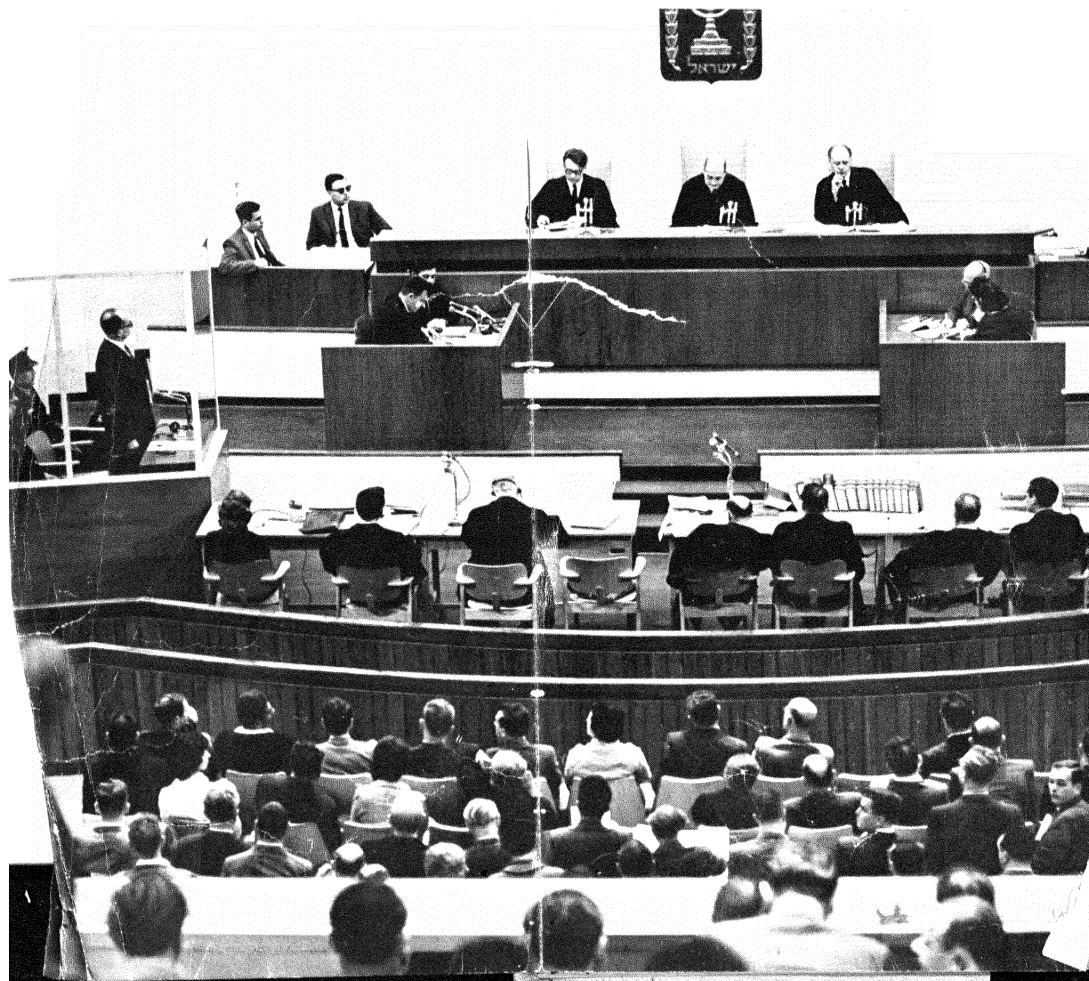


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Israel's Case Against Eichmann

*The Opening Speech and Legal Argument of
Mr Gideon Hausner,
Attorney-General*

*Translated from the Hebrew, and edited by
Shabtai Rosenne
Ambassador of Israel*

PUBLISHED BY THE JERUSALEM POST

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Printed in Israel
by the Jerusalem Post Press, Jerusalem

NOTE BY THE EDITOR

Why is Eichmann on trial in Israel? The formal answer lies in the indictment against him. The explanation of the indictment is found in the opening speech of Mr. Gideon Hausner, Attorney-General of the Government of Israel, when he presented the case of the Prosecution.

By what right is Israel trying Eichmann? If, on the one hand, the answer to this question is somewhat technical, it must be remembered, on the other hand, that the technicalities are not an abstract exercise in juristic debate but are most intimately connected with the substance of this case.

By the criminal procedure of Israel, before an accused person has to answer the charges brought against him he is entitled to argue that the Court lacks jurisdiction. That is what Eichmann did.

The present volume attempts to answer the two questions posed above. After the text of the Indictment, Part I contains the Attorney-General's opening speech (delivered after the Court's decision on its jurisdiction), and Part II contains the objections of Defence Counsel to the jurisdiction of the Court, the Attorney-General's reply, the Decision of the Court, and the accused's plea of Not Guilty. These documents together constitute the pith of Israel's case against Eichmann.

The official language of the Court proceedings is Hebrew. Statements made in any other language are translated into Hebrew by the Court's interpreter, subject to the control of the Court. The present translation is based on the unrevised Hebrew protocols published daily.

In preparing this translation the Editor has attempted to reproduce faithfully the original remarks. Some difficulty was ex-

perienced in dealing with the legal argument on the preliminary objections owing to the at times conversational style in which, as is customary in Court, these matters were discussed. A few editorial notes have been added for the convenience of the reader. Where these additions appear in the text they are inserted in square brackets []; other additions appear as footnotes with an indication that they have been made by the Editor.

The translation of the Attorney-General's opening speech, although based on a text¹ released for publication simultaneously with the speech, has been thoroughly checked with the protocol and has been substantially revised. A few minor modifications of presentation have also been made, in consultation with the Attorney-General, but these do not affect the general tenor of the speech.

Jerusalem, 20 May 1961

SHABTAI ROSENNE

¹ The preliminary text was prepared by Messrs. Shalom J. Kahn, Lucien Harris and Lawrence Haffner and was edited by Mr. Misha Louvish.

CONTENTS

The Indictment	11
Part I	The Attorney-General's Opening Speech 27
Chapter I	Introduction 29
Chapter II	The S.S., the S.D., and the Gestapo 44
Chapter III	The Accused 54
Chapter IV	The Final Solution of the Jewish Problem 63
Chapter V	The Extermination in Poland 90
Chapter VI	The Extermination in the U.S.S.R. and Annexed Countries 110
Chapter VII	The Extermination in Northern, Western and Southern Europe 119
Chapter VIII	The Extermination of Hungarian Jewry 143
Chapter IX	The Camps 154
Chapter X	A World that has Vanished 168
Chapter XI	The Charge and the Evidence 173
Part II	The Question of Jurisdiction 177
The Defence Objections	179
Fair Trial	179
No Jurisdiction	181
The Israeli Law and International Law	181
Eichmann's Abduction	184
The Attorney-General's Reply	186
No Conflict of Jurisdiction	187
The Independence of the Judges	187
Fair Trial	191
Defence Witnesses	194
Eichmann's Abduction	196
Punishment of Nazi Criminals	214
Crimes against the Jewish People	232
International Law and the Law of Israel	236

Individual Responsibility for International Crimes	242
<i>Ex post facto</i> Legislation	246
The Question of Exterritoriality	253
Universal Jurisdiction over certain Crimes	266
Trial before International Tribunal?	272
The Jewish People and the State of Israel	273
Summary	282
The Plea of "Act of State"	284
Final Summary	292
Final Defence Plea	294
 The Court's Decision	 303
 The Arraignment	 307
Appendix One Nazis and Nazi Collaborators (Punishment) Law, 5710—1950	• 309
Appendix Two Note regarding Evidence	314

Officially this case is: Criminal Case No. 40/61, in the District Court of Jerusalem. The proceedings are scheduled as—The Attorney-General of the Government of Israel v. Adolf, the son of Adolf Karl Eichmann.

The judges are—Mr. Justice Moshe Landau, President, Judge Benjamin Halevi and Judge Yitzhak Ravch. Mr. Joseph Bodenheimer is Clerk of the Court.

Appearing for the Prosecution are: Mr. Gideon Hausner, Attorney-General of the Government of Israel; Dr. Jacob Robinson, Special Assistant to the Attorney-General; Mr. Gavriel Bach, Deputy State Attorney; Mr. Yaacov Baror, Deputy State Attorney; Mr. Zvi Terlo, Deputy State Attorney.

Appearing for the Defence are: Dr. Robert Servatius, of the Cologne Bar, and Mr. Dieter Wechtenbruch, of the Munich Bar.

THE INDICTMENT

THE ATTORNEY-GENERAL

V

ADOLF, THE SON OF ADOLF KARL EICHMANN
AGED 54, AT PRESENT UNDER ARREST — THE ACCUSED

ADOLF EICHMANN

is hereby charged as follows:

FIRST COUNT

Nature of offence :

Crime against the Jewish people, an offence under section 1(a) (1) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, and section 23 of the Criminal Code Ordinance, 1936.

Particulars of Offence :

(a) The accused, together with others, during the period 1939 to 1945, caused the killing of millions of Jews, in his capacity as the person responsible for the execution of the Nazi plan for the physical extermination of the Jews, known as "the final solution of the Jewish problem".

(b) Immediately after the outbreak of the Second World War the accused was appointed head of a department of the Gestapo in Berlin the duties of which were to locate, deport and exterminate the Jews of Germany and the other Axis countries, and the Jews of occupied areas. That department bore in succession the following distinctive numbers:

IV D4; IV B4; IV A4,

(c) Instructions for the execution of the plan of extermination in Germany were given by the accused directly to local commanders

THE INDICTMENT

of the Gestapo, while in Berlin, Vienna and Prague the instructions of the accused were issued to central authorities (*Zentralstelle für Jüdische Auswanderung*) for the direction of which the accused was personally responsible until their liquidation towards the end of the Second World War.

(d) In areas occupied by Germany the accused acted through the offices of the commanders of the Security Police and the S.D., and through those persons specially nominated to deal with Jewish affairs, who were appointed from the department of the accused in the Gestapo, and were subject to his instructions.

(e) In Axis countries and areas conquered by them the accused made use of the offices of the diplomatic representatives of Germany in each place, in continual co-ordination with the special departments of the German Foreign Ministry in Berlin which dealt with the Jewish Problem. Advisers were appointed in the offices of such diplomatic representatives from among members of the department of the accused, who were subject to his instructions.

(f) The accused, together with others, secured the extermination of the Jews, by—among other means—their being killed in concentration camps the purpose of which was mass murder, the more important of such camps being as follows:

1) *Auschwitz.*

Millions of Jews were exterminated in this camp from 1941 until the end of January 1945 in gas chambers and in crematoria, and by shooting and hanging. The accused directed the commanders of that camp to use gas known as Zyklon B, and in 1942 and 1944 the accused also secured the supply of a quantity of gas for the purpose of exterminating the Jews.

(2) *Chelmno.*

This extermination camp was operated from November 1941 to the beginning of 1945, and poison gas, among other means of extermination, was used therein.

(3) *Belzec.*

This extermination camp was operated from the beginning of 1942 until the spring of 1943, and poison gas, among other means of extermination, was used therein.

(4) *Sobibor.*

This extermination camp was operated from March 1942 until October 1943 and there were erected there, among other build-

THE INDICTMENT

ings erected for purposes of extermination, five stone gas chambers.

(5) *Treblinka*.

This extermination camp was operated from 23 July 1942 until November 1943. Also in this camp poison gas, among other means of extermination, was used.

(6) *Maidanek*.

This extermination camp was operated from 1941 until July 1944, and poison gas, among other means of extermination, was used therein.

(g) Immediately after the invasion of Poland by the German Army in September 1939, the accused committed acts of expelling, uprooting and exterminating the population, in co-ordination with massacre-squads, recruited from the ranks of the German Security Police and the S.S., which were known by the name of *Einsatzgruppen* (Special Action Groups). Groups of this nature also operated after the invasion of the U.S.S.R. in 1941, and advanced in the wake of the German army. These groups received their orders directly from the Reich Security Head Office (RSHA), and each such group co-operated with the accused in the extermination of the Jews in the area of its jurisdiction. These groups operated in the main on the Sabbath and Jewish Festivals, which days were selected for the slaughter of Jews. These groups exterminated hundreds of thousands of Jews in the area occupied by Germany in Poland.

(h) Before the invasion by the German army of areas of the U.S.S.R. and the Baltic countries Lithuania, Latvia and Estonia, which were annexed to the U.S.S.R., four *Einsatzgruppen* co-operated with the accused in the extermination of Jews in the areas referred to, and in that portion of Poland which was annexed to the U.S.S.R. after September 1939. The activities of such groups included the following acts, inter alia:

(1) *Einsatzgruppe A*

During the first four months of the invasion of the areas above-mentioned, by the German army, this Group exterminated: in Lithuania more than 80,000 Jews; in Latvia more than 30,000 Jews; in Estonia about 470 Jews; in Bielorussia more than 7,600 Jews; in the U.S.S.R., about 2,000 Jews; in the District of Tilsit about 5,500 Jews; a total of more than 135,000 Jews.

THE INDICTMENT

(2) *Einsatzgruppe B*

Up to 14 November 1941, this Group exterminated more than 45,000 Jews in Bielorussia and other areas.

(3) *Einsatzgruppe C*

Up to 3 November 1941, this Group exterminated more than 75,000 Jews in the Ukraine, including 33,000 Jews of Kiev.

(4) *Einsatzgruppe D*

Up to 12 December 1941, this Group exterminated about 54,000 Jews.

(5) During the period from August to November 1942, the *Einsatzgruppen* referred to above exterminated some 363,000 Jews.

The *Einsatzgruppen* above-mentioned operated in the same manner and for the same purpose in the said districts in the extermination of the Jews from June 1941 until 1944, and exterminated hundreds of thousands of Jews in addition to those detailed above.

(i) At the end of 1941 the accused ordered the deportation of thousands of Jews from Germany, Austria and Czechoslovakia (Protectorate) to Ghettos in Riga, Kovno and Minsk. These Jews were exterminated and, inter alia,

(1) A number of such Jews deported from the Reich (Germany) were murdered on 30 November 1941 together with some 4,000 from Riga;

(2) Some 3,500 Jews from Germany who were sent to Minsk as aforesaid pursuant to instructions issued by the accused, were exterminated by an *Einsatzgruppe* in Bielorussia together with 55,000 more Jews who were residents of that district.

(j) During the years 1940-1945 the accused, together with others, caused the killing of hundreds of thousands of Jews in forced labour camps which were conducted on the lines of concentration camps, and in which such Jews were enslaved, tortured and starved to death in Germany, and in countries occupied by Germany.

(k) The accused, together with others, caused the killing of still more hundreds of thousands of Jews during the years 1939-1945 in Germany and the other Axis countries, and the areas occupied by them, by their mass deportation and concentration in Ghettos and other concentration points under cruel and inhumane conditions, that

THE INDICTMENT

is to say, in the following countries: Germany; Austria; Italy; Bulgaria; Belgium; U.S.S.R. and the Baltic States, Lithuania, Latvia and Estonia which were annexed to U.S.S.R., and that part of Poland which was annexed to the U.S.S.R. after September 1939; Denmark; Holland; Hungary; Yugoslavia; Greece; Luxembourg; Monaco; Norway; Poland; Czechoslovakia; France; Rumania.

(l) The accused caused the killing of some half a million Hungarian Jews by means of their mass deportation to the extermination camp at Auschwitz and other places during the period from 19 March to 24 December 1944 at a time when he acted as head of the "Eichmann Special Action Group" (*Sondereinsatz-Kommando Eichmann*) in Budapest.

(m) All the acts mentioned in this count were committed by the accused with the intention of destroying the Jewish people.

