 1945, when its last prisoners were led to other camps inside Germany (evidence of Professor Wellers, Sapir, Gutman, Bakon, Dr. Beilin and Mrs. Kagan).

It is not clear to us that the Accused was personally concerned with the evacuation of the camps and with what happened in them during this last stage, except for Bergen- Belsen. The report of the International Red Cross representative of April 1945 (T/865) makes it clear that the control of Jewish prisoners in this camp, and also in the Terezin Ghetto, remained with the Accused until the end. Accordingly, he bears at least part of the responsibility for what happened in Bergen-Belsen towards the end of the Nazi regime, and for the conditions in which the camp prisoners were found by their liberators.

150. We must devote special consideration to two camps, both because of their special character and also because of the close connection which the Accused had with the administration of these camps: Terezin (Theresienstadt) and Bergen-Belsen.

The Terezin Ghetto

Terezin was originally set up as a ghetto for the concentration of the Jews of the Protectorate, following upon the conference held in Prague on 10 October 1941 and presided over by Heydrich (T/294). This we have already mentioned above in connection with the first deportations from the Reich after Hitler had given his order for the extermination of the Jews. In his Statement T/37, at p. 117, the Accused stated that it was he who suggested to Heydrich the idea of concentrating the Jews of the Protectorate in this manner, thus rescuing Heydrich from an awkward situation after the latter had publicly announced that the Protectorate would be purged of Jews within eight weeks. Within a short time, additional functions were allocated to the Terezin Ghetto.

At the Wannsee Conference, Heydrich speaks of Terezin as a “ghetto for the aged” to which Jews above the age of sixty_five are to be sent, as well as war invalids and holders of distinguished service medals, together with their spouses and children up to the age of fourteen. Jews of these categories were indeed sent to Terezin, as well as other privileged groups, such as descendants of mixed marriages - as is apparent from the documents of the Duesseldorf Gestapo, dated July 1942 (T/1397).

When Kaltenbrunner, in a letter dated February 1943, - reference IVB4 - seeks permission from Himmler to evacuate Jews over the age of sixty from Terezin to Auschwitz, he received the following surprising reply:

> “The Reichsfuehrer is not interested in the dispatch of Jews from Terezin, because this would interfere with the aim that the aged Jews in Terezin Ghetto should be able to live and die in peace.” (T/858; T/859)

We do not know what lay behind Himmler's reply. He certainly cannot be suspected of any human feelings towards Jews, of whatever age. In fact, sick and old people were deported from Terezin to Auschwitz at an earlier date (see, for example, T/848), and also later (evidence of Mrs. Henschel, Session 37, Vol. II, p. 674; evidence of Mr. Ansbacher, Session 38, Vol. II, pp. 683-684). Mr. Ansbacher describes the deportation of old people from Terezin to Auschwitz as follows:

> "Generally, people arrived there already at the end of their strength. There were those who were already dying, and the SS nevertheless shouted that the number had to be complete and that they should be put inside the freight cars." (Session 38, Vol. II, p. 690.)

151. The truth is that the Terezin Ghetto was established for large-scale propaganda purposes and for camouflage, so that it could be shown to foreign visitors to convince them that rumours about the extermination of Jews and the way they were maltreated in the camps were nothing but "atrocity propaganda." In the language of the Accused (T/37, p. 245), this was "only Himmler's exterior signboard (Aushaengeschild) for people abroad, and nothing else," and on the same page he called Himmler's idea of transforming Terezin into a ghetto for the aged "a devilish idea."

We find full confirmation of this in the documents. Exhibit T/734 is a report of a consultation on 6 March 1942 in Section IVB4 of the RSHA, presided over by the Accused, when he himself explained that the transports to Terezin were made in order to "keep up appearances for the outside world." In exhibit T/537 (memorandum by Zoepf on a conversation he had with the Accused), Terezin is described simply as the "propaganda camp."

The witness Ansbacher told us of the severe hunger, the frightful overcrowding, the diseases and general atmosphere of desolation which prevailed in Terezin, and the pictures of life in the ghetto (T/651-T/663) show all this to the full. In a single month (October 1942), more than three thousand persons died there (declaration by Seidl, the first commander of Terezin, T/842, second record of proceedings, p. 5).

But, when foreign representatives visited the camp, such as the representatives of the Red Cross, the appearance of the ghetto changed beyond recognition. In his evidence, Mr. Ansbacher states (supra, p. 692):

> "...There were certain areas where there was a total curfew ... Only people who had a more or less human appearance were allowed to show themselves... They painted the houses on the outside, they prepared large signs which read: 'Central School'...'Ghetto Theatre'... They prepared a special play hall...they constructed beautiful toys...they brought the children there in little beds with a heart carved on them, really like some palace."

In 1942, the Terezin Ghetto population reached close to 60,000 souls (declaration of Seidl, supra, p. 4). From time to time the population would be "thinned out" by deportations, to make possible the reception of new Jews in the ghetto, so that Terezin in fact became an assembly point for deportation to Auschwitz, as Seidl says on page 8. He mentions February 1942 as the date of the first deportation from Terezin to Auschwitz (supra, third record of proceedings, p. 18), and estimates the number of persons thus deported during the period of his service there (December 1941 to July 1943) at 50,000.

In the autumn of 1944, again more than 20,000 persons were deported from Terezin to Auschwitz (testimony of Viteslav Diamant, Session 45, Vol. II, p. 808). When the witness Mrs. Salzberger reached Terezin at the end of January 1945, she found only 6,000 people there. On the eve of the collapse of the Reich, the number again increased, because thousands of prisoners from other camps were transferred there.

When they reached Auschwitz, some of the deportees from Terezin were housed in a special “Families' Camp” (evidence of Yehuda Bakon, Session 68, Vol. III, p. 12442; evidence of Hoess in Poland, T/1356, p. 52 on the eleventh day of the trial). The Accused ordered “Special Treatment after six months” for them, and during their stay in Auschwitz, they had to write letters to Terezin according to a prescribed text, to inform their friends that all was well with them (testimony of Hoess, supra). On this subject, the witness Bakon relates that he and others with him were also obliged, in January 1944, to write postcards bearing the date 25 March 1944 (Session 68, Vol. III, p. 1244).

In February and March 1945, the construction of gas chambers at Terezin was begun (evidence of Engelstein, Session 45, Vol. II, p. 815), but work was abandoned before its completion, and these chambers did not reach the stage of being used.

152. The Accused was competent to give instructions on all matters connected with the administration of the Terezin Ghetto, and he also used this authority in practice and closely supervised what was happening there, to the point of intervening in current administrative matters. A sort of “local government” of the Jews was set up in the ghetto, in the form of a Council of Elders, which was, of course, subordinate to the commander of the camp (Seidl, and after him Rahm). The commander, on his part, used to receive his instructions from the Central Office for Jewish Emigration in Prague, headed by Hans Guenther (the brother of Rolf Guenther, the Accused's permanent deputy).

From an administrative point of view, the Central Office in Prague was attached to the office of the Commander of the Security Police (BdS) on the spot, but in fact, the Central Office was attached to the Accused's Section in the RSHA. The Accused's competence in regard to Terezin stands out clearly in all the testimonies as well as the “Orders of the Day” and the various memoranda of the Council of Elders which have been preserved.

Rahm, who followed Seidl as commander of Terezin, gave evidence in his trial that the Accused himself told him that, from the point of view of technical administration, he was responsible to the BdS in Prague, but from a political point of view, to the RSHA in Berlin, and on questions of policy, he, Rahm, would receive instructions from Moes, one of the officials working with the Accused in Section IVB4 (T/864).

In his evidence, the Accused tried to limit his competence to matters of state importance (Session 98, Vol. IV, p.xxxx5), but this cannot be accepted as an accurate description of the scope of his powers. He not only decided upon the transfer of Jews of foreign nationality from Terezin to Bergen-Belsen (T/851), but the above-mentioned Moes appointed the Council of Elders in the ghetto. The Accused organized the “Jewish Police” within the ghetto (T/37, p. 2028); approaches were made to him for permission to send

letters from Terezin, and his interest even reached the matter of deciding what type of beds should be provided for the inhabitants of the ghetto (T/346).

The Accused visited Terezin frequently. According to the evidence of Mr. Diamant, which we accept as correct, in spite of the Accused's denial, the Accused personally took part in a selection in Terezin, which preceded the deportation to Auschwitz in the autumn of 1944 (Session 45, Vol. II, p. 808). The Accused contends that during that period he was in Hungary, but the fact is that he used to travel quite often from there to Berlin and to other places.

We shall discuss the instructions for the prevention of births in the Terezin Ghetto in a special section devoted to this subject.

153. The camp for Jews in Bergen-Belsen was set up because of the desire of the German Foreign Ministry to concentrate Jews of foreign nationality in an "Exchange Camp," with a view to their being exchanged for German prisoners in the hands of the Allied Powers. Accordingly, the Foreign Ministry, in a letter dated 2 March 1943 (T/762), which was sent to the RSHA for the Accused's attention, demands the concentration of some 30,000 Jews regarded as suitable for exchange, and states that these Jews are not to be evacuated to the East. The RSHA dealt with putting up the camp. One of its officials (from the police department dealing with foreigners) reports confidentially to von Thadden in the Foreign Ministry that,

> "... although he had been informed that, from the point of view of work, they would not treat these Jews harshly enough for them to die, yet the impression to be gained from the camp regulations which were in process of being drafted, etc., was that at any rate they would treat them with considerable harshness,"

and this disturbs von Thadden, because such an attitude towards the prisoners is likely to defeat the purpose of the camp (T/789). The history of the camp shows that there was a sound basis for this anxiety.

The camp was set up at the beginning of July 1943. Seidl, who until then had been the commander of Terezin, was transferred to Bergen-Belsen (T/842, third record of proceedings, p. 26). During the same period, a conference took place at the Accused's Section with the Advisers on Jewish Affairs, at which representatives of the Section announced that the new camp would have a capacity of 10,000. "Jews in protective custody" would be housed there, as well as Jewish communal leaders and Jews with contacts abroad who could be considered for exchange, and also Jews of repute (T/554).

Questions reached the Accused's Section (T/555) and instructions were sent out from it (T/557, T/558) in relation to the categories of Jews to be sent to Bergen- Belsen. On 27 January 1944, the Accused's Section (over his signature) orders the transfer to Bergen-Belsen of all Jews holding Argentinian nationality (T/500), and on 29 February 1944 (over Guenther's signature) the Jews of foreign nationality in Greece (T/997). Seidl also

testified (T/842, third record of proceedings, p. 27) that the letters which had been written by the camp prisoners were collected together on the spot and sent to the Section of the Accused.

In the autumn of 1944, a representative of the International Red Cross applied to the Foreign Ministry for permission to visit Bergen-Belsen (T/799). Von Thadden promised to look into the matter, but in an internal memorandum, he wrote that there would be serious hesitations on the part of the RSHA about such a visit. A similar request was presented to the Accused in April 1945 by a representative of the Red Cross (T/865), but,

> "Eichmann stated that a typhus epidemic had broken out in this camp, and that the Reich authorities responsible for sanitation and health were fighting it with all the means at their disposal. He promised me that he would tour this camp with me in a few days' time. This visit did not take place, because I could no longer find Eichmann in Berlin."

The witness Melkman (Session 34, Vol. II, p. 618) was in Bergen-Belsen from 15 February 1944 until 9 April 1945. His evidence makes it clear why the Accused opposed visits by foreigners to the camp. This is what the witness said:

> "When I came to Bergen-Belsen, the living conditions at first were no worse than those in Westerbork, perhaps a little better... In the course of time, the situation at Bergen-Belsen became worse, and the situation deteriorated terribly, until it received this horrible and awful name, as many more people arrived. At first the camp was intended only for some thousands, but in the end there were tens of thousands there. There was no food. The sanitary conditions - it is almost impossible to describe them. In a hut for 400 people, there was one toilet, and this was always out of order. Everybody suffered from diarrhoea... In the end there were tens of thousands of people. The dead lay in the roadway... I also entered the concentration camp of the women who had arrived at Auschwitz, I think that this was in November 1944. And there I saw terrible things - women who fell upon some barrel where a few remnants of food still remained... There were even instances of cannibalism there."

Dr. Chen (Session 71, Vol. III) and Mr. Hoter-Yishai (Session 73, Vol. III, pp. 1349-1350) gave evidence of the terrible situation prevailing in the camp when the liberators arrived. At the time of the liberation there were 52,000 people in the camp, of whom 27,000 died from weakness, in spite of the medical attention they received. To illustrate this evidence, photographs taken at Dr. Chen's instructions were submitted to us (T/1347-T/1355), and a film was shown to us which had also been taken after the liberation of the camp.

It is clear from the documents we have mentioned that the RSHA, and within it the Accused's Section, controlled the fate of the Jewish prisoners in the Bergen-Belsen camp. In this regard, therefore, there is a resemblance between Terezin and Bergen-Belsen.

154. We have also touched, in passing (for example, in the Hungarian chapter), on the transportation conditions when the victims were expelled from their homes and sent to the concentration camps and to other deportation places. We shall now add that the method of transportation in every place resembled the transportation of cattle and worse - sealed freight trucks, in intense cold or blazing heat, without food supplies (except what the evacuees brought along with them), a scant supply of drinking water, and at times no water at all for days on end, the most terrible sanitary conditions (one pail per truck to take care of physiological needs), not less than 70 to 100 people and even more in each truck.

In this matter, the line of increasing harshness is clearly recognizable from the documents: In T/37 (the instruction for evacuation to the Generalgouvernement area) of March 1942, it is still stated that it is forbidden to dispatch more than 1,000 Jews in each train. Compare this with exhibit T/765, dated 20 February 1943 (instructions for evacuation to Auschwitz) where we read that every train must transport at least 1,000 Jews. At a conference in his Section on 9 September 1942, the Accused told his officials that there was room only for 700 people on the trains, but 1,000 Jews would have to be transported in them. When Superintendent Less put this statement to the Accused, he replied:

> "Mr. Superintendent, this does not alter the fact that I was the person authorized and responsible for this - this is clear." (T/37, p. 774)

And so he continued right up to the deportations from Hungary, when 100 people and more were packed tightly into a single truck.

The police who accompanied the transports were generally members of the Order Police. But the Order Police were not responsible for the overcrowding in the trucks, nor for the supply of food and water during the journey, nor for the sanitary arrangements. Responsibility for these matters rested solely upon the section which organized the transports, namely the Section of the Accused. It is no exaggeration to say that the very process of transporting people under such conditions was the first stage in the extermination of the deportees.

Thus, it often happened that when a transport reached its destination, or was still at one of the intermediate stations, the bodies of persons who had died en route were taken out of the trucks. This applies not only to the period of the Final Solution, but also to the second stage, when Jews were deported from the Warthe zone, etc., and Stettin under disastrous conditions of transportation.

155. We shall now devote some comments to the activity of the Accused in regard to the prevention of the immigration of Jews into Palestine and the prevention of their emigration to other countries overseas. These matters are connected with the chapter of desperate attempts made by Jewish institutions and individuals to save Jewish lives from the Nazis, and the degree to which the various governments responded to these rescue efforts. This, too, is a complex chapter of history full of heartbreak, which deserves to be

examined thoroughly by the historian, and this Court cannot take this task upon itself. We shall content ourselves with a statement of the facts, which were proved before us, relating to the Accused's activity in this matter.

The first hint of the Accused's attitude to the question of aliyah (immigration) to Palestine is found in a comment in a report submitted by him, together with Hagen, on their joint journey to Palestine in 1937 (T/124). As will be remembered, in the report he says that the plan for the emigration of 50,000 Jews

> "...is out of the question, in view of the fact that it is the policy of the Reich to avoid the creation of an independent Jewish state in Palestine."

Mention has previously been made that during this journey he was going to meet the Mufti, Hajj Amin al-Husseini, in Palestine, but at the time the meeting did not take place.

During the period of the Final Solution, there were two contributory factors in German policy preventing immigration into Palestine: First, the pact signed between the Nazis and certain Arab leaders, headed by the Mufti; and second, the desire to complete the extermination of all the Jews within the area of German influence without leaving any remnant. With regard to emigration to other countries, the second factor operated and was sufficient in itself to stop emigration, not only from the Reich itself - in accordance with Himmler's order already mentioned above - but from the whole area of German influence. Deviations from this general line were permitted solely because of overriding considerations of high policy.

The Accused was faithful to the official line, as will be shown from the documents which follow, in addition to those which we have already mentioned in the sections on Romania and Croatia:

(a) On 11 May 1942, the Accused requests the German Foreign Ministry to prevent Jewish emigration from Romania via Hungary, Croatia and Italy "by taking appropriate measures," and the reason he gives is that:

> "Since, in general, Jews of means are under discussion, there is a danger that in the end only the mass of Jews without means will remain in Romania." (T/1016)

(b) The Accused also fought the immigration of children into Palestine. On 3 March 1943, he seeks to prevent the immigration of one thousand children via Bulgaria and Turkey (T/1048). And again Guenther, of his Section, takes action against the immigration of four thousand children (T/950, dated 2.4.43). On 9 April 1943 Richter, from Budapest, informs the Accused (T/1050) that he has taken steps to prevent the transport of the children via Bulgaria, and he writes as follows:

> "The President of the Jewish Centre has been officially informed that he has to act against the departure of the transport of the Jewish children,

since on our part we shall take steps to halt the transport on Bulgarian territory and direct it elsewhere."

It is easy to imagine the meaning of the word "elsewhere."

(c) In May 1943 (T/1055), the Accused notifies the Foreign Ministry of Himmler's attitude to the emigration of children:

"1. Emigration of Jewish children is to be rejected on principle.

"2. Approval would be given for the departure of five thousand Jewish children from the Eastern Occupied Territories, provided that, as a result, German prisoners receive permission to return to the Reich from abroad by way of exchange at a ratio of 1:4, that is to say, a total of twenty thousand. But it must be emphasized that the question here is not one of twenty thousand elderly Germans, but of Germans fit for begetting offspring, and under forty years of age. Moreover, the negotiations must be conducted with speed, because the time is approaching when it will no longer be possible technically to enable the five thousand Jewish children to leave the Eastern Occupied Territories, because of the implementation of our activities against the Jews.

"3. In spite of what has been said in paragraph 1, as far as the need becomes apparent to agree to the departure of Jewish children from Romania or from other Balkan countries, importance is attached to the fact that this, too, should not be done without a quid pro quo, but in accordance with the procedure outlined in paragraph 2."

In this connection, we shall mention an additional memorandum of the Foreign Ministry of May 1944, a year later. There it is stated (T/1258):

"Secret information has come from the RSHA that five thousand Jewish children, who could be considered for departure, are still to be found only in the Lodz Ghetto. But this ghetto will be closed down shortly, in accordance with the instructions of the Reichsfuehrer-SS."

(d) In Hungary, the diplomatic representatives of a number of neutral countries strove devotedly to rescue Jews, both by granting them letters of protection, and also by assisting their emigration. These humanitarian efforts are linked with the names of men of noble spirit - Raoul Wallenberg of Sweden and Lutz of Switzerland. The Accused takes action to thwart these efforts. On 24 April 1944, he writes to his Section in Berlin as follows (T/1216):

"We have seen to it that the [German] Embassy here will also do everything to delay the emigration efforts, and finally, after the continued evacuation of the Jews, will stop the emigration efforts completely."

And he requests,

> "the phrasing of the German Government's consent which had been given at the outset, with more clarity and sharpness on this point. It should be said that emigration to Palestine...does not meet with Germany's approval."

(e) The consent of the Reich Government, mentioned in the previous paragraph, referred to the proposals for Jewish emigration which had come from the governments of Sweden, Switzerland, and the United States. In reply to these proposals, Hitler agreed to the emigration of several thousand Hungarian Jews, on condition that Horthy should hand over the rest of the Jews of Hungary (especially the Jews of Budapest) to the Germans (see T/1214, para. 5; N/85). And here the Accused reaches the extreme limit in his struggle against the rescue efforts. Veesenmayer writes in a cable dated 25 July 1944 (T/1215, para. 2):

> "SS Obersturmbannfuehrer Eichmann, head of the Jewish Operations Units of the SD here, has taken the stand that, as far as he knows, in no circumstances does the Reichsfuehrer agree to the emigration of Hungarian Jews to Palestine. The Jews in question are without exception important biological material, many of them veteran Zionists, whose emigration to Palestine is most undesirable. Having regard to the Fuehrer's decision, of which he had been informed, he is about to submit a report to the Reichsfuehrer-SS and, if necessary, he will seek a new decision from the Fuehrer. Furthermore, it has been agreed with Eichmann that, to the extent that assent will be given to additional evacuations of Jews from Budapest, these are to be carried out as far as possible suddenly, and with such speed that the Jews in question will already have been deported before the completion of the formalities."

It is also stated there that, in the event of permission being given for emigration to the West, the Accused is considering preventing the emigrants from continuing their journey, for example, by taking appropriate steps on French territory.

And what has the Accused to say on this matter, which is more damning than a hundred witnesses could be? Apart from empty talk to the effect that Veesenmayer erred in his reporting of matters, he explains that the Fuehrer's order was not in writing before him, whereas Himmler's order was given to him in writing. The Attorney General refuted this explanation by pointing to the fact that the order for the total extermination of the Jews was also notified to the Accused only orally, yet all his actions were guided by it. This incident is characteristic of the Accused's attitude, not only from the point of view of the subject with which we are dealing at the moment. We shall return to this subject of his attitude in another context.

156. This is the place to add a few words about the Accused's personal contact with the Mufti, Hajj Amin al- Husseini.

It has been proved to us that the Mufti, too, aimed at the implementation of the Final Solution, viz., the extermination of European Jewry, and there is no doubt that, had Hitler succeeded in conquering Palestine, the Jewish population of Palestine as well would have been subject to total extermination, with the support of the Mufti.

Memoranda sent by the Mufti to the German Foreign Ministry, Ribbentrop (T/1260, T/1261), and to the satellite governments of Romania and Bulgaria (T/1263, T/1264), have been submitted to us, containing the insistent demand that all Jewish immigration into Palestine be prevented.

In the memorandum to the Bulgarian Foreign Minister, dated 6 May 1943 (T/1263, p. 3), it says:

> "I take the liberty of drawing your attention to the fact that it would be indeed appropriate and advantageous if the Jews were to be prevented from emigrating from your country, and if they were sent to a place where they would be placed under strict control, as for example Poland."

It is unnecessary to make any comment upon the phrase "strict control," when the subject under reference is Polish Jewry in the year 1943.

In his notes, exhibit T/89, dated 26 July 1946, Wisliceny quotes the Accused as saying that the Mufti visited his office in Berlin at the end of 1941 or the beginning of 1942. The Accused gave him an account of the Solution of the Jewish Question in Europe, and the Mufti was duly impressed. The Mufti told the Accused that Himmler had agreed to his request that a member of the Accused's Section should come to Jerusalem to serve as personal adviser to him (the Mufti) upon the latter's return to Jerusalem after the victory of the Axis Powers. The Accused asked Wisliceny if he would like to take this task upon himself, and he, Wisliceny, declined to consider the suggestion.

In his Statement, the Accused admitted that he had met the Mufti, though not in his office, but on the occasion of a more widely attended gathering, and continues (p. 564):

> "But it is correct that those who accompanied the Grand Mufti visited me, and certainly there was some discussion then, though I cannot remember that I ever had a longer conversation with these Iraqi majors beyond general greetings and receiving them and handing them over to the members of my staff."

Shortly afterwards (pp. 568-569), he speaks of a visit paid to his office by a nephew (or other close relative) of the Mufti's.

In the light of this partial admission by the Accused, we accept as correct Wisliceny's statement about this conversation between the Mufti and the Accused. In our view it is not important whether this conversation took place in the Accused's office or elsewhere.

On the other hand, we cannot determine decisive findings with regard to the Accused on the basis of the notes appearing in the Mufti's diary which were submitted to us.

Discussions with Regard to the Descendants of Mixed Marriages

157. Nazi legislation defined in paragraph 5 of Regulation No. 1 under the Citizenship Law (one of the Nuremberg Laws) who was to be regarded as a Jew (T/68). The Nazi legislator had no doubts that a person who had three Jewish grandparents was to be regarded as a Jew, whereas a person having only one Jewish grandparent was not regarded as a Jew. Special instructions existed with regard to half-Jews, but we do not propose to detail them here.

During the first period, evacuation orders were based upon this legislation. They laid down that Jews were to be evacuated, and they defined who was a Jew for this purpose in accordance with paragraph 5 above (see, for example, T/713, T/664, T/730, T/737).