SECOND COUNT

Nature of Offence:

Crime against the Jewish people, an offence under section 1(a)(1) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, and section 23 of the Criminal Code Ordinance, 1936.

Particulars of Offence:

(a) During the period from 1939 to 1945 the accused, together with others, placed many millions of Jews in living conditions which were calculated to bring about their physical destruction, and took steps towards this end in Germany and the other Axis countries, in the areas occupied by them, and in the areas under their *de facto* control. During the period aforesaid, and pursuant to his duties as stated in the first count, and for the purpose of executing "the final solution of the Jewish problem", the accused committed the following acts in respect of such Jews:

- (1) Putting them to work in forced labour camps;
- (2) Sending them to Ghettos and detaining them there;
- (3) Driving them into transit camps and other concentration points;
- (4) Deporting them, and conveying them in mass transportations under inhumane conditions.

All the said acts were committed by the accused for the same pur-

THE INDICTMENT

pose, in the same manner, and in the same places mentioned in the first count.

(b) All the said acts were committed by the accused with the intention of destroying the Jewish people.

THIRD COUNT

Nature of Offence:

Crime against the Jewish people, an offence under section 1(a) (1) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, and section 23 of the Criminal Code Ordinance, 1936.

Particulars of Offence:

(a) During the period of the Nazi regime the accused fulfilled certain duties in the Security Service of the S.S.(S.D.) in dealing with Jews, in accordance with the programme of the Nazi Party (N.S.D.A.P.). After the outbreak of the Second World War these duties were combined with the duties of the department in the Gestapo which is described in the first count, at the head of which stood the accused.

(b) During the whole of the period aforesaid the accused, together with others, caused serious physical and mental harm to millions of Jews in Germany and the other Axis countries, in areas occupied by them and in areas under their *de facto* control, in the countries detailed in the first count.

(c) The accused, together with others caused the serious harm aforesaid by the enslavement, starvation, deportation and persecution of the said Jews and by their detention in Ghettoes, transit camps and concentration camps in conditions which were designed to cause their degradation, the deprivation of their rights as human beings and to suppress them and cause them inhumane suffering and torture.

(d) The accused, together with others, committed the acts aforesaid through measures the more important of which were as follows:

(1) The sudden, mass arrest of Jews without any guilt on their part or judicial decision, and merely by reason of their being Jews, and the torture of such Jews in concentration camps such as those at Dachau and Buchenwald;

(2) The organization on the night of 9-10 November 1938 of the mass persecution of some 20,000 Jews from Germany and



THE JUDGES
LEFT TO RIGHT JUDGE B. HALEVY, THE PRESIDENT MR. JUSTICE M. LANDAU,
JUDGE Y. RAVIV

THE INDICTMENT

Austria by arrest, cruel beatings, causing serious bodily harm, and torture in concentration camps;

(3) The organization of the social and economic boycott of Jews and their designation as a sub-human racial group;

(4) The application of the laws known as the "Nuremberg Laws" in order to deprive millions of Jews in all the countries specified in the first count of their human rights.

(e) The acts aforesaid were committed by the accused with the intention of destroying the Jewish people.

FOURTH COUNT

Nature of Offence:

Crime against the Jewish people, an offence under section 1(a) (1) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, and section 23 of the Criminal Code Ordinance, 1936.

Particulars of Offence:

(a) As from 1942 the accused, together with others, devised measures the purpose of which was to prevent childbearing among the Jews of Germany and countries occupied by her.

(b) The devising of such measures by the accused, by virtue of his duty as head of the Department for Jewish Affairs in the Gestapo in Berlin, was also designed to advance the "final solution of the Jewish problem".

(c) The measures referred to include:

(1) The instruction of the accused to Dr. Epstein who was Head of the Council of Elders in the Concentration Camp of Theresienstadt during 1943/1944, concerning the forbidding of births in the camp and the interruption of pregnancy by artificial abortion in all cases and at all stages of pregnancy;

(2) An order by the German police in the Baltic countries in 1942 against Jewish women in the Ghetto of Kovno forbidding birth and compelling such women to undergo operations for abortion in all stages of pregnancy;

(3) On 27 October 1942 in the offices of the accused IV B4 (RSHA) in Berlin, the accused, together with others, devised measures for the sterilization of the offspring of mixed marriages of the first degree among Jews in Germany and in areas occupied by her in accordance with the following principles:

THE INDICTMENT

(aa) The sterilization of the offspring of the mixed marriages, Jews or Jewesses, will be performed with their consent, in return for the favour of their being given the right to remain within the area governed by the German Reich;

(bb) The offspring of the mixed marriages will be entitled to choose between sterilization and deportation to extermination areas in the East;

(cc) It will be suggested by the authorities to the offspring of the mixed marriages to choose deportation;

(dd) Those who choose deportation will be separated according to their sex in order to prevent any further births;

(ee) The sterilization will be carried out secretly and in a camouflaged manner.

(d) In devising the measures aforesaid, the accused intended to destroy the Jewish people.

FIFTH COUNT

Nature of Offence:

Crime against humanity, an offence under section 1(a)(2) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, and section 23 of the Criminal Code Ordinance, 1936.

Particulars of Offence:

The accused, during the period 1939 to 1945, committed, in Germany and other Axis countries, in areas occupied by them and in the areas under their *de facto* control, acts constituting a crime against humanity in that, together with others, he caused the murder, extermination, enslavement, starvation and deportation of the civilian Jewish population in those countries and areas.

The accused committed those acts whilst functioning in the capacities specified in the first count.

SIXTH COUNT

Nature of Offence:

Crime against humanity, an offence under section 1(a)(2) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, and section 23 of the Criminal Code Ordinance, 1936.

THE INDICTMENT

Particulars of Offence:

The accused, in carrying out the acts described in counts 1 to 5 above, persecuted Jews on national, racial, religious and political grounds.

SEVENTH COUNT

Nature of Offence:

Crime against humanity, an offence under section 1(a)(2) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, and section 23 of the Criminal Code Ordinance, 1936.

Particulars of Offence:

(a) During the period of the Nazi regime in Germany and the other Axis countries, in the countries occupied by them and in the areas under their *de facto* control, the accused, together with others, caused the spoliation of the property of millions of Jews resident in the countries aforesaid, by means of inhumane measures involving compulsion, theft, terrorism and torture.

(b) Such measures included:

(1) The establishment, organization and operation of "the Central Authority for the Emigration of Jews" (*Zentralstelle für Jüdische Auswanderung*) in Vienna, from immediately after the entry of the Nazis into Austria in March 1938 until the end of the Second World War, through which authority the accused transferred the property of the Jews of Austria and all the Jewish communities of that State into German control. Part of this property was stolen for the purpose of financing the expulsion of the Jews of Austria to places beyond the borders of that State, and part of such property was transferred to the authorities by means of compulsion and measures of terrorism against its owners.

(2) The establishment of the "Central Authority for the Emigration of Jews" in Prague after the Nazi invasion of Czechoslovakia in March 1939, until the end of the Second World War, and the organization and operation of that authority by the accused in the same manner as the Central Authority in Vienna. By means of this Authority a "special account" was operated through which the property of the Jews who had been robbed

THE INDICTMENT

by the accused, together with others, in Czechoslovakia itself and in other countries, was transferred to the control of Germany.

(3) The establishment of a Central Authority for the Emigration of Jews and the Affairs of German Jews (*Reichszentrale*) in Berlin in 1939, and its operation by the accused until the end of the Second World War. By means of this Central Authority, as was the case with the Central Authority in Vienna, the accused, together with others, despoiled the property of the German Jews, both the individual property as well as the property of the various Jewish communities in that country, by the same methods and under the same conditions as were prescribed by him in regard to the authorities in Vienna and Prague.

(4) The accused compelled hundreds of thousands of Jews to finance their deportation to extermination camps and other centres of mass slaughter by the levy of compulsory payments upon deportees from Germany and areas occupied by her. For this purpose the accused conducted a special account "W" which was placed at the sole disposal of his department.

(5) The property of Jews who were murdered in German occupied countries in Eastern Europe was also stolen by their murderers—members of the S.S.

In order to centralize the acts of plunder special actions were organized in 1942/1943 within the framework of the special operation for the murder of Jews in Poland known as "Aktion Reinhard". The person in charge of this special operation was the commander of the Security Police and the S.D. in the District of Lublin. During the two said years property, the nominal value of which was two hundred million Marks, but the actual value of which was several times in excess of that sum, was stolen.

(6) During the Second World War and up to a short time before its conclusion, freight trains containing the movable property of persons murdered in extermination camps, concentration points and Ghettos were run month by month from the occupied districts in the East to Germany. This property also contained vast amounts of parts of the bodies of the murdered persons, such as hair, gold teeth, false teeth and artificial limbs; all other personal effects were also robbed from the bodies of the Jews before their extermination and thereafter.

(7) The accused, together with others, planned all the acts of

THE INDICTMENT

extensive robbery in order that the property of the millions who were sent to extermination should be taken from them and conveyed to Germany. The extent of the success of such robbery is reflected by the fact that when the Germans, at the time of their retreat in January 1945, burnt 29 stores of personal effects and valuables out of 35 such stores which had been erected in the extermination camp at Auschwitz, the six stores saved from the fire were found to contain, inter alia:

34,820 men's suits, 836,255 women's dresses and 38,000 men's shoes.

(c) The accused committed the said acts until the end of 1939 in the exercise of his special functions in the Security Service of the S.S. (S.D.); and from the end of that year the accused combined these functions with his functions in Bureau IV of the RSHA.

(d) The accused executed the spoliation of the property of the Jews of Germany and the other areas occupied by her, in addition to those already mentioned in this count, by giving instructions to local commanders of the Security Police and, in Axis countries and areas occupied by such countries, through the offices of the diplomatic representatives of Germany as described in the first count.

EIGHTH COUNT

Nature of Offence :

War crime, an offence under section 1(a)(3) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, and section 23 of the Criminal Code Ordinance, 1936.

Particulars of Offence :

The accused, during the period of the Second World War, in Germany and other Axis states and in areas occupied by them, committed acts constituting a war crime in that, together with others, he caused the ill-treatment, deportation and murder of Jewish inhabitants of the States occupied by Germany and other Axis states. The accused committed these acts whilst functioning in the capacities specified in the first count.

THE INDICTMENT

NINTH COUNT

Nature of Offence :

Crime against humanity, an offence under section 1(a)(2) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, and section 23 of the Criminal Code Ordinance, 1936.

Particulars of Offence :

The accused, between 1940 and 1942, in Poland, then occupied by Germany, committed acts constituting a crime against humanity in that, together with others, he caused the deportation of over half a million Polish civilians from their places of residence with intent to settle German families in those places.

The Polish deportees were in part transferred to Germany and German-occupied areas for the purpose of their employment and detention under conditions of enslavement, coercion and terrorism; in part abandoned in other regions of Poland and German-occupied areas in the East; in part concentrated under inhumane conditions in labour camps organized by the S.S.; and in part transferred to Germany for the purpose of re-Germanization (*Rückverdeutschung*).

The accused committed these acts under a special appointment dated December 1939, by which he was empowered by the head of the Security Police in Berlin to act as officer in charge of the "evacuation" of civilians.

TENTH COUNT

Nature of Offence :

Crime against humanity, an offence under section 1(a)(2) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, and section 23 of the Criminal Code Ordinance, 1936.

Particulars of Offence :

(a) The accused, in 1941, in the then German-occupied parts of Yugoslavia, committed acts constituting a crime against humanity in that, together with others, he caused the deportation of over 14,000 Slovene civilians from their places of residence, with the intention of settling German families in their stead.

THE INDICTMENT

(b) The Slovene deportees were transferred to the Serbian part of Yugoslavia by coercive, terrorist measures and under inhumane conditions.

(c) The planning of the deportations aforesaid was devised by the accused at a meeting which took place at Marburg (Untersteiermark) on 6 May 1941 to which the accused summoned the representatives of the other authorities concerned in the matter. The deportation headquarters continued to be located in that city, and operated under the directions of the accused.

The accused committed these acts under his special appointment referred to in the ninth count.

ELEVENTH COUNT

Nature of Offence :

Crime against humanity, an offence under section 1(a)(2) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, and section 23 of the Criminal Code Ordinance, 1936.

Particulars of Offence :

The accused, during the period of the Second World War, in Germany and German-occupied areas, committed acts constituting a crime against humanity in that, together with others, he caused the deportation from their places of residence of tens of thousands of gypsies, their concentration at concentration points, and their transportation to extermination camps in German-occupied regions in the East for the purpose of their being murdered.

The accused committed these acts under his special appointment referred to in the ninth count.

TWELFTH COUNT

Nature of Offence :

Crime against humanity, an offence under section 1(a)(2) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, and section 23 of the Criminal Code Ordinance, 1936.

Particulars of Offence :

The accused, in 1942, committed acts constituting a crime against humanity in that, together with others, he caused the deportation

THE INDICTMENT

of approximately 100 children, civilians of the village of Lidice in Czechoslovakia, their transportation to Poland, and their murder there.

The accused committed these acts in the discharge of his functions in the Gestapo in Berlin.

THIRTEENTH COUNT

Nature of Offence :

Membership in a hostile organization, an offence under section 3(a) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950.

Particulars of Offence :

The accused, during the period of the Nazi regime in Germany, was a member of the organization known as *Schutzstaffeln der N.S.D.A.P. (S.S.)*, and attained during his service in that organization the rank of *S.S.-Obersturmbannführer*.

This organization was declared a criminal organization by the Judgment of the International Military Tribunal dated 1 October 1946, in accordance with article 9 of the Charter of the Tribunal annexed to the Four-Power Agreement of 8 August 1945, concerning the trial of the major war criminals.

FOURTEENTH COUNT

Nature of Offence :

Membership in a hostile organization, an offence under section 3(a) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950.

Particulars of Offence :

The accused, during the period of the Nazi regime in Germany, was a member of the organization known as *Sicherheitsdienst des Reichsführers S.S. (S.D.)*.

This organization was declared a criminal organization by the Judgment of the International Military Tribunal dated 1 October 1946, in accordance with article 9 of the Charter of the Tribunal annexed to the Four-Power Agreement of 8 August 1945, concerning the trial of the major war criminals.

THE INDICTMENT

FIFTEENTH COUNT

Nature of Offence :

Membership in a hostile organization, an offence under section 3(a) of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950.

Particulars of Offence :

The accused, during the period of the Nazi regime in Germany, was a member of the Secret Police (*Geheime Staatspolizei*) known as the Gestapo, and served in it as Director of the Department for Jewish Affairs.

This organization was declared a criminal organization by the Judgment of the International Military Tribunal dated 1 October 1946, in accordance with article 9 of the Charter of the Tribunal annexed to the Four-Power Agreement of 8 August 1945, concerning the trial of the major war criminals.

The notice of charge was handed to Counsel for the accused on 1 February 1961, and he intimated that he waives his right to the holding of a preliminary examination.

Jerusalem, this fifth day of Adar, 5721 (21 February 1961).

Gideon Hausner
ATTORNEY-GENERAL

WITNESSES FOR THE PROSECUTION

- | | |
|------------------------------------|-------------------------|
| 1. Pakad Avner Less, Israel Police | 12. Dr. Bedrich Steiner |
| 2. Dr. Benno Cohn | 13. Leon Kapun |
| 3. Moshe Agami | 14. Yitzhak Nehama |
| 4. Dr. Yohanan Friedenthal | 15. Theodor Loewenstein |
| 5. Aharon Walter Lindenstrauss | 16. Hinko Salz |
| 6. Moshe Burger | 17. Pinhas Freudiger |
| 7. Dr. Paul David Meretz | 18. Yoel Brand |
| 8. Adolf Engelstein | 19. Hansi Brand |
| 9. Hilde Hahn | 20. Dr. Foeldi |
| 10. David Berger | 21. Suzan Strauss |
| 11. Dr. Ernst Abeles | 22. Amalia Rubin |
| | 23. Elisheva Szenes |

THE INDICTMENT

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|-----------------------|-----------------------|
| 24. Arye Breslauer | 32. Ada Lichtmann |
| 25. Aviva Fleischmann | 33. Barbara Faust |
| 26. Margot Reich | 34. Avraham Krassik |
| 27. Yehuda Bakon | 35. Dr. Mordecai Chen |
| 28. Dr. Huga Kratki | 36. Kalman Teigman |
| 29. Zvi Pachter | 37. Eliyahu Rosenberg |
| 30. Aviel Abraham | 38. Esther Lurie |
| 31. Yosef Buzhminski | 39. Henryk Ross |

PART I

THE ATTORNEY-GENERAL'S OPENING
SPEECH

Sixth Session — 17.4.61, Morning

Seventh Session — 17.4.61, Afternoon

Eighth Session — 18.4.61, Morning

The Attorney-General's Opening Speech was delivered over three sessions of the Court. However, it falls into eleven chapters, and for the reader's convenience is presented in that form here.

CHAPTER I

INTRODUCTION

When I stand before you here, Judges of Israel, to lead the Prosecution of Adolf Eichmann, I am not standing alone. With me are six million accusers. But they cannot rise to their feet and point an accusing finger towards him who sits in the dock and cry: "I accuse". For their ashes are piled up on the hills of Auschwitz and the fields of Treblinka, and are strewn in the forests of Poland. Their graves are scattered throughout the length and breadth of Europe. Their blood cries out, but their voice is not heard. Therefore I will be their spokesman and in their name I will unfold the awesome indictment.

The history of the Jewish people is steeped in suffering and tears. "In thy blood, live!"¹ is the imperative that has confronted this nation ever since its first appearance on the stage of history. Pharaoh in Egypt decided to "afflict them with their burdens" and to cast their sons into the river; Haman's decree was "to destroy, to slay, and to cause them to perish"; Chmielnicki slaughtered them in multitudes; they were butchered in Petlura's pogroms. Yet never, down the entire blood-stained road travelled by this people, never since the first days of its nationhood, has any man arisen who succeeded in dealing it such grievous blows as did Hitler's iniquitous regime, and Adolf Eichmann as its executive arm for the extermination of the Jewish people. In all human history there is no other example of a man against whom it would be possible to draw up such a bill of indictment as has been read here. The most terrible crimes of those fearful figures of barbarism and blood-lust, Nero, Attila, or Genghis Khan, the telling of which curdles our blood and makes our hair stand on end with horror, deeds that have become "a proverb and a taunt"² and an "everlasting abhorrence"³ to the nations—these

¹ Ezekiel 16:6.

² Jeremiah 24:9.

³ Daniel 12:2.

almost seem to pale into insignificance when contrasted with the abominations, the murderous horrors, which will be presented to you in this trial.

At the dawn of history, there were examples of wars of extermination, when one tribe assaulted another with intent to destroy, when, in the heat and passion of battle, peoples were slaughtered, massacred or exiled. But only in our generation has an organized State set upon an entire defenceless and peaceful population, men and women, grey-beards, children and infants, incarcerated them behind electrified fences, imprisoned them in concentration camps, and resolved to destroy them utterly.

Murder has been with the human race since the days when Cain killed Abel; it is no novel phenomenon. But we have had to wait till this twentieth century to witness with our own eyes a new kind of murder: not the result of the momentary surge of passion or mental black-out, but of a calculated decision and painstaking planning; not through the evil design of an individual, but through a mighty criminal conspiracy involving thousands; not against one victim whom an assassin may have decided to destroy, but against an entire people.

In this trial, we shall also encounter a new kind of killer, the kind that exercises his bloody craft behind a desk, and only occasionally does the deed with his own hands. Indeed, we know of only one incident in which Adolf Eichmann actually beat to death a Jewish boy, who had dared to steal fruit from a peach tree in the yard of his Budapest home. But it was his word that put gas chambers into action; he lifted the telephone, and railway trains left for the extermination centres; his signature it was that sealed the doom of thousands and tens of thousands. He had but to give the order, and at his command the troopers took to the field to rout Jews out of their homes, to beat and torture them and chase them into ghettos, to pin the badge of shame on their breasts, to steal their property—till finally, after torture and pillage, after everything had been wrung out of them, when even their hair had been taken, they were transported en masse to the slaughter. Even the corpses were still of value: the gold teeth were extracted and the wedding rings removed.

We shall find Eichmann describing himself as a fastidious person, a "white-collar" worker. To him, the decree of extermination was just another written order to be executed; yet he was the one who planned, initiated and organized, who instructed others to spill this

INTRODUCTION

ocean of blood, and to use all the means of murder, theft, and torture. He is responsible, therefore, as though he with his own hands had knotted the hangman's noose, had lashed the victims into the gas-chambers, had shot in the back and pushed into the open pit every single one of the millions who were slaughtered. Such is his responsibility in the eyes of the law, and such is his responsibility by every standard of conscience and morality. His accomplices in the crime were neither gangsters nor men of the underworld, but the leaders of a nation—including professors and scholars, robed dignitaries with academic degrees, linguists, educated persons, the "intelligentsia". We shall encounter them—the doctors and lawyers, scholars, bankers and economists, in those councils which resolved to exterminate the Jews, and among the officers and directors of the work of murder in all its terrible phases.

This murderous decision, taken deliberately and in cold blood, to annihilate a nation and blot it out from the face of the earth, is so shocking that one is at a loss for words to describe it. Words exist to express what man's reason can conceive and his heart contain, and here we are dealing with actions that transcend our human grasp. Yet this is what did happen: millions were condemned to death, not for any crime, not for anything they had done, but only because they belonged to the Jewish people. The development of technology placed at the disposal of the destroyers efficient equipment for the execution of their appalling designs.

This unprecedented crime, carried out by Europeans in the twentieth century, led to the definition of a criminal concept unknown to human annals even during the darkest ages—the crime of Genocide.

The calamity of the Jewish people in this generation was considered at a number of the trials conducted in the wake of Germany's defeat in World War II, when mankind resolved to set up instruments of defence, through the establishment of courts and execution of judgments, to ensure that the horrors of war which our generation has witnessed shall not recur. But in none of those trials was the tragedy of Jewry as a whole the central concern. It was among the subjects treated; sometimes it was given great weight, always it evoked sentiments of horror; but it was never at the centre, since the accused at these trials were indicted for crimes against members of many and various nations. There was only one man who had been concerned almost entirely with the Jews, whose business had been their destruction, whose role in the establishment of the iniquitous

regime had been limited to them. That was Adolf Eichmann. If we charge him also with crimes against non-Jews, committed as it were by the way, this is because we make no ethnic distinctions. But we should remember that the mission of the accused, in which for years he saw his destiny and calling, and to which he devoted himself with enthusiasm and endless zeal, was the extermination of the Jews.

Men still ask themselves, and they will certainly continue to ask in days to come: How could it have happened? How was it possible in the middle of the twentieth century? The judges at the Nuremberg trials also asked themselves this question, examined its various aspects, and arrived at interesting formulations; yet it would be difficult to claim that a full or satisfactory answer was given. I doubt whether in this trial we on our part will succeed in laying bare the roots of the evil. This task must remain the concern of historians, sociologists, authors and psychologists, who will try to explain to the world what happened to it. But we shall nevertheless endeavour, however briefly, to describe the background, in an attempt to explain what is perhaps altogether inexplicable by the standards of ordinary reason.

Hitler, his regime and crimes, were no accidental or transient phenomenon. He did not come to power as a result merely of a unique combination of circumstances. Historical processes are usually the product of many developments, like many streams flowing each in its own channel until they combine into a mighty river. They will come together only if their flow is in the same general direction.

No doubt various events contributed to the rise of Nazism: the defeat of Germany in World War I; the subsequent economic difficulties; lack of leadership and futile party divisions; fratricidal strife and disunion—all these impelled the German people, disoriented and groping, to turn its eyes towards the false prophet. But Hitler would not have been able to remain in power, and to consolidate in his support all the strata of the German people, including most of the intellectuals—to win the support of so many university professors and professional men, the civil service and the whole army—if the road to his leadership had not already been paved. Not even the oppressive regime of the concentration camps, and the atmosphere created by the terror so rapidly activated against all opposition by the hooligans of the S.S. and the S.A., are adequate alone to explain the enthusiastic and devoted support he received from the majority of the nation, unless it had been preceded by an extensive spiritual



GOODMAN ACCUSED

INTRODUCTION

preparation. When we read today the declarations of the scientists, authors, and journalists—including many who had not been among his adherents before—who chanted his praises and willingly gave him their support and backing, how they willingly and joyfully accepted his yoke, we must reach the conclusion, however reluctantly, that the people were ready and prepared to crown him as their leader. Professor Wilhelm Roepke, of the University of Marburg, said this clearly at the end of World War II:

“There have been Hitlers everywhere and at all times, but it is Germany’s shame that so miserable a figure could become her leader. In order to germinate, the seed of Nazism had to find a favourable soil: it found it in the German Reich and the Germans, such as they had become in their political, spiritual, economic, and social history.”¹

In Goethe’s *Dichtung und Wahrheit* (*Poetry and Truth*, Part IV, Book 20, we read his prophetic description of a demonic personality like that of Hitler:

“Against him, no union of moral forces can make a successful stand. In vain will men of enlightenment seek to scorn him or unmask his true character as a cheat and deceiver. The masses are drawn after him . . .”

Yet it is doubtful whether in this instance the majority of “enlightened” ever tried to make such a stand. As Professor Julius Ebinghaus wrote after the War:

“The universities of Germany did not come forth, when it was still possible to do so, to oppose openly and with all their might the destruction of science and the democratic state.”

And here is an example. In 1937, the author and art-critic who used the pseudonym of Wolfgang Bruegge wrote in an article entitled “When I Hear That Voice!” dealing with Hitler’s speeches, those hysterically ranting manifestations of self-exaltation, hate, and thirst for vengeance:

“During all these last years, I have always had the same experience when I heard that voice . . . It has always seemed to me that the voice was speaking directly to me. It was to me,

¹ *The German Question* (1946), p. 96.

CHAPTER I

the anonymous one among millions of auditors, that it spoke. It wanted me to be better, to show me the way, to make me a German. And that voice insinuated itself mysteriously into the core of my being. It removed the bonds behind which my ultimate faith had been imprisoned. It broke through the innermost doors, dissolved with its fervency all my doubts, suppressed in me the faint-hearted dog and awakened the hero to action."

What was it that voice was saying to its enthusiastic and ardent listeners? It spoke of the cult of hatred and power, of Germany's mission to rule peoples and nations. It spoke of battle, in the spirit of Treitschke, who had preached war as a necessity for the survival of the State. It spoke of the supremacy of the Aryan race—that master race whose destiny it was to rule over all inferiors, and to institute the "New Order" in the world. So he wrote in his programmatic book *Mein Kampf* (pp. 290 ff.):

"All the human culture, all the results of art, science, and technology that we see before us today, are almost exclusively the creative product of the Aryan. This very fact admits of the not unfounded inference that he alone was the founder of all higher humanity, therefore representing the prototype of all that we understand by the word 'man'. He is the Prometheus of mankind from whose bright forehead the divine spark of genius has sprung at all times, forever kindling anew that fire of knowledge which illumined the night of silent mysteries and thus caused man to climb the path to mastery over the other beings of this earth . . . Hence it is no accident that the first cultures arose in places where the Aryan, in his encounters with lower peoples, subjugated them and bent them to his will . . . As long as he ruthlessly upheld the master attitude, not only did he really remain master, but also the preserver and increaser of culture . . . As soon as the subjected people began to raise themselves up and probably approached the conqueror in language, the sharp dividing wall between master and servant fell. The Aryan gave up the purity of his blood and, therefore, lost his sojourn in the paradise which he had made for himself. He became submerged in the racial mixture, and gradually, more and more, lost his cultural capacity . . ."

INTRODUCTION

Hitler denied the existence of a common basis for all humanity. According to his doctrine, there is no mutual responsibility between men. In place of the injunction "And thou shalt love thy neighbour as thyself," we find "Crush him that is unlike thyself!" Instead of the ideal of human brotherhood, we have the principle of race superiority.

Distinguishing characteristics were assigned to the sons of the master race: the skull was oblong, the complexion bright and splendid, expressing spiritual elevation. The word "Aryan" in Sanskrit signifies "Master". The Aryans are of Indo-Germanic stock, whose most highly developed branch is the Teutonic, and the choicest of them all are the Germans. They, and only they, should rule the world with an iron hand, and they must not defile themselves by contact with other races. The purity of the race and its preservation against pollution became the immutable foundation of the Nazi political programme. This was the "New Order" that Hitler promised his people, on which would be based a Third Reich that would last a millennium.

Only those whose blood was Aryan were worthy of citizenship. This was established by the Nuremberg laws. The preamble to the "Law for the Preservation of the German Blood and the German Honour" stated :

"Imbued with the consciousness that the purity of German blood is essential to the continued existence of the German people, and animated by the inflexible resolve to secure the security of the German Nation for all time, the Reichstag has unanimously adopted the following law . . ."

Then began the campaign of fraud. It was proved that Jesus of Nazareth was an Aryan, in whose veins no drop of Jewish blood flowed. The scientists undertook to formulate the bases of an Aryan science. Professor Philip Lenard, Nobel Prize-winning physicist, undertook to establish a German physics "in opposition to the Jewish science represented by Einstein". According to such theorists of racial doctrine as Hermann Gauch and others, non-Nordic man is closer to the animals than to the human race. The believers in the racial doctrine created the concept of the "sub-man" (*Untermensch*) to describe those who were not Aryans. Only the Nordic peoples have the aptitudes for leadership—such was the teaching of Professor Valentin Mueller.

CHAPTER I

Institutes were established in Nazi Germany, devoted to racial research and the determination of the hierarchical pyramid of racial superiorities. The Jews found themselves at the bottom of the list, followed only by the Gipsies and the Negroes.

Hatred of the Jews, now called 'anti-Semitism', was not invented by Hitler. It had existed for many generations. Its roots lie in the disastrous dispersion of the Jews, in ignorance and prejudice, superstition and envy. Stupid people have always hated those who differ from them, those who are exceptional. But the Nazis converted anti-Semitism into a doctrine of hatred which started with hostility and ended with murder. That was an elemental development. When he gave free rein to hatred for the Jews he had also taken the steep path that plunged down to the "Day of Boycott" against the Jews on 1 April 1933, to the *Kristallnacht* of 9-10 November 1938; to the "physical extermination" decision of 31 July 1941. This was the logic of events, each of which evolved from the one before, and led inexorably to its successor. The way of anti-Semitism led to Auschwitz.

Hitler knew that for the success of his lying doctrines he would have to use the age-old weapon of hate. He needed to place before the German people an object to which could be attributed everything loathsome and contemptible, an object worthy of abhorrence, which would be the absolute antithesis of the Aryan man, the Nazi, and whose existence and activities could be presented as the cause of all the failures and difficulties that Germany had encountered.

This object was the Jew. Hitler had other hates: the Marxists and Communists were regular targets for his virulent attacks. But there was this difference: the latter could redeem themselves in his eyes by turning their backs on their former beliefs and finding their way into the bosom of National-Socialism. The Jew, however, was the eternal scape-goat. He had no way out; he was in no position to escape the storm of hate.