The evacuation orders issued by the Accused's Section also deal with this subject. For example, in the instructions for the evacuation of Jews to Terezin, dated 20 February 1943 (T/850), we see that various categories of descendants of mixed marriages (in the language of the indictment before us, children of mixed marriages) who were regarded as Jews, were to be evacuated to Terezin and not to the East.

But, in the meantime, the question of how to deal with borderline cases concerning children of mixed marriages did not cease to occupy the experts on race theory and the Nazi jurists.

In exhibit T/526, dated 19 September 1941, a person named Stiller, who worked in the German administration in Holland, reports on a conversation with Loesener, the Referent for Jewish Affairs in the German Ministry of the Interior. According to Loesener, there are circles which recommend making the existing regulations more stringent, and especially that half-Jews should be regarded as Jews for all purposes. The Accused also, it is there stated, adopts this point of view zealously. Army circles opposed this extention, because of the bad impression which such severity was likely to make upon soldiers who were one quarter Jewish, and whose parents would thus be regarded as Jews in the full sense of the word. The matter went right up to Hitler himself, and he rejected the proposal for widening the scope of the law.

In a sworn affidavit, dated 24 February 1948 (T/693), Loesener states that he tried to prevent the harsh treatment of children of mixed marriages, and that Nazi Party and SS circles were angry with him because of this. In this connection he mentions the name of the Accused as that of one of the most fanatical and vicious Jew-haters.

In the statements of Stiller and Loesener, we see adequate proof of the Accused's attitude on the question under discussion.

In the minutes of the Wannsee Conference (T/185), the debate on the treatment of children of mixed marriages of the first and second degree occupies considerable space, and extreme views are expressed, including a proposal for sterilization; but the discussion on this question was not concluded. On 6 March 1942, a month and a half after the Wannsee Conference, a meeting takes place in the Accused's office, attended by representatives of the various ministries and offices. The entire the meeting was devoted to the question of the treatment of children of mixed marriages. The list of the participants does not include the name of the Accused, but that of Bilfinger, as representing the RSHA. The discussion was most detailed, and in particular the question of sterilization was debated. At this meeting, also, no final conclusion was reached.

On 27 October 1942, a further meeting took place in the Accused's Section on the question of the children of mixed marriages, this time with his participation (T/190). Those present agreed to the proposal for voluntary sterilization of children of mixed marriages of the first degree, in return for granting them permission to remain on Reich territory. But here, again, the results of the meeting were to be communicated to various offices, so that they could decide upon their final attitude on the question, and we do not know how the matter ended.

Thus, it has been shown that the Accused himself handled the question of the children of mixed marriages, but on the basis of the material before us, we are unable to find that the discussions on this question ever brought about a change in the racial legislation, as it existed until then, or in the implementation of the plan for the sterilization of the children of mixed marriages.

On 30 January 1942, a meeting took place in the Ministry for Eastern Occupied Territories (T/299), attended also by Suhr, one of the officials in the Accused's Section. All the participants assumed that the Nuremberg Laws did not apply in the East, and the debate turned on the question as to how the term “Jew” should be defined in the East. Heydrich also intervened in this debate (T/301), but again it has not been proved to us that matters went beyond discussion and correspondence and ever reached any final conclusion.

Sterilization and the Prevention of Births

158. As we have seen, a suggestion had already been made at the Wannsee Conference that the children of mixed marriages be sterilized. But the Nazis' interest in sterilization went far beyond this. Rudolf Brandt, one of Himmler's men, testified to this in his affidavit dated 19 October 1946 (T/816):

> “Himmler was especially interested in the development of a cheap, quick method of sterilization which could be used against enemies of the German Reich, such as Russians, Poles and Jews. It was hoped thereby not only to defeat, but also to destroy the enemy. Germany would be able to exploit the working capacity of the sterilized persons, while averting the danger that they might multiply.”

Brandt, in his declaration, describes some of the shameful acts by which Nazi doctors desecrated the name of medical science: At Auschwitz and Ravensbrueck, experimental sterilizations were carried out on women. Many thousands of women, and especially Jewesses and Gypsies, were sterilized. According to Brandt's statement, at Auschwitz men, too, were sterilized for experimental purposes. Two of the victims of these experiments have given evidence before us.

According to a letter (T/1379), dated 4 July 1942, sent to the Accused's Section for the attention of Guenther, a telephone conversation took place between Fischer, one of Himmler's adjutants, and Guenther. Fischer attaches to his letter photographs which apparently relate to experiments which are to be carried out. Fischer also requests Guenther's close co-operation in this matter with the office of Pohl, the chief of the Economic-Administrative Head Office. In his Statement to the police (T/37, p. 2237 et seq.), the Accused denies all knowledge of the matter and expresses his astonishment at the fact that Guenther's name appears on the letter, which had been sent from Himmler's office. In his testimony before us, he surmised that apparently this had been a special task allotted to Guenther personally (Session 79, Vol. IV, p.xxxx8).

On 10 July 1942, a letter (T/1377) was sent to Professor Klauberg (or Glauberg), whose name became infamous in connection with sterilization experiments on Jewesses. The subject of this letter is: The experimental sterilization of one thousand Jewesses in Ravensbrueck. A copy of this letter was sent to the RSHA for information. The words “SS Sturmbannfuehrer Guenther, IVB4, Jewish Department” appear typed on this document, but above that, the words “SS Gruppenfuehrer Mueller” were written by hand (see T/37 (178).

We have come to the conclusion that on this subject the Accused should be given the benefit of the doubt. Mention of Mueller's name in exhibit T/1377 shows that it is not at all impossible that this matter was handled at a higher level. Because of this doubt, we do not find that the Accused and his Section took part in the implementation of the sterilization programme or in its preparation.

159. We know of the prevention of births from the Kovno Ghetto and from Terezin. Dr. Peretz (Session 28, Vol. I, p. 478) testified about Kovno. There the Germans published an order in July 1942 for the termination of all pregnancies except those in the eighth or ninth months. A woman whose pregnancy was not terminated in spite of the order was liable to the death penalty.

With regard to Terezin, we shall quote a statement, dated 21 August 1843, sent by Dr. Munk, director of the health services in the ghetto, to the chief medical officer and all the gynaecologists there, which reads as follows:

> “As a consequence of the two latest notifications of births, SS Obersturmbannfuehrer Burger has announced that in future all fathers of children conceived here, and also the mothers and the children, will be included in transports and deported. We therefore request you again to

> report, first of all, all pregnancies known to you which have not yet been reported, since otherwise the examining gynaecologist becomes an accessory, and therefore guilty. The information to be given to the pregnant women must be in unequivocal language, saying that the abortions have to be made on official instructions." (T/863)

On this subject, Rahm (who succeeded Seidl as camp commander) stated at his trial (T/864):

> "Until about March 1944, I knew nothing about the prohibition according to which women in the ghetto were forbidden to bear children... Then Eppstein [head of the Jewish Council] told me that he thought that - in accordance with what had been agreed between himself and Eichmann - the general prohibition in force in Germany concerning artificial abortions did not apply to Jews, and that this agreement was exploited by Eichmann, in oder to force Jewish women in the ghetto to have abortions...and when Guenther came to visit me, I asked him about it, and he confirmed to me that I did not have to see to it personally, but it was already a matter for the Jews themselves, and that the Elder of the Jews had received notification about it from Eichmann directly."

It should be mentioned that this same Burger, who was mentioned in Dr. Munk's statement, was one of the Accused's men (T/37, p. 1478). In this matter of the prevention of births, our conclusion is that it has not been proved that the Accused was involved in giving the order in the Kovno Ghetto, of which Dr. Peretz spoke. In the "Brown File" on Easter Occupied Territories, in the drafting of which the Accused participated, we have also not found instructions with regard to the prevention of births amongst the Jews. But with regard to Terezin, the Accused's responsibility for the order given there for the termination of pregnancy, and for its implementation, has been proved fully.

160. The Prosecution adduced evidence with regard to a specially horrible chapter with which the Accused's name is also connected. The reference is to the collection of skeletons in the Institute of Anatomy at the University of Strasbourg.

One of the pseudo-scientific institutions of the Nazi period was called "The Ancestral Heritage." Its president was Himmler and its director a man called Sievers. The task of the institution was "to investigate the area, spirit, activity and inheritance of the Indo-German group of the Nordic race" (T/1362). Under the auspices of this institution, Professor Hirt of the University of Strasbourg carried out examinations of skeletons and skulls.

On 9 February 1942, Sievers submits to Brandt, who belonged to Himmler's personal staff, a memorandum proposing that examinations of this kind be also carried out on skeletons and skulls of Jews (T/1363). In a letter dated 7 July 1942, Himmler gives his approval to Hirt's research work (N/18). In order to secure Jews, alive and dead, Sievers approaches Gluecks, the official in charge of concentration camps, who refers him to the

Accused. A conversation takes place between Sievers and the Accused. Sievers requests the Accused “to create suitable conditions in Auschwitz” for carrying out the examinations in accordance with Himmler's instructions, and the Accused replies that he needs to have a letter from Himmler or from his personal staff (evidence of Sievers at the trial of the doctors at Nuremberg, T/1370, p. 5776).

On 2 November 1942, Sievers again approaches Brandt and supplies him with a draft for such a letter from Brandt to Section IVB4, for the attention of the Accused (T/1264). On 28 April 1943, a conversation takes place between Sievers and Guenther, and Sievers makes the following note in his diary on the content of the conversations:

> “Examinations are now possible in the concentration camp of Auschwitz...discussion about the procedure.” (T/1367).

On 21 June 1943, Sievers informs the Accused's Section that the research work in Auschwitz has been completed and that the people examined (79 Jews, 30 Jewesses, two Poles, and four other persons) are to be transferred to the Natzweiler concentration camp (T/1366). In August 1943, about eighty detainees were sent from Auschwitz to Natzweiler, and Kramer, who was then the commander of this camp, approached Professor Hirt in Strasbourg, in accordance with the instructions he had received. Hirt gave him a quantity of gas and explained to him how he was to execute these people. Kramer carried out this assignment in a matter of days and sent the bodies to Strasbourg (evidence of Kramer at the trial of the doctors, (T/1371)).

Evidence was also given at Nuremberg by a witness called Henripierre (T/1369), with regard to the visit of an SS officer to Strasbourg. Henripierre also related that bodies arrived in three consignments - 30 women, 30 men, and another 26 men. It was clear that these persons had just been killed, and the witness described what was done with the bodies in the Anatomy Institute at Strasbourg. In a letter dated 5 September 1944, Sievers requests Brandt to instruct him what to do with the collection of skeletons, in view of the danger that Strasbourg might be occupied by the Allied armies (T/1368). We do not know Brandt's reply, but when the Allies conquered Strasbourg, bodies and parts of bodies were found there, and in regard to some of them it was stated “apparently Jews.” (T/1372)

With regard to this chapter of events, the Accused testified (Session 79, Vol. IV, pp. xxxx12-15), that he does not remember Sievers' visit, he does not deny receipt of the letter T/1365, and the conclusion is that he really has no comment to make except in relation to the documents, and the matter was not within his competence.

Sievers and Kramer were accomplices in the crime of executing the victims, and their evidence requires corroboration, but there is sufficient corroboration, both in the evidence of Henripierre and also in the documents submitted. It is clear that Sievers twice visited the Accused's office - the first time shortly before 1 November 1942 (and the letters T/1364 and T/1365 are a result of this visit), and the second time on 28 April 1943, when he spoke to Guenther. Sievers' evidence that on the first occasion he spoke to the

Accused himself is supported by the draft letter dated 1 November 1942 (T/1363) and by the letter dated 6 November 1942 (T/1365), and also by the fact that in a document (T/1366) a letter (not submitted to us) is mentioned which was sent from the Accused's Section on 25 September 1942.

The Accused himself, or through his permanent deputy, gave instructions to the concentration camp at Auschwitz, first of all to place the detainees at the disposal of Professor Hirt in the required numbers, and then to transfer them to Natzweiler - all this, knowing for certain that the end of these detainees would be their execution (in the letter of 6.11.42, T/1365, it is specifically stated: “Subject: The Establishment of a Collection of Skeletons in the Anatomy Institute at Strasbourg”). It is correct that, in this matter, the Accused requested and received specific orders from Himmler's staff.

161. With regard to the number of victims of the Final Solution, the indictment does not mention exact totals but speaks of millions of Jews exterminated, mostly in the extermination camps, and hundreds of thousands by the Operations Units. Only in regard to limited operations were more precise figures mentioned, when the evidence, and especially the final figures mentioned in documents, made this possible.

The Prosecution could not do more than this, nor was it obliged to do more, according to the definitions of the crimes with which the Accused was charged, which place emphasis on activities against a group of people as such, as distinct from the individuals who make up that group. The statistical data before us are far from being complete. Therefore, we shall not attempt to give specific figures even approximately but confine ourselves to a general finding, that the extermination of millions has been proved, and that, according to demographic calculations made by Professor Baron, in his evidence before us, on the basis of the sources mentioned in his testimony, there is no doubt that the total number of victims of the Final Solution was about six million (Session 13, Vol. I, pp. 183-185).

Professor Baron also gave particulars of the destruction in various countries. Of Polish Jewry, which before the Second World War numbered some 3,300,000 souls, there was left at the end of the War a remnant of some 70,000; and this is not the only country where the Jewish community was completely wiped out. There is also confirmation of the total figure of six million from the Accused himself, and he probably knows the details better than any other person, because it was in his Section that secret statistical data were collected on the progress of the extermination programme. As will be detailed below, he once spoke of six million Jews having been killed and on another occasion about five million. The Attorney General expressed the opinion that, in referring to the lower number, the Accused had not included the victims of the Operations Units; but it is difficult for us to be definite on this point.

162. We now propose to establish more precisely what was the part played by the Accused in the extermination operations. We have already touched upon this central topic in some of the earlier sections, when giving a description of the background of the events, especially in Hungary and Eastern Europe. In other sections, in which we described the expulsions of the Jews and all that was connected therewith, in the Reich itself and in the

other European countries, the part played by the Accused is clearly seen from the very description of activities carried out there by his subordinates.

In regard to all these matters, we have only to summarize and reach final conclusions. But we have not yet discussed the status of the Accused within the RSHA, i.e., at the centre from which the extermination operations throughout the length and breadth of Europe were directed, and this we now propose to do. In the course of this discussion, we shall touch upon another chapter in which the Prosecution seeks to prove specific activity on the part of the Accused, i.e., the introduction of the method of gas-killing, and the supply of gas to the extermination camps.

163. First, let us elucidate the date at which the Accused was informed that an order for complete extermination had been given by Hitler, for clearly we can place upon him responsibility for participating in the implementation of the Final Solution of the Jewish Question only from the moment when he began to act in the full knowledge that the signal had been given for carrying out the Final Solution. The Accused contends that Heydrich informed him of the matter orally, and that on the same occasion Heydrich sent him to Globocnik in Lublin, in order to ascertain what stage had been reached by the latter in his preparations for the exterminations. He relates that he travelled to Lublin as ordered, and there saw the extermination installations in the process of construction and was informed that the Jews would be executed by exhaust gases from a motor (T/37, p. 172). He mentions the date of the conversation and the visit in his Statement T/37, pp. 169-170:

“In June, I think, was the outbreak of war, in June or July, let us say July, was the outbreak of war. And apparently about two months later, possibly three months later, at all events it was at the end of summer...when Heydrich summoned me. I presented myself to him and he told me... `The Fuehrer has ordered the physical destruction of the Jews.'

“... And then he said to me: `Eichmann, go to Globocnik in Lublin...the Reichsfuehrer has already given Globocnik appropriate instructions, and see how far he has progressed in the work he has to do'.”

From the Accused's testimony before us, it appears that his visit to Globocnik took place approximately in the middle of September (Session 87, Vol. Iv, p. xxxx20; see also Session 78, Vol. IV, p. xxxx13) and this we are prepared to accept as fact.

But, in contradiction to the Accused's version, we find that he had been informed not at the end of summer, in the circumstances he has described, but it was as early as the beginning of the summer of 1941 that Hitler had issued his order for the physical destruction of the Jews.

The Accused admits that he was present at the gathering of men of the Operations Units which took place in Berlin on the eve of the war against Russia, i.e., in June 1941, but in his evidence he denied that the men of the Operations Units received information there as to what their duties would be and stated that the discussion revolved only around

organizational questions (Session 102, Vol, IV, pp. xxxx10-11). But this evidence is contradicted by Walter Blume's statement, in the trial of Ohlendorf and others (Trial No. 9 of the additional trials at Nuremberg). Blume, who was commander of one of the Operations Units, declares (T/306, p. 3) that he was present at that gathering, and that there Heydrich spoke about the task of the Operations Units in regard to the extermination of the Jews.

Sufficient corroboration of Blume's statement is found in the Accused's own Statement (T/37). When Superintendent Less asked him if, at that gathering, Hitler's order for extermination had been mentioned, he contends that he does not remember what happened at that gathering, but adds (supra, p. 2119),

> "...I assume that when the discussion opened, they were relying on some order..."

; and again, p. 2121, in answer to a further question about Hitler's order or another order, which was given there to the men of the Operations Units:

> "You are absolutely right, Mr. Superintendent, certainly something like that was mentioned."

We find further confirmation that the Accused knew already in the summer months of 1941 that an order had been given for the Final Solution by mass extermination, in the following:

(a) The Accused admitted, when cross-examined by the Attorney General, that he received reports of the activities of the Operations Units in the East from the end of June 1941 onwards (Session 102, Vol. IV, p. xxxx11), and thus he had weekly information about the mass killings of Jews. Is it conceivable that he neither understood nor knew at that time that these activities were being carried out in accordance with an order from above for total extermination?

(b) On 28 August 1941, the Accused writes to the Foreign Ministry that the emigration of Jews from the German- occupied territories is to be prevented, "having regard to the Final Solution of the European Jewish Question which is now in sight and is at present in the preparatory stage" (T/183 - our emphasis). It should be pointed out also that precisely during the same period the Accused secretly informs Rademacher that the Fuehrer has agreed that the Jews in Germany should be obliged to wear the Jewish Badge (see Section 82 above).

We have already remarked, when we spoke of an earlier stage, that the rulers sometimes also spoke of the Madagascar Plan as "the Final Solution," but in the course of time the significance of this term changed. This gradual change in content, while the term itself remained unchanged, was convenient for camouflage purposes vis-a-vis all those who were not privy to secret decisions taken from time to time by the top leadership.

Therefore, when the Accused states, for example, in a letter dated 12 March 1941 (T/697), that the emigration of German Jews from Yugoslavia is not desirable, “having regard to the Final Solution of the Jewish Question which is now in sight,” it is not yet clear what is the Final Solution mentioned there. But when, on 28 August 1941, further words are used, to the effect that this solution “is at present in the preparatory stage,” it is clear that the reference is to the new solution, and this solution, though, at that moment, in the preparatory stage, is none other than total extermination.

If, in the same letter, the Accused gives an additional reason that, as a result of the emigration of Jews from the occupied areas, the possibilities of Jewish emigration from the Reich would be still further limited, it may be assumed that the reference there is to that trickle of emigration which was still being allowed until, in October 1941, by Himmler's order, the gates were finally closed.

(c) In his statement, Hoess says (T/90, p. 1) that Himmler informed him in the summer of 1941 (he cannot give the exact date) that Hitler had given an order for the Final Solution of the Jewish Question, and that it would be the duty of the SS to carry it out. It is inconceivable that, at that same time, this matter was not known to the Accused, who held the same rank as Hoess and was head of the Section for Jewish Affairs in the RSHA.

(d) Finally, in the letter of appointment, dated 31 July 1941, mentioned above (T/179), Goering ordered Heydrich to submit to him, at an early date, a plan for implementing the Final Solution, by way of “evacuation,” i.e., the extermination of the Jews. It can be assumed with certainty that, immediately upon receipt of this letter, Heydrich summoned the official authorized to handle Jewish affairs in the RHSA, i.e., the Accused, explained to him that now a turning point had been reached as far as the handling of Jewish affairs was concerned, and gave him the new instructions, arising from the situation.

164. It follows, therefore, that already in the summer of 1941 it was clear to the Accused that everything connected with the expulsion of Jews would, in the end, lead to their final destruction. We are, therefore, convinced that the Accused gave false testimony when he stated that he had sent the first transports from the Reich territory to the Lodz Ghetto in October 1941, in order to rescue the Jews from death at the hands of the Operations Units. To maintain this version, the Accused was even prepared to admit that he employed the cunning techniques of horse dealers, in order to overcome the opposition of the head of the Lodz district to the entry of additional Jews into that ghetto, as stated in a cable of protest from the head of the district, dated 9 October 1941 (T/220). True - says the Accused in his evidence (Session 78, Vol. IV, p. xxxx13) - there is a basis for this complaint, but (so it appears from his evidence) any method to ensure that these Jews did not fall into the hands of the Operations Units was acceptable.

The truth is that, at the time of the negotiations regarding these transports to Lodz in the second part of September 1941 (see exhibit T/221), the Accused knew full well that the Jews in the Lodz Ghetto would also be exterminated sooner or later, because such was the Fuehrer's command. The truth is that the Accused employed horse dealers' methods without any lofty intentions.

165. It is therefore clear that all the Jews dispatched by the Accused and his Section to the East for "posting for work," or under any other camouflage term, were dispatched to death by him knowingly, whether he sent them after the Wannsee Conference or in October 1941 to the Lodz Ghetto. And it makes no difference whether they were sent to an extermination camp or to a labour camp. They could be done to death immediately in the concentration camp, or also later, after they had been employed in one of the labour camps in the East. It makes no difference whether the forced labourers died as a result of the hard labour or were taken away from their place of work to the place of physical extermination. The Accused admitted this in his reply to the Attorney General (Session 93, Vol. IV, p. xxxx26):

> "Q. ...When you issued directives T/1399 under your signature, for the deportation of Jews to Izbica, near Lublin, there was no obligation to report to Oranienburg, nor to the Auschwitz camp, but only to Lublin and to Cracow, because this transport was going directly to extermination. True?
>
> "A. The contents of the document are correct. This was within the authority of the State Secretary.
>
> "Q. I am not asking about authority, I am asking, if this is the way it was signed and sealed, were not these people destined for extermination?
>
> "A. Yes, I do not deny this at all."

(Group D of the Economic-Administrative Head Office was located in Oranienburg. The State Secretary mentioned here is apparently Krueger.)

Later on, on the same page, he corrects himself and replies:

> "Whatever may happen, at any rate I have never denied that, to my sorrow, some of the deported Jews were sent to death. This I could not deny."

The limited reference to only a part of the deportees was apparently intended to exclude those who had been put to forced labour before their death. But even if this was so, there is no doubt that their final fate was also known to the Accused at the time he dispatched them to the East, and it was for that purpose that he sent them there.

As we have stated elsewhere with regard to the deportees to Auschwitz, it was as persons condemned to death that they reached the gates of the camp.

166. We shall now discuss the question as to whether the Accused had a part in the introduction of the system of killing by gas and the supply of gas. The Accused denies that he had any part at all in this.

As we have already mentioned, when we spoke about Globocnik's extermination camps, the system of killing by gas had already been used in Germany before then to put an end to the lives of mentally sick people (N/94, p. 15), and the order for this appears to have been issued from Hitler's office. The unit engaged in this, under the guidance of Wirth, was transferred to the East, in order to use the same system against the Jews. Until then, it was a question of using motor exhaust gases. As to the system of carrying out executions by means of Zyklon B gas (prussic acid), which was used at Auschwitz, Hoess states that it was invented by his deputy, Fritzsch, who first used it to execute Russian prisoners (T/45, p. 146; T/90, p. 4). There is no reason why his statement should not be accepted as accurate.

The question of finding a “cleaner” and more efficient system for mass executions than shooting undoubtedly occupied the attention of the Accused as early as the end of the summer or the beginning of the autumn of 1941. This we find from the mention he makes in his Statement (T/37) of the impression he gained when he saw an Operations Unit in action near Minsk, where he had been sent by Mueller. He states that his reaction to this was:

> “How can this be possible? To shoot like that at a woman and children... The men must go out of their minds or they will become sadists - those men of ours.” (supra, p. 214)

Again, the date of the visit is in dispute: In his evidence before us, the Accused moves this visit to the winter of 1941-1942 (Session 87, Vol. IV, p. xxxx22). At the same time, he connects the visit with “the double battle of Minsk and Bialystok” (T/37, p. 211), and so does the timetable attached to the Counsel for the Defence's written summary. It should be mentioned here that, in his evidence, the Accused was confused in saying that he crossed this battlefield on the occasion of his visit to Lublin (see Session 87, Vol. IV, p. xxxx20).