Anyone who reads the speeches, writings and reported conversations of Hitler is shocked at his ignorance, at his ability to describe fantasies as if they really existed, and above all at his power to persuade others of the truth of the most enormous lies. Otto Strasser, one of his supporters, who became an opponent, wrote of him:

"I have been asked many times what is the secret of Hitler's extraordinary power as a speaker. I can only attribute it to

INTRODUCTION

his uncanny intuition, which infallibly diagnoses the ills from which his audience is suffering. If he tries to bolster up his argument with theories or quotations from books he has only imperfectly understood, he scarcely rises above a very poor mediocrity. But let him throw away his crutches and step out boldly, speaking as the spirit moves him, and he is promptly transformed into one the greatest speakers of the century...

"Adolf Hitler enters a hall. He sniffs the air. For a minute he gropes, feels his way, senses the atmosphere. Suddenly he bursts forth...

"His words go like an arrow to their target, he touches each private wound on the raw, liberating the mass unconscious, expressing its innermost aspirations, telling it what it most wants to hear." (*Hitler and I*, pp. 74-7.)

And Hitler did in fact free the hatred of the Jew which was latent in the hearts of large sections of the German people, intensify it and stimulate it into greater activity. The germ of anti-Semitism was already there; he stimulated it and transformed it into the source of an epidemic. For the purposes of Nazi Germany's internal policy, the Jew was a convenient object of hatred; he was weak and defenceless. The world outside remained silent when he was persecuted, and contented itself with verbal reactions that did little harm. The Jew was pilloried as a supporter of Communism—and therefore an enemy of the German people. In the same breath he was accused of being a capitalist—and therefore an enemy of the workers. National-Socialism had found in the Jew an object of hostility appropriate to both halves of its name, and it set him up as a target for both national enmity and class hatred. The Jew was also a ready target through which the attention of the public could be diverted from other problems. This too was an age-old weapon, which had been used by many anti-Semites down the ages. On this point we shall find the accused himself saying:

"The Jewish Question was a welcome tactic to divert attention from other reverses... Whenever any difficulties of another sort arose, they took refuge, at least at this time, in the Jewish Question, and immediately the diversion was created. This was done not only by Himmler himself, not only by the Gauleiters; this was the practice of every one among the so-called high leadership."

CHAPTER I

A confused and blinded world was not alarmed by this campaign of hatred and the denial of human rights. It did not understand that the persecution of the Jews was only the beginning of an onslaught on the entire world. The man whose henchmen howled the infamous words:

“When Jewish blood spurts from the knife,
Then all goes doubly well!”

*(Wenn Judenblut vom Messer spritzt—
Dann geht's nochmal so gut!)*

—the same man would soon, by a natural development and led by the same master-feeling of hate, proclaim that all the cities of England would be subjected to the same fate as bombed Coventry.

In order to complete the picture, we should point out that there were in Germany tens of thousands of scientists and ecclesiastics, statesmen and authors and ordinary people, who dared to help the Jews, to raise their heads in opposition to the iniquitous regime, and even to rebel against it, and among these were men whose names were famous in German science and culture. Thousands of opponents of the bloody regime were imprisoned and were later destined to suffer greatly in concentration camps before the Nazi monster was brought low. Thousands of these died without seeing the day of liberation. Hundreds of ecclesiastics were arrested and imprisoned. There were also examples of personal bravery—like that of the priest who was sent by Eichmann to a concentration camp for intervening openly on behalf of the Jews. There were Germans who hid Jews and shared their rations with them and who at the risk of their lives helped them to hide or obtain “Aryan” papers, and there were others who maintained an anti-Hitler underground. During the War there were Germans who even protested to Hitler at the disgrace the Gestapo was bringing on the German people by acting like beasts of prey, as they described the extermination of the Jews. There were also soldiers who tried to frustrate the killings by direct intervention.

But after all is said and done, these were a very small minority. The decisive majority of the German people made peace with the new regime, and were phlegmatic witnesses of the most terrible crime ever perpetrated in human history. And when Goebbels, the Nazi Propaganda Minister, made a public bonfire of the creations of men of the spirit, Jewish and non-Jewish—the works of such

INTRODUCTION

men as Heinrich Heine, Thomas Mann, Wassermann, Einstein, Freud, Upton Sinclair, H. G. Wells, Zola, Havelock Ellis, and scores of others, because they were "in opposition to the German spirit", he proclaimed:

"The soul of the German people can again express itself. These flames not only illuminate the final end of an old era; they also light up the new."

The majority of German intellectuals were ready to warm themselves at those bonfires, and to accept as their spiritual guide the false glitter of their flames.

Nazi Germany became the scene of an anti-Jewish campaign directed and spurred on by brutish passions of hate. The slogan, "Germany awaken—Jewry die!" (*Deutschland erwache—Juda verrecke!*) appeared on the walls. The Jews were accused of every fault and defect in existence. A poisonous diet of bestial incitement was published weekly in *Der Stuermer*, that odious newspaper edited by Julius Streicher, who was eventually executed by sentence of the International Military Tribunal.

In order to denigrate the Jew, all his works had to be denounced. For this purpose, the Nazis defiled the greatest Jewish creation of all the ages—the Bible. Alfred Rosenberg, one of the "thinkers" of the Movement, demanded that the Holy Scriptures be removed from any sphere where they could be a spiritual influence or source of religious faith. He considered it a prime defect of the Protestant faith that it sanctifies the Old Testament. There was talk of "the redemption of Jesus" from his connections with Judaism, in order to make it possible to degrade the people into which he was born.

The Protocols of the Elders of Zion—that forgery which describes "the Jewish conspiracy to rule the world", and which had long been exposed as a base fabrication—was revived as a valuable means of propaganda, and was widely distributed and taught.

Even the loathesome "blood libel", long banned by popes and kings, was revived. It was later to appear in a new and unprecedentedly cynical guise. On 19 May 1943, at the height of the War, the Chief of the S.S., Reichsfuehrer Heinrich Himmler, sent to Eichmann's superior officer, Kaltenbrunner, Chief of the Security Forces of the Reich (*Reichssicherheitshauptamt*), hundreds of copies of a book, *Jewish Ritual Murder*, and asked him to distribute it among those dealing with Jewish affairs. He ordered that steps be taken

CHAPTER I

to spread the blood libel in Rumania, Hungary, and Bulgaria, in order to persuade their governments still hesitating to stain their hands with murder, to expel Jews.

Himmler proposed to Kaltenbrunner the setting up of a special radio station for the spread of anti-Semitism, beamed towards England and the United States, over which material from the *Stuermer* would be broadcast.

"In addition", he wrote, "personnel should immediately be allocated to follow up notices published by the police and courts in England so that we may be able through our transmitter to broadcast notices to the effect that, in such and such a place, a child is missing, who was murdered of course by the Jews for ritual purposes.

But let us not anticipate events. On 30 January 1933, Hindenburg gave the power over Germany into Hitler's hands. Did that old man know what he was doing to his people and the world? After swearing in the members of the new government, he said to them: "And now, gentlemen: Forward, with the help of God!" Germany did indeed stride forward—towards war, horror and shame.

Even before the power was firmly in their hands, the Nazis initiated official measures of persecution against the Jews. On 1 April 1933, only two months after they obtained power, they organized the "Day of Boycott", to give symbolic form to the goal of uprooting the Jews and driving them out of the German Reich. Jews were beaten and imprisoned in concentration camps; Aryan customers were forbidden to enter Jewish places of business. It was then that Robert Weltsch wrote his unforgettable article in the *Jüdische Rundschau*, the organ of German Zionism: "Wear With Pride the Yellow Badge!" But even Weltsch could not foresee that the yellow badge could become the distinctive sign which, a few years later, would be forced upon all the Jews in countries ruled by the Nazis, so that they might be more easily identified for the purpose of the blood-bath.

The economic boycott of the Jews was retained until their final extermination. At a later stage it was enforced by means of legislation. Thus a series of laws excluded Jews from a number of professions. Law, medicine and teaching were closed to them. They were dismissed from the Army. In 1935, the Nuremberg laws were enacted, which forbade Jews to intermarry with Gentiles and deprived them

INTRODUCTION

of German citizenship. Later, they were driven out of industry and expelled from the entire German economy.

After the Nazis had succeeded in using anti-Semitism as an important instrument for securing their power in Germany itself, they planned to use the same poison of hate to bind together the enemies of the Jews throughout the world, in order, by this means, to undermine opposition to the hegemony of Nazi Germany. And while German military might cast its shadow of terror on peoples and lands, silencing the voice of reason, anti-Semitism was exploited as a deliberate expedient to undermine the conscience of the nations, to excite the basest of passions, and to encourage Quisling and other collaborators. The Jew was described, in the official publications of the Party and the German Reich, as an enemy to the peace of the world, and there was a proposal for a league of nations against Jewry, *ein Völkerbund gegen Juda*.

Wherever the Nazi conqueror set foot, there awaited him a prepared group of adventurers, traitors to their country, underworld characters—sometimes plain assassins, who cast lustful eyes on Jewish property and lent their unclean hands to the task of destruction. Wherever the German legions trod, they introduced the suppression of human freedom and whipped up Jew-hatred.

Anti-Semitism became an excellent article of "export", to be sown everywhere and cultivated by German ambassadors and representatives abroad. We shall show during this trial how the Nazis deliberately fanned anti-Jewish hostility and agitation in order to form fascist parties in various countries, to facilitate their work of undermining the independence of peoples and States, and to prepare the Fifth Column which was at their disposal in all the countries they conquered. The Fifth Column was always anti-Semitic, and it was organized and developed by exploiting hatred of the Jew. Acceptance of Nazi doctrine and a deliberate, carefully fostered anti-Semitism came to be one and the same thing throughout the entire range of movements developed by the Reich: the *Nasjonal Samling*, Quisling's party in Norway; Mussert's *N.S.B.* in Holland; the Darlan group in France; the Degrelle movement in Belgium; Hlinka's party in Slovakia; the Ustashis of Pavelitch in Croatia; the Iron Guard in Rumania; Szálasi's Arrow-Cross in Hungary; the *Ukrainska Powstanskaja Armija* in the Ukraine; the *Perkonkrust* in Latvia; the D.N.A.S. in Bielorrussia; and others. All were fascist, all totalitarian, all anti-Semitic.

CHAPTER I

Ribbentrop, the Minister for Foreign Affairs, laboured to set up an anti-Semitic International as a vanguard of corruption among all the nations, to pave the way for the armies of conquest. Anti-Semitism in the hands of the Nazis was a weapon no less efficient and deadly than their cannon, bombers, submarines and the rest of the death-dealing weapons which they brought into operation against peoples and lands.

In the end, the military pride of Germany was defeated, the voice of the cannon silenced, the bombers shot down, and the submarines sunk—but the poisonous seed of anti-Semitism spread, still lives, and its sprouts continue to grow. At times it even lifts again its monstrous head, when its followers go out in the darkness of the night to scrawl their swastikas on the walls.

Even on the verge of defeat in World War II, when the balance of the scales was moving towards the side of the Allies, after the Red Army had forced the retreat of the Germans from most of their conquests in the East, after the forces of the West had brought about the surrender of Italy, when the greatest expeditionary force in history was preparing in the British Isles for a mighty invasion in the fateful summer of 1944, when the cities of Germany itself had been in part reduced to ruins—in April of that same year the German Foreign Ministry convened a meeting of diplomats in the European capitals to consult on ways and means of strengthening Jew-hatred in the world. At this meeting, Ambassador Schleier gave an account of the progress of anti-Semitism in England and the United States; suggested lines of action for the future; emphasized that the spread of anti-Semitism was one of Nazi Germany's military aims; and declared that the extermination of the Jews in the East had already deprived Jewry of her biological reserves—though Judaism still existed in the Soviet Union, England, and the United States. In his conclusion he said:

“Not only in Germany but also throughout the world, the problem of the Jews must find its solution.”

The assembled diplomats then went on to a detailed discussion of the next steps to be taken to disseminate Jew-hatred, by means of literature, caricatures, films and the Press. The activities for each country were planned in accordance with its special circumstances. The Slovaks must be told that the Jews were identical with Bolshevik Russia, and they should be offered, in place of the Pan-

INTRODUCTION

Slavic idea, the ideal of Pan-anti-Semitism. In Turkey, *The Protocols of the Elders of Zion* would be distributed. As for England and the United States, the waves of the ether should be flooded with improved radio propaganda. In France, the activities of the Anti-Jewish Institute and its exhibitions should be expanded. Propaganda pamphlets should be sent to Switzerland; the Italians told that the Jews deal on the black market, and the Swedes sent postcards with anti-Jewish jokes. Thus the Nazis tried to accomplish through anti-Semitism what they could not achieve by force of arms.

There is a Hebrew saying: "The wicked, even at the gate of Hell, do not repent." In April 1945, at the moment of his death agonies, when the Soviet cannon were thundering in the streets of Berlin, when Hitler sat imprisoned in the cellar of the Reichskanzlei, his entire world in ruins and his country stricken, over the corpses of six million Jews—at that moment, the Führer wrote his political last will and testament. He bequeathed to his people the injunction of eternal hatred for the Jews, and he concluded:

"Above all, I enjoin the government and the people to uphold the racial laws to the limit and to resist mercilessly the poisoner of all nations, international Jewry."

Even from beyond the grave, Hitler was still trying to sow the seeds of hatred and destruction for the Jewish people.

CHAPTER II

THE S.S., THE S.D., AND THE GESTAPO

The persecution of the Jews in Germany, in the occupied and the satellite countries was part of the official policy of the Nazi State and Party, and the official institutions of the Reich, including the Ministry for Foreign Affairs, the Propaganda Ministry, and even the Army, were utilized for the purpose. But the chief tools created by the Nazi Party to dominate Germany and impose a reign of terror on the occupied territories were three criminal organizations: the S.S., the S.D., and the Gestapo, to all three of which Eichmann belonged.

At its inception in 1921, the National-Socialist Party set up the Storm Troopers, the *Sturmabteilung* (S.A.), which was the executive arm of the propaganda machine. It was these who spread the idea of *Lebensraum*—living-space; these who supplied the ruffians who provoked street brawls and quarrels in saloons. When the Nazis took over the government, they were also used to suppress opponents and imprison them in concentration camps.

The S.S. (*Schutzstaffel*) was set up in 1925 as the élite of the S.A. Its initial aim, at least formally, was to serve as a personal guard for Hitler and other leaders; but very quickly the S.S. was transformed into an instrument for complete domination over the Party—later over the Reich, and finally over the whole of conquered Europe. The S.S. was an "order" set up for a special purpose. Its chief, Heinrich Himmler, organized it with deliberate care, so that it might be a powerful fist to strike and subjugate every opponent or rebel. Hence, only picked men were accepted for service in the organization; they were the choicest élite. When Himmler was appointed Reichsführer S.S., that is, the leader of the organization, it had only 280 members. At the outbreak of the War, it numbered about a quarter of a million, who had received military training and were organized in para-military units. Later, Himmler set up the Armed S.S. (*Waffen-S.S.*), which were select military units to serve as a counterweight against the regular German army, in case the latter

ever showed signs of faltering in its loyalty to the Führer. Thus Himmler created a powerful organization, having its own army, with its own stores of weapons and ammunition, an independent economy, and even separate laws and its own "judicial" processes. These were the most faithful of the faithful, whose duty it was to fortify the rule of the idol Hitler, and of Himmler his high priest.

That satanic force which was Nazism constructed its own instruments of rule with great thoroughness and fiendish cunning. It also set up an internal Party organization (*Sicherheitsdienst des Reichsführers S.S.*), known as the S.D. For external consumption, it was described as "the brain of the Party and the State." But very soon it became an internal espionage and detective organization which did not balk at any means for achieving its purposes. Heydrich, who organized and commanded this service, always contended: "One must know as much as possible about people." For that purpose a Party intelligence network was set up which included confidential agents (*V-Leute*), ordinary agents (*A-Leute*), informers (*Z-Leute*), casual employees (*H-Leute*), and doubtful informants (*U-Leute*). They were happy to receive any information whatsoever about economic developments, social life, politics and, especially, about the private lives of Party members. Heydrich wanted to know every possible detail about the members of the Party and their opponents, everything relating to their character and weaknesses; their hobbies and habits; scandals in which they had been involved; their personal desires and love life; the places they frequented; the expenditures and income of industrial firms, the movements of bank deposits—in brief, every item that might possibly be exploited, in one way or another, against a man or an institution, especially if it might be used as a threat for purposes of blackmail. All this was patiently and thoroughly recorded in an enormous personal filing system that used about 100,000 regularly employed agents, detectives and informers. Nothing in the most intimate lives of all the leaders of the Reich, and afterwards of the leaders and administrators of the whole of Europe, escaped the vigilance of the S.D. Clearly, such an instrument soon became a weapon of great strength.

When the Nazis came to power, a clash between the S.S. and the S.A. was inevitable. Once Hitler had proclaimed that the two pillars of his regime were the State and the Party, it was clear that only one of the two Party organs could be the central core of the Party pillar. Himmler had no difficulty in defeating the S.A., and the no-

torious purge of 1934 took place, in which its leaders were assassinated. Himmler's mastery over the Party was now absolute.

But in order to consolidate the regime, there was a need not only for sources of information, but also for means of implementation. From 1936 on Himmler became the supreme chief of all branches of the German police including political and criminal. He set up a network of S.S. chiefs and superior police officers who operated as his representatives. The Security Police and the Gestapo were under the command of Heydrich.

After the outbreak of World War II, Himmler divided the S.S. into twelve head offices; one of these was the R.S.H.A. (*Reichssicherheitshauptamt*)—the Reich Security Main Office—which thereafter was in charge of the police forces. Its chief function was the suppression of all opposition, and its chief was Heydrich. *Amt* (Bureau) IV was the Gestapo, headed by Müller. Within this was Section IVB 4—the Jewish Section, headed by Adolf Eichmann.

At the disposal of Himmler, as has been said, were also real military forces, including the Death's-Head Units (*Totenkopfverbände*), which carried out the acts of atrocity in the concentration camps; the *S.S.-Verfügungstruppen*, "the bone-breakers of the opponents of the regime"; and various police units.

The S.S. expanded and developed into a distinct and independent body, which dominated the entire nervous system of Nazi Germany. It was in fact a state within the State, independent with a central and decisive function. All Himmler's opponents in the struggle for power and influence in the Reich were doomed to failure. Hitler always supported his "faithful Heinrich". Only occasionally did it seem that Himmler himself was careful not to encroach upon the Army proper, and had to compromise and make concessions to the marshals and generals of the Wehrmacht, many of whom despised him in their hearts and even refused to allow him the rank of General. Yet even this latter goal was achieved in 1944, when he was appointed Supreme Commander of the Reserves (*Ersatzheer*).

The International Military Tribunal at Nuremberg, whose decision in this matter is binding upon us according to our Law, stated the following in its judgment:

"The creation of the RSHA represented the formalisation, at the top level, of the relationship under which the SD served as the intelligence agency for the Security Police. A similar co-ordination existed in the local offices. Within Germany and

the areas that were incorporated in the Reich for the purpose of civil administration, the local offices of the Gestapo, Criminal Police and SD were formally separate. They were subject to co-ordination by inspectors of the Security Police and SD on the staffs of the local Higher SS and Police Leaders, however, and one of the principal functions of the local SD units was to serve as the intelligence agency for the local Gestapo units. In the occupied territories the formal relationship between local units of the Gestapo, Criminal Police, and SD was slightly closer. They were organised into local units of the Security Police and SD and were under the control of both the RSHA and of the Higher SS and Police Leader who was appointed by Himmler to serve on the staff of the occupying authority. Originally, one of the primary functions of the Gestapo was the prevention of any political opposition to the Nazi regime, a function which it performed with the assistance of the SD. The Gestapo and the SD also dealt with charges of treason and with questions relating to the press, the Churches, and the Jews. As the Nazi programme of anti-Semitic persecution increased in intensity, the role played by these groups became increasingly important . . .

"The Gestapo and SD were used for purposes which were criminal under the Charter, involving the persecution and extermination of the Jews, brutalities and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave labour programme and the mistreatment and murder of prisoners of war. In dealing with the Gestapo the Tribunal includes all executive and administrative officials of Amt IV of the RSHA.

"The Tribunal declares to be criminal within the meaning of the Charter the group composed of those members of the Gestapo and SD holding the positions enumerated in the preceding paragraph who became or remained members of the organisation 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 organisation in the commission of such crimes."¹

See *Trial of the Major War Criminals before the International Military Tribunal*, Nuremberg, 14 Nov. 1945–1 Oct. 1946, vol. 1, p. 263, 267,

CHAPTER II

And this is what the International Military Tribunal said about the SS:

"The SS was even a more general participant in the commission of war crimes and crimes against humanity . . .

"The SS played a particularly significant role in the persecution of the Jews . . .

"It is impossible to single out any one portion of the SS which was not involved in these criminal activities. The Allgemeine SS was an active participant in the persecution of the Jews and was used as a source of concentration camp guards. Units of the Waffen-SS were directly involved in the killing of prisoners of war and the atrocities in occupied countries. It supplied personnel for the Einsatzgruppen, and had command over the concentration camp guards after its absorption of the Totenkopf SS, which originally controlled the system. Various SS Police units were also widely used in the atrocities in occupied countries and the extermination of the Jews there. The SS central organisation supervised the activities of these various formations and was responsible for such special projects as the human experiments and "final solution" of the Jewish question.

"In dealing with the SS the Tribunal includes all persons who had been officially accepted as members of the SS, including the members of the Allgemeine SS, members of the Waffen-SS, members of the SS Totenkopfverbände, and the members of any of the different police forces who were members of the SS.

"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 organisation 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 organisation in the commission of such crimes."¹

268. And see s. 3 of the Nazis and Nazi Collaborators (Punishment) Law, 5710—1950 — Editor.

¹ Ibid., pp. 270, 271, 273.



**Alle Juden haben sich am
19 April d. J. um 8 Uhr mor-
gens bei der Städtischen
Schutzpolizei (im Feuerwehr-
kommando am Taš-Majdan)
zu melden.**

Juden die dieser Meldepflicht
nicht nachkommen, werden er-
schossen.

Belgrad 18-IV 1941

Der Chef der Einsatzgruppe
der Sicherheitspolizei
und des S. D.

**Сви Јевреји морају да се
пријаве 19 априла т. г. у 8
час. у јутро градској поли-
цији (у згради Пожарне
команде на Ташмајдану).**

**Јевреји који се не одазо-
ву овом позиву биће стре-
љани.**

Београд, 18-IV-1941 год.

Шеф групе полиције
безбедности и С. Д.

The S.S. set up all the concentration camps, work camps and extermination centres. This organization, which was branded at the Nuremberg trials, was in fact an enormous conspiracy for the execution of crimes and horrors without precedent.

In all the countries under German occupation, Himmler's special representatives were at work, whether as high officers of the S.S. and Police (*Höhere S.S. und Polizeiführer*) or direct representatives of the RSHA (*Befehlshaber der Sicherheitspolizei* — BDS).

In theory, these were subordinate to the regular occupation regime, but in practice they acted on their own initiative and were only subordinated to the occupation authorities as a matter of form. This fact was a natural result of the very nature of the totalitarian regime, which always gave great power to the police, and especially the secret police; and also of the military situation in the occupied territories, where the regime used these forces to suppress all opposition and to strengthen the institutions of police rule.

The Reich Security Main Office, through the police officers, thus controlled all the occupied areas.

After the outbreak of the war with the Soviet Union, the S.S. was given additional and special powers. On 17 July 1941, Hitler ordered that security measures in all the occupation zones in the East would be executed by the *Reichsführer SS*, who would be empowered to issue orders to all other authorities. We shall see later how Himmler used his enormous powers. In Jewish matters, Adolf Eichmann was the executive arm of the S.S. and of its cherished offspring—the RSHA.

A directive issued by Alfred Rosenberg, Minister for the Occupied Eastern Territories, was later found. It read:

“In the light of a certain incident, I hereby forbid all civilian authorities in the eastern zone to take any active part in executions of any kind. The carrying out of executions, especially in connection with the extermination of the Jews, is the function of the Security Police and of the SD.”

The first and principal means of repression used by the S.S. was the concentration camps, in which were developed and perfected systems of terror employing all the resources available to modern technology. The Nazi, that romantic mystic, the family man, who on the surface seemed to be a loving husband to his wife and a merciful father to his children, the lover of nature and of living

things, was revealed in the concentration camps as a monster of insane brutality, who did not hesitate to trample on human beings, without blinking an eyelash, as if they were insects. One of the shocking chapters in the story of Rudolf Hoess, the Commander of Auschwitz, is the part where he describes his own peaceful family life at home: the education he gave his sons, his affectionate regard for his wife—all this going on just on the other side of the high-tension barbed-wire fence of the terrible extermination camp, in which between five and ten thousand people were being put to death each day, and sometimes even more.

The mere imprisonment of a man without a trial in which he can attempt to prove his innocence, and without any indication of when he is to be released—that is terrible enough. If we add to this a regime of humiliation, forced labour, beatings, whippings, torture and hangings, we may understand the terrible repressive power exercised by the Nazi concentration-camp.

The Gestapo had also learned well how to exploit all the human frailties of their victims. They knew that given time starvation and torture can break even strong men, that by means of brutality and humiliation it is possible to efface the divine image, leaving a man insensitive, inert, an obedient robot doing as he is told, even when he is ordered to dig his own grave.

The Aryan opponent of the regime could repent and accept the yoke of National-Socialism. He could hope to be set free, to be allowed to live, to regain his position in society. And many did so, overwhelmed by the hypnotic force of Hitler and his ever-growing power—for nothing succeeds like success. Only the Jew had no road to deliverance, for every measure was carefully taken to break down his opposition and bring him to a point where he no longer believed in his very right to exist. On him too the hypnotic supremacy of the victorious "Master Race" had its effect. In addition, every means of humiliation was deliberately employed to destroy his faith in himself. When a man is whipped across the face, and he cannot react; when he is deprived of food until he writhes with the pangs of hunger; when men and women, boys and girls, are given orders to perform their excretory functions in full sight of one another, like beasts; when women are made to run naked before the guards; when, morning and night, executions by shooting and hanging prove that the lives of Jews are absolutely worthless; when killing and butchery take place before your eyes for no reason at all, out of

mere caprice or for sport; when a score of times each day you are shown that you are abandoned and defenceless, that your very life depends on the mood of any one of the S.S. men that day—under such circumstances it was not difficult to create a condition in which most of these unfortunates, oppressed and down-trodden, were stripped of all faith and feeling, bereft for the most part of any will to continue living, their supreme desire being for a speedy and painless death.

The prisoner in the concentration camp was finally brought almost to the point where he could hardly distinguish any longer between right and wrong. He was reduced to a beast-like state, almost entirely lacking in such human feelings as sympathy, grief, or capacity to respond to misfortune. While working in the slave-camp sewing-shop on a pile of plundered clothing he had been ordered to clean and repair, a prisoner might come across the clothes of his dead wife or children. He would be shocked for a moment, but he would quickly quench the glow in his eyes and carry on. He would not shout, not go mad, not raise his fist against those who had enslaved him, but would go on with his work, patching the bullet-holes and removing the yellow badges of shame, so that the clothing might be used, after repair, by the murderers themselves.

The men of the Gestapo knew a great deal about the conquered peoples, and tried to fan the flames of hatred for the Jew wherever they went, but they also understood very well where and in what circles their work would reap its best reward. The incitement to anti-Jewish pogroms was carried out generally in the occupied zones of Eastern Europe and the Baltic countries, where they could rely on the crude anti-Semitism that prevailed in various circles to give them a "scientific basis" and official support for acts of murder and pillage. Here the hardened hooligans could rest assured that the authorities were on their side. We shall submit to the Court the reports of the *Einsatzgruppen* (Special Action Groups), which tell of their success in inciting some of the local population to pogroms, but add that, since the riots had not yet liquidated the Jews it would be necessary to go over to methods of direct extermination.

The Gestapo also knew that the will to survive is a primordial instinct, and they pressed it, too, into their service. Having broken the spirits of all their victims, they would select a few for special duties, or grant them what seemed like authority. The overall extermination programme was kept secret; as a result, it was possible

CHAPTER II

to suggest to a number of individuals privately, whether expressly or by hints, that they would suffer no harm if they obeyed orders or acted as informers, that if they did what they were told, they might save their lives and those of their families. In general, the method of using the victim's own people against him was accepted. We shall submit to you Gestapo orders to the effect that the execution of hangings in concentration camps should be entrusted to other prisoners of the same nationality as those to be hanged, and that the executioners should be given three cigarettes as wages.

The Nazis knew how to exploit for their purposes every human weakness and biological need. They even had brothels opened inside the concentration camps, to which those who toed the line were to be offered admittance. They were skilled in lies and chicanery, they knew how to use every expedient to deceive their victims. After every man-hunt, in which thousands and tens of thousands of Jews were sent to their deaths and others would manage to escape or hide, a rumour would be deliberately spread by the Nazis that this was the last operation of the kind, that the survivors would no longer be touched, that there would be no more transports. And many individuals of the type that cling to any hope, those who could not or would not believe that the fate of all the Jews had indeed been sealed, or who were exhausted with hunger, misery and suffering, would venture out of their hiding-places or return from the forests, only to be captured by their persecutors in a new man-hunt. The tiger played with his victims at his own sweet will.

We shall find Jews among those carrying out Nazi orders, in the Jewish police in the Ghettoes and in the Councils of Elders. Even at the entrance of the gas-chambers there were Jews whose task was to calm the victims and persuade them that they were merely going to the showers. This was one of the most satanic aspects of the entire programme: to deaden men's senses, to deprive them of all emotional and intellectual vigour, to leave no more than a terrified and lifeless robot, so that it was possible to use the prisoners in the camps themselves as part of the murder machine against their own people, and thus let the Gestapo reduce to a minimum the number of their own men in the camps. Of course, in the end even these robots did not escape the cruel fate of their people, and were put to death with their brethren.

It is extraordinary that even in the midst of this inferno there were many Jews who succeeded in preserving the divine image, and

were not broken. There were also others. In this trial, we shall not deal with the Jews who carried out orders, either the "kapos" or the members of the Councils of Elders. This is not the trial of the victims, but the trial of the destroyer.

Nor shall we enter into the problem of the course a Jewish leader or public worker should have followed within the jaws of the tiger: whether it should have been the way of Edelstein, who tried to organize the Theresienstadt ghetto; or the methods of Kasztner, who tried to negotiate, and found a tiny avenue of escape for a few people; or the course adopted by Czerniakow, who poised himself when he saw that the Nazis were demanding that he give them the Jews of Warsaw to be sent to their death. This controversy has no place in the present trial. I do not think that to-day we can establish a book of rules for the proper behaviour of a victim in his relations with the beast of prey, that we can say how this or that leader in Warsaw, Budapest, Prague or Vienna should have behaved—whether he should have tried to save what he could, or to incite a rebellion, or to cling to every straw of hope for deliverance even when these hopes had no foundation. We are all, of course, proud of the revolt of the Warsaw Ghetto, of the various instances of resistance and rebellion, of the partisans and fighters who struck out at the evil regime. But this trial is not the place at which this problem can be clarified, and we shall leave it to the historian of the Holocaust. Here Adolf Eichmann is on trial.