This battle did not take place later than July 1941 (see, for example, T/313, report of an Operations Unit from Minsk, dated 13 July 1941). It also stands to reason that, if Mueller wanted to receive particulars about the activities of the Operations Units and sent the Accused to Minsk for that purpose, he did so at an early stage, and not in the winter of 1941-1942. Accordingly, we find that this visit took place in September 1941 at the latest.

167. In exhibit T/308, which is connected with the name of Dr. Wetzel, an official of the Ministry for the Eastern Occupied Territories, we find the main evidence implicating the Accused with regard to the introduction of the method of killing by gas vans. This collection of documents comprises a handwritten memorandum, a typescript of the same memorandum and two drafts of letters to the Reich Commissioner in Ostland (the Baltic countries). The handwritten memorandum and the typescript are identical, with one exception: The memorandum states that a conversation took place between Wetzel, Brack (an official of Hitler's Chancellery) and the Referent dealing with the Solution of the

Jewish Question. The place in which the name of that Referent was to appear was not filled in (it should be added that the name of Wetzel himself was not filled in either).

According to the typescript, the third person who took part in this conversation was the Accused. One of the draft letters does not say any more than the memorandum and the typescript, but also mentions the names of Wetzel, Brack and the Accused. Thus far, we still do not know the details of the discussion which took place among the three of them, but the second draft, dated 25 October 1941 (which was also submitted at one of the Nuremberg Trials - the Trial of the Doctors, Green Series, Vol. l, pp. 870-888) states:

> "With reference to my letter of 18 October 1941, I inform you that...Brack, of the Fuehrer's Chancellery, agreed to take part in the preparation of the necessary housing and of the gas apparatus. At present, the apparatus required does not exist on a sufficiently large scale and must be manufactured. Since, in Brack's view, the manufacture of the apparatus in the Reich will cause greater difficulties than their manufacture on the spot, he thinks it would be more effective to send his men, especially his chemist, Dr. Kallmeyer, to Riga immediately, to attend there to everything necessary...
>
> "May I point out that Sturmbannfuehrer Eichmann, the Referent for Jewish Affairs in the RSHA, has agreed to this procedure. According to Sturmbannfuehrer Eichmann, Jewish camps are about to be set up in Riga and Minsk. Perhaps Jews may also be brought to these camps from the territory of the Old Reich. At present Jews are being evacuated from the Old Reich and brought to Lodz, but also to other camps, so that they can arrive at a later date for posting to work in the East, insofar as they are fit for work. As things stand, there is no reason why those Jews who are not fit for work should not be liquidated by means of Brack's apparatus. In this way, there will not be any incidents, such as occurred - according to a report submitted to me - when Jews were executed by shooting in Vilna. We cannot allow such incidents, especially in light of the fact that the executions by shooting were carried out in public. But those who are fit for work must be deported to the East for the labour operation. Naturally, Jews who are fit for work must be separated from the other men and women. I request a report on your forthcoming activities."

Learned Counsel for the Defence argues that only the handwritten memorandum can count as evidence, and he emphasizes that the Accused's name is not mentioned therein. In his evidence before us, the Accused denies having taken part in a conversation of this kind.

This was not the reaction of the Accused in his Statement to Superintendent Less when these documents were submitted to him. He then stated (p. 2313):

> "Yes, to this I can only say - it is all described with accuracy... I cannot raise any doubts here as to it being so." (See also p. 2314.)
>
> Afterwards, the Accused returns to the same subject of his own accord and says (supra, p. 2339): "There is no doubt that Wetzel came to me on this matter. This I cannot at all explain in any other way, after reading the report - that I brought the matter up through Gruppenfuehrer Mueller - but I cannot say that Gruppenfuehrer Mueller decided in this matter - to the Head of the Security Police and the SD, and after this I informed Wetzel of the attitude taken by the Head of the Security Police and SD. It makes sense only in this way."

Superintendent Less showed him the same documents a second time (p. 3483), and the Accused made no further comment in connection with this. In Session 30, Vol.I, p. 518, these documents were submitted to us without protest, and the Accused's denial that he spoke to Wetzel about the gas appears for the first time in his testimony (Session 78, Vol. IV, p. xxxx17) and again (Session 98, Vol. IV, p. xxxx37).

We do not attach any value to this denial and so do not accept it. The denial is based essentially on the fact that, in the handwritten memorandum, the Accused's name does not appear. This was noticed by the Accused only after he had been examined by the police. The documents were written in an official office of the German Reich, their formal authenticity is not in doubt; they are closely connected; they record the words and actions of persons acting with official authority, and they were composed soon after the events occurred. If we add to this that the Accused readily admitted the accuracy of their contents, not only spontaneously when the documents were first shown to him, but also a second time on another day, after he had had time to think, and volunteered to repeat his confirmation of their accuracy, without having been questioned again on this subject; and again on a third occasion, when shown the same documents he expressed no reservations.

This is more than sufficient to convince us that these documents are not only authentic from a formal point of view, but also accurate in content, and there is no basis for the much later denial made by the Accused. Thus, it has been proved that the Accused expressed the consent of the RSHA to the use of gas vans in October 1941 as a substitute for the execution of Jews by shooting. (His argument in Statement T/37 that he acted according to instructions from his superiors is repeated in regard to many other matters, and we shall deal with this later in its proper place.) From the declaration of Ohlendorf (T/312), we know that in the spring of 1942 a gas van was sent to the Operations Units, and exhibit T/309 gives evidence of the dispatch of an additional van in July 1942.

Therefore, we find that the Accused took part in exchanging the system of execution by shooting for execution by means of gas vans.

168. We have before us the following material, proving the Accused's part in the introduction of the system of killing by Zyklon B at Auschwitz, and in the supply of this gas to Auschwitz:

(a) In his autobiographical notes (T/90), Hoess describes his conversations with the Accused on the preparations for mass extermination operations at Auschwitz and, inter alia, he mentions a conversation in Berlin at the end of November 1941 (supra, p. 4). They spoke about various matters, but

> "I could not secure information about the date the operation was to begin. Eichmann had not yet managed to obtain suitable gas."

Later, Hoess' deputy came across Zyklon B gas and used it to execute Russian prisoners, as mentioned above. And Hoess continued (supra, p. 5):

> "When Eichmann visited [Auschwitz] again, I told him about this use of Zyklon B and we decided to introduce this gas in future for the mass exterminations."

(b) When Superintendent Less showed these excerpts to the Accused (T/37, p. 287), the latter reacted with a vigorous denial but continued:

> "All the time, this comes back to the gas. I never had anything to do with gas. The first time that I heard anything at all about gas in my Section was when I was in Hungary. Then Guenther ordered gas for himself somehow, this I do know, and I also said to Guenther, I say: `What on earth have you got to do with gas, man? We do not have anything to do with gas. It is not my concern.'"

The Accused emphasizes that at the time of this incident it was not he who was in charge of the Section, because of his absence from Berlin. Superintendent Less asked him (apparently because of other material which was in his possession, and which we shall mention presently) about March-April 1942, and the Accused confirmed that at that time he was in Berlin.

(c) Again the Accused returned to the same subject quite spontaneously and said (p. 933 et seq.):

> "I had a row with Guenther because he, sometime or other - I do not know when, at any rate it was during the time that I was away from Berlin, I think - he had begun to do something in connection with gas." At this point Superintendent Less reminded the Accused that he had spoken about this earlier in connection with the Hungarian period, and the Accused continues: "It is possible that when I was in Hungary, apparently this was so. Matters of this kind, you see, Guenther never weighed up in his mind...why he interfered in matters which were no concern of his...that, altogether the Section was not geared for this. For how could I bring this matter now to the head of the office - he would tell me to go to hell. He reprimanded me severely for much less serious offences."

Later, Superintendent Less asks the Accused if he had had any connections with a man called Gerstein, and if he had sent Guenther to him. The Accused replies in the negative and adds that he now heard the name Gerstein for the first time.

(d) We have already mentioned Gerstein elsewhere and the exhibits connected with his name. The reference is to exhibits T/1306-T/1315, manuscripts by engineer Kurt Gerstein, who wrote them in April 1945, and statements which he gave in May 1945 to a British officer and an American officer; also a manuscript dated 4 May 1945, which reached his wife a year later (T/1310; T/1311). Gerstein was later detained by the French and examined by them (T/1313/b and T/1313/c). In July 1945 he was found dead in a French prison and apparently had committed suicide, though his wife doubts that this was so.

From 1941 Gerstein worked in the Medical Technical Service attached to the SS Command, and in January 1942 he was appointed Technical Director for Disinfection, and during his service he handled highly poisonous gases for disinfectant purposes. It appears that the supply of gas to Auschwitz went through him. In the summer of 1942, on his return from the extermination camps, he met a Swedish diplomat on the train and, according to his statement, poured out his heart to him and confessed to what he had seen. He also tried to pass information on this subject on to church and neutral circles. The Swedish diplomat confirmed that in August 1942 Gerstein gave him a detailed report on the extermination procedure at Belzec, and thus this part of Gerstein's statement received confirmation from a trustworthy source (T/1312).

According to Gerstein, Guenther ordered 100 kilograms of potassium cyanide from him on 8 June 1942 (T/1309, p. 4 of the English document, p. 3 of the German document). Elsewhere (T/1313/a, p. 3) he says that Guenther on this occasion ordered 260 kilogrammes. Gerstein also relates (T/1309, p. 8 of the English document, p. 12 of the German document) that at the beginning of 1944 Guenther again requested very large consignments of potassium cyanide for an unknown purpose (see also T/1313/a, p. 11). Gerstein attached to his statement accounts from February to May 1944 relating to a quantity of gas of more than 2,000 kilogrammes, and in a handwritten document in French he wrote that these quantities had been ordered by Guenther.

(e) Gerstein's documents were submitted to the Accused (T/37, p. 2256), and he denied all knowledge of their contents. He admits that at the beginning of 1944 he was in Berlin (p. 2260), but emphasizes that he was away from the office very frequently (p. 2268). He mentions the possibility that a special assignment had been given to Guenther, though such a matter also should have come to his attention (p. 2269). However, it is a fact, states the Accused, that not all Guenther's special duties came to his knowledge. And how does he explain such a possibility?

> “Possibly this was a case where Mueller had assigned a duty to Guenther directly...since Mueller knew me generally as a more sensitive person than Guenther... I am not trying to say that I displayed the sensitivity of a girl, but I was much more sensitive than Guenther, for example.” (p. 2274)

Elsewhere the Accused surmises that possibly Guenther had direct contact with Globocnik and ordered the material for him (p. 2340). The Accused thought that this possibility was more likely, because Mueller would not decide on a matter of this kind on his own responsibility but would receive instructions from the head of the Security Police, in which case he, the Accused, would have known of it, because during that period in 1942 he was not away from Berlin for more than eight days at a time, and during such a short period a matter of this nature would not have been completed (pp. 2246-2347).

At this stage, the Accused mentions yet another possibility, namely that he had not heard about the whole matter from Guenther but only read about it in the literature, in the books of Poliakov or Reitlinger (p. 2346, p. 2488). On pp. 935-936, supra, he even argued that he heard the name Gerstein then for the first time. In his evidence before us, he repeated his general denial, but here he already remembers that he had heard about Gerstein and his report while he was still in Buenos Aires (Session 95, Vol. IV, p. xxxx16).

169. As already stated, exhibit T/1312, with regard to Gerstein, was submitted to us. Though it does not provide corroboration of the contents of Gerstein's statement, because it only proves that as far back as 1942 Gerstein disclosed particulars which also appear in his statement in exhibits T/1309 and T/1313, still this fact adds weight and credibility to this statement of his. We do not doubt the accuracy of his statements with regard to Guenther's visit and the requisitions made by the latter.

In our view, there is also sufficient corroboration of Hoess' statement on his discussions with the Accused on the subject of introducing Zyklon B gas for the mass execution of Jews at Auschwitz, and also of Gerstein's statement about the supply of gas by the Accused's Section. Corroboration of Hoess' statement on this matter can be seen in the fact that the Accused visited Auschwitz in the autumn of 1941 (see section 143 above), i.e., during the period in which preparations were being made there for mass extermination of Jews, and at that time the question of executing by gas occupied the Accused, and he also took part in the preparations for execution by means of gas vans, as we have seen.

As for the supply of gas to Auschwitz, we see corroboration in the fact that the Accused made a partial admission, namely that he had heard at the time of Guenther's activity in connection with the supply of gas. As we shall make clear below, the acts of Guenther - his permanent deputy in charge of Section IVB4 - are prima facie to be regarded as the acts of the Accused himself, and we do not accept the Accused's allegation that he had no connection with this activity and did not know about it.

The Accused admits that, as Section Head, Guenther's activities should have come to his knowledge, and he also admits that even had he been away from Berlin temporarily, a matter of this kind would not have been concluded prior to his return. There remains, therefore, only his assumption that there was some kind of secret negotiation between Globocnik and Guenther - so remote a possibility that it cannot be seriously considered. And again, in the first part of his Statement, the Accused said spontaneously that he had

been informed of the matter at the time and had discussed it with Guenther. Only at a much later stage did he try to alter his version and contend that he had learned of the whole matter only in recent years from the literature.

We reject this attempt on the part of the Accused, and consequently, as stated, we do not accept his version, with the exception of his statement as mentioned above, which in fact lends further weight to our acceptance of the statements by Hoess and Gerstein.

Accordingly we find that Hoess' deputy began to use Zyklon B in Auschwitz for the execution of Russian prisoners. Hoess informed the Accused of this, and jointly they decided to introduce this method for the mass killing of Jews in Auschwitz. Guenther - with the knowledge of the Accused - made an attempt to introduce this system also in the other extermination camps, and to that end ordered a quantity of Zyklon B from Gerstein in June 1942. But this plan was not implemented, and in the other camps the use of motor exhaust gas was continued. In 1944, the Accused's Section ordered additional large quantities of Zyklon B for use in Auschwitz, possibly also in other places, such as Terezin, where in the end the gas chambers were not put to use.

We have said that the activities of Guenther, the Accused's deputy, are to be attributed prima facie to the Accused. This finding requires further elaboration, together with discussion of the Accused's contention that everything he did was not on his own initiative but solely on the basis of, and in accordance with, the instructions regularly received from his superiors. At this point, we return to the general subject of the Accused's status within the apparatus of the RSHA.

170. The Accused has given us a truly amazing portrait of himself during those days. He was in charge of a Section in the RSHA, with the SS rank appropriate to the grade of “Oberregierungsrat” in the general administrative service and the military rank of lieutenant-colonel. Subordinate to him at his office in Berlin were many officials, from low grades right up to the SS ranks appropriate to the grade of Regierungsrat in the administrative service and to the military rank of major. In addition, he was in control of a group of Advisers on Jewish Affairs who were themselves persons of considerable status in the various lands in which they worked.

The Accused asks us to believe him when he says that, being a person in such a position, and in spite of his being in such a position, he always acted only under explicit instructions received by him in every case, and only when a precedent existed which exactly fitted the case before him would he refrain from approaching his superiors. On the other hand, he ascribes to his subordinates no small degree of initiative in their specific fields, for example in questions of property, which were within the special field of duty of Suhr and Hunsche. As for his deputy Guenther, the Accused not only attributes considerable personal initiative to him, but even actions behind the back of the head of his Section.

In accordance with the evidence before us, let us therefore examine whether this is, in fact, the way in which matters were administered in the Accused's Section and in the RSHA as a whole.

171. The Attorney General has submitted to us the "Joint Administrative Rules for Ministries of the Federal Republic (of Western Germany), General Section" (T/1423). It is the 1958 edition, but the preface states that the present text is based on that of 1927, well before the Nazi period. This exhibit was submitted to the Accused in cross-examination (Session 95, Vol. IV, pp. xxxx21-22), and he did not deny that these rules were also in force in the central institutions in the Reich during the Nazi period, but with regard to the SS institutions, he added:

> "In the light of the change in the line of command and in the system prevailing in the Third Reich, the procedure employed in the Weimar Republic was frequently changed, because here different degrees of responsibility and command obtained. Accordingly, a considerable number of basic orders, which had been valid during the Weimar period, were changed."

In paragraph 4 (p. 13) of T/1423, it is stated:

> "The Ministry is divided into departments (Abteilungen) and the department into sections (Referate). The basic unit in the organizational structure of the ministry is the section... Head of Section (Referent) is an official of the senior service, who directs the section on his own responsibility and is directly subordinate to the head of the department or to the head of the group. In his hands lies the first decision on all matters which come within the scope of his section."

(The RSHA, as a central authority (Hauptamt) is parallel, according to this terminology, to a ministry, and its divisions (Aemter) to departments.)

The following exchange of questions and answers took place between the learned Attorney General and the Accused (Session 95, Vol. IV, pp. xxxx23-24):

> "Q. ...Is it your contention that, whereas all the heads of sections had authority as herein described, in Department IV, Mueller did not agree that his subordinate should possess such authority, or are you arguing that in the Nazi period none of the heads of sections had authority as stated herein?
>
> "A. I would not dare contest what has just been said. I am only saying what I know from my own experience and from what I myself went through.

> “Q. That is to say, a head of section had the right of decision, but you, as Mueller's head of section, did not have the right of decision?
>
> “A. It seems to me that it may be said that at that time the matter depended upon the personality of one's superior, insofar as he had - if one may say so - dictatorial qualities.
>
> “Q. Did Mueller have such qualities or not?
>
> “A. As far as decisions were concerned, he was very pedantic and intolerant and reserved for himself all decisive action. This much I can say.
>
> “Q. Was this the case also on minor matters, on details?
>
> “A. Mueller took decisions on the most trifling matters, yes. Surprisingly enough, this was also true of Himmler, who went right into the smallest of details.”

Thus, the Accused's version is that, in principle, exhibit T/1423 was valid also during the Nazi period, and in the RSHA as well. But the scope of a section head's powers was set by the department head, and since his department head, Mueller (who was the head of Department IV), reserved all decisions for himself, he, the Accused, as head of Section IVB4, was not left with any power of decision.

172. One thing is undoubtedly true: Letters from Section IVB4 and the other RSHA Sections, just as from every section in every central authority of the Reich, were sent in the name of the head of the service, and if the head did not sign himself (this happened only on rare occasions of special significance), another person signed - the department head or the section head - in his name, or on his behalf, or “upon his instruction.” These letters were always written in the first person, and the “first person” was not the signatory to the letter, but the head of the service in whose name or on whose behalf or upon whose instruction the signature was appended. The “first person,” who appears in all the letters submitted to us, and signed by the Accused or Mueller, or Guenther, or Suhr, or anyone else, is the Head of the Security Police and the SD, namely Heydrich, and after him Kaltenbrunner, and in the interim period between Heydrich's death and the appointment of Kaltenbrunner, Himmler himself.

The reference IVB4 on a document raises a presumption which the Accused has to rebut, that the document was sent on the Accused's responsibility, whether it was signed by one of his subordinates or one of his superiors.

As to the Accused's own signature on a document, it is clear that, by appending his signature, the Accused accepted responsibility for his subordinates who had dealt with the subject of the document, but the fact that he himself signed the document is still not

proof that he had taken the decision on the subject of the document on his own initiative or had acted in accordance with the instructions of his superiors.

But just as it is impossible to ascribe to the Accused the initiative for a certain letter signed by him, by reference solely to the "first person," so also initiative cannot be ascribed to some other person, for example Guenther, when that person signed a letter. For example:

T/1398 is one of the files of the Duesseldorf Gestapo, the contents of which we dealt with in an earlier part of this Judgment. The office in Duesseldorf was engaged in evacuation to Terezin, and in a letter dated 3 June 1943 (p. 247 of T/1398) sent to Section IVB4, raised the question as to whether certain persons were to be evacuated. On p. 252, we find a cable signed by the Accused, and drafted in the first person, which contains certain instructions (that the persons in question should not be evacuated for the moment.) On p. 253, there is a further cable, this time signed by Guenther, which states, inter alia: "I have in the meantime dealt in a special cable with the questions which arose in your letter, dated 3 June 1943." Thus, the use of the "first person" in the first cable does not refer to the Accused, nor in the second cable to Guenther, but in both the reference is to the Head of the Security Police and SD.

173. Of course, this formal arrangement does not mean that Heydrich or Kaltenbrunner personally dealt with all RSHA affairs or initiated all RSHA activities; and the same applies to Mueller, as Head of Department IV of the RSHA. Superintendent Less asked the Accused what in general were the matters on which he himself was allowed to make decisions, and the Accused replied (T/37, p. 1261), that he could decide about anything by himself, provided he had before him:

> "The orders, instructions, commands, and appropriate directives from Himmler, Head of the Security Police and the SD, or Mueller, or, of course, laws or executive regulations applying to the matter..."

And he continues:

> "After that, upon my own authority - in all other cases I could decide myself, of course, but then, if some mishap occurred, I would be the one to have to take the consequences."

What, for example, was the origin of the evacuation instructions sent to the various authorities? In his Statement T/37, (pp. 906-907), the Accused stated:

> "... I sat at my desk in Berlin, I had instructions from my superiors - in this case there were not even any such instructions - I cannot even say from my superiors - because when it came to giving orders in principle, Mueller scarcely ever gave any order of his own, independently, he never deviated from the orders given by his superiors, Heydrich, Himmler. This was the first thing.

Secondly: I had the reports from people who were abroad, and here it was their duty to make suggestions on the basis of their practical experience, because they, above all, could see what action was at all practicable. From these two sources, Section IVB4 prepared a report which was later either approved or rejected. The directive followed from this procedure.

In practice, this could mean that a proposal which came in from Paris or from Zoepf in The Hague went out fourteen days later to Paris or The Hague in the form of a directive approved by the RSHA. This is how things always developed in practice, and it was not the case at all that a directive was prepared at the beginning, once and for all, and that afterwards action was to be taken in accordance with it and a pattern set, but everything was in a state of continuous flux, a steady stream, and every moment addenda were prepared or cancellations made of details which had ceased to be valid, perhaps because Himmler had issued new rules, or perhaps the Head of the Security Police and the SD had given other orders, or perhaps also because new ideas had been culled from the reports of the officials in the occupied territories or territories under [German] influence, as a result of which oth

er directives were given from above." Hence, also according to the statement of the Accused, he too, was competent to issue general instructions according to his discretion, within the limits of the orders which had come from above and by which he was bound.

174. In his evidence before us, the Accused tried, as was his wont, to limit his personal role, and he argued that in fact he did not even make use of the authority he possessed, and never put forward any proposals of his own. At the same time, he admitted that every draft prepared by the officials of his Section had to be approved by him. Accordingly, he was asked (Session 106, Vol. IV, p.xxxx5):

> "...whether everything issued by your Section had first to pass through your hands, or, in your absence, the hands of your permanent deputy and be initialled by you, or, in your absence, by him?"

To this the Accused replied:

> "Yes, this was so."

During the same session (p. 7), internal correspondence of the German Foreign Ministry was placed before the Accused. From this correspondence it appears that the head of section (Referent) made a certain proposal, which went up to the Minister for Foreign Affairs via the department head, and returned to the section head after the minister had inserted a certain correction. The Accused agreed that in the Foreign Ministry it was the custom for the section head to put forward proposals. And when it was put to the Accused (p. 11) that it was difficult to understand why the same procedure did not apply to his own Section, he could only find the following reply:

> "...On the Jewish Question there were so many instructions, so many orders...so many points of contact with the central governing authorities, with all the Party authorities, that it was altogether difficult for the State Police to deal with this and to do what all the authorities wanted. Its hands were full, occupied with executive work. The orders and the aims used to contradict each other. They interfered in everything, they demanded and requested, and this is why there was not even any need to make suggestions. Not only my Section was not called upon to make proposals, even Mueller, as a general rule, was not called upon to make suggestions. Everything that the police did here was by way of carrying out the requests of others who were exerting pressure, making requests, making demands, and making numerous suggestions."

There is no doubt that other authorities in the Third Reich also sought to show their ability in the handling of Jewish affairs. But this explanation that the RSHA as whole was only the servant of others does not appear to us to be worthy of serious consideration, and we therefore reject it.

Huppenkothen, who was a Section Head in Department IV of the RSHA, gave evidence about Mueller's work methods. The gist of his statement is that Mueller had a strong tendency "to do everything by himself as far as possible" (p. 6 of the testimony), but the witness adds that this tendency was especially felt in Mueller's special field of interest, which was the war against Communism. Similarly, Huppenkothen confirms (p. 8) that Mueller would at times pass individual cases for action to sections which actually had no competence in the matter, or devolve duties on a specific official, without the knowledge of the authorized Referent, and there were complaints about this practice.