CHAPTER III

THE ACCUSED

Now for a few personal details concerning the accused. He was born on 19 March 1906, in Solingen, and as a child moved with his parents to Linz, Austria. After graduating from primary school, he studied in a secondary school and a technical college. As early as 1927 we find him marching in the ranks of the German-Austrian Front Fighters, and in 1932 he became a member of the Nazi Party and the S.S. He was introduced into the Party by his boyhood friend, later his chief, the bloodstained Ernst Kaltenbrunner, whom the International Military Tribunal later stigmatized as the effective supervisor and commander over all the criminal activities of the RSHA. Of course, Eichmann joined the ranks of the S.S., and remained in the organization of his own free will. Like his master, Hitler, he left Austria and settled in the Reich. Hitler did so in order to evade military service in the Austrian army; Eichmann because he was attracted by the rising power of National-Socialism in Germany. In 1933, we find him receiving his military training in the S.S. camp at Lachfeld, and later at Passau. In 1934 we meet him, with the rank of *Unterscharführer* (corporal), in the concentration camp at Dachau, which served as a school for all promising S.S. men. The first commander of this camp, Theodore Eicke, laid down at the outset this principle: "Tolerance means weakness. Knowing this, one must act without mercy when the interests of the homeland appear to demand it. As for political agitators and intellectuals, of whatever complexion, they must be told: Beware . . . or you will be grabbed by the throats and . . . silenced."

Dachau was the refining crucible, the school of violence and horrors, through which future Nazi leaders had to pass; it was there that they were taught the doctrine of hate, were compelled to beat prisoners and put them to death.

Armed with this experience, Adolf Eichmann went over in September 1934 to serve in the S.D., already now a *Scharführer* (Sergeant). A year later we find him in the Jewish Section of the S.D.,

which worked in close co-operation with the Jewish Section of the State Secret Police, the Gestapo. During the early years of his work there, he met a number of those who were later to be among his faithful assistants: Wisliceny, Dannecker, the brothers Guenther and Alois Brunner.

Eichmann's employment at this stage was mainly in the field of intelligence. He was sent to the Near East, and presented a detailed report of his trip, while Wisliceny was sent to the 20th Zionist Congress to follow its debates.

Eichmann continued to rise in the ranks of the S.D., and was commissioned in 1937. During this period we shall meet him in the company of his second sponsor, the infamous Julius Streicher, who was branded by the International Military Tribunal as an inciter and instigator of murder and extermination.

Streicher and his subordinates befriended Eichmann and brought him to the National-Socialist Party Congress at Nuremberg in 1937. There he met all those from abroad who were anxious for a Nazi victory, and there he made contact with the leaders of the anti-Semitic agitation.

With the conquest of Austria in March 1938, Eichmann was sent back to the country of his childhood. By this time he was already known as an expert with practical experience in Jewish affairs. Vienna was his training-ground for independent work, where he first began to assume responsibility as an organizer. At that time Nazi policy concentrated on compelling Jews to emigrate, and Eichmann devoted himself to furthering this policy with great zeal, so that after a short while his work was brought to the notice of the Ministers of the Reich as the model to follow in the liquidation of the Jews. In Vienna the process was organized on the assembly-line principle: a man came into the office still a citizen, with a status in society, a job, a home and property. After being thoroughly processed, he came out an emigrant, his property gone—in part confiscated and in part invested by government order in frozen currency of little value—his apartment registered for confiscation, no longer employed, his children no longer pupils in school, the only thing in his possession a travel document marked *Jude*, which granted him permission to leave Austria by a certain date, never to return.

The pressure for Jewish emigration continued by all possible means. Foreign and stateless Jews were ordered to leave the country within twenty-four hours. Jews from the provinces were brought to

CHAPTER III

Vienna destitute, and the Jews of the capital were ordered to house and look after them until their emigration. Those who refused were arrested. In the meantime, Jewish hospitals, schools and convalescent homes were taken over.

It is no wonder, then, that the representatives of Berlin Jewry, who were ordered to come to Vienna to witness Eichmann's remarkable achievements and learn their lesson, stood awe-stricken at this "assembly-line emigration".

Early in 1939, Eichmann's system of Jewish expulsion by emigration was copied by the office of the central German authority for Jewish emigration set up in Berlin, as well as by a similar office created in Prague after the German invasion.

As I have already mentioned, in September 1939 Himmler unified the national Security Police (SIPO—*Sicherheitspolizei*) and the Party intelligence service (S.D.). It was around this time that the accused returned to Berlin and was appointed chief of the central authority for Jewish emigration—a post officially occupied by Heydrich, though the accused had already been doing the actual work previously.

We shall bring evidence of Eichmann's methods of work in Vienna and in Prague; we shall show how he treated and spoke with Jews in the best tradition of Nazi duplicity. There was oppression, terror and intimidation—and at the same time the deliberate cultivation of the impression that "perhaps the Devil is not so bad, after all"—that perhaps it might be possible somehow to come to terms with him, to conduct negotiations, and even at times to detect in his voice a note of politeness. On the other hand, a slap in the face for Dr. Loewenherz, one of the leaders of the Vienna Jewish community, at their first meeting; arrogant invective for Stahl, head of the Berlin community in 1939 in the style of: "You wretch, you sack of dung—it's a long time since you were in a concentration camp!"; for Sebestin, venerable leader of Bratislavan Jewry, who had dared to offer him a cigarette, a yell: "*Weg mit dem Zeug!*"—"Take the thing away!" All this, side by side with the hypocritical pretence that he was interested in Jewish problems and would give a favourable response to certain requests, usually concerning trivial matters.

Some Jewish leaders still thought it necessary to make some attempt at negotiating with him, and indeed there was no other way, for he had become the master of life and death for the Jews. When the road was still long to the furnaces of Auschwitz and the brutal

THE ACCUSED

suppression of Hungarian Jewry, we find this Adolf Eichmann daring to use to Baron von Freudiger, a man of rare distinction and leader of Budapest Jewry, who had come to plead for Jewish lives, the insulting expression: "*Ich werde mit Ihnen Schlitten fahren.*"¹ Eichmann was well on the way to his goal. He was in fact the lord and master of the Jews, who gave them orders and determined their destiny, as will be clear from all the reports of the Jewish communities in Vienna and Prague that will be presented to the Court. Meanwhile, his success in persecuting the Jews had brought him promotion and greater authority.

At the end of 1939 we meet Eichmann in Berlin. Now he summons the representatives of the Vienna community, to report to him on the progress of Jewish emigration and receive other instructions concerning the community's affairs. Henceforth, he notifies them, he will be dividing his time between Berlin, Vienna, Prague and occupied Poland. At the same time, thanks to his experience in uprooting populations, he is given the additional responsibility of putting into execution the enormous expulsion of the Jewish and Polish populations from the western zones of Poland annexed to the Reich—including the districts of Warthegau, Upper Silesia and the Polish corridor with the city of Danzig. He is already chief of a section in the RSHA—namely IVD 4. At that time, he is also occupied with the tragic expulsion of the Jews to the region of Nisko. In 1940 he continued to deal with the same matters.

In March 1941 we meet Eichmann as head of Section IVB 4 of the Gestapo, concerned with Jewish affairs and the expulsion of populations. This was the office he continued to hold until the tragic end of European Jewry. But he was also Heydrich's special plenipotentiary for the final "solution of the Jewish question." As a consequence of this combination of functions, to which we shall return, Eichmann was the official executor of the extermination programme, with enormous authority in the Reich, which now included Austria and the Protectorate, and all the occupied countries. In the Reich itself, he did his work by means of the local police headquarters—*Stapoleitstellen* and *Stapostellen*—in each of which there was an officer for Jewish affairs taking his orders direct from Eichmann.

In the occupied countries—France, Norway, Belgium, Italy, Holland and Luxembourg—he had special envoys under his orders at

¹ "I'll ride on you like a sledge," or—roughly: "I'll make mincemeat of you!"

CHAPTER III

tached to police headquarters, who had authority to deal with Jewish matters. In the satellite countries such as Rumania, Bulgaria and Slovakia, he worked through special representatives attached to the German embassies, who procured the deportation of Jews with the aid of the local authorities, usually misleading them as to the destination of the transports.

In Serbia, Eichmann used special envoys; in Croatia, his representatives in the German embassy; to occupied Greece and Denmark he sent special units for the deportation of Jews to the extermination camps. In the area of the General Government of Poland his tools were officers of the Security Police; and in the eastern occupied territories he also used Special Action Groups (*Einsatzgruppen*).

Eichmann himself, in person, as the specialist in extermination, was sent to Hungary, where he appeared leading a band of confederates, intent on completing their mission of butchery in the shortest time possible.

In sum, he reached out to every corner to carry out the "final solution", using the methods he found most effective, convenient and suitable to local conditions. With the satellite and occupied authorities, he would sometimes use persuasion, sometimes threats, but always pressure, and always with one goal in mind: to get hold of the Jews and to send them to the camps in the East.

He lorded it over the ghettos and extermination camps; his position in the RSHA was unique. He could pass over the heads of his superiors and deal directly with Himmler. His nominal status as the head of a subordinate department did not reflect his powerful position. Through his concern with Jewish matters, he was granted comprehensive and potent authority which brought him into contact with Ministers of the Reich and heads of the governments of the occupied territories, with the higher commanders of the German Army and the top men of the Foreign Ministry. In all that pertained to Jewish affairs he operated with the full power and authority of Himmler and Heydrich behind him. We shall present documents proving that in Jewish matters, the RSHA, the Central Security Office of the German Reich, was in fact Adolf Eichmann.

It need not surprise us, therefore, that on Jewish matters he gave orders to men of higher rank than his own. As early as 1940 he took part in a meeting to which the Minister Seyss-Inquart was also invited. His authority and power steadily increased, despite his inconspicuous nominal rank, as his assistant Wisliceny bore witness:

THE ACCUSED

"Goering's order laid it down that the authority in Jewish matters passed to the chiefs of the RSHA and the S.D., and as a result Eichmann's powers increased immeasurably. On the basis of that order, which as I recall was issued in the summer of 1941, he could annul or overrule measures taken by all the ministries and institutions of the government."

We shall see him preparing and organizing the well-known Wannsee conference, and being appointed to carry out its decision on the "final solution"; we shall find him acting in Himmler's name and giving instructions concerning executions in the concentration camps. Where Jews were concerned, Eichmann even gave orders to the German Army.

His powers grew and were solidly entrenched after the death of Heydrich; for half a year, until the appointment of Kaltenbrunner, the RSHA had no commander-in-chief, and during this period the power of the department heads increased. And when the new chief turned out to be Kaltenbrunner, his boyhood friend, Eichmann came to enjoy a privileged position of great power.

When I develop further the history of the Holocaust, I shall present to the Court more details of the part Eichmann played in the work of extermination. At present, I shall only mention that, in October 1941 the head of the personal section of the S.S. recommended that he be promoted to the rank of Lieutenant-Colonel (*Obersturmbannfuhrer*) in these words:

"I am proposing this promotion on the ground of the exceptionally fine services rendered by Eichmann, who has already achieved excellent results in the dejudatization of Austria, in his capacity as head of the central authority for Jewish emigration. Through Eichmann's work, enormous properties were secured for the German Reich. His work in the Protectorate, which was carried out with commendable initiative and the necessary firmness, was likewise distinguished. It should be added that Eichmann is an exemplary S.S. officer, who was active for many years in Austria for the benefit of the National-Socialist movement, losing his job there because of his political activities. At the present, Eichmann is working on important problems of the evacuation and transfer of populations. In view of the importance of this work, I also regard Eichmann's promotion as desirable in the interests of the service."

CHAPTER III

It need hardly be added that this recommendation was accepted, and Eichmann was promoted. For his work in exterminating Jews he received several S.S. distinguished service decorations. In December 1944 he became head of Section IVA 4, which dealt with Jews and with political problems relating to the Christian churches.

Adolf Eichmann will tell you that he carried out the orders of his superiors. But the conscience of the world, speaking with the voice of the International Military Tribunal, has declared that orders contrary to the principles of conscience and morality, orders that violate the essential imperatives on which human society is based and set at naught the basic rules without which men cannot live together—such orders constitute no defence, legal or moral. Therefore, in the light of this ruling, our own law in Israel has denied the accused the right to submit such a defence.

But that is by no means all. We shall prove to the Court that he went far beyond his actual orders, that he took the initiative in extermination operations for which he had been given no orders whatsoever, and carried them out only because of his devotion to the task in which he saw his life's mission. When, in the summer of 1944, Horthy in Hungary did not want to co-operate with the exterminators, Eichmann managed by stealth to push through another death-train from Kistarcsa to Auschwitz. He even used the cunning stratagem of convening a meeting of the leaders of Budapest Jewry at his headquarters, so that they should be unable, at the last moment, to plead with Horthy for the frustration of Eichmann's designs. And when Himmler issued a final order to discontinue the extermination in October 1944, Eichmann still managed to organize the transportation of the Jews, on foot, from Hungary to Austria, by methods that made it certain the journey would be a death-march. Later, he planned to poison the survivors in Theresienstadt, and sought to kill Jews wherever he could lay his hands on them.

His independent initiative, his burning devotion to the utter destruction of Jewry, are also shown by his ardour in frustrating every attempt at escape or flight by any individual Jew, when even his own authorities were prepared to allow these unfortunates to break through the man-hunt network—and we shall present evidence of such instances by the score. He did not rest or relax his efforts until he had driven into the gas-chambers every Jewish group and individual—including such as, in full obedience to his orders, he might have allowed to survive.

THE ACCUSED

After the war, a number of people who collaborated with Eichmann were to provide general descriptions of the man and his work. Two of these had already been sentenced to death when they wrote: Dieter Wisliceny, in prison in Bratislava, who had been Eichmann's superior and later became his subordinate and loyal assistant; and Rudolf Hoess, Commander of Auschwitz, who wrote his diary in Cracow Prison on the eve of his execution. Each wrote with complete independence of the other. Both were criminals. Both might have erred in details, but it would seem that their words provide a true picture of the man. This is what Hoess wrote:

"Eichmann was absolutely devoted to his mission, and was certain that the extermination was necessary in order to save the German people in the future from the destructive intentions of the Jews. That was how he understood his mission, and he devoted all his energies to carrying out the extermination plans of the Reichsführer. Eichmann was sharply opposed to every suggestion to sift out the Jews capable of work from those deported. He regarded this as a constant danger to his plans for the 'final solution', in view of the possibility of mass escapes or some other event that might permit the Jews to remain alive."

Wisliceny gave a detailed description of Eichmann's career, his intimate affairs, his methods of dealing with his superiors and subordinates. Among other things, he wrote:

"In 1942, he was opposed to any relaxation, even the very slightest. He endeavoured to get Himmler's consent, but at the same time he went to great pains to carry out the deportations in such a way as to frustrate every possibility of a settlement."

And in another statement, also from the death cell of Bratislava Prison, Wisliceny wrote:

"On the basis of my personal experience, I reaffirm that, though Eichmann was covered by orders from Hitler and Himmler, his personal share in this act, the decimation of European Jewry, was decisive, and he must be regarded as fully responsible for it, as there were other possible ways of circumventing Hitler's order."

Another man, Kurt Becher, who had been appointed by Himmler

CHAPTER III

to carry out the attempt at extortion from Hungarian Jewry in the well-known "Blood for goods" proposition, and who worked a long while in personal contact with Eichmann, summed up his role in the extermination as follows:

"Eichmann was not the spiritual father of the programme, but he was its zealous executor."

Eichmann engaged in the work of slaughter not apathetically but with a clear mind, fully conscious and aware of what he was doing, and believing that it was the right and proper thing to do; that was why he acted with all his heart and soul. We shall prove that even after the downfall of the Nazi monster, after the entire world had expressed its shock and horror at what had happened, when a number of the Nazi leaders themselves had begun, in panic-stricken haste and ostensible penitence, to expose and accuse one another—even then he, Adolf Eichmann, remained faithful to his ideas and principles. He did not repent, he still believes that in destroying millions he did what was right and proper.