This phenomenon was also connected particularly, but not solely, with Mueller's special field, the war against Communism. Mueller did not rush to make decisions (p. 9) but in all unusual cases asked for instructions from above, and this also limited the activities of his own subordinates. There were also complaints about this, but Huppenkothen does not remember the Accused complaining. Here we shall mention the following statement made by the witness:

> "It often happened that Mueller did not approve the orders submitted to him without further discussion, but altered them or addressed questions to his superiors." (pp. 9-10)

Six, who was Head of Department VII in the RSHA until 1941, gave evidence about the status of the Accused himself in the RSHA (pp. 4-6 of his evidence):

> "The authority which Eichmann had is not known to me in detail, but there is no doubt that he had greater authority than the other Heads of Sections. This was the general opinion in the RSHA. The general impression was that Eichmann was not merely subordinate to Mueller, but to some extent already stood alongside him. Mueller was known as one of the worst

> whips, and I must say that the two matched each other well. It can be assumed that, had Eichmann been under somebody else's orders, and not Mueller's, he would not have had such wide powers as he in fact had...in line with his whole attitude, Eichmann did not go beyond the instructions had been given."

Wisliceny gave evidence at Nuremberg (T/58, p. 2) that special powers had been given to the Accused by the Head of the Security Police and by Mueller, and he continued as follows (p. 8):

> "I know that Eichmann dealt cautiously with all the questions relating to his special task, and especially with all the files. In every respect, he was the complete bureaucrat. He immediately prepared a memorandum on every conversation he had with any of his superiors. He always used to remark to me that this was the most important thing, that he should always be covered from above. He himself refrained from taking personal responsibility and made every effort to obtain cover for his responsibility vis-a-vis his superiors, i.e., Mueller and Kaltenbrunner."

It is difficult to understand Huppenkothen's statement with regard to the Accused's status. In his sworn affidavit dated 18 July 1946 (T/159), he said:

> "The Jewish Section (IVB4, afterwards IVA4b) and its director, Eichmann, held a special position in Department IV."

Huppenkothen's evidence in this case shows a clear desire on his part to retract these remarks in the affidavit he had given earlier. To that end, he used special terminology, according to which he makes a distinction between (a) Sonderstellung, (b) besondere Stellung, (c) Ausnahmestellung, expressions which even a person well versed in the German language would have difficulty in distinguishing one from the other (if indeed any distinction exists). In spite of this semantic hair-splitting, Huppenkothen now again confirms that the Accused had "special status" ('besondere Stellung') in Department IV (p. 7).

Morgen, who had judicial duties in the SS, also gave evidence at Nuremberg as a witness for the defence on behalf of the SS, and his testimony was submitted to us by Counsel for the Defence (N/94). Morgen stated there that, during the Third Reich, he had investigated the question of the extermination of the Jews and in mid-1944 had come upon mention of the Accused's activities. He continues (p. 51):

> "I requested the SS court in Berlin to conduct the investigation against Eichmann on the basis of my comments. Therefore the SS court in Berlin submitted an order for Eichmann's arrest to Kaltenbrunner as the person competent in judicial matters (Gerichtsherr). Dr. Bechmann (apparently the judge who submitted the order to Kaltenbrunner) told me that dramatic incidents then took place. Kaltenbrunner immediately summoned Mueller,

> and the judge was then told that an arrest was absolutely out of the question, because Eichmann was carrying out top secret duties, of the highest importance, on behalf of the Fuehrer."

176. All these testimonies and affidavits, even the cautious evidence of Huppenkothen, point to the Accused's strong and influential position in the RSHA, and are incompatible with the tendency of the Accused to represent himself as having been devoid of any initiative or influence from 1941 onwards. Of course, the statements by these witnesses must be examined carefully, for at least some of them were accomplices, and therefore their statements require corroboration, and not only in a formal sense. Corroboration of this kind comes from the Accused himself. Exhibit T/1393 (File No. 17 of the Sassen Document) contains remarks and notes in the Accused's handwriting, and exhibit T/1393/a contains the same extracts from Sassen's own document to which the remarks in exhibit T/1393 refer, and without which the remarks are unintelligible. These extracts were taken from the Sassen Document with the consent of the Attorney General and the Counsel for the Defence, and we regard them as authenticated by the Accused's handwritten remarks (Session 75, Vol. IV. p. xxx26).

In the first extract (p. 1 of T/1393/a) the Accused relates an incident which occurred between himself and Wolff, Himmler's adjutant, who held the rank of general (Obergruppenfuehrer). Wolff requested that a certain person not be deported, and the Accused refused to comply with this request. Wolff became angry and remarked that the Accused was only an Obersturmbannfuehrer, whereas he himself was an Obergruppenfuehrer. To this the Accused replied:

> "Yes, Obergruppenfuehrer, I know that, but may I be permitted to reply that you are now speaking to the State Secret Police and to the Referent of the Secret Police Office, Obersturmbannfuehrer Eichmann."

Here we shall mention again the cable from Veesenmayer (T/1215) in which he reports the Accused's opposition to the emigration of Jews from Hungary. What was the meaning of this opposition? The Accused could not reconcile himself to the order, which was known to him, of the Fuehrer himself, lest some thousands of Jews might escape the general slaughter. Here, is revealed before us not a bureaucratic official, but a man with a will of his own, who feels his own power to the point that even the Fuehrer's order no longer represents an unalterable decision for him.

177. There is no contradiction between this kind of status and the constant anxiety to be "covered," to which so many of the above witnesses testified. And if Mueller, the head of the Gestapo, one of the key men in the Nazi security network - who sat in his office and was not prominent outside it, but pulled the strings from his office - if he, too, took care to be "covered" from above, this tendency is certainly understandable in the Accused. When he was already "covered" by an existing instruction, he acted without asking questions, and if he had before him a new question of principle, he prepared a draft order, approached his superiors - first of all, of course, Mueller, and Mueller approved it, or, as

Huppenkothen said, did not approve it without further discussion, altered it or also addressed questions on it to those above him.

178. The Accused's Section also dealt with many individual cases of Jews who tried to escape from the jaws of death. Much evidence, from all parts of Europe, has been submitted to us on such cases. Nearly all of them had a tragic end, and in this, too, the Accused and the officials of his Section had a hand. Here we shall mention only one case out of many, to illustrate what has been said about the standing of the Accused in his Section - this time as seen by an outsider.

In Holland, Professor Meyers, Professor of Law at the University of Leyden, was arrested together with his family and taken to Westerbork camp. His friends mobilized support and funds on his behalf, in order to secure permission for him to emigrate to Switzerland. This request was refused in letters (T/534, T/535) emanating from the Accused's Section - one signed by Guenther and the second by the Accused - because Professor Meyers was an "intellectual." His friends did not give up hope. Efforts for the rescue of Professor Meyers were concentrated in the hands of a Dutch lawyer, Mrs. Van Taalingen-Dols, who has also published a book on this matter, entitled The Battle for a Man's Life. Counsel for the Defence submitted to us an affidavit from Mrs. Taalingen-Dols, accompanied by extracts from the book (N/104). The intention of Counsel for the Defence was to prove that the Accused and his Section did not have authority to permit individuals to emigrate from the areas under German rule. Indeed, this was so: When emigration was stopped in 1941, Himmler reserved this power to himself and only permitted emigration in isolated and exceptional instances (and in return for the payment of a considerable sum in foreign currency).

With the aid of influential persons, including a member of the SS, Mrs. Taalingen-Dols sought an interview with the Accused, of whom she says in her affidavit:

> "They always hinted to me that he was the supreme chief of Department IV (the group of `Jewish Departments') in the RSHA in Berlin). As such they described him to me as an important and extremely influential man."

She was granted an interview in Section IVB4 and on 22 July 1943 visited the Section, accompanied by a member of the SS. The Accused was on one of his service journeys, and she was received by Guenther who "according to what he said, was authorized to give a binding reply" (p. 214). Guenther repeated the prohibition on emigration, emphasizing that of late Himmler had rejected all applications of this kind. When the lawyer asked whether Guenther would object to her trying to take a certain step in SD quarters in Holland, Guenther replies that "all the activities against the Jews are decided in Berlin, and all operations must be subordinate to this" (p. 216). The decision, announced by Guenther on the spot, was:

> "The Reich...is prepared, as a special exception, to prevent the deportation of the Meyers family to the East, even though the professor is not yet 65, and up to this age all the Jews are evacuated to the East." (p. 217)

Guenther was asked what would happen to Professor Meyers in the event of a general evacuation, and his reply was that in such an event there were two possibilities - one of them, his being deportation to Terezin. Counsel for the Defence informed us that the professor and his family were in fact sent to Terezin and survived.

We shall also quote a statement by the same member of the SS who was present during this conversation (p. 218):

> "He says that, the fact in itself that I was allowed at all to appear personally at the RSHA -the holy of holies - and was permitted to speak there to the deputy of the supreme chief for Jewish affairs, must be regarded as an exception to basic procedure, because outsiders have no access there."

From this case we have learned about the powers which existed in regard to emigration, and we have also learned that Guenther - and how much more so the Accused - had the power to decide upon the exceptional treatment of a specific Jewish family. We have learned further that this decision could only be made in Section IVB4 in Berlin, and not on the spot, at the office of the Adviser on Jewish Affairs in Holland. Finally, we must point out with what fear and trembling all of them, including the SS man, mentioned the name of the Accused, the arbiter of life and death.

179. Also with regard to the scope of the duties, which were placed within his competence, the Accused made an attempt, in his Statement to the police and in his testimony before us, to play down his own personal involvement, in contradiction to the truth. His repeated contention was that he was no more than an official dealing with the preparation of timetables for the trains which carried the deportees from their various countries to the East. There is no doubt that even obtaining the necessary railway freight cars called for much effort, in view of military needs at a time of total war.

But it cannot by any means be said that here the Accused's duties ended. His main work lay not in obtaining the freight cars, but in obtaining the Jews to fill them, in order to deport them for extermination and everything connected with this. One cannot summarize the nature of this work by detailing his duties. The purpose was a single one; the duties were many and varied, according to the constantly changing circumstances in any given place. As the Accused said in his Statement on p. 2408:

> "As far as evacuation was concerned...it was the duty of IVB4, as it were, to set the pace, for two reasons: first, the clear and resolute orders which had been given by the Reichsfuehrer-SS and Head of the German Police to carry out the matter energetically. This was a permanent standing order. Secondly, as I said before, IVB4 was dependent upon means of transport. If there were periods when it was easier for IVB4 to obtain the freight cars, IVB4, in accordance with the general order from the Reichsfuehrer-SS and Head of the German Police, had to make strenuous efforts to ensure that the freight cars should be used to their maximum capacity.

This is what IVB4 did, of course...these were the two hinges on which the whole matter turned."

"That the maximum capacity of the freight cars should be used" - thereby, in effect, everything has been said, and there is a vast difference between this and the mere arrangement of timetables. This called for the creation of all the conditions preliminary to hunting down Jews wherever they lived and rounding them up for deportation. At the other end also, attention had to be paid to the "reception" of the transports at their destinations, so that the deportation machinery should not be halted halfway; and it is clear, for example, that the speeding-up of the extermination process facilitated the reception of fresh transports at peak periods, such as the period of deportations from Hungary to Auschwitz. Thus both the speed and methods of extermination also became part of the field of interest of the Accused and his Section.

The Accused's key position in everything relating to the deportations of the Jews from the Reich and the Protectorate stands out from the facts which we have found. This is true also of all the European lands in which the Advisers on Jewish Affairs were active, and whose steps he used to control from his seat behind the desk in Berlin, with the aid of modern means of communication and through his frequent journeys to the focal points of operations throughout the length and breadth of Europe. We have also noted his special activity in Hungary.

As to the plundering of the property of the deported Jews, this went side by side with the deportation itself and was handled by the Accused's Section, especially through its jurists, Suhr and Hunsche. We have quoted the evidence for this in detail above, and finally the Accused also admits that his Section was involved in the plunder ("dass das Dezernat IVB4 hier seine Finger schwerstens drin gehabt hat") (T/37, p. 2872).

180. To sum up this section: We reject absolutely the Accused's version that he was nothing more than a "small cog" in the extermination machinery. We find that in the RSHA, which was the central authority dealing with the Final Solution of the Jewish Question, the Accused was at the head of those engaged in carrying out the Final Solution. In fulfilling this task, the Accused acted in accordance with general directives from his superiors, but there still remained to him wide powers of discretion which extended also to the planning of operations on his own initiative. He was not a puppet in the hands of others; his place was amongst those who pulled the strings.

It should be added - and we have already given the details in the appropriate place - that the Accused's activity was most vigorous in the Reich itself and in the other countries from which Jews were dispatched to Eastern Europe; but it also ranged widely in various fields of activity in Eastern Europe.

The question arises: If such was the Accused's status, why was he not promoted to a higher rank, after his last appointment at the end of 1941, in spite of his rapid advancement in the preceding years. The Accused gives the answer to this (T/37, p. 250):

> "And it was virtually impossible to promote me further because the post of Section Head, according to the establishment, was that of a Regierungsrat or Oberregierungsrat, and the equivalent SS rank...to Regierungsrat was Sturmbannfuehrer, and to Oberregierungsrat - Obersturmbannfuehrer. Therefore, so long as I was a Section Head in the RSHA, I could not go any higher, even if I stayed there for twenty years."

And it should also be remembered that in 1944, three decorations were conferred on the Accused, one after the other, including the "Distinguished War Service Cross, First Class, with Swords" (T/55 (13)). It is not rare for a man in an important position - and especially in a position such as that of the Accused - to be unwilling to be prominent or for the ruling powers to wish him not to be prominent.

Legal Analysis of the Findings of Fact in the Light of the Indictment

181. The acts of the Accused against the Jewish People were detailed in eighth counts 1-8 of the indictment. In all these counts, the Accused was charged with offences under Section 1 of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950. This section defines three crimes for which the punishment is death:

Crime against the Jewish People - Section 1(a)(1), and with this the Accused is charged in counts 1-4;

Crime against humanity - Section 1(a)(2), and with this the Accused is charged in counts 5-7;

War crime - Section 1(a)(3), and with this the Accused is charged in count 8.

Section 1(b) defines the nature of these three crimes.

182. We shall now devote our remarks to the Crime against the Jewish People, referred to in counts 1-4. The legislator has specified in seven sub-sections the acts which he regards as a crime against the Jewish People. We have to deal only with the first four sub-sections in this list, because counts 1-4 are parallel to these four sub- sections, as follows:

(1) killing Jews, is dealt with in the first count;

(2) causing serious bodily or mental harm to Jews, is dealt with in the third count;

(3) placing Jews in living conditions calculated to bring about their physical destruction, is dealt with in the second count;

(4) devising measures intended to prevent births among Jews, is dealt with in the fourth count.

According to the first part of Section 1(b) of the Law, all these acts amount to a crime against the Jewish People only if they were committed with intent to destroy the Jewish People, in whole or in part.

As to the periods during which the crimes were committed, the first and second counts mention the period 1939-1945 and, from the recital of facts, it appears that the reference in these counts is to the period which commenced with the outbreak of the Second World War in September 1939. In the third count, the "period of the Nazi regime" is mentioned as the period of the commission of the crimes, and in the fourth count, the period is "commencing with the year 1942."

It has been proved that the specific intent to destroy the Jewish People, within the terms of Section 1(b), lay at the basis of the plan called "the Final Solution of the Jewish Question," from the time in mid-1941, when Hitler gave the order for general extermination. The acts of murder and violence against the Jews, committed by the Nazi regime and under its influence from that time onwards, were committed without a shadow of a doubt with specific intent to destroy the Jewish People as such, and not only Jews as individuals. Hence, also, the ruthlessness shown even towards little children, because those who sought to strike at the roots did not wish the survival of the new generation, which would ensure the future and continuity of the Jewish People.

We have found above that information on the plan for the Final Solution reached the Accused at the beginning of the summer of 1941 (section 163 of the Judgment). Further we have seen (sections 163-164) that, at the end of August 1941, the Accused sought to prevent the emigration of Jews from German-occupied territories, lest these Jews escape the Final Solution "which was now in the preparatory stage," and that, not later than mid-September 1941, the Accused paid his first visit to Globocnik in Lublin, and immediately afterwards took part in discussions about the first deportations from the Reich territory to the Lodz Ghetto.

It may be said that, from the moment he heard of the order for total extermination, the Accused did not sit with his arms folded, and that, from then onwards, all his activities as Referent for Jewish Affairs in the RSHA were co-ordinated and directed towards the target of the Final Solution. But since in the evidence before us we have not found positive proof of specific action on the part of the Accused in the interim period between June and August 1941, we think it more cautious to find that his activity within the framework of the Final Solution commenced in August 1941.

183.The facts which have been demonstrated, showed not only that the Accused knew of the intent to destroy the Jewish People, which lay within the plan for the Final Solution, but he personally was also permeated with this intent. The very breadth of the scope of his activities is evidence of this. Moreover, he prepared the material for Heydrich's address at the Wannsee Conference, both the statistical material and the section on the lesson to be learned from history, the lesson which dictated the complete extermination of the Jewish People (section 164). We may recall his reference to "elements of much greater ethnic value who are more fertile," who must not be kept alive (section 116) and

his statement on “the important biological material...whose emigration to Palestine is not desirable” (section 155). All this also bears witness to the aim of biological extermination, directed against the entire Jewish People. We shall further quote Hoess' statement about the Accused, solely in order to sum up the Accused's attitude on this question, which has in any case been well proved: “Eichmann was permeated with the conviction that if there would be success in destroying the foundations of Jewry in the East by complete extermination, then Jewry as a whole would never recover from this blow. For the assimilated Jews of the West, including America, are not able - nor do they wish - to replace the enormous losses in blood, since amongst these Jews there is no expectation of offspring in considerable numbers.” (Hoess on Eichmann, T/88, p. 3) The question arises whether this same intent to destroy the Jewish People existed in the heart of the Accused already at an earlier date, before he was informed in 1941 of the Final Solution. In the third count, Section (b), of the indictment, the Attorney General charges the Accused with causing grave bodily and mental harm to millions of Jews, during the entire period of the Nazi regime, with intent to destroy the Jewish People, and in the list of acts in section (d), supra, mention is made of mass arrests of Jews and their torture in concentration camps, such as Dachau and Buchenwald, and the organization of mass persecutions on the Crystal Night, the organization of a social and economic boycott of Jews, and stigmatizing them as a subhuman racial group, and the implementation of the Nuremberg Laws.

184. With regard to the period up to the outbreak of war, the acts specified in section (d) of the third count were not yet part of the programme for the Final Solution by way of complete physical extermination. Accordingly, we have to consider separately each of these series of acts - for example, the events of the Crystal Night. If so, there is, in our view, grounds for saying that the mass acts of violence, committed by the National Socialist regime up to the outbreak of the War, as for instance the dispatch of thousands of Jews to concentration camps, were already committed with intent to destroy the Jewish People in part, and therefore they already come within the definition of “crime against the Jewish People,” within the meaning of Section 1(a)(1) of the Nazis and Nazi Collaborators (Punishment) Law; for it was clear from the outset to those who sent the Jews to the concentration camps because of their being Jews, that the prisoners would be placed there in such living conditions as would cause many of them to die - and this was the purpose of those who sent them there.

But there is no need for us to decide this question finally, because, in our view, it has not been proved that, until his transfer to Vienna in 1938, the Accused had already taken an active part in the mass persecutions mentioned in section (d) of the third count. We have explained above (in section 62) that up to that date the Accused was engaged in intelligence work and not on executive measures. We have also found that it has not been proved that the Accused participated in the organization of the Crystal Night in Austria (Section 64).

185. With regard to the activity of the Accused in the Central Office for Emigration in Vienna, Prague and Berlin, designed to bring about the forced emigration of Jews, we have found that here the Accused exerted pressure and used threats of terror (Section 65).

Amongst other things, he also threatened to send Jews to a concentration camp if emigration were not speeded up as he wanted. We have come to the conclusion that these threats do not amount to active participation in dispatching Jews to concentration camp or in what occurred inside these camps. The organization of forced emigration itself was not yet accompanied by intent to destroy the Jewish People, but there is no doubt that in the circumstances that have been described these were acts of expulsion of a civilian population which fall within the definition of "crime against humanity."

186. With regard to the expulsion of Jews, in the organization of which the Accused was engaged in what we have called above the "second stage," that is to say, between the beginning of the War and mid-1941, namely the deportations to Nisko, the evacuation of Jews from the areas annexed to the Reich in the East (the Warthe district, etc.) and from Vienna, the expulsion of the Jews from Stettin, and from Baden and the Saar Palatinate (sections 72-75, 77): We have found that these were organized by the Accused in complete disregard for the health and lives of the deported Jews. So, too, it has been proved that many Jews died as a result of the expulsions from Nisko, Stettin and the Warthe district. There is no doubt that here, there was cruelty which bordered on premeditated malice, and we have weighted carefully whether or not the Accused foresaw the murderous consequences of these deportations, and this was what he wished.

But in the final analysis, a doubt remained in our minds as to whether there was that intentional aim to exterminate which is required for the proof of a crime against the Jewish People, and we shall, therefore, deal with these inhuman acts as being crimes against humanity.

187. We must now analyze the legal aspects of the Accused's acts during the third stage, namely the stage of the Final Solution.

The Attorney General argued that the plan for the Final Solution must be regarded as a criminal conspiracy for the carrying out of the countless criminal acts connected with the extermination of the Jews within the area of German influence. The Accused participated in this criminal conspiracy and, therefore, must be held liable ipso facto for all the offences committed to bring about its implementation, whether by a given action or a series of given actions, in whatever geographic area or any area of activities, whether committed with the active participation of the Accused or not. The Attorney General based this argument on the judgment of the Supreme Court in the case of Kaiser (C.A. 88/58, Piskei Din 12, 1628) and especially on the following passage (p. 1642):

> "Sections 35, 36 (Criminal Code Ordinance, 1936) stand by themselves in their definition of a specific crime. We are bound by virtue of Section 4 of the Ordinance to interpret it according to English law. In my opinion, under English law, the offence of conspiracy connotes a substantive rule of law, whereby the conspirators are jointly liable, and this without having regard to the general rules as to complicity. The conspirators are not mutually responsible for their deeds because they are partners to a crime

> within the meaning of Chapter V of the Criminal Code Ordinance, but because of an independent rule in the Law of Conspiracy."

We are of the opinion that the Kaiser case is to be distinguished from the case before us, for two reasons:

(a) There, the Accused were charged in the indictment, inter alia, also with specific offences of conspiracy, whilst in the matter before us the Attorney General did not include in the indictment a count of criminal conspiracy.

(b) As far as we could ascertain, in the Kaiser case the offences against the Accused were misdemeanours, and the punishment to which the perpetrators of the completed crimes were liable did not exceed, or did not greatly exceed, the punishment provided in Sections 35 and 36 of the Criminal Code Ordinance, for a party in a conspiracy to commit misdemeanours (two years imprisonment). It is to be noticed that the Supreme Court in its dictum cites only Sections 35 and 36, and not Section 34, which deals with criminal conspiracy for the commission of a crime. In the case of a crime, punishments may vary considerably; in the case before us, the difference is between a sentence of seven years imprisonment for the offence of conspiracy, and the death sentence for the crimes themselves.

188. We hesitate to accept the proposition put forward by the Attorney General, as a general rule applicable in all cases. We do not consider that a person who consents to the perpetration of a criminal act or acts (for this is the essence of the conspiracy), makes himself ipso facto liable, without any additional ground of responsibility, as actual perpetrator of all those acts. It is true - and thus it was held in the case of Goldstein (C.A. 129/54, Piskei Din 10, 505) - that there exists a rule of substantive law, that once a criminal conspiracy has been entered into, then each of the conspirators becomes the agent of the others for the purpose of the conspiracy, so that every act committed by one of the conspirators, during the existence of the conspiracy, is deemed to be the act of all the conspirators, even if committed in their absence and without their previous knowledge.

But here the emphasis is on the words "for the purpose of the conspiracy," and this ruling does not apply to the completed crime. Thus we also interpret the dictum appearing in an English judgment, in the case of Sweetland (1958) 42 Cr. App. R., quoted by the Attorney General:

> "Every act done by a conspirator in furtherance of the conspiracy is done on behalf of all the conspirators." In our opinion, the words "for the purpose of proving conspiracy" must also be added here. If we accepted the Attorney General's argument, we would destroy the statutory framework of Sections 23-25 of the Criminal Code Ordinance, defining the responsibility of the various partners to a crime. Such responsibility demands, in every case mentioned in those sections, something more than mere consent, such as soliciting, aiding, abetting, and even in the extreme

> case of common purpose, dealt with in Section 24, at least the presence of the Accused at the commission of the crime.

189. We are also of the opinion that in general the sections of our law are in conformity with the rules of English Common Law, from which they are derived. For instance, in the case of Bullock (1955) 1 All E.R. 15, the Court of Appeal in England quotes these words from a previous judgment - R.v. Lomas (1913) 9 Cr. A.R. 220):

> "Mere knowledge that the principal intends to commit a crime does not constitute an accessory before the fact."

And the Court adds:

> "Mere knowledge is not, of itself, enough; there must be something further."

And so also in the case of Crofts (1944) K.B. 295, where a man and a woman agreed together to commit suicide. The woman committed suicide, but the man did not keep the agreement. He was charged as an accessory to the crime of murder. The court says there:

> "This court is of opinion that mutual agreement to commit suicide amounts to such a counselling, procuring, inducing, advising or abetting as constitutes the survivor an accessory before the fact, even if he is not present when the other party to the agreement commits suicide..."

that is to say, that the court found, in the circumstances, that in the very act of agreement there was also an element of mutual procuring and abetting to commit the offence. In the language of our law, we should say that the man was found guilty as an accomplice to the crime under Section 23(1)(b), (c) or (d), and not because of the mere fact of the agreement made with the woman, which, in English law, is considered a criminal conspiracy.

In Russell on Crime, 11th edition, vol. 1, pp. 146-147, it is explained that a person may be convicted as an accomplice also by reason of "constructive presence" during the act, but on condition that he participates in the act by aiding, abetting or even by encouraging the principal offender, whilst the latter carries out his criminal intent. Here, too, we see no deviation from the law embodied in our Sections 23-25.

190. Although we did not accept the Attorney General's argument as put forward by him in his summing up, we are of the opinion that his general approach is correct, viz. that all the acts perpetrated during the implementation of the Final Solution of the Jewish Question are to be regarded as one single whole, and the Accused's criminal responsibility is to be decided upon accordingly. In our opinion, this is to be concluded not from the law of criminal conspiracy, but from the very nature of the "Final Solution," as being a crime against the Jewish People, in accordance with the legal definition of that crime.

Elsewhere in this judgment we have already explained that, when drafting the definition of the Crime against the Jewish People, our legislator received his inspiration from the Convention for the Prevention of the Crime of Genocide. What is it that endows this crime with its special character in the criminal law of a state which adopts in its domestic legislation the definition of the crime of genocide? The answer is: the general sum total form which this crime is liable to take. This form is already indicated by the definition of the criminal intention necessary in this crime, which is general and total: the extermination of members of a group as such, i.e., a whole people or part of a people. As the Supreme Court said in the case of Pel (C.A. 119/51, Piskei Din 6, pp. 489, 502):

> "By Section 1 of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, a person may also be found guilty of an offence which he in fact committed against specific persons, if the offence against those persons was committed as a result of an intent to harm the group, and the act which was committed by the offender against those persons was a kind of `part performance' of his malicious intent against the whole group, be it the Jewish People or any other part of the civilian population."

But the distinction does not lie only between the intention required in the crime of genocide and in the individual crimes of homicide perpetrated during the commission of that crime; but also the criminal act itself (actus reus) of genocide is different in its nature from the sum total of all the murders of individuals and the other crimes perpetrated during its execution. The people, in its entirety or in part, is the victim of the extermination which befalls it through the extermination of its sons and daughters.

191. The comprehensive nature of the crime against the Jewish People flows from the language of the definition in Section 1(b) of our Law; not only is the criminal intention, as required by the definition, an intention to exterminate directed against the Jewish People as such, but also the criminal act is defined in words which clearly connote the essence of the crime as an attack upon a group of people as such. It says there, "the killing of Jews," "causing serious harm to Jews," etc. - all this is in undetermined numbers, in complete contradistinction to the definitions of the usual crimes against the body, which are always referred to as attacks upon a person as an individual.

192. There is, of course, no better illustration of what we have said just now than the "Final Solution" itself. Here the basis of the crime lay in Hitler's order to achieve the physical extermination of the Jews. This was not an order to exterminate the Jews of Germany, France, Hungary, Poland, Soviet Russia - each group separately. It was not an order to exterminate first one million Jews and later another million, and so on; but the order was one comprehensive order, and the desire of the main conspirators and perpetrators was identical with the wish of the original initiator - general and total. Their criminal intention did not renew itself from time to time; it was not limited, for instance, to the first deportations to Lodz, Minsk and Riga, so that when these deportations were completed, it had been implemented completely and was renewed with the following deportation; but the criminal intent was continuous and embraced all activities, until the whole operation had been completed.

193. This also applies to the objective aspect of the "actus reus." When the order to exterminate the Jews was given, it was evident that this was a most complicated operation. It was not easy to kill millions, dispersed amongst the general population. The victims had to be found and isolated. Not every place is convenient for killing. Not everywhere will the population submit to the killing of their neighbours. Therefore, the victims had to be transferred to suitable places. It was wartime. Labour was needed. Manpower should not be wasted, and, therefore, the working capacity of the victims themselves had to be exploited as long as their muscles could function.

It was therefore clear from the outset that a complicated apparatus was required to carry out the task. Everyone who was let into the secret of the extermination, from a certain rank upwards, was aware, too, that such an apparatus existed and that it was functioning, although not everyone of them knew how each part of the machine operated, with what means, at what pace, and not even at which place. Hence, the extermination campaign was one single comprehensive act, which cannot be divided into acts or operations carried out by various people at various times and in different places. One team of people accomplished it jointly at all times and in all places.

194. Hence, everyone who acted in the extermination of Jews, knowing about the plan for the Final Solution and its advancement, is to be regarded as an accomplice in the annihilation of the millions who were exterminated during the years 1941-1945, irrespective of the fact of whether his actions spread over the entire front of the extermination, or over only one or more sectors of that front. His responsibility is that of a "principal offender" who perpetrated the entire crime in co-operation with the others.

With due apologies, we shall illustrate our meaning by an example which may seem incongruous, but it may serve to clarify what we have said: Two persons may collaborate in the forging of a document, each one of them forging only a part of the document. In such a case, they are both responsible as principal offenders, for in the words of our Code (Section 123(1)(a)), each one of them "perpetrated one of the acts which constitute the crime," and it is not necessary that both be present at the same time, while each one commits his part of the offence.

This is the prevailing rule also in the English Common Law (Macklin, 168 E.R. 1136; Glanville Williams, Criminal Law, p. 177), and also in the law of the United States. We quote from Wharton's Criminal Law, 12th ed., vol. 1, p. 340, para. 255):

> "If part of a crime also be committed in one place and part in another, each person concerned in the commission of the offence is liable as principal."

195. The Accused was privy to the extermination secret, as from June 1941. As from August 1941, he began to be active in the furtherance of the extermination campaign, occupying a central place in it. We saw that the intention of his deeds was the total biological extermination of the entire Jewish People. We saw the commencement of his actual activities in his letter dated 28 August 1941, wherein he acted to prevent the emigration of Jews, since preparations for the Final Solution were being made. From a

legal point of view, this was an act of aiding, committed in order to facilitate the extermination of Jews in accordance with the plan for the Final Solution.

Not later than September 1941, or close to that time, the Accused made his first trip to Globocnik on Heydrich's order. Even if this journey was made only in order to gain information on what Globocnik was doing, for the Accused's superiors in the RSHA, this was also an act of aiding, towards the planning of future extermination activities by the heads of the RSHA. Henceforth, all the Accused's activities in rounding-up the Jews and transporting them for extermination, including all the planning and the organization required, were directed not only towards an isolated transaction, such as the killing at Auschwitz of the Jews deported there by him in a certain transport, immediately or after a time, by way of "extermination through labour," but they were done within the general framework expressed concisely in Hitler's order, and detailed in Heydrich's speech at the Wannsee Conference, as confirmed by all those present there.

Hence, the Accused will be convicted (if no justification for his acts are found) of the general crime of the "Final Solution" in all its forms, as an accomplice to the commission of the crime, and his conviction will extend to all the many acts forming part of that crime, both the acts in which he took an active part in his own sector and the acts committed by his accomplices to the crime in other sectors on the same front.

196. As we see it, the first and second counts of the indictment complement each other in describing the activities connected with the Final Solution: The first count describes the killing of Jews as a result of the implementation of the Final Solution, and, therefore, the second count must be limited to those Jews who were subjected to conditions of life which were such as to bring about the physical extermination through the implementation of the Final Solution, but remained alive.

We shall, therefore, relate this count, for instance, to those Jews who were deported to Auschwitz during the period of the Final Solution, and there put to hard labour, with the intention of killing them, too, in time, in some way; but who were saved because of the advance of the Soviet army. We do not think that the conviction of the second count should also include those Jews who were not saved, as if, in their case, there were two separate actions: first, subjection to living conditions calculated to bring about their physical destruction, and later the physical destruction itself.

197. We shall not content ourselves with what we have said up till now about the Accused's responsibility for actions connected with the Final Solution, but alternatively we shall continue and examine his responsibility, assuming, contrary to our opinion, that he is responsible only for those actions connected with the Final Solution in which he personally participated. The factual basis for this examination is to be found in the detailed description of the activities of the Accused and his Section in the previous sections of this Judgment, and we do not intend to repeat the details here. We found that the focus of his activities was within the Reich itself, the Protectorate, and in the countries of Europe to the west, north, south, southeast and Central Europe.

During the period of the Final Solution, the Accused acted against the Jews in those countries in all the various ways which have been described, in order to round them up and transport them towards their death in the East. Expressing his activities in terms of Section 23 of our Criminal Code Ordinance, we should say that they were mainly those of a person soliciting by giving counsel or advice to others, and of one who enabled, or aided others in that act (Section 23(1)(b), (c) and (d)).

But we wish to emphasize that in any case the Accused is regarded as committing the crime itself, according to the opening part of Section 23(1), whether he committed an act in order to facilitate or to aid another in carrying out the extermination (Section 23(1)(b) and (c)), or whether he counselled or solicited others to exterminate (Section 23 (1)(d)). But more important than that: In such an enormous and complicated crime as the one we are now considering, wherein many people participated at various levels and in various modes of activity - the planners, the organizers and those executing the acts, according to their various ranks - there is not much point in using the ordinary concepts of counselling and soliciting to commit a crime. For these crimes were committed en masse, not only in regard to the number of the victims, but also in regard to the numbers of those who perpetrated the crime, and the extent to which any one of the many criminals were close to, or remote from, the actual killer of the victim, means nothing as far as the measure of his responsibility is concerned.

On the contrary, in general, the degree of responsibility increases as we draw further away from the man who uses the fatal instrument with his own hands and reach the higher ranks of command, the “counsellors” in the language of our Law. As regards the victims who did not die but were placed in living conditions calculated to bring about their physical destruction, it is especially difficult to define in technical terms who abetted whom: he who hunted down the victims and deported them to a concentration camp, or he who forced them to work there.

Let us combine the examination of the Accused's criminal responsibility according to the alternative assumption we have made above.

We have found the extent of the measure of his activities in the areas annexed to the Reich in the East, the Warthe district, including the Lodz Ghetto, Bialystok, etc., where he was active in considerable measure (sections 133-134), and have found the measure of his activity in the Generalgouvernement area, where the Accused acted concurrently with others (sections 135-137).

We have described his activity in areas conquered in the East (section 138), and his activity in connection with the Operations Units, when he visited Minsk, not later than September 1941, and later on by participating in directing their activities as from the spring of 1942 (section 139). As to the camps, we found that the Accused encouraged Globocnik to continue the extermination operations in his camps in the Lublin area (sections 141-142), and this, too, is an act of abetting, within the meaning of the last part of Section 23(1)(c).

We have described the extent of the Accused's activities in what took place in the Auschwitz camp (143-146). We have also described his rule over the Terezin Ghetto (sections 150-152) and over Bergen-Belsen camp (section 153). We have dwelt upon his part in introducing the method of killing by means of gas vans, the introduction of the method of killing by Zyklon B gas at Auschwitz and in the supplying of this gas to the victims whom he transported from European countries, including the Generalgouvernement area (sections 132, 137), to the ghettos, to the Operations Units and to the camps in the East, in order to have them exterminated there, whether earlier or later.

It appears, therefore, that even if we view each sector of the implementation of the Final Solution separately, there was not one sector wherein the Accused did not act in one way or another, with a varying degree of intensiveness, so that this alternative way would also lead us to find him guilty all along the front of extermination activities.

199. The third count in the indictment refers, as has been mentioned, to the entire period of the Nazi regime, and should therefore be divided into two periods of time: the one including the first two stages of the persecution of the Jews, and the other, the last stage, beginning in the summer of 1941. Here, too, the accusation is of a crime against the Jewish People, this time by causing serious bodily or mental harm to Jews.

In connection with the first stage, until the outbreak of war, we have already said that the Accused's participation in the activities mentioned in section (d) of this count has not been proved (sections 184, 185). In connection with the second stage, we have held, out of doubt, that at that time the intention to exterminate did not yet exist in the mind of the Accused (section 186). As to the last stage - beginning August 1941 - there is no doubt that causing serious bodily harm to Jews was a direct and unavoidable result of the activities which were carried out with the intention of exterminating those Jews who remained alive, for instance the witnesses to the catastrophe who have given evidence in this case. In the language of the third count, section (c), it has been proved that,

> "...the Accused, together with others, caused this grave harm by means of enslavement, starvation, deportation and persecution, confinement to ghettos, to transit camps and to concentration camps - all this under conditions intended to humiliate the Jews, to deny their rights as human beings, to suppress and torment them by inhuman suffering and torture," and all this with the intention of exterminating the Jewish People.

The fourth count speaks of devising measures intended to prevent child-bearing among the Jews. The time is limited to the period beginning in the year 1942. In this count, the Attorney General apparently did not mean that part of Heydrich's speech at the Wannsee Conference where he talked about segregating the sexes during the deportation of the Jews to the East. In any case, we do not think that the prevention of child-bearing was an explicit part of the Final Solution plan, as put by Heydrich before the participants at the conference, although action against the Jews in preparation for the Final Solution was in many places accompanied by segregation of the sexes.

We shall, therefore, confine ourselves to the concrete matters mentioned in section (c) of the fourth count - the Accused's order to prevent child-bearing in Terezin has been proved, though it has not been proved that he took part in giving directives for the prevention of child-bearing in the Kovno Ghetto (section 159). In connection with the sterilization of the descendants of mixed marriages (Section (c)(3) of the fourth count), as stated above, the negotiations conducted with the participation of the Accused did not reach a final result, and we do not know if the means there discussed were actually employed (section 158). In Section 1(b)(4) of the Law, it says "devising measures, etc.," seemingly along the lines of Section 2(d) of the Convention on the Prevention and Punishment of the Crimes of Genocide, wherein the expression "imposing measures" is used. We are of the opinion that "devising measures" here means actually putting these measures into effect, at least to the stage of giving orders to carry them out. This has not been proved against the Accused in the matter of sterilization.

200. Counts five, six and seven of the indictment charge the Accused with crimes against humanity committed against Jews. According to Section 1(a)(2) of the Law, "crime against humanity" means one of the following acts: "murder, extermination, enslavement, starvation, and deportation of civilian population; and also persecution on national, racial, religious or political grounds."

The fifth count attributes to the Accused acts mentioned in the first part of the definition (murder, extermination, enslavement, starvation or deportation), and the sixth count includes everything mentioned in counts 1-5, and charges the Accused that by carrying out all these actions, he persecuted Jews on national, racial, religious or political grounds, as mentioned in the second part of the definition.

201. It is clear that both parts of the definition of the crime against humanity apply to all the activities of the Accused against the Jews at the final stage, as from August 1941, and that at this stage he participated in all the inhuman acts mentioned in the section of the Law (murder, extermination, enslavement, starvation and deportation of civilian population). Causing serious damage to the Jews, bodily or mentally, was also an inhuman act committed against the civilian population. All his acts carried out with the intent of exterminating the Jewish People also amount, in fact, to the persecution of Jews on national, racial, religious and political grounds.

In addition, the Accused will also be convicted (unless justification for his acts can be found) of crime against humanity, instead of crime against the Jewish People, by reason of his activities in the Central Offices for Jewish Emigration in Vienna, Prague and Berlin until October 1941 (sections 63-66, 80) and by organizing deportations to Nisko, the evacuation of Jews from territories annexed to the Reich in the East (the Warthe district, etc.), the expulsion of the Jews of Stettin and the expulsion of the Jews of Baden and the Saar- Palatinate (sections 72-75, 77). It should be pointed out that crimes committed during the first stage, before the outbreak of World War II, also come within the definition of crime against humanity, according to Section 1(a)(2), which refers to the entire period of Nazi rule, beginning on 30 January 1933 (see Section 16 of the Law).

202. The seventh count refers to the plunder of the property of the victims, and in this connection charges the Accused with a crime against humanity. In this regard, Counsel for the Defence put forward a legal argument that, according to the definition in the Law, plunder of property is not included in the list of acts constituting crimes against humanity. The Attorney General argued that plunder of property comes within the definition of "any other inhuman act committed against any civilian population," as stated in Section 1(b) of the Law.

It is to be pointed out that "plunder of public or private property" is especially mentioned in the list of acts which come within the definition of war crime. May we read into the general concept of "any other inhuman act" something expressly mentioned by the legislator in proximity to the same part of the Law?

203. The courts at Nuremberg were already troubled by the question before us when they had to interpret similar provisions in the London Charter and in Control Council Law No. 10. In the case of Flick (Green Series, Vol. 6), the court expressed the opinion that the plunder of Jewish industrial property on the basis of discriminating laws in regard to the confiscation of Jewish property, could not be considered a crime against humanity. The court there says (supra, p. 1214):

> "Such use of pressure, even on racial or religious grounds, has never been considered to be a crime against humanity."

But it adds:

> "A distinction could be made between industrial property and the dwellings, household supplies and food supplies of a persecuted people. In this case, however, we are only concerned with industrial property."

In "The Ministries Case" (Green Series, Vols. 13-14), the same question was considered in the matter of the Minister of Finance, Schwerin von Krosigk. A majority of the judges in this case convicted Schwerin-Krosigk of war crimes and of a crime against humanity, by reason of his participation in the notorious meeting held by Goering after the Crystal Night, at which it was decided to impose upon the Jews a levy of "expiation money" amounting to one billion Marks; publication of regulations for the carrying out of this order; participation in the issue of directives for the confiscation of the property of deported Jews; and the publication of Regulation No. 11 under the Citizenship Law, in regard to the confiscation of Jewish property upon crossing the Reich frontier; and also participation in the realization of the confiscated property which fell into the hands of the Germans when the Warsaw Ghetto was evacuated. One of the judges dissented, saying (vol. 14, p. 930):

> "It cannot be a crime against humanity, because merely depriving people of their property is not such a crime. There must be some maltreatment of the person ..."

The same court reconsidered its judgment and confirmed the conviction of Schwerin-Krosigk. This time the court uses the following language (vol. 14, p. 991):

> "...nor can there be any doubt of the fate of the vast majority of the Jews thus robbed. Arrest, imprisonment in concentration camps, theft and death were essential parts of the same horrible scheme."

The International Military Tribunal, which tried the main war criminals, also touched upon the question before us in the matter of the Minister of Economy and President of the Reichsbank, Funk. Amongst his deeds, the court mentions that, in the year 1942, an agreement was concluded between him and Himmler, according to which the Reichsbank was to receive from the SS jewellery and sums of money from the property of the victims of concentration camps, and that he issued instructions to his officials not to ask any questions in connection with this arrangement (English edition, vol. 22, p. 551). This served as one of the grounds for the conviction of Funk of a war crime and crime against humanity.

204. We hold that, according to the language of the Law in question, the plunder of property may be considered an inhuman act within the meaning of the definition of "crime against humanity" only if it is committed under the pressure of mass terror against any civilian population, or if it is linked to any of the other acts of violence defined by the Law as a crime against humanity, or as a result of any of those acts, i.e., murder, extermination, starvation, or deportation of any civilian population, so that the plunder is only part of a general process, by way of "Hast thou killed (or expelled) and also taken possession?"

Hence, the plunder of the property of the Jews of Austria and of their institutions, through the Centres for Jewish Emigration - in the organization of which the Accused played a leading role - must be regarded as a crime against humanity in which the Accused participated, because it was carried out by means of terror against the Jews as a group. As to the plundering of the property of the Jews who were expelled from the Reich by way of forced emigration, this was an inseparable part of the procedure of expulsion itself (section 64). The same applies to the confiscation of the property of the Jews of the Protectorate and of their institutions, through the Central Office for Jewish Emigration in Prague, set up and administered by the Accused (section 66), as well as in connection with the property of the Jews of Germany and of their institutions, and from the commencement of operation of the Central Office for Jewish Emigration in Berlin in which the Accused was active from the time it was first set up in 1939 (section 65).

The methods used in the Centres in Vienna and Prague were duplicated by the Accused in Berlin; and in Germany Jews also lived in a state of mass terror. This terror began immediately on Hitler's coming to power and gained intensity as from the events of Crystal Night. Under pressure of the threat of continued acts of violence and of deportation to concentration camps, the Jews endeavoured to save their lives and surrendered their property to the Reich, in exchange for permission to emigrate. This, too, applies not only to the private property of individuals, but also to the property of Jewish

institutions which were made over to the Reich Association of Jews in Germany, and upon the liquidation of the Association, this property also was finally lost (section 56).

205. What has been said applies with even greater force to the Jews who were deported during the second stage, like the Jews of areas annexed to the Reich (the Warthe district, etc.) who were deported and whose property was transferred simultaneously with the deportation to the "Trustreeship Office East" (section 73); and later, at the final stage, in connection with the property of those deported from the Reich towards the East, whose property was stolen from them during the deportation by the many devices described above, such as the "contributions" to Special Account W and money ostensibly paid for the acquisition of housing at Terezin (sections 85, 90(c), 91, 96(a)). The same is true of all the Jews of European countries who were expelled from their homes and sent to the East.

It makes no difference whether the property of these Jews fell into the hands of the Germans themselves, or whether it was left in the hands of the satellite governments of the victims' home countries, in accordance with "the territorial principle," which had been invented for this purpose (T/194; T/195). The Accused participated in the plunder of the property of all these, by the very act of deporting the victims, which was invariably connected with the confiscation of their property. For example, although it has not been proved that the Accused participated in organizing the special Rosenberg Unit which plundered the property of the Jews in the countries of Western Europe (sections 100, 101), he, too, is responsible for this plunder, since by deporting the Jews he made it possible for this Unit to carry out its task.

And finally, the luggage and personal belongings of the deportees, which were taken from them on their arrival at the extermination and other camps (including the Aktion Reinhard in Globocnik's camps), and the abomination of desecrating the corpses by the extraction of their teeth and the cutting off of the hair from the women's heads - in all these the Accused had a hand, since he was responsible for bringing the victims to the camps where the acts were committed, with the knowledge that these acts would be committed.

206. In the eighth count, the Accused is charged with a war crime, in that during World War II in Germany and other Axis states, and in areas occupied by them, together with others, he caused the persecution, deportation and murder of the Jewish population of the countries occupied by Germany and by other countries of the Axis. All acts of persecution, deportation and murder in which the Accused took part, as we have found in discussing crimes against the Jewish People and against humanity, also constitute war crimes within the meaning of Section 1(a)(3) of the Law, as far as they were committed during World War II, and the Jews who were the victims of these acts belonged to the population of the countries conquered by Germany and by other Axis countries.

Hence, unless there is a justification for these acts of his, the Accused will be convicted also on the charge of war crimes according to the eighth count.

Ninth to Twelfth Counts

207. The ninth count of the indictment charges the Accused with a crime against humanity committed against over half a million Polish civilians. The period is between 1940 and 1942, and the act - deportation of Poles from their places of residence, with intention of settling German families in those places. The methods of deportation are described in the indictment as follows: (a) The transfer to Germany and to German-occupied areas for the purpose of their employment under conditions of servitude, coercion and terror; (b) abandonment in other regions of Poland and German-occupied areas in the East; (c) concentration in labour camps under inhumane conditions; (d) transfer to Germany for the purpose of "Germanization."

Counsel for the Defence argued that the Poles were not deported, but that they were "resettled" in a way which does not constitute a crime. Let us, therefore, examine the nature of the activities mentioned in this count of the indictment. Almost all the proof is documentary, except the evidence of the Accused and that of the witness Krumey (taken in Germany), a number of excerpts from the statement by Hoess, and the evidence of Rajewsky at the trial of Hoess in Poland (T/1356).