He knows that today it is regarded as a crime, and he will therefore be ready to give verbal and insincere expression to this view; at times he may even clothe it with a mantle of grandiloquent phrases. But we have every reason to believe that if the swastika flag were again to be raised with shouts of *Sieg-Heil*, if there were again to resound the hysterical screams of a Führer, if again the high-tension barbed wires of extermination camps were set up—Adolf Eichmann would rise, salute, and go back to his work of oppression and butchery.

And now let us examine in detail the murderous project to which the Nazis gave the name of "the final solution of the Jewish problem".

CHAPTER IV

THE FINAL SOLUTION OF THE JEWISH PROBLEM

The Nazi programmes and the methods used to put them into effect varied according to circumstances, and various phases of planning and execution may be distinguished. It was so on the political front: after the German armies had successfully reoccupied the Rhineland they began to look in the direction of Austria; when they had taken that, they demanded the Sudetenland; when this was conceded, they went on to conquer the whole of Czechoslovakia and invaded Memel. From then onwards, their preparations for war matured rapidly.

Whether there existed a political-military master plan for the subjugation of peoples and nations, or whether this developed as a result of political victories, when the world remained inactive in the face of brazen Nazi aggression accompanied by protestations of peace, and Europe's statesmen submitted to threats and fulminations—in any case, Nazi self-confidence and political blackmail grew stronger and more blatant, and culminated in World War II.

So it was with the Jews. Whether the physical extermination was planned and prepared from the start and action waited only on the appropriate time, or whether it came as a gradual development that reached its climax when pretence was no longer needed, and it had become possible, casting off all restraint, to put into operation the plan for total destruction—it is still possible to distinguish various phases in the treatment of the problem.

At the beginning, when the Nazis were still somewhat sensitive to the reactions of world opinion, the solution took the form of forced emigration. Though the methods were drastic and brutal, Nazi arrogance had not yet reached the point of deciding on extermination. But when they found that it could be done, that for all practical purposes the world was silent, that circumstances were propitious—they went over to total extermination.

In between, there was a transitional phase, in which the Nazis toyed with the idea of a so-called territorial solution for the Jewish problem.

CHAPTER IV

The accused took an active part in both the planning and the execution of all three of these programmes. He was the responsible head of the executive arm of all these deadly projects. Though his master, Hitler, did not succeed in realizing a single one of his promises and ultimate aims, Eichmann carried out whatever he took upon himself to do. But before I speak of his part in the execution, let us dwell first on the plans themselves.

At first the Nazis were satisfied with the mass emigration of Jews seeking refuge from the misfortunes that had suddenly befallen them: the humiliating Nuremberg laws which dislodged them from their positions, economic boycott, arrest and imprisonment in concentration camps. Nazi greed for gain, which was the only brake on their hatred of the Jews, did not allow them to renounce this source of income: every emigrant was forced to pay emigration taxes to the extent of 25% of his property, and to exchange the balance for "frozen marks", whose actual worth rapidly fell to an infinitesimal fraction of their nominal value. This period extended until the annexation of Austria to the Reich on 12 March 1938. Four days later, Eichmann had already put in an appearance in Vienna and begun to organize the anti-Jewish programme on the new basis of which I have already spoken. A central authority was set up for the emigration of the Jews, which in actual fact was engaged in their expulsion and the partial confiscation of their property.

At the end of October the German Government decided to expel all Jewish residents who had formerly been Polish citizens. The Poles had cancelled their passports, but the Nazis decided to take advantage of their position and get rid of them. They were arrested at the order of Reinhard Heydrich, then head of the Security Police and the S.D. Thus the first mass Jewish expulsion took place. The Jews were permitted to take only what they could carry, and were ordered to leave the rest of their property behind. Crowded into freight cars, they were transported to a point near the border, ordered to descend, and then chased through the fields in the direction of the Polish border. Men and women stumbled and fell, but were forced by kicks to rise and run on. Some lay dead where they had fallen.

The Polish frontier guards, unprepared for this sudden inrush, were helpless. The human flood broke through: the first expulsion had been a success.

Among those unfortunates was a Jewish cobbler, Mendel Grynszpan.

THE
ACCUSED



OBERSTURMFÜHRER
ADOLF EICHMANN

THE "FINAL SOLUTION"

He too was expelled, in a state of utter destitution, with his wife and children. In bitter despair, the family wrote a postcard from Poland to their son, Herschel, who was then in Paris. This young lad of seventeen decided that he would not keep silent in the face of injustice. Though the entire world seemed indifferent to these crimes committed in broad daylight, he, Herschel Grynszpan, would not be still; he would at least try to avenge the injustice to his parents and family. On the morning of 1 November he bought a pistol, and on that very day appeared at the German Embassy in Paris. He had determined to kill the ambassador, but he was sent to the Counsellor of the Embassy, Ernst vom Rath, who asked him what he wanted. The young man's revolver barked twice, and vom Rath fell, severely wounded. To the Paris police Herschel Grynszpan declared: "I resolved to kill a member of the German Embassy as a sign of protest. I had to avenge the Jews, to draw the attention of the world to what is happening in Germany."

Grynszpan did not know then that his sacrifice would be in vain. Not even the despairing act of this young Jew could shock the world. He himself was imprisoned in Paris, and after the occupation fell into German hands. He was sent to Berlin for special investigation by Eichmann's department. He was investigated, and since then all trace of him has vanished.

Vom Rath died of his wounds two days later. Immediately Heydrich issued urgent instructions to all units of the Gestapo to the effect that, following the attack on vom Rath, "anti-Jewish demonstrations may be expected." He therefore ordered the police to co-operate in the organization of the demonstrations, to guide them, and to permit the destruction of Jewish property and the burning of synagogues—so long as it was possible to ensure that the flames would not spread to other neighbourhoods. All the property of the Jewish communities was to be confiscated.

Thus Nazi Germany revived in Europe the burning of Jewish places of worship, which until then had been known only in the darkest days of the Middle Ages.

That night of terror, between 9 and 10 November, came to be known as the *Kristallnacht*. The Nazi hooligans broke into Jewish homes, pillaged, destroyed and plundered. Thousands were imprisoned in concentration camps, allegedly to "protect them from the wrath of the people". This was the first time the Nazis arrested large numbers of Jews at one time and put them in concentration camps.

CHAPTER IV

One hundred and one synagogues were burned and 76 destroyed; 7,500 places of business were plundered. These figures are taken from an official report submitted by Heydrich to Goering at a meeting of Ministers devoted to Jewish affairs two days later, the minutes of which will be submitted to the Court. The damage to shop windows alone came to 6 million marks, and what most bothered the participants in the meeting was the problem of the compensation for damages that the insurance companies would have to pay the Jews. It was thereupon decided quite simply that these companies would make their payments to the German Treasury, and the Jews would be obligated to repair the damage at their own expense. Goering complained that a great deal of property had been destroyed; and when Heydrich also reported the deaths of 35 Jews, Goering said: "It would have been better if you had killed and not destroyed so much property."

There was a further discussion about making Jews wear a distinctive badge. Towards the end of the meeting, Goering said:

"I shall find an appropriate formula to obligate the Jews as a whole to pay a fine of a billion marks for their base criminal acts, etc., etc. That will hit them where it hurts. The swine won't carry out another murder so quickly. And in general, I must repeat: I wouldn't like to be a Jew in Germany now."

The fine was imposed, and brutal legislation went into effect to deprive the Jews of all sources of livelihood.

Eichmann was in Vienna on the *Kristallnacht*, and we shall yet have the opportunity of tracing his actions there at that time.

I have referred to this ministerial meeting at length because it marks a turning-point and a phase of preparation for the next developments. This had been a second test action of the Nazis against the Jews. If this could be done to them without shocking the world, it would be possible to proceed further towards the final solution.

At the same conference, Heydrich reported on the activities of the accused in Vienna, and spoke with pride of the fact that, thanks to the activities of the Vienna emigration authority, some 50,000 Jews had already left Austria. It was decided to set up a central authority for Jewish emigration from the entire German Reich. In January, 1939, Goering instructed Heydrich to carry out the plan,

THE "FINAL SOLUTION"

and to use all possible means to speed up emigration. This forced-emigration programme was thenceforth carried out in all parts of Germany, and, beginning in July 1939, also in that part of Czechoslovakia that had meanwhile fallen into the hands of the Germans and was known as the "Protectorate".

In his order, Goering appointed Heydrich, Chief of the Security Service and Security Police, as head of the central office for emigration, with the economist Wohlthat as his associate. He thus ensured that, while Heydrich would work towards getting the Jews out of Germany, Wohlthat, who had formerly been Schacht's assistant, would be concerned with plundering their property.

In this way, Goering overcame those doubts to which he had given open expression at the ministerial conference, when he brought up fiscal and economic reasons against the policy of forced emigration. The way had now been found to carry out this aim without damaging Germany's economy, which it was Goering's function to steer towards a war effort.

Trading at the expense of Jewish freedom was thenceforth the official policy of the Reich. Ribbentrop gave notice, in a Foreign Ministry circular dated 25 January 1939, that the ultimate goal of Germany's policy was the emigration of all the Jews, and that the problem would not be solved until the last of them had left her soil. Funk, the Minister of Economics, was able to report that, out of the seven billion marks which were estimated as the value of the property of German Jews, two billion had already been transferred to the State, and there were grounds for hope that Germany would get the balance in the near future.

These two aims—the physical liquidation of the Jews by expulsion or killing, and the pillage of their property—were thereafter fixed pillars of German policy. First expulsion and robbery, then murder and robbery—these were to remain closely associated, accompanying one another through all the phases of the Holocaust, soon becoming so indistinguishable that one is at a loss to say which was the more important, which was being put into the service of the other. Henceforth, they are both to be part of the "final solution": to kill *and* to take possession were the two fundamental principles of the evil German plan. At all stages of the Holocaust, in all the documentation filled with shocking details of cruel killings by strangulation, burning, hanging, and unimaginable tortures, there will always be found a twin section telling of the plunder of Jewish property.

CHAPTER IV

The pressure on Jews to emigrate was not discontinued after the outbreak of war; the line changed, as has been said, only when new decisions were reached relating to the physical fate of the Jews.

At first there was no definite decision on what to do with the Jews. They were to be got rid of, but not completely; to be expelled, but a certain number had best be left to serve as a sort of hostage, so that the threat of their destruction might bring pressure on the world's rulers to submit to the German will. Hitler gave expression to this idea in one of his conversations with Rauschning, President of the Danzig Senate, and on 30 January 1939 he delivered his famous speech in the Reichstag predicting that if the international Jewish financiers should again plunge the nations into a world war, the result would not be the spread of Bolshevism and the victory of Jewry, but the annihilation of the Jews throughout Europe.

Again Hitler had fused the Jews with his two mortal enemies: the capitalistic West and the communistic East. Over both, according to him, Jews ruled by means of an unholy alliance: the capitalist circles desired the victory of the Communists, as a means by which the Jews could rise to power. The foolish absurdity of this contention is so glaring that there is no sense in even analysing it. What is important for our present purpose is the fact that the annihilation of the Jews was one of Hitler's bargaining and blackmailing points in his relations with the outside world: "Give in to my demands or—woe to your Jews."

All the prophecies of that evil man proved false. The Reich that was to have lasted a thousand years collapsed like a house of cards. The "New Order" that was to have served as the basis for human civilization has become an historical byword for atrocity. The Aryan Master Race was thoroughly defeated by the "degenerate plutocrats" and the "inferior" Slavs. Not only was Germany driven out of the Ukrainian wheat granaries she had invaded, which the Führer had promised her as an eternal heritage, but she herself is now divided, and Bismarck's work of unification has been set at naught.

Only one single promise, the most dreadful of Germany's terrible deeds, which has brought upon her eternal disgrace, was kept by Adolf Hitler. And for the execution of that promise to destroy European Jewry he used another Adolf—Adolf Eichmann, who is on trial before you today.

From the beginnings of the Nazi regime, Jewish affairs were dealt

THE "FINAL SOLUTION"

with by the Gestapo and the S.S. In June 1940 Heydrich notified Ribbentrop that, because of the great increase in the Jewish population then under the control of the Reich, emigration could no longer be considered a feasible solution of the Jewish problem. He therefore suggested that a territorial solution be sought to settle the Jewish question once and for all, and he wanted to consult him on the matter.

Within the framework of programmes for expulsion, there also emerged two abortive projects of a territorial nature. One was to deport all the Jews to Madagascar. In fact, this was an old scheme, which had already been put forth in the anti-Semitic literature of the twenties; the Polish government had toyed with it in the thirties, and the Nazis had begun to discuss it officially even before the outbreak of the War. Goering and Rosenberg spoke about it in the Reichstag, and the idea was the subject of diplomatic activity and pseudo-scientific researches. In July 1940 the German Foreign Ministry prepared a memorandum according to which defeated France would have to relinquish Madagascar within the framework of the future peace treaty. A German military base would be established on the island, and the Jews would be settled there under a German mandatory regime, "as a hostage for the future good behaviour of their kinsmen in the United States."

The accused too had a hand in all this. One of the staff of his section, his close assistant, Dannecker, who will often be mentioned in this trial, wrote a detailed memorandum for his Foreign Ministry on the Madagascar Plan. Its advantage, he wrote, was that it would isolate the Jews on an island; its execution should be made possible by the confiscation of Jewish property; and its executors should be the Gestapo. The goal should be to send one million Jews each year.

There is no need to add that this plan was abortive. Experts differ as to whether the Nazis ever gave it serious thought, or whether it only served them as one of their many means of camouflaging a different project, which had already begun to take shape. In any case, practically nothing was done to achieve it.

On the other hand, an attempt was made at a territorial concentration of Jews within another context, by collecting them into the Lublin zone, between the San and Vistula Rivers. This was called the "Nisko" plan, named after the village at the centre of that small region to which Eichmann drove Jews from Vienna, Moravia and Bohemia in the winter of 1939. You will hear evidence

CHAPTER IV

of the theft of the property of the deportees, how they were left destitute in the zone, the brutal treatment to which they were subjected, and the expulsion of a number of them eastward beyond the Soviet borders with the threat that those attempting to get back would be killed.

Eichmann personally dealt with these expulsions, even spending a few days in the Nisko area. The project was finally abandoned because of the opposition of the governor of Poland, Hans Frank, who persuaded Goering that the project was upsetting the German war effort. The Nisko refugees later met their deaths in the Belzec extermination camp.

The attack on the Soviet Union on 22 June 1941, and America's entry into the war on the side of the Allies some months later, in December of the same year—these were the turning-points in the development of the plans for extermination. True, the idea had been explicitly mentioned earlier. We shall present to the Court the minutes of a meeting called by Heydrich on 21 September 1939, in which Eichmann took part together with other high S.S. officers, where ways of dealing with Jews in the areas of occupied Poland were decided upon. That very day, Heydrich issued orders to all the Special Action Groups (*Einsatzgruppen*) of the S.S. that accompanied the Army and constituted units for special security missions. Their function was designated by Heydrich. After warning that all his instructions were "top secret", Heydrich distinguished between the long-range solution of the Jewish problem—meaning by this, without any doubt, their actual extermination—and immediate steps to be taken against them: the Jews were to be expelled from the countryside and concentrated in the cities near railway junctions; and Councils of Elders were to be set up, to be personally responsible for marshalling the Jews. As a pretext for these measures, Heydrich suggested, it should be claimed that the Jews had been taking part in irregular activities and robberies. Violation of the order to move into the concentration areas would be met with the heaviest punishment.

According to the minutes of that meeting, Heydrich issued instructions that every judgment against violators in the occupied areas that was *not* a death-sentence should be reported to him personally. Orders were given to seize Jewish enterprises, to forbid Jews to change their places of residence, and to impose a curfew on them during night hours.