The Accused's activities are connected with two separate waves of deportation of the population: (a) The transfer of Poles from the Warthe district to the Generalgouvernement area, viz., from West to East; (b) the transfer of Poles from the Zamosc district to the West. The first wave began at the end of 1939 and continued until 1943; the second began at the end of 1942 and continued, as far as we know, for a number of months.

208. We shall now consider first the transfer of the population from the West to the East.

The basis was laid by Heydrich, at a meeting held on 21 September 1939 (T/164), with the participation of the Accused. We have mentioned this meeting in another context, and now the parts which refer to the Poles must be emphasized, and we shall quote them in detail, because in those parts of Heydrich's speech lies the answer to the above argument put forward by the Defence. The Accused was present at the meeting, and therefore learned not only what was the plan at the time as far as the Jews were concerned, but also what was in store for the Poles. And this is what Heydrich said about the Poles:

> "About the development of former Poland, the trend of thought is that the former German districts will become German, and, in addition, a foreign language district will be set up, with Cracow at its capital... The solution of the Polish problem, as has been repeatedly explained, will be carried out by distinguishing between the stratum of leaders (Polish intelligentsia) and the lowest stratum, that of the labourers.
>
> Of the political leaders in the occupied territories, at the most three per cent have remained. These three per cent must also be rendered harmless, and they will be brought to concentration camps. The Operations Units

> will prepare lists of outstanding leaders, and also lists of the middle class of teachers, clergy, nobility, legionnaires, returning officers, etc. These, too, are to be arrested and moved into the remaining area. The care of the souls of the Poles, will be placed in the hands of Catholic priests from the West, but these will not be allowed to speak Polish. Primitive Poles will be included in the labour forces as migratory labourers, and in time they will be evacuated from the German areas into the foreign language area... Commanders of Operations Units...must weigh how, on the one hand, the primitive Poles could be included within the framework of labour, and how, at the same time, to evacuate them. The aim is: The Pole is to remain a seasonal labourer - the eternal wanderer. His permanent place of residence must be in the vicinity of Cracow."

Anyone who listened to this speech and plan, and later participated in any form whatsoever in the operation of uprooting the Polish population, could in no way argue that this was an innocent operation of "resettlement." This was plain and simple expulsion, accompanied by degradation of the people, and with malicious intent, especially against the educated class.

The leadership of this campaign was entrusted to Himmler, as the "Reichsfuehrer for the Strengthening of the German people" (T/167). On 30 October 1939, he draws up the plan for the period until 1940: All Congress Poles must be evacuated from the Danzig - Western Prussia area, and also a certain number of "especially hostile" Poles (T/169) from other areas annexed to the Reich. The implementation of the evacuation was assigned to the Security Police (N/8), and on 21 December 1939, the Accused's activity begins (T/170). Heydrich announces:

> "For practical reasons, centralized treatment of Security Police matters connected with the evacuation of the Eastern Territories becomes necessary. As my special Referent in the Head Office for Reich Security, Department IV, I have appointed Hauptsturmfuehrer Eichmann..."

The Accused alleges and testifies that here, too, his action was limited to obtaining the trains. In fact, this admission is sufficient to convict him of complicity in the deportation of a civilian population according to the plan of which he had knowledge as early as 21 September 1939; for by this act alone, the Accused already made himself guilty of a crime against humanity, within the meaning of Section 1(a)(2) of the Law.

But after studying the documents, we have come to the conclusion that his claim and his evidence in this matter, are not in accordance with the truth. It becomes clear that the Accused and his section co-ordinated the deportations. We have already remarked - in connection with the deportation of Jews during this period - that the classification of the deported Poles was carried out by the "Centres for the Change of Residence." But the deportation itself was in the hands of the Accused's Section. We shall quote a number of documents which prove this:

(a) On 4 October 1940 a meeting was presided over by the Accused (T/171). The minutes of that meeting show that the Accused co-ordinated the deportation operation. The tools of implementation are "the section officials at the Inspectors of the Security Police and the SD," who are of course subordinate to the RSHA. The co-ordination is evident from the last part of the minutes:

> "The Head Office for Reich Security, Department IV, will put one assistant and one messenger at the disposal of each Inspector of the Security Police and the SD, for the preparation of the measures to be taken during the deportation."

(b) The memoranda of conversations held on 22 January 1940 and 23 January 1940 between the Accused and Seidl, one of the officials of the Centre for the Change of Residence in Poznan, also confirm the conclusion that they discussed not only the timetable of transports, but also the class of deportees (only "Congress Poles").

(c) At a meeting held on 30 January 1940 (T/166), Heydrich defined the Accused's task as the "central direction of deportation duties," and also "to collect figures and prepare deportation plans." At this meeting, he announced that some of the Polish labourers would be transferred to Reich territory for agricultural work.

(d) The Accused deals with questions of how much money and how much food deportees may take with them (T/211; T/1406), and he demands a report on the technical execution of the evacuation and the settlement of the Germans who are to come in place of the evacuated Poles (T/1407).

The extent of the expulsions is revealed by the following documents: T/362 shows that up to 15 November 1940 nearly 300,000 Polish deportees were transferred into the Generalgouvernement area. T/361 shows that, from the beginning of the operation until the end of 1943, over 530,000 Poles were deported. This includes the period up to the end of 1939, before the Accused began to deal with evacuations, and also the year 1943, which is not mentioned in the indictment.

After subtracting the number of those deported in the years 1939 and 1943 (about 130,000 persons), the remaining number of Poles, whose deportation the Accused organized on behalf of the RSHA, is 400,000. However, it seems that the lists attached to exhibit T/361 do not include the Poles evacuated from Eastern Prussia, Upper Eastern Silesia and Danzig-Western Prussia. These three zones appear in list T/362, with 60,000 Polish deportees (up to 15 November 1940).

209. As to the second wave: On 12 December 1942, Himmler issued a directive to evacuate the Zamosc district and to settle Germans from other regions there (N/26). The operation was assigned by Himmler to Krueger, who had to co- operate with the head offices subordinated to Himmler. The Attorney General cross-examined the Accused about this operation in Session 98 (Vol. IV), and this time, too, the Accused endeavoured to show that his activity was limited to organizing timetables (pp.xxxx 3, 21-22). But the

documents prove that Section IVB4 did much more than that, and was also occupied with the deportations. They were given a special reference number, IV - 3666/42g (1505), which appears for the first time in a cable dated 26 October 1942, signed by Guenther (T/373).

On 31 October 1942, Mueller submits to Himmler a plan of action bearing the reference number of the Accused's Section IVB4a, and Himmler confirms it (T/374). According to the plan, the Polish population is to be divided into four groups. One group is to be settled, a second is to be brought to Germany for labour purposes, a third is to be "Germanized;" as to the fourth group, a distinction is made between those under the age of 14 and above the age of 60, and those between the ages of 14 and 60. Those fit for work from the 14-60 age group are to be taken to Auschwitz, and the aged above the age of 60 are to be taken to "pension villages" (Rentendoerfer) (see also T/375). In the order of implementation dated 21 November 1942 (T/372) - signed, it seems, by Krumey, who worked at the time at the Centre for the Change of Residence - the distinction of those fit and those unfit for work in the 14- 60 age group - classified as group 4 - is unclear, and the report T/382, dated 16 December 1942, about the transport of 644 Poles to Auschwitz, shows that those unfit for labour were also sent there. In regard to this matter it says:

> "As far as the question of their ability to work is concerned, it has been pointed out (by the Deputy Camp Commander) that only Poles able to work are to be sent there, in order to avoid an excessive burden on the camp and on transport. It is necessary to remove the mentally weak, the insane, the crippled and the sick from the camp as quickly as possible. They must be liquidated, in order to alleviate the burden carried by the camp. But this step involves difficulties, because, according to directives from the Head Office for Reich Security, Poles must be allowed to die a natural death, and the methods employed against Jews cannot be used against them. Therefore, the management of the camp demands that people who cannot be included in the labour effort should not be sent there."

A cable dated 29 December 1942, sent from the Accused's Section, signed by Guenther (T/378), deals with the question of how to treat the clergy. This constitutes additional proof that the Accused did not limit himself solely to organizing timetables.

The witness Rajewsky (T/1356, the second day of the trial, p. 175 of the original) gave evidence in the case of Hoess in Poland, and related that Poles from Zamosc reached Auschwitz. He, too, mentions the reference number IVB4 366/42 g/1505. On p. 189 he testified that the transport of Poles from Zamosc "went to the gas" (as distinguished from transports of other Poles).

We cannot say how many Poles were evacuated from Zamosc, but it is clear from exhibit T/371 that, in any case, many thousands were deported. From exhibits T/377, T/381 and T/382, we learn about the conditions of the transports: Children arrived with frozen

limbs; after a short journey of twelve hours, a considerable number of dead bodies had to be removed from the waggons; those who tried to escape were killed.

The result is that the Accused's guilt of a crime against humanity has been proved, in that between the years 1940 and 1942 he caused, together with others, the expulsion of a civilian population - namely hundreds of thousands of Poles, under the circumstances already described by us.

210. The tenth count charges the Accused with a crime against humanity, in that, in the year 1941, he took part in the expulsion of over 14,000 Slovenes, in order to settle German families in their stead. In this matter, too, the Accused does not deny his own activity and the activity of his Section in matters of transport, but according to the argument by the Defence it has not been proved that the deportation was carried out in an inhuman manner or by means of terror.

The proof at our disposal is in exhibits T/898-T/901. The Accused reacted to a part of these documents in his Statement T/37 (pp. 245 and 3559). The witness Novak mentioned the deportation of the Slovenes briefly on p. 5 of his evidence, and the settling of the Slovenes in the Lublin area is mentioned in exhibit T/370.

The beginning of this action is to be found at a meeting held in Marburg (Untersteiermark) on 6 May 1941, the invitation to which was sent from the Accused's office, signed by Heydrich. We know about deportations on 7 June 1941 and 27 September 1941 to other localities in Yugoslavia. We do not doubt that these, too, were forced deportations, as is evidenced by the use of the word “evacuation” which appears in the letter of invitation T/898, and occurs in Novak's evidence and in the Accused's Statement.

This is also shown by the hurried pace of the transports and by the fact that the implementation and the provision of escorts were in the hands of the Security Police. In October 1942, thousands of Slovenes were still left without a permanent abode, and an order was given to settle them in the Lublin district (T/370). This fact provides further confirmation of our conclusion that this was an enforced deportation, and not a planned and orderly exchange of populations.

Every act of forced deportation of a civilian population is in itself a crime against humanity. The fact that at the end of 1942 thousands of Slovenes still had not found permanent dwelling places for themselves, proves that this act of evacuation brought much human suffering in its wake. The Accused's complicity with others in a crime against humanity was thus also proved on this count.

211. The eleventh count charges the Accused with a crime against humanity by participating in the deportation of tens of thousands of Gypsies, their assembly in places of concentration, and their transportation to extermination camps for the purpose of murdering them.

In the material placed before us, first mention of the Gypsies appears at a meeting held on 21 September 1939 (T/164), at which Heydrich ordered the deportation of 30,000 Gypsies to Poland. The same order is mentioned again at a meeting held on 30 January 1940 (T/166), after the setting up of Section IVD4, headed by the Accused; but at the time priority was given to other activities (p. 6). In the documents before us, there is no evidence of action against Gypsies, until the deportation of 5,000 Gypsies to Lodz in the months of October-November 1941 (T/222), in spite of protests by the local authority (T/221, T/220, T/243).

We have more information on this subject from the declaration made by Friedel on 13 June 1949 in the prison of Bialystok (T/293), from the memoirs of Hoess (T/45, p. 124), from the evidence of Rajewsky (T/356, the second day of the trial, p. 189), from the evidence of Dr. Beilin (Session 69, Vol. III, pp. 1259-1260), from the Accused's Statement (T/37, pp. 977, 1662-1663), and from the evidence given by Novak. From all these, we gather that the transportation of the Gypsies was carried out by the Accused's Section, and for that he bears responsibility.

But we do not have sufficient proof before us that the Accused dealt also with the concentration of Gypsies. In this connection, and also in connection with the general supervision of the Gypsies, Friedel and Hoess mention Group V2 of the RSHA, viz., the Criminal Police. Gypsies were exterminated at Auschwitz and at Chelmno (see T/1297), but we have no reliable proof before us that the Accused knew that the Gypsies transported by his Section to Auschwitz were to be exterminated there.

The result is that the Accused's complicity in the commission of a crime against humanity has been proved by his participation in the deportation of the Gypsies.

212. The twelfth count of the indictment charges the Accused with a crime against humanity, regarding approximately 100 children, residents of the village of Lidice in Czechoslovakia. According to the indictment, the Accused participated in their deportation, their transport to Poland, and their murder there.

The Accused denied all activity in, or knowledge of, this act, and Counsel for the Defence also contends that the murder of the children was not proved. In addition to the documentary material, we also have before us in this matter Krumey's evidence, Mrs. Freiberg's statement (N/19), and the evidence submitted in the case of Greifelt and others (the case against the Head Office for Race and Resettlement, Green Series, vol. 4, p. 599; and vol. 5), especially in the evidence of Maria Hanfova (vol. 4, p. 1033). In connection with this evidence, we mention our Decision No. 48 given on 24 May 1961 (Session 50, p. 904).

From all this material, the following picture emerges: After the Nazis had wrought their deeds at Lidice, two transports of children from the village were sent to Lodz. The first transport consisted of 91 children (a list of names is attached to exhibit T/1091), but in fact only 88 children arrived, for three children had been removed from the transport as being “fit for Germanization.” While they were in Lodz, an additional seven children out

of the remaining 88 were removed for Germanization (a list of names, dated 20 June 1942, is attached to the evidence of Krumey). With these seven was Maria Hanfova who gave evidence at Nuremberg (in both lists her name is given as "Hankova"). The remaining 81 children were put into a camp at Lodz, from which they were removed on 2 July 1942.

The Attorney General contends that these 81 children were removed to the East. And, indeed, it says on the printed copy of Form T/1095: "To the Generalgouvernement, 81 Czechs." But the photocopy of the original document, which was put before the Accused as exhibit T/37(246), leaves a doubt, for there three items are crowded into the space intended for the description of those who are "leaving," and the remark "81 Czechs" does not appear on the line reading "To the Generalgouvernement" but just above this line. On the strength of this document, it is impossible to establish with certainty where the children were sent. But on the strength of the document dated 2 July 1942, also attached to the evidence by Krumey, it can be established that the children were handed over to the Lodz Stapo. This document

> reads as follows: "Confirmation: In accordance with a cable from the Head Office for Reich Security, 81 Czech children, who were temporarily lodged in the camp at 41 Gneisenau Street, were handed over today, 2 July 1942, to the Litzmannstadt Stapo."

The document is signed by two SS men, the one who handed over the children, and the other as the one receiving them.

We did not learn any more about the fate of these 81 children. Immediately after, there is a further transport of 18 children, six of whom are destined for Germanization and are immediately transferred to a certain children's home. The remaining children were handed over on 25 July 1942 to the Lodz Stapo (exhibit T/1099), and according to the confirmation of the delivery and the receipt, in the meantime these twelve children were also in the above camp.

Hence, we are concerned with 93 children handed to the Lodz Stapo, and with 16 children transferred for Germanization. It seems that the indictment refers only to the 93 children, and in any case it has not been proved that the Accused fulfilled any function in connection with the sixteen children who were transferred for Germanization. These (or some of them) were at the Puschkau Home near Poznan, as transpires from the evidence given by Maria Hanfova at the trial in Nuremberg.

We are, therefore, convinced that the children whom Mrs. Freiberg mentions in her declaration (N/19) are the children intended for Germanization, and are not from amongst the other 93 children who, according to the argument of the Attorney General, were murdered. We shall comment here that the kidnapping of children for "Germanization" is also considered a crime against humanity (see the case against Greifelt and others - Green Series, vol. 5, p. 96).

213. There is no doubt that these 93 children were deported and that the Accused took part in their deportation. Krumey, who, at the time, was head of the Centre for the Change of Residence, referred a question to the Accused, asking what to do with these children (T/1093 in regard to 81 children, and T/1098 in regard to 12 children). He also spoke to the Accused in person (in T/1093 it says "Reference: a conversation with SS Obersturmbannfuehrer Eichmann").

Although the instructions given by the Accused's office in connection with the 81 children are not before us, we have before us the instructions (signed by Guenther) in connection with the twelve children (T/1099). It says that the children are to be handed over immediately to the Lodz Stapo, "which has received further orders." Since, in accordance with these orders, the children were handed over to the Lodz Stapo, and since a cable of the RSHA is also mentioned in the first confirmation dated 2 July 1942 in connection with the 81 children, the inescapable conclusion is that the same orders which were given by the Accused's Section concerning the twelve children in exhibit T/1099, were also given in connection with the 81 children.

No importance is to be attached to the fact that it was Guenther who signed the cable T/1099, nor to the Accused's denial, but the action taken by his Section is to be considered as the Accused's action, especially since his personal activity in this matter is evident from the above-mentioned remark about the conversation held with him which appears in exhibit T/1093.

On the other hand, it has not been proved that the Accused's Section had any part in the murder of these 93 children, and it has also not been proved beyond reasonable doubt, according to the evidence before us, that they were murdered. The Attorney General proposes that the Court conclude this from:

(a) The letter (or cable) dated 12 June 1942, number 346/42, signed by Fischer, attached to the evidence by Krumey, in which it is stated:

> "The children who are not suitable for Germanization are being transferred there, and they are to be sent on in the proper way through the Polish camps situated there... The children bring with them nothing but what they have on their persons. There is no need to take special care of them."

(b) The letter T/1094, where Krumey writes that he applied in this matter to Section IVB4, assuming "that these were intended for special treatment."

The representatives of the Attorney General and of the Accused were present at the interrogation of the witness Krumey, but it is not clear to us who showed Krumey the above letter, dated 12 June 1942. Krumey's reaction to the letter was that he did not remember the various letters sent to him on the subject (p. 8), but did not doubt its authenticity. But then the contents of the letter are not unequivocal, especially since it was not sent by the Accused's Section, but by the Commander of the Security Police in

Prague, and the question whether, as regards non- Jews, the Commanders of the Security Police were subordinate to the Accused's Section is not clear to us.

As to the term “special treatment” - in the year 1942 this most certainly had only one meaning when used in regard to Jews: If in the year 1942 Jews were taken for special treatment, they were killed. The same unequivocal meaning has not been proved to us in regard to others. Counsel for the Defence submitted to us forms N/108 in connection with “special treatment” for Poles. There is ground for the assumption that in one of the forms the reference is to killing, in connection with a Pole who is not “suitable for Germanization.”

But a doubt still persists, especially as, according to the letter of 12 June 1942 cited by us above, the children are to be sent to camps for Poles. We know that Poles from Zamosc were sent to extermination, but it has not been proved that Poles sent from Lodz were similarly treated. Finally: The term “special treatment” was used by Krumey, and he assumed that this is what was in store for the children. The term does not appear in cable T/1009 sent by the Accused's Section.

In conclusion, as regards the Accused, it has been proved only that he participated in the expulsion of the 93 children of Lidice from their homeland, and he thus took part in the commission of a crime against humanity.

Counts 13-15 of the Indictment

214. In the three last counts of the indictment, counts 13- 15, the Prosecution charges the Accused with offences against Section 3 of the Law, viz., membership in SS organizations, the SD and the Gestapo, which are, according to the Prosecution's submission, hostile organizations within the meaning of this Section.

The Accused's membership in those organizations is not in dispute, but the Defence puts forward two arguments:

(a) The Prosecution must prove that these organizations were criminal organizations, and this has not been proved.

(b) Our law obliges the Court to punish without proof of guilt, and the Court should refrain from applying such a law; neither is it authorized to fill in the gaps in the law by searching for, and perhaps finding, guilt, where the law itself ignores its existence and the need for proof.

According to our system of law, the Court is not allowed to ignore the legislator's will, as is proposed by Counsel for the Defence in his second argument. But, in fact, this is not a case of charge without guilt, and the answer to Counsel's two arguments is to be found in the wording of Section 3 itself.

The definition of “a hostile organization” in Section 3(b)(1) is not self-contained, but refers us to findings of the International Military Tribunal. That Tribunal did not merely declare that the SS, the SD and the Gestapo were criminal organizations, but it laid down additional conditions without which nobody can be found to be liable because of his membership in the above-mentioned organizations.

To quote the decisive findings of the International Military Tribunal:

(a) In regard to the Gestapo and the SD, the English edition, vol. 22, p. 511 (German edition, vol. 1, p. 301):

> “The Tribunal declares to be criminal within the meaning of the Charter the group composed of those members of the Gestapo and the SD holding the positions enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes.”

(b) In regard to the SS, ibid. at p. 517 (German edition, ibid., p. 307):

“The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who had been officially accepted as members of the SS as enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes ...”

In both findings, we have emphasized the last words, because upon them we are about to base the conviction of the Accused in regard to these counts in the indictment. The crime of extermination of the Jews during the War was expressly declared by the International Military Tribunal also to be a crime within the meaning of the London Charter. In the present Judgment we have found that the Accused personally participated in the commission of this crime, and there is no doubt that he did so participate in its commission in his capacity as a member of the Gestapo, the SD and the SS; hence his criminal responsibility as a member of those organizations.

215. Therefore, our answer to the two arguments by the Defence is: The Prosecution did not have to prove the criminal nature of the three organizations as such, because the charge is not merely of membership in these organizations. The Prosecution had to prove the Accused's membership in these organizations - and this membership is not in dispute - and in addition that the Accused took part in the commission of crimes, as a member of these organizations - and this has been proved.

The Attorney General mentioned that under Section 13(b) of the Law the offence according to Section 3 is prescribed

after the lapse of twenty years. The decisive time in this case is May 1940, because it was in May 1960 that the warrant for the arrest of the Accused was issued in Israel for the first time. It has been proved that after May 1940, as a member of the three hostile organizations mentioned in the indictment, the Accused took part in the commission of crimes. In fact, most of his criminal activities were committed after this date. Therefore he is to be convicted also on counts 13-15 of the indictment.

Obedience to Orders, and the Accused's Attitude Towards his Deeds

216. The Accused's principal defence is that everything he did was in accordance with orders from his superiors. This he regards as full justification for all his deeds. He explains that his SS training inculcated in him the idea that blind obedience is of primary importance, obedience based on boundless confidence in the wise judgment of the leadership, which will always know what the good of the Reich demands and will give its orders accordingly. At the end of the trial, we heard this argument in its most extreme form from Counsel for the Defence, as follows:

> "Faith in the leadership is the basic principle of all states. Deeds are silent, obedience is blind. The state can rely on these virtues alone. It depends upon the success of politics whether these virtues are rewarded. Where politics have failed, the order is considered as a crime in the eyes of the victor. He who has obeyed is unlucky; he has to pay for his loyalty. The gallows or a decoration - that is the question: The deed which fails will be a common crime. If it succeeds, it will be sanctified" (Session 114, Vol. V, p. xxx39.)

If by these words Counsel for the Defence intended to describe a totalitarian regime, based on denial of all law, as was Hitler's regime in Germany, then his words are indeed apt. Such a rule seeks to turn the citizen into an obedient subject who will carry out an order coming from above, be it an order to commit an injustice, to oppress or to murder. It is also true that under such a regime the criminal who obeyed a criminal leader is not punished, but, on the contrary, is rewarded, and only when the entire regime collapses will he become amenable to justice. But such arguments are not to be voiced in any state in the world which bases itself on the rule of law.

The attempt to turn an order for the extermination of millions of innocent people into a political act, with the aim of thus exempting from their personal criminal responsibility those who gave, and those who carried out, the order is of no avail. And do not let Counsel for the Defence console us with the promise of a world government to come, when such "acts of state" will become a thing of the past. We do not have to wait for such a radical change in the relations between nations, in order to bring a criminal to judgment, according to his own personal responsibility for his acts, which is the basis of criminal judgment all over the world.

We have already considered in another chapter of our Judgment the Defence argument of "act of state" in international law, and have concluded that this cannot avail the Accused.

At this point we shall only add that also according to the positive laws of the State of Israel, there is no such justification to absolve the Accused from responsibility for the crimes he committed, although they were committed at the command of one of the state authorities.

The personal responsibility of a government official for his acts is the basis of the rule of law, which we have adopted at the inspiration of the Common Law. It is thus explained by Dicey, Law of the Constitution, 10th edition, Chap. XI, p. 326:

> "The minister or servant of the Crown...is legally responsible for the act in which he is concerned, and he cannot get rid of his liability by pleading that he acted in obedience to royal orders. Now supposing that the act done is illegal...he becomes at once liable to criminal or civil proceedings in a court of law."

217. An additional argument, in spirit similar to the former, which the Counsel for the Defence hinted at - rather than argued explicitly - is that the Accused could have relied for his defence upon the laws of war. In his summing up he said:

> "A declaration of war against the Jews was not made; however, there is a close relationship between the war and the fight against Jewry." (Session 114, Vol. V. pp. xxxx)

Here, too, it would have been better had this argument not been put forward. It is true only that Nazi propaganda declared the Jews "enemies of the Reich," and for this purpose also exploited Dr. Weizmann's declaration at the Zionist Congress, on the eve of the outbreak of World War II, that the war of the Western democracies is the war of the Jewish People (Session 112, Vol. V., p. 81).

As the Attorney General said, would that the Jews under the rule of Hitler had been granted the status and privileges of prisoners of war. But this "war" took the form of deporting helpless people to be slaughtered by citizens of the state in which they lived, without any reason save that of gratuitous hatred and without any aim save that of their extermination. It is true only that the state of war between Germany and the Allies created conditions convenient for the implementation of the "Final Solution," by enveloping the territory under German rule in a smoke screen, which veiled much of what was going on there from the eyes of the world, and made it easier to perpetrate the slaughter without outside interference.

218. A serious legal discussion of this subject is possible only within the compass of the argument of "superior orders." But according to our law, this plea also cannot lead to the Accused's acquittal of his criminal responsibility whenever the indictment is under the Nazis and Nazi Collaborators (Punishment) Law (hereinafter: the Law). Section 8 of the Law states:

> "Sections 16, 17, 18 and 19 of the Criminal Code shall not apply to offences under this Law."

Section 19(b) of the Criminal Code Ordinance, 1936, is the one dealing with "superior orders," as follows:

> "A person is not criminally responsible for an act or omission if he does or omits to do the act in any of the following circumstances, that is to say:....
>
> "(b) In obedience to the order of a competent authority which he is bound by law to obey, unless the order is manifestly unlawful.
>
> "Whether an order is or is not manifestly unlawful is a question of law."

In spite of Section 8 of the Law, importance still attaches to the provisions of Section 19(b) of the Criminal Code also in regard to offences against the Law, because of Section 11 of the Law, which says:

> "In determining the punishment of a person convicted of an offence under this Law, the court may take into account, as grounds for mitigating the punishment, the following circumstances:
>
> "(a) that the person committed the offence under conditions which, but for Section 8, would have exempted him from criminal responsibility or constituted a reason for pardoning the offence, and that he did his best to reduce the gravity of the consequences of the offence;
>
> "(b).....
>
> "However, in the case of an offence under Section 1, the court shall not impose on the offender a lighter punishment than imprisonment for a term of ten years."

In this respect our Law follows Article 8 of the London Charter under which the International Military Tribunal at Nuremberg was set up, and Article II4(b) of Law No. 10 of the Allied Control Council for Germany, under which courts were set up to try subsequent cases against war criminals. They also refuse to accept a plea of "superior orders" as exempting from responsibility, but permit the court to consider the existence of such an order as grounds for mitigation of the penalty.

219. Although the provisions of Section 11 of the Law concern only the last stage of the proceedings - the stage of the sentence - it is desirable that already now we find the facts in that regard, since they flow from the same evidence which was adduced on the Accused's criminal responsibility.

We shall, therefore, ask ourselves whether the Accused committed the offences in circumstances which might exempt him from responsibility, had Section 19(b) of the Criminal Code Ordinance applied here. This necessitates the consideration of the question whether the orders upon which the Accused acted were "manifestly unlawful."

This concept in Section 19(b) is explained by the District Military Court for the Central District in the matter of the Chief Military Prosecutor v. Melinki and others (13 Pesakim Mehoziim, p. 90) in the following terms:

> "The distinguishing mark of a 'manifestly unlawful order' should fly like a black flag above the given order, as a warning reading "Prohibited!". Not mere formal illegality, hidden or half-hidden, not the kind of illegality discernible only to the eyes of legal experts, but a flagrant and manifest breach of the law, certain and necessary illegality appearing on the face of the order itself; the clearly criminal character of the order or of the acts ordered, an illegality clearly visible and repulsive to the heart, provided the eye is not blind and the heart is not stony and corrupt - that is the extent of 'manifest illegality' required to release a soldier from the duty of obedience upon him and make him criminally responsible for his acts."

The Military Court of Appeal adopted these words in its judgment in the appeal in the same case (Pesakim Elyonim, vol. 44, p. 362), and added that our legislator's solution in Section 19(b) of the problem of conflict between law and obedience is, as it were, a golden mean between giving complete preference to one of those factors over the other, because

> "It recognizes the impossibility of reconciling these two values in full through the medium of pure formal law, and therefore relinquishes the attempt to solve the question solely by such means, and exceeds the pure legal categories, calling upon the feeling of legality which lies deep within every human conscience, also of those who are not conversant with books of law..." (supra, p. 410)

And the Military Court of Appeal continues (supra, p. 411):

> "This is our law in this regard, and we, as a court of law, are not to question its validity. But we believe that this solution, arrived at through the inspiration of the best jurists within the sphere of influence of the English Common Law, is the best obtainable, and is best suited to the demands of a state like ours, based upon the rule of law."

220. Here we shall add that, in civilized countries the rejection of the defence of 'superior orders' as exempting completely from criminal responsibility, has now become general. This was also acknowledged by the General Assembly of the United Nations, being one of the principles of the London Charter and of the judgment in the case against the Major War Criminals (Resolution of the Plenary Session, No. 55, dated 11.12.46). Perhaps it is

not a vain hope that the more this conviction becomes rooted in the minds of men, the more will they refrain from following criminal leaders, and the rule of law and order in the relations between nations will be strengthened accordingly.

It is to be pointed out here that even the jurists of the Third Reich did not dare to put on paper that obedience to orders is above all. They did not repeal Section 47(2) of the German Military Criminal Code, which states that whoever commits an offence against the Criminal Law, through obedience to a superior's order, is punishable as an accomplice to a criminal act, if he knew that the order concerned an act which is a crime or an offence according to the general Military Law. This provision was applicable also to SS men, according to the laws of jurisdiction over them (see exhibit T/1402/a, pp. 15, 21-22).

221. Of course, the Accused well knew that the order for the physical extermination of the Jews was manifestly illegal, and that by carrying out this order he was committing criminal acts on an enormous scale. To arrive at this finding, we do not have to rely on the Accused, because according to Section 19(b) the question as to whether an order is manifestly illegal is a question of law, left to be decided by the court according to objective criteria. In any case, we shall also quote his evidence in the matter, which he gave after much evasion, and as though it needed a great inner effort on his part to realize such a simple truth:

> "Your Honour, President of the Court, since you call upon me to tell and give a clear answer, I must declare that I see in this murder, in the extermination of Jews, one of the gravest crimes in the history of mankind."

And in answer to Judge Halevi:

> "...I already at that time realized that this solution by the use of force was something illegal, something terrible, but to my regret, I was obliged to deal with it in matters of transportation, because of my oath of loyalty, from which I was not released." (Session 95, Vol. IV, pp. xxxx35-36)

Not only the order for physical extermination was manifestly illegal, but also all the other orders for the persecution of Jews because of their being Jews, even though they were styled in the formal language of legislation and subsidiary legislation, because these were only a cloak for arbitrary discrimination, contrary to the basic principles of law and justice. As was stated by the court at Nuremberg which tried the Nazi jurists (Justice Case) (Green Series, vol. 3, p. 1063):

> "...but it is alleged that they participated in carrying out a governmental plan and program for the persecution and extermination of Jews and Poles, a plan which transcended territorial boundaries as well as the bounds of human decency. Some of the defendants took part in the enactment of

> laws and decrees, the purpose of which was the extermination of Poles and Jews in Germany and throughout Europe.
>
> "The overt acts of the several defendants must be seen and understood as deliberate contributions towards the effectuation of the policy of the Party and state. The discriminatory laws themselves formed the subject matter of war crimes and crimes against humanity with which the defendants are charged."

This was not a single crime, but a whole series of crimes committed over the years. The Accused had more than enough time to consider his actions and to desist from them. But he did not stop; as time went on, he even increased his activity.

222. By what we have said up to now, the Accused's attempt to rely on superior orders for the justification of his acts, or even in mitigation of his punishment according to Section 11 of the Law, is already untenable. Since the order was manifestly illegal, they cannot be used as an excuse. Yet, we shall continue to examine what was the Accused's attitude to the orders within the framework in which he acted: Did these orders disturb his conscience, so that he acted under compulsion from which he saw no escape; or did he act with inner indifference like an obedient automaton; or perhaps, in his heart, he identified with the contents of the order.

Although this makes no difference as regards the conviction of the Accused, yet it is important to examine these questions, in order to define the measure of the Accused's moral responsibility for his acts. For this reason, the Attorney General rightly requested that we draw our conclusions already at this stage from the evidence before us, in answer to this question as well.

223. What is in fact the Accused's version on this matter? He was verbose before this Court and in his statements outside the Court, but when all is said and done, we do not see in his words a clear consistent version. Besides the repetition of his statement that he acted according to orders, and that the oath of loyalty which he had taken as an SS man and an SD man strengthened even further his absolute duty to obey any order given to him, he keeps on saying that until a certain time he was carrying out his duties willingly and with inner satisfaction. It was thus, he said, as long as he was working at the Central Offices for Jewish Emigration in Vienna and Prague, for in this he saw work beneficial to both sides - his side and the Jewish side.

This, too, was his attitude to the Madagascar Plan, on which he laboured so much, for also this was still a "political solution." But when this plan was also shelved, his world crumbled around him and his attitude to his work changed from one extreme to the other. He lost interest in his work and decided that in the future he would act as an ordinary official, obeying instructions and no more. Thus far the version is more or less clear. From here onwards the picture becomes more and more blurred.

How does he describe his reaction to the horrifying sights he saw from time to time with his own eyes during his visits to the East: the mass slaughter of Jews - men, women and babies; the shooting on the brink of the pits; the blood spurting from a mass grave; the loading of Jews into the gas vans in Chelmno; the cremation of bodies there; the transport of Jews into the gas chambers? This is what he said, quoting his own words to Mueller on his return from such a journey:

> "'Terrible, I tell you, the inferno, this I cannot bear,' I told him. (T/37, 177)

> "'Please don't send me to that place. Send someone else, send someone more robust (Jemand robusteren). Look, I have never been allowed to go to the front. I was never a soldier... They do not collapse. I cannot watch it.' I said, 'I cannot sleep at night! I have dreams - I cannot carry on this way, Gruppenfuehrer.'" (218)

Elsewhere in his Statement to Superintendent Less he explains his desire to be transferred to another post, giving as additional reasons his chances for promotion and his lack of interest in police work as such from the very beginning, from the time of his transfer to Berlin in the year 1939 (T/37, p. 250).

And also in his evidence, in answer to the Attorney General (Session 94, Vol. IV, pp. xxxx13-14):

> "I referred to him [Mueller] with such a request for the first time and asked not to be transferred to Berlin at all, because I wanted to remain where I lived with my family. I sent in a second urgent request and told him I would not be able to stand this physically, after the service trip to the East, the first trip, and later on I applied after each trip. Mueller was aware of my state of mind at the time after such a trip."

224. It is therefore clear that, according to his contention, he requested a transfer to another job for reasons of convenience, to obtain promotion, and also, according to his own words, because physically he was not robust enough to bear all the horrifying sights with which he was confronted in the East. But there is not one word here about inner revulsion against the extermination of Jews for reasons of conscience. True, when pressed by the Attorney General, who asked,

> "And you did not mind acting as the great transporter to death?"

his answer is:

> "I did mind, I minded very much - more than anyone can imagine. That is why, from time to time, I requested my superior, and repeated my request, that he find me another task." (Session 94, Vol. IV, pp. xxxx11-12)

225. But this version - that he asked to be relieved of his post for reasons of conscience - is contradicted by the Accused himself. When his Counsel asks him,

> "It does seem that, from the remarks in the reminiscences taken down by Sassen, as well as now, you were quite satisfied with the Conference [the Wannsee Conference]. Can you express your opinion about this?" (Session 79, Vol. IV, p. xxxx2)

then his answer is:

> "Yes, but the origin of my satisfaction is to be sought in another direction, not in that of Heydrich's satisfaction...
>
> "And so, after many efforts [to find other solutions], after the Wannsee Conference I could say to myself that, in spite of my wish, and not due to my own preparations, through no fault of mine, and having the feeling of a Pontius Pilate washing his hands, I could feel that the fault was not mine. But at this Wannsee Conference, the men at the top, the elite, the popes of the empire, laid down the line to be followed. And I? I had only to obey."

It should be remembered that even before the Wannsee Conference he had already seen what was happening in the East and had begun deporting Reich Jews to the slaughter; yet, in spite of this, according to his testimony here, he feels like a Pontius Pilate, that is, like a man who could find a way of soothing his conscience. And this, in fact, is his basic contention: that the order sets his conscience free; that blind obedience, according to an oath of loyalty, comes first and stands above all, and that against this obedience the voice of one's conscience cannot even make itself heard.

Dr. Grueber, the German priest, one of the righteous men of this world, who because of his activities on behalf of persecuted Jews was himself thrown into a concentration camp, described before us this type of the German mercenary, the "Landsknecht":

> "A German Landsknecht, the minute he dons his uniform, doffs his conscience; it is said that he deposits them in the cloakroom." (Session 41, p. 737)

And here, in the evidence of the Accused, is the argument in all its nakedness:

> "...responsibility and the matter of conscience lie upon the heads of the state." (Session 88, Vol. IV, p. xxxx9)

Later, when cross-examined by the Attorney General, he retreats somewhat from this extreme position and clings to the most miserable of excuses (Session 95, Vol. IV, pp. xxxx33-34):

> "In my opinion, to break an oath of loyalty is the worst crime and offence that a man can commit.
>
> "Q. A crime greater than the murder of six million Jews, amongst them one and a half million children, is that correct?
>
> "A. Not that, of course. But I was not occupied in extermination. Had I been occupied in exterminating, had I been ordered to deal with extermination - I believe that I would have committed suicide by shooting myself."

This answer calls to our mind matters in the same spirit which he noted in his remarks to the article in Life magazine, in connection with the activity of Section IVB4:

> "We had nothing to do with the atrocities, we went about our affairs in a decent way." (T/51, second paragraph.)

That is, had he been ordered to throw the gas container amongst the victims, then his conscience would have woken up, but since it was his duty to hunt down the victims in the countries of Europe and transport them to the gas chambers, his conscience was at peace, and he obeyed orders without hesitation.

226. The Attorney General submitted that, had the Accused seriously tried to be released from his murderous task, he could have found ways of attaining his desire. He could have asked to be transferred to the front; he could have made various excuses to get away as others did, or he could have stated openly that his heart was not at one with the task assigned to him. In the evidence before us, there is ground for this submission.

For instance, Justice Musmanno stated that in his conversations with Schellenberg, he was told that men were released from Operations Units when it became clear that they were incapable of taking part in murder (Session 39, Vol. II, pp. 725). Such a case (concerning a man named Jost) is also mentioned in the affidavit of Best, which was submitted in the Einsatzgruppen Case (T/687), and in a affidavit made by Burmeister about the release of the witness for the Defence, Six, from the Operations Units (T/688, pp. 24-26; see also the evidence by Six himself in the present case, p. 8). Himmler's speech at Poznan also hints that whoever showed signs of abhorrence at the business of murder could obtain his release (T/1288, p. 151).

But we do not intend to go into this problem in depth, because, in our opinion, this whole discussion is not to the point, since such a problem never troubled the Accused. He never thought of giving up his important job behind his desk at the RSHA, a position he had obtained because of his being an expert on a problem which kept the Third Reich and its heads busy. It is possible that he was not at ease when watching bloody sights. Perhaps he even spoke to Mueller about it, although this is difficult to accept as a fact, because such a manifestation of weakness was not appropriate for an SS man like him, for in the SS toughness was one of the principal personal qualities demanded.

As we have shown, the Accused's version is far from clear in this matter. As far as he talked about a troubled conscience, his words are not worthy of belief, since they are altogether contrary to his actual attitude as regards his work on the front against the Jews at every stage.

227. With this, we reach the heart of our discussion of the inner motives which prompted the Accused in his activities. That he was merciless in all his deeds, is almost undisputed. One illustration will suffice, in connection with the transaction "goods for blood" in Hungary. When asked why he regarded the idea of this transaction favourably, he explained that he took this matter up because he felt that Becher was his rival and had been poaching on his preserves in the matter of Jewish emigration. Then he is asked by his Counsel:

> "In your negotiations with your superiors, did you also speak of the sense of pity which had been aroused in you in regard to the Jews, and say that this was an opportunity to help them?"

And he answers:

> "I am giving evidence under oath and I must tell the truth. I did not approach the matter out of pity. Also, I would have been fired, had I adopted such an attitude." (Session 86,Vol. IV, p. xxxx16)

And in answer to the Attorney General in the same matter:

> "Q. "...You will perhaps agree with me that your heart was not in this affair?
>
> "A. I did not contend otherwise. I have already said that this was done for reasons of utility. I did not say that this was a rescue operation." (Session 103, Vol. IV, pp. xxxx18-19)

That is to say, it never entered his head that human beings could possibly save their lives in this way. This reveals to us the same block of ice, or block of marble, which Dr. Grueber saw before him when he came to the Accused on the humanitarian mission which he had taken upon himself.

228. But the Accused tried to convince us that only obedience to orders motivated and guided him in all his activities, that only blind obedience, "cadaver-like" obedience (Kadavergehorsam) is what silenced his conscience. That is why he presented himself as an insignificant official, with no opinion of his own in all matters with which he had to deal, and as lacking all initiative in his work.

We have already discussed this allegation in a different context, when evaluating the Accused's activities. Now we repeat that, also regarding his inner feelings towards his work, the picture which he has tried to draw for us is entirely distorted. It is true that the

Accused gave such obedience as was demanded from a good National Socialist and as an SS man in whom blind obedience was deeply inculcated. But that does not mean that he fulfilled his task only because he was ordered to do so. On the contrary, he carried it out wholeheartedly and willingly, at every stage, also because of an inner conviction. Let us review briefly the evidence which has led us to this conclusion.

The Accused admits that he was a zealous National Socialist, devoted to his Fuehrer (T/37, p. 325), but he contends that he was not an anti-Semite. The answer to this contention is found in the words of Dr. Grueber (Session 42, Vol. II, p. 750):

> "Q. Did you find that the Accused showed personal hatred of the Jews, acute anti-Semitism or National Socialist fanaticism?
>
> "A. These are hard to separate. National Socialist fanaticism was organically bound up with anti-Semitism, was it not? They went hand in hand, to my knowledge."

Indeed, this is common knowledge: In Hitler's bogus ideology, the elevation of the German nation to the position of "master-race" is bound up with hatred of the Jews and their degradation to the rank of "subhuman."

229. It is possible that the Accused did not believe in Streicher's crude methods of incitement, for he considered himself an expert in the fight against Jewry, as one who had studied the problem thoroughly, and he was thus regarded by his superiors. As an expert, he understood that it is not always the crude methods which are efficient. However, his attempt to argue that he - the Specialist on Jewish Affairs in the Head Office for Reich Security - he, of all people - was that "white raven," the National Socialist who did not hate Jews, is unbelievable.

Had a man of his kind, a man who stood in the thick of the fight against the Jews - first in the field of ideology and afterwards in the actual fight - shown the slightest deviation from the anti-Semitic orthodoxy which was demanded from every member of the Party, however lowly, he could not have remained there for even one day. The heads of the SD and the Gestapo with whom he worked would certainly soon have detected any such deviation. But let us quote the words of the Defence witness Six, who knew the Accused closely from the time of his work in the SD Head Office, when Six was head of the branch in which the Accused worked. In his evidence taken in Germany, he says (p. 6):

> "Eichmann believed wholeheartedly in National Socialism ...I believe that, when in doubt, Eichmann invariably acted according to the doctrine of the Party in its most extreme interpretation."

230. The evidence before us fully confirms these words. Even today, when he makes his remarks on the article in Life, the Accused explains to Sassen, why Hitler disappointed him (T/48, p. 8):

> "I said that the real agitators for war were the infernal high finance (die infernalische Hochfinanz) circles of the Western hemisphere, whose servants are Churchill and Roosevelt, and the puppets, the pawns in this game of theirs, are Hitler, Mussolini, Daladier, Chamberlain."

The "infernal finance circles" are, of course, the Jews according to the concepts of the "Protocols of the Elders of Zion," that "International Finance Jewry" about whom Hitler spoke in his speech in January 1939 and whom he threatened to exterminate. This is the style used by the Accused even in 1957, so deep was his conviction from the past that the Jews are the enemies of mankind, and he reaches a new peak in the development of the Nazi mythology: Hitler himself was a plaything into the hands of the Jews.

Thus he also unhesitatingly adopted the official Nazi doctrine, that the Jews, being enemies who have declared war upon the German Reich, must be exterminated. As Himmler said in his speech in Posen on 4 October 1943:

> "We had a moral duty towards our own people - it was our duty to exterminate this nation which wanted to exterminate ours." (T/1288, p. 2)

This hatred is echoed in the Accused's words in the Sassen Document, in the part (File 17) written in his own handwriting, and to which he confessed (supra, p. 735):

> "The slogan of both sides was: The enemy must be exterminated! And world Jewry...obviously declared war upon the German Reich."

A couple of lines before that, he makes it clear that the Jews had always been the enemies of the German people, not only after the outbreak of war, and that Hitler had already declared war upon them years earlier (supra, p. 734).

And again, he has a ready excuse: The intention was not actual extermination, for neither the British nation, nor the French nation, were exterminated during the War (Session 96, Vol. IV, pp. xxxx9-10) - a hollow excuse.

231. Out of this soil of hatred for the Jews grew the actions of the Accused, and it is clear that mere blind obedience could never have brought him to commit the crimes which he committed with such efficiency and devotion as he evinced, were it not for his zealous belief that he was thereby fulfilling an important national mission. We have already seen the Accused's position within the RSHA apparatus, which was a key position in the implementation of the Final Solution.

It is true that in matters of principle he received orders from above, and these orders decided for him the various stages of implementation. But within this general framework he still had much scope left, in working out the details of implementation which were entrusted to him. This, too, was a considerable, and ramified task when taking into account the manifold activities needed to round up the Jews in their countries, to deport

them for extermination, and to remove all obstacles which stood in the way of these activities.

The Accused also headed of a widespread establishment of officials, who obeyed his orders and whom he set to work, constantly supervising them and spurring them on. All this required a great deal of initiative, continuous thought and consistent striving towards the end in view.

232. Here, we shall mention another of the Accused's arguments, which is also entirely devoid of foundation: that the Nazi apparatus was, as it were, divided into two sections - one consisting of those who gave orders, bearing full responsibility; and the other of those who received orders, who were supposed only to obey, and carried no burden of responsibility. It is a well-known fact that in the Nazi regime, which was based on the principle of leadership, every rank, except Hitler himself, both received and gave orders. And, as is customary in any hierarchical regime, an order becomes more and more detailed and takes on flesh and blood as it is passed down from one level to the next.

Certainly the Accused was not only a channel for the passing on of an order as received, without change of form and content. Had it been as he says, had he done his work in a purely routine manner, he would have been removed from office, and someone else would have been put in his place, because the activities of Section IVB4 were far from being routine. But it was not so, for the Accused was praised by his direct superior, Mueller, who said of him: “If we had had fifty Eichmanns, we should automatically have won the War” (Session 98, Vol. IV, pp. xxxx17-18; T/1432 (6)). We do not believe the Accused that this statement referred only to his last activities, namely the preparation of his office building in readiness for the Battle of Berlin, but that it was a concise evaluation of all his activities carried out under Mueller.

233. There is a great deal of evidence indicative of this attitude of the Accused, in his very acts and in his declarations on various occasions, as has been proved to us.

No single case brought to our notice, revealed the Accused as showing any sign of human feelings in his dealings with Jewish affairs, except when, according to his own words, he helped the daughter of his uncle (his stepmother's brother), who was half-Jewish, and one more Jewish couple, on whose behalf this same uncle intervened (T/37, pp. 114-115). In all his activities the Accused displayed indefatigable energy, verging on overeagerness towards advancing the Final Solution, both in his general decisions and in his treatment of individual cases of Jews who sought to escape death.

Many illustrations of this attitude have already been mentioned in this Judgment, in the course of the description of events. We shall add here a few more remarks on this same point.

234. Von Thadden gives evidence (p. 9) that the Accused invariably refused applications for the granting of exceptions. He remembers that, when he once requested the grant of an exception in a certain case, the Accused described his (von Thadden's) approach as

“weak-kneed” (knieweich). And in his statement, made in defence of the State Secretary, Steengracht, at Nuremberg (exhibit T/584), von Thadden said that in the opinion of the German Foreign Ministry the immediate deportation of the Jews of Denmark was impossible for political reasons, but the Accused 'ironically' informed him that pressure would be brought to bear upon the Foreign Ministry to reconsider its attitude.

And after the failure of the action in Denmark - von Thadden continues - Guenther, the Accused's deputy, told him that this was a case of sabotage, seemingly on the part of the German Embassy in Copenhagen, and that the Accused had already reported the matter to the Reichsfuehrer (Himmler) and that he, Eichmann, would demand the head of the saboteur. (Today, von Thadden claims that he can no longer remember the details, but he does not go back on his declaration - p. 13 of his evidence).

235. To make his version of the transaction of “goods for blood” stronger, the Accused relinquishes his argument that he acted only out of routine. Here, he suddenly turns into a man of initiative, who 'ponders' things and who conceives a far-reaching plan entirely on his own (Session 86, Vol. IV, p. xxxx12). This version is not worthy of belief, as we have already found above when speaking about the chapter on Hungary, but the very description of matters in this light contradicts that of the colourless figure which the Accused tries to assume. Thus he tells Sassen in a passage submitted by his Counsel (N/100):

> “I have always worked one hundred per cent, and above all I have thought over matters” (ich habe die Sache durchgedacht) “and when giving orders, I was certainly not lukewarm.”

Certainly, he was not lukewarm in giving his orders nor in his deeds, but energetic, full of initiative and active to the extreme in his efforts to carry out the Final Solution. He appears thus in September 1941, when his advice was “to kill by shooting” the thousands of Jews of Belgrade, and continued in this manner until the last days of the Third Reich. The representative of the International Red Cross reports these words as coming from the Accused in April 1945:

> “Concerning the general Jewish problem, Eichmann was of the opinion that Himmler was at that moment about to consider humane methods. Eichmann personally did not entirely approve of these methods, but as a good soldier, he was, of course, blindly following the orders of the Reichsfuehrer.” (T/865, p. 3)

236. In this same matter, we shall cite one more episode, described by Justice Musmanno, who heard an account of it from General Koller, of Hitler's entourage. We see no ground to doubt these words of Koller, and were given no reason why Koller should wish to place unjustified blame upon the Accused.

This is what happened (Session 39, Vol. II, p. 723-724): In his last days, Hitler ordered the execution of imprisoned Allied airmen. Koller tried to circumvent this order and

turned to Kaltenbrunner, because the order was that the airmen be handed over to the SD. Kaltenbrunner granted his request, but then he met with a difficulty because of the attitude of the Accused, who demanded that the Jews from amongst the airmen be executed according to Hitler's order, and he refused to budge from this position. Koller rescued these Jews by mixing them with thousands of other prisoners in the prisoners of war camps, so that it was difficult to identify them.

237. When carrying out the Final Solution, the Accused resorted to the psychological warfare tactics of misleading and confusing the enemy. In this connection, we shall here add only one of many illustrations. At his first meeting with the heads of Hungarian Jewry on 31 March 1944, the Accused gives certain instructions concerning the administration of Jewish institutions, etc. Then he addresses the scared Jews in these glib words:

> "He emphasized that these instructions would be enforced only for the duration of the War. Later the Jews would be free and could do as they pleased.
>
> "Everything happening to the Jews was only for the duration of the War. When the War was over, the Germans would once again be as pleasant (gemuetlich) as before... "He emphasizes that he appreciates frankness and that we, too, must be outspoken with him. He will also be frank with us."

This description, from the book by Munczi Ernoe, was confirmed by the Accused himself (Session 103, Vol. III, p. xxxx6; see also the declaration by Dr. Ernoe Petoe - T/1157, p. 3).

This, then, is the frank language used by the Accused, whilst the order for the deportation of Hungarian Jewry to Auschwitz is already in his pocket. Such a measure of viciousness can only be shown by a man who does his criminal job wholeheartedly and with all his being.

238. To conclude this chapter, in which we are concerned with the Accused's attitude to his work, we shall mention further utterances by him on various occasions, which reveal his feelings:

(a) In answer to a question by the Attorney General during cross-examination about an excerpt from the Sassen Document, wherein the pace of deportation from various countries is discussed, he stated as follows:

> "I speak of all countries. The same thing happened to us in Slovakia and in France, although there things began in a very hopeful manner (sehr hoffnungsvoll). The same thing happened to us in Holland where, at first, the transports rolled, until one could say that it was marvellous (es war eine Pracht). Only later were difficulties heaped upon difficulties." (T/1432 (21))

And this is the Accused's reaction to this quotation and to what was said there further on:

> "I cannot say that these things are correct word for word. Many words have no meaning at all... But I must say that these are substantially correct. I cannot say otherwise." (Session 104, Vol. IV, p. xxxx12)

Thus, "substantially" this attitude of complete identification with his work is correct - his joy in deporting Jews to their death. This is not the way in which a person who did this horrible work with any inner compunction, or even indifference, would have spoken.

(b) While under arrest in Israel, he wrote in his memoirs what he had told Mueller, his superior, at the time:

> "I was considering the subject of `victory.' I said that I believed that in this way we must lose the War, since by what right were the Jews killed, whilst hundreds of thousands of German scoundrels, criminal and political, were not killed. Such wrongdoing will necessarily avenge itself." (T/44, p. 108)

Therefore, his proposal when speaking to Mueller was to resort to the trusted remedy of the Gestapo: "To put 100,000 Germans against the wall." (Session 95, Vol. IV, pp. xxxx29-30)

We quote these words here, only to point out the Accused's trend of thought in regard to the extermination of the Jews. He had no inner reservations about the act itself, but only regrets that, together with the Jews, 100,000 Germans were not also exterminated, whose only crime was their opposition to the Nazi regime. The failure to kill these Germans, he believed, would avenge itself.

(c) And finally, the Accused's words at the end of the War, that he is ready to "jump into the pit." In this matter, the exact wording must be decided upon first, because there is a serious difference of opinion about it.

In his Statement to Superintendent Less, the Accused describes the matter in the following way:

During the last days of the War, the men of his Section were depressed. In order to improve their morale, he told them that he was looking forward joyfully to the last battle over Berlin, because what he had in mind was, "if death does not find me, I at least will seek death," and here he quotes his own words:

> "Millions of German women, children and old people lost their lives in this way, this I said to the men and to the soldiers. For five years millions of the enemy attacked Germany. Millions of enemies were also annihilated, and according to my estimate, the War also cost five million

> Jews. Now all this is over, the Reich is lost. And should the end come now, I said, I shall also jump into the pit." (T/37, p. 308)

And in his evidence before us, in answer to his Counsel (Session 88, Vol. IV, p. xxxx8), his version is:

> "I told my officers: The end has come, it is all over. The collapse is imminent...therefore, if this is the end of the Reich, then I shall gladly jump into the pit, knowing that in that same pit there are five million enemies of the state."

He states categorically that, when mentioning at the time "the enemies of the state," he did not have the Jews in mind, but "the enemy knocking at the gates of the state - the Russians and the fleets of Allied bombers, because they were the enemies of the state."

This is also how he explains his words in his remarks on the article in Life magazine (T/51, passage 1).

239. In our opinion, this explanation is nothing but a lie. The Accused explicitly mentioned to Superintendent Less, and then again in his evidence in Court (Session 105, Vol. IV, pp. xxxx19-22), the five million Jews killed, according to his estimate, in one breath with his readiness to "jump into the pit." It was not explained to us on what ground the Accused could have estimated at that time the number of victims of the Allies as exactly five million. It stands to reason, that the Accused spoke at the time about the front on which he was active and where his listeners were active, i.e., the battlefront against the Jews. This was likely to raise their spirits. And we know that the Jews were considered enemies of the Reich, in the language of the Nazi propagandists, which the Accused adopted in its entirety.

This was not the only occasion on which the Accused voiced such sentiments. The witness Grell, who in the year 1944 was in charge of Jewish affairs at the German Embassy in Budapest, and who, in this capacity, was in continuous contact with the Accused, says in his evidence in this case (pp. 7-8):

> "At the end of autumn of 1944, Eichmann once told me that the enemy powers regarded him as war criminal No. 1, and that he had on his conscience some six million people. In this connection, he did not speak of enemies of the Reich. I interpreted this statement made by Eichmann as `the more enemies, the greater the honour.' I remembered these words only when the American prosecution brought them up before me. As far as I was concerned, this statement was part of his effort to stress his status or his personality."

According to the affidavit by Dr. Wilhelm Hoettl (T/157), which served as evidence at Nuremberg, the Accused spoke to him in Budapest at the end of August 1944 and told him as well that,

> "He knows that the United Nations regard him as one of the main war criminals, because millions of Jewish lives are on his conscience."

And when Hoettl asked the Accused what was the exact number, the latter revealed that four million had been killed in extermination camps and additional two million in other ways, most of them by the Operations Units.

In his evidence in this trial, Hoettl repeated that the Accused mentioned the number of six million victims, but retreated from his above-mentioned affidavit, saying that the Accused did not tell him that he felt guilty of the death of those six million Jews (p. 61). The gravest version of this statement we find in the affidavit made by Wisliceny at Nuremberg on 24 November 1945 (T/56, paragraph 10 of the affidavit):

> "He [the Accused] told me on the occasion of our last meeting in February 1945, at which time we were discussing our fates upon losing the War: `I will laugh when I jump into the grave, because of the feeling that I killed five million Jews. This gives me great satisfaction and gratification'." (See also the evidence of Wisliceny at Nuremberg, T/58, p. 22)

. Out of caution, let us assume for the benefit of the Accused that he did not at the time confess his personal responsibility for the death of five or six million Jews. But the fact remains - undisputed in our opinion - that at the end of the War he expressed satisfaction at the death of millions of Jews, and declared that the very thought would make it easier for him to "jump into the pit." This was satisfaction at the terrible blow delivered to "the enemy of the Reich" on the front, where the Accused had been active during the War years and before. This "soul-searching" by the Accused at a time of general despair, is sufficient to indicate his true attitude to the business of murder in which he had been engaged.

240. From all that has been said, a very clear picture emerges - a picture matching, in our opinion, the evaluation given by Hoess, who wrote about the Accused (T/88):

> "Eichmann was a man full of life, always active... He always had new plans and always sought innovations and improvements. He never knew rest. He was wholly and compulsively obsessed with the Jewish Question and with the `Final Solution' which had been ordered" (Von der Judenfrage und der befohlenen "Endloesung" war er besessen)..."Eichmann was totally obsessed by his mission and convinced that the campaign of extermination was essential in order to rescue the German nation in future from the desire of the Jews to destroy it." (page 4)

We shall add here that the Accused never alleged that Hoess bore him any grudge (see, for instance, T/37, p. 391).

Of course, this attitude contradicts all readiness on the Accused's part "to do his best to reduce the gravity of the consequences of the offence," under Section 11(a) of the Law.

There is no desire here to alleviate matters, but a determined effort to aggravate matters in every respect.

241. To summarize this chapter, we shall state that the Accused closed his ears to the voice of his conscience, as was demanded of him by the regime to which he was wholeheartedly devoted, and to which he had sold himself body and soul. Thus far, Dr. Grueber's description of the Landsknecht suits the Accused. Thus, he sank from one depth to another until, in the implementation of the "Final Solution," he reached the nethermost depths. But it is not to be said of him that his mind also ceased to function, or that it functioned only out of blind obedience. He believed wholeheartedly in the National Socialists' bogus ideology that the Jews were the enemies of the Reich, and that they were to be destroyed without mercy. His hatred was cold and calculated, aimed rather against the Jewish People as a whole, than against the individual Jew, and for this very reason, it was so poisonous and destructive in all its manifestations.

To this task he devoted his alert mind, his great cunning and his organizing skill. He acted within the general framework of the orders which were given to him. But within this framework, he went to every extreme to bring about the speedy and complete extermination of all Jews in t

he territories under German rule and influence. 242. In saying all this, we do not mean that the Accused's viciousness was unusual within the regime which had raised him. He was a loyal disciple of a regime which was wholly evil and malicious.

Counsel for the Defence devoted great efforts to proving the part played by others in the commission of crimes with which the Accused is charged. In fact, it is not disputed that in all his activities the Accused always acted together with others, and this is how he was charged in the indictment. We shall not see the complete picture if we place the responsibility for the entire extermination campaign upon the Accused alone. Above him, there were the men at the top, beginning with Hitler himself - those who were the initiators of the Final Solution, and who gave the basic orders which guided the Accused; and alongside the Accused and his Section, many others were active, all of them determined to carry out the Fuehrer's order, each one of them in his own particular field of action:

The Ministries of the Interior and Justice, which laid the main formal groundwork for the persecution of the Jews, by drafting definitions which determined precisely who was a Jew, who was a descendant of mixed marriage and who was an Aryan, thereby setting up barriers which segregated the Jews from the rest of the population - by promulgating laws and regulations aimed at putting the Jews beyond the pale of the law; the Foreign Ministry, which laboured unceasingly to spread the poison of anti-Semitism all over the world, and to create conditions for the delivery of the Jews of other countries into German hands, in order to deport them to their slaughter; the Ministry of Finance and the Reichsbank, which took part in plundering the property of the victims; the Fuehrer's Chancellery, which was active in the introduction of the method of killing by gas; and

also the German Army Command, which tainted itself by acting in partnership with the SS in the extermination of the Jews in the East, in Greece, and in other countries.

Not only these, but all the authorities of the Reich and of the National Socialist Party, whose sphere of activity touched upon Jewish affairs - they all competed with one another to excel in furthering the common end - the complete extermination of the Jews, the enemies of the Reich, by every means in their power, efficiently and speedily.

But all this does not detract from the fact that the Accused's Section in the RSHA stood at the very centre of the Final Solution; and the guilt of the others does not lessen by one iota the personal guilt of the Accused.

243. The Accused's evidence in this case was not truthful evidence, in spite of his repeated declarations that he was reconciled to his fate, knowing the gravity of the activities to which he had confessed of his own will, and now his only desire was to reveal the truth, to correct the wrong impression which had been created in the course of time in regard to his activities in the eyes of his people and of the whole world. In various sections of this Judgment, we have pointed out where the Accused was found to be lying in his evidence.

We now add that his entire testimony was nothing but one consistent attempt to deny the truth and to conceal his real share of responsibility, or at least to reduce it to a minimum. His attempt was not unskilful, due to those qualities which he had shown at the time of his actions - an alert mind; the ability to adapt himself to any difficult situation; cunning and a glib tongue. But he did not have the courage to confess to the truth, not about how things actually happened, nor about his inner convictions to the acts he committed.

We saw him again and again winding his way under the impact of the cross-examination, retreating from complete to partial denial, and only when left no alternative, to admission; but of course always taking refuge in the plea that in all matters, great or small, he was acting on explicit orders.

The question which arises is: Why did the Accused confess before Superintendent Less to a number of incriminating details of which, on the face of it, there could be no proof but for his confession, in particular to his journeys to the East, where he saw the atrocities with his own eyes. We cannot search the depth of the Accused's soul now, while he is under arrest, to discover what caused him to do so. Various theories may be put forward to explain these partial confessions, but this would be futile for the purpose of a legal evaluation of his evidence. Suffice it to say that in our view these confessions did not add credibility to his evidence before us, as regards all those matters in which he was found to be lying.

244. The indictment was formulated in considerable detail. The method generally followed by the Attorney General was to set out in each count the essence of the indictment in one of the paragraphs of the “particulars of offence,” for example - in paragraph (a) of the first count (crime against the Jewish People by causing the death of

Jews), in paragraph (b) of the third count (crime against the Jewish People by causing grave physical and mental harm), and in paragraph (a) of the seventh count (crime against humanity through the plunder of property). To this the Attorney General added a detailed factual description of part of the acts attributed to the Accused. This is particularly evident in counts 1-7 of the indictment. It is here stressed at the same time that the factual description is not exhaustive.

Thus, in paragraph "g" of the first count, there is a partial description of the operations of the Einsatzgruppen (Operations Units) by the specification of the number of the victims during a given period; but it is clear from the opening words "the operations of these Units included inter alia the following operations, etc.", that the Attorney General merely sought to give instances and examples from among all the operations which were carried out by the Operations Units. Again, in the seventh count, various operations of plunder of property are enumerated, but it is stated that these were among the activities of the Accused.

We do not mean to criticize this way of wording the charge sheet. On the contrary, in the nature of things, the description could not be more exhaustive because of the vast dimensions of the activities with the execution of which the Accused was, together with others, charged, while the method of partial specification was apt to inform the Accused with greater clarity of the nature of the operations of which he was accused. But as we come now to convict the Accused, we do not consider ourselves bound by this partial specification in the indictment. We shall adhere to the general framework of the indictment, insofar as it concerns the description of the statement of offence, and also those parts of the particulars of offence in which a general description of the nature of the offence appears. But, as regards all other details, we base the conviction of the Accused on the detailed description of the facts which we have given in this Judgment, and of which the principal ones have been recapitulated in the chapter containing the legal analysis of the facts. In the light of this detailed description, we will now comprise in the text of the conviction only that which appears to us essential in each of the counts of the indictment, insofar as they have been proved before us.

(1) We, therefore, convict the Accused, pursuant to the first count of the indictment, of a crime against the Jewish People, an offence under Section 1(a)(1) of the Nazis and Nazi Collaborators (Punishment) Law 5710-1950, in that during the period from August 1941 to May 1945, in Germany, in the territories of the Axis States, in the areas which were occupied by Germany and by the Axis States, and in the areas which were subject to the authority of Germany and the Axis States, he, together with others, caused the deaths of millions of Jews, with the purpose of implementing the plan which was known as the "Final Solution of the Jewish Question," with intent to exterminate the Jewish People.

We acquit the Accused of a crime against the Jewish People, by reason of the acts attributed to him in this count of the indictment during the period until August 1941. The criminal acts of the Accused until that time (see sections 185, 186 above) will be included in the conviction for crimes against humanity, under paragraph (5) of the conviction, as set out below.

(2) We convict the Accused pursuant to the second count of the indictment of a crime against the Jewish People, an offence under Section 1(a)(1) of the above-mentioned law, in that during the period from August 1941 to May 1945, in the territories and areas mentioned in paragraph (1) of the conviction, as set out above, he, together with others, subjected millions of Jews to living conditions which were likely to bring about their physical destruction, in order to implement the plan which was known as the "Final Solution of the Jewish Question," with intent to exterminate the Jewish People.

We acquit the Accused of a crime against the Jewish People by reason of the acts attributed to him in this count during the period until August 1941.

(3) We convict the Accused, pursuant to the third count of the indictment, of a crime against the Jewish People, an offence under Section 1(a)(1) of the above-mentioned Law, in that during the period from August 1941 to May 1945, in the territories and areas mentioned in paragraph (1) of the conviction, as above, he, together with others, caused grave bodily and mental harm to millions of Jews, with intent to exterminate the Jewish People.

We acquit the Accused of a crime against the Jewish People attributed to him in this count during the period until August 1941.

(4) We convict the Accused, pursuant to the fourth count, of a crime against the Jewish People, an offence under Section 1(a)(1) of the above-mentioned Law, in that during the years 1943 and 1944 he took measures calculated to prevent births among Jews, by directing that births be banned and pregnancies terminated among Jewish women in the Terezin Ghetto, with intent to exterminate the Jewish People.

We acquit the Accused of having committed all other acts mentioned in the fourth count of the indictment.

(5) We convict the Accused, pursuant to the fifth count, of a crime against humanity, an offence under Section 1(a)(2) of the above-mentioned Law, in that during the period from August 1941 to May 1945, in the territories and areas mentioned in paragraph (1) of the conviction, as above, he, together with others, caused the murder, extermination, enslavement, starvation and deportation of the Jewish civilian population in those countries and in those areas.

We also convict the Accused of a crime against humanity, an offence under Section 1(a)(2) of the above-mentioned Law, in that he, together with others, caused during the period from March 1938 to October 1941, the expulsion of Jews from their homes in the territories of the Old Reich, Austria and the Protectorate of Bohemia-Moravia, by way of compulsory emigration through the Central Offices for Jewish Emigration in Vienna, Prague and Berlin.

We also convict the Accused of a crime against humanity, an offence under Section 1(a)(2) of the above-mentioned Law, in that during the period from December 1939 to

March 1941 he, together with others, caused the deportation of Jews to Nisko and the deportation of Jews from areas in the East annexed to the Reich, and from the Reich area itself into the German-occupied area in the East and to France.

(6) We convict the Accused, pursuant to the sixth count, of a crime against humanity, an offence under Section 1(a)(2) of the above-mentioned Law, in that, when carrying out the activities mentioned in paragraphs 1-5 of the conviction, he persecuted Jews on national, racial, religious and political grounds.

(7) We convict the Accused, pursuant to the seventh count, of a crime against humanity, an offence under Section 1(a)(2) of the above-mentioned Law, in that, during the period from March 1938 to May 1945, in the territories and areas mentioned in paragraph (1) of the conviction, as above, he, together with others, caused the plunder of the property of millions of Jews through mass terror, linked with the murder, destruction, starvation and deportation of those Jews.

(8) We convict the Accused, pursuant to the eighth count, of a war crime, an offence under Section 1(a)(3) of the above- mentioned Law, in that he performed the acts of persecution, expulsion and murder mentioned in the preceding counts, so far as these were committed during the Second World War, against Jews from among the populations of the countries occupied by Germany and the other countries of the Axis.

(9) We convict the Accused, pursuant to the ninth count, of a crime against humanity, an offence under Section 1(a)(2) of the above-mentioned Law, in that he, together with others, during the years 1940-1942, caused the expulsion of a civilian population, namely hundreds of thousands of Poles, from their homes.

(10) We convict the Accused, pursuant to the tenth count, of a crime against humanity, an offence under Section 1(a)(2) of the above-mentioned Law, in that in 1941, he, together with others, caused the expulsion of a civilian population, namely more than fourteen thousand Slovenes, from their homes.

(11) We convict the Accused, pursuant to the eleventh count, of a crime against humanity, an offence under Section 1(a)(2) of the above-mentioned Law, in that during the Second World War, he, together with others, caused the expulsion of a civilian population, namely tens of thousands of Gypsies from Germany and German-occupied areas, and their transportation to the German-occupied areas in the East.

It has not been proved before us that the Accused knew that the Gypsies were being transported to extermination.

(12) We convict the Accused, pursuant to the twelfth count, of a crime against humanity, an offence under Section 1(a)(2) of the above-mentioned Law, in that in 1942, he, together with others, caused the expulsion of 93 of the children of the Czech village of Lidice. It has not been proved before us that the Accused is guilty of the murder of these children.

(13) We acquit the Accused of the charges of belonging to hostile organizations, under the thirteenth, fourteenth and fifteenth counts, with respect to the period until May 1940, because of the prescription of these offences. (14) We convict the Accused, pursuant to the thirteenth count, of membership of a hostile organization, an offence under Section 3(a) of the above-mentioned Law, in that he was, as from May 1941, a member of the organization known as Schutzstaffeln der NSDAP (SS), which was declared a criminal organization by the International Tribunal which tried the Major War Criminals, and in that, as a member of such organization, he took part in acts that were declared criminal in Article 6 of the London Charter of 8 August 1945.

(15) We convict the Accused, pursuant to the fourteenth count, of membership of a hostile organization, an offence under Section 3(a) of the above-mentioned Law, in that, as from May 1941, he was a member of the organization known as Sicherheitsdienst des Reichsfuehrers-SS (SD) which was declared a criminal organization by the International Military Tribunal which tried the Major War Criminals, and as a member of such organization he took part in acts declared criminal in Article 6 of the London Charter of 8 August 1945.

(16) We convict the Accused, pursuant to the fifteenth count, of membership of a hostile organization, an offence under Section 3(a) of the above-mentioned Law, in that he was, from May 1940, a member of the organization known as the Geheime Staatspolizei, which was declared a criminal organization by the International Military Tribunal which tried the Major War Criminals, and as a member of such organization took part in acts which were declared criminal in Article 6 of the London Charter of 8 August 1945.