THE "FINAL SOLUTION"

Heydrich required regular reports on the operations of the Special Action Groups, and concluded with these words:

"For the attainment of the goals indicated, I order the immediate mobilizing of all the forces of the Security Police and Security Services. The heads of the *Einsatzgruppen* operating in adjoining areas will keep in close touch with one another, so that every possible district will be completely and immediately covered by the net-work."

We shall see later when we deal with the tragedy of Polish Jewry, how the conquerors interpreted these instructions — the brutality, murder and pillage that came in their wake.

But it was only as the invasion of the Soviet Union progressed that the Nazis went over to the "final solution" in the new sense, that is, utter physical extermination. On 31 July 1941, Goering instructed Heydrich as follows:

"Complementing the task that was assigned to you on 24 January 1939, which dealt with the carrying out of emigration and evacuation, a solution of the Jewish problem, as advantageous as possible, I hereby charge you with making all necessary preparations in regard to organizational and financial matters for bringing about the total solution of the Jewish question in the German sphere of influence in Europe.

Wherever other governmental agencies are involved, these are to co-operate with you.

I charge you furthermore to send me, before long, an overall plan (*Gesamtentwurf*) concerning the organizational, factual and material measures necessary for the accomplishment of the desired final solution (*Endlösung*) of the Jewish question."

Thus the official signal was given. Heydrich was appointed to plan the extermination, and he on his part appointed for the planning and execution a cruel and fanatical man, implacable in his enmity, this evil Eichmann.

As a preparation for the final solution, fresh occupation units had already begun mass murders of Jews in zones from which the Red Army had withdrawn in the summer and autumn of 1941. We shall discuss these actions in a later chapter. Partial and mass expulsions towards the East had already been carried out earlier from within Germany proper, but at that time the work of general "planning"

CHAPTER IV

was being done in Berlin. In August 1941, Eichmann wrote to his Foreign Ministry that it would be advisable to prevent further emigration "in the light of *preparations* for the final solution of the problem of European Jewry." These preparations of his were completed before November of that year, since already then he wrote in the same connection about "the imminent final solution".

That summer we also find Eichmann in Auschwitz arranging with Rudolf Hoess the various technical details, and choosing the spot for the erection of the extermination apparatus. In the autumn, Eichmann flew to Kiev to report to Himmler. Himmler seems to have received a suitably satisfactory report, since, on 27 October 1941, he issued a decree forbidding any emigration of Jews from the areas of German rule. Two days earlier, on 25 October 1941, Wetzell, an official in the Ministry for the Occupied Territories, wrote that an agreement had been reached with Eichmann to use gas-chambers for the solution of the Jewish problem.

Thus we see: the plans had been formulated, the means had been determined. For the Jews, instead of emigration—murder.

From now onwards, it was the task of the head of the Jewish Section of the Gestapo to direct in a suitable fashion the planning of other offices of the Reich, according to the detailed master-plan that had already been sketched in September 1939. On 15 September 1941, the accused sent to Heydrich for signature orders, applying both to Germany and to the occupied territories, requiring the introduction of the "Jewish badge", which had been imposed some time before in the eastern occupation zones. Every Jew would have to wear on the left side of his breast a special, easily recognizable badge. The Jewish authorities themselves would have to supply the badge of shame. A ban was imposed on Jews leaving their places of residence and using transportation, with some clearly specified exceptions.

But there were also problems. Rosenberg, Minister for the Occupied Territories, issued a series of directives for the occupation authorities in the areas under his jurisdiction, which included the Baltic countries, East Poland, and parts of the Soviet Union. These instructions were called *Die Braune Mappe* (The Brown Portfolio). They included a chapter relating to the Jews containing severe repressive provisions—but not extermination. "The problem of the Jews," it said, "will find a solution in the whole of Europe at the end of the War." But when the draft of "The Brown Portfolio"

THE "FINAL SOLUTION"

came to Heydrich's attention, he reacted with a highly significant letter dated 10 January 1942. He did not agree with Rosenberg's proposals. He insisted that the special instructions, already issued—which included complete extermination, as we know—be taken into account.

"In view of the basic policy for dealing with the Jewish problem as formulated by the Reich Central Security Office (in charge: S.S. Sturmbannführer Eichmann) I must ask you to reprint the instructions."

In the same month, Heydrich sent on to Rosenberg the revisions suggested by Eichmann. Because of the importance of this document, I shall quote from it at length:

"All measures in connection with the Jewish question in the occupied territories in the East are to be considered from the point of view that the Jewish question must be generally solved for the whole of Europe. Hence, such measures in the occupied territories in the East as contribute towards the solution of the Jewish question and thereby the liquidation of Jewry must in no way be hindered. In the occupied territories in the East in particular, efforts are to be made to bring about a most immediate solution of the Jewish question... Any measures of the local population against the Jews are therefore not to be hindered... Until measures for the liquidation of Jewry are taken, the local Jews are to be strictly separated from the rest of the population... Free movement of Jews is to be immediately stopped. Transfer to the ghettos is to be carried out... The guarding of the boundaries between the ghetto and the outside world is a matter for the Police... The measures that contribute to the liquidation of Jewry are to be carried out without any consideration for economic needs... All Jewish property is to be registered. Transfers of property by Jews are to be prevented..."

But the matters were not arranged by a mere exchange of letters. Frank, the Governor-General of Occupied Poland, tried to deal with Jewish affairs in his own way, and to take the matter out of the Gestapo's hands. In other areas, too, difficulties arose. Eichmann therefore proposed that a meeting be called of the senior central officials who might be considered suitable to carry out the plan of

slaughter, and Heydrich agreed. It was Eichmann who organized this conference, from the preparation of all the factual material to the drafting of the invitations; and those invited were asked to take time off from other duties, "in view of the exceptional importance of the problems, and of the need to arrive at a unified point of view."

The conference took place on 20 January 1942, in the suburb of Wannsee, near Berlin. The participants were the leading personalities, with the rank of Director General of the Ministries for the Occupied Territories in the East, the Interior, Justice, Foreign Affairs, Economics Affairs, Race and Settlement; representatives of the Party, the RSHA and the Reichskanzlei, and, of course, Eichmann. Heydrich delivered the key-note speech, on the basis of data supplied by the accused. He recalled Goering's order and established at the outset, for the removal of all doubt, that it was his Ministry that was centrally responsible for the execution of the "final solution" everywhere, without any geographical limitations. He mentioned "the practical experiments" that had been carried out in the East, the lessons from which were of the utmost importance for the final solution. After having briefly outlined the steps taken thus far "in the battle against this enemy" for the purpose of forcing the Jews out of the areas in which the German people lived and which constituted its *Lebensraum*, he stated that a halt had been called to this emigration at the order of Himmler, and that now would begin, according to the Führer's orders, the evacuation of the Jews to the East with the object of arriving at the "final solution."

We shall prove to the Court that, in the Nazi system of camouflage, the term *Endlösung* ("final solution") in this context and henceforth had the sole meaning of the actual killing of the Jews. This was also the meaning of these other terms: *Ausscheidung* ("elimination"), *Gesamtlösung* ("total solution"), and many others.

Heydrich listed the countries to be considered for this "final solution", including besides all the countries under Nazi occupation, Great Britain, Ireland, Sweden, Switzerland, Spain, Turkey, and the entire area of the Soviet Union, and arrived at a total of 11 millions to be included in the "final solution". In his list, Estonia already appears as *Judenrein* (clear of Jews).

And this is how the problem would be solved:

"Under suitable control, the Jews should be brought to the East in the course of the Final Solution, for use as labour. In

THE "FINAL SOLUTION"

big labour gangs, the sexes separated, the Jews capable of work will be transported to those areas and set to road-building, in the course of which many, without doubt, will succumb through natural losses. The surviving remnant, surely those with the greatest powers of resistance, will be given special treatment (*Sonderbehandlung*), since they will constitute the natural reserve for the re-creation of Jewry, as history has proved.

In execution of the Final Solution, Europe will be combed from West to East. The Jews will first be driven into Ghettoes, and from there to the East . . . In the Occupied Territories and in those under our influence in Europe, the officer designated by the Security Police will operate in co-ordination with the appropriate representative of the Ministry for Foreign Affairs."

We shall prove that the officer designated by the RSHA was Adolf Eichmann, and that "special treatment" was—death.

There was discussion, further, of what to do with children of mixed marriages. This problem troubled the executors of the extermination programme. The principle was established that children of mixed marriages of the first degree—namely, in which one of the parents was Jewish—would be classified as full Jews, excluding men who had married German women and had children, or those with respect to whom there were exceptional circumstances and for whom the higher institutions of the Party and the State had specially interceded; but such circumstances were to be examined with great care.

The exceptional cases were to be permitted to stay in Germany on condition that they gave their consent to their own sterilization.

Instructions were also given with respect to children of mixed marriages of the second degree, the mixed couples themselves, and various categories of borderline cases.

The Economics Ministry asked that, for the time being, Jews working in vital war industries should not be evacuated, and Heydrich agreed. Dr. Buehler, representing the Governor-General of Poland, gave notice that there the final solution had already "begun", asked that the problem be solved with all possible despatch, and declared that the majority of the Jews in his region, about 2½ million, were not capable of work at all. He agreed that the implementation of the final solution be put into the hands of the Gestapo, and promised full support by the authorities of the General-Government. He asked only for action to begin as rapidly as possible.

CHAPTER IV

Next, views were exchanged on "the various means connected with the possibilities of a solution", and the representative of the government of the eastern areas, like that of the [Polish] General Government, asked that the preparations already made in his areas be completed, but without stirring up panic among the population.

This was afterwards given the seal of legality. Thierack, the Minister of Justice, stated that in order to free the body of the German people of certain elements including the Jews, he was therewith transferring the punitive authority over them to the Reichsführer S.S., Himmler, and he added:

"I am proceeding on the assumption that the judicial process can contribute but little to the extermination of these foreign elements. It is true that severe sentences are now being imposed upon these people, but this is not enough to bring about the aforementioned result. There is also no sense in keeping them in prisons or internment centers . . . On the other hand, the delivery of these people to the police, which will be unfettered by the criminal statutes, will bring much better results."

This was the final victory of anarchy over law. Here National-Socialism arrived at its ultimate degeneration. In order to destroy the Jews it openly surrendered the very existence of the law, an act which has no precedent in the history of law.

Even earlier, on 6 January 1942, Himmler had transferred the authority to pass the death sentence and to give instructions for "special treatment" (*Sonderbehandlung*) to the head of Section 4 of the SS or to his representative. We shall show the Court that Eichmann was the man who actually used this authority in Himmler's name. Detailed directives were given relating to executions and the submission of reports on them, in concentration camps and elsewhere.

I have already said that as early as 1941 Heydrich had appointed Eichmann to plan and carry out the extermination programme. A re-endorsement of this choice is found in a letter by Heydrich, dated 26 January 1942, prepared by the accused's Section, in which notice was given of the Wannsee Conference which "to the general satisfaction revealed complete unity of views concerning the practical steps for implementing the final solution". The Foreign Ministry was asked to appoint its representative to a meeting called for 6 March 1942 by Heydrich's representative, Obersturmbannführer

THE "FINAL SOLUTION"

Eichmann. The Foreign Ministry sent Rademacher as its representative.

The programme thus went into its practical phase. At this stage, Eichmann is already the only one in charge. We shall see him now more frequently than heretofore, together with his band of confederates, combing Europe from the Pyrenees to the Urals in order to assemble the Jews together and despatch them to death. With the help of his deputies in all the countries of Europe, he held the Jewish people in his grip like an octopus strangling its prey. Henceforth, Eichmann is not only active as one of the directors of a department in the RSHA: he is the personal representative of Heydrich, regarded by the Reich authorities as the commissar for the solution of the Jewish problem. The Court should note the unusual form taken by this appointment. Goering, the second man in the Reich, acting in this matter no doubt with the authority and in the name of Hitler, goes over the head of the Reichsführer S.S., Himmler, directly to Heydrich, and makes him responsible for the solution of the Jewish problem. Heydrich in turn goes over the head of the chief of Bureau IV, Mueller, and appoints Eichmann directly as his representative. This appointment granted Eichmann boundless power, supported by the order of the Führer himself.

There is evidence that Eichmann had in his possession a written document containing Hitler's order for the extermination of the Jews. This order is not in our possession. But it is beyond any doubt that the unusual character of his appointment raised Adolf Eichmann to a unique position invested with tremendous authority, enabling him to contact heads of governments and ministers, to issue orders and instructions in all matters relating to the destruction of the Jewish people.

We shall see him issuing detailed directives for the implementation of the deportations to Auschwitz. We shall trace the activities of his men concerned with the supply of gas for killing Jews; we shall find him negotiating with the representatives of the satellite governments in order to persuade, to stimulate, to spur on the work. Everywhere, he was the official authority for murder and plunder, and all reports had to be sent to him. We shall look for his name in vain among the speechmakers at the grand conferences, possibly because his superiors, Himmler and Heydrich, who had chosen him with care and deliberation to do the work of butchery, did not want to have him speak in the company of the professors

and university graduates who took part in those consultations. It may be that he himself took no great interest in talk, having devoted himself with unlimited fanaticism and zeal to action. Towards that goal, he would not hesitate to come into conflict with, and sometimes even to mislead, men in positions higher than his own in the Nazi hierarchy. But this did not bother him at all, since he was sheltered in the shadow of the omnipotent Himmler. He treated with open contempt the ministers and envoys of satellite states. By persuasion, threats or compulsion, he got from them what he wanted: the enactment of laws depriving the Jews of human and civil rights; and rounding-up of Jews and their concentration in ghettos; their deportation to the extermination centres. Everywhere he adapted himself to the needs and circumstances of the moment, but his persistent and cruel pressure was successful.

Everything relating to the extermination and the preparations for it was his concern. We shall see him visiting and inspecting the Warsaw and Lodz ghettos. We shall follow him as he travels in the autumn of 1941 to Globocnik, chief of the S.S. and the Police in Lublin, in order to transmit to him personally the secret order for the physical extermination of the Jews. Then he was also in Treblinka and in Chelmno, where gases were used for the extermination. He witnessed in Chelmno a parade of naked Jews who, stripped of their clothing, were waiting their turn for death by gassing. He watched as gold teeth were extracted from the mouths of his dead victims. He inspected the system of extermination by means of cars expelling gas from their exhausts, in the early phase of the mass killings. He was sent to examine the system of extermination by shooting used by the *Einsatzgruppen*. He saw the murderers in Minsk shooting their victims in the back, so that they fell into prepared graves. He saw them murdering women and children. He saw those units operating against the Jews in the vicinity of Lwow, where the blood spurted from the grave "as from a spring", to use his words.

But direct murder by shooting did not satisfy him. "Our men will become sadists", he said. In another place he put it that the method was not "elegant" enough for the purpose. A new method must be found. This was found in the gas-chambers and crematoria of the extermination centers—which he visited on a number of occasions, to examine the apparatus, to organize the transportation procedures, and to give instructions. There he also saw how corpses were burned in the open field.

THE "FINAL SOLUTION"

Now that these instruments of extermination, it seems, were functioning to his satisfaction, he concerned himself with supplying them with victims.

His Section from time to time issued detailed directives relating to the death transports. The instructions applied to all the Jews, except for those exempted by his Section, IVB4. There were special instructions relating to Jewish property. The deportees were forbidden to take with them anything of value.

We shall submit to the Court evidence of the requirement to send reports about the expulsions to Eichmann's Section. A similar duty to report on the implementation of the extermination programme was imposed on the Commander of Auschwitz, among others. Eichmann therefore knew at all times who had been sent to Auschwitz, who was candidate for execution, and who had already been killed. Eichmann's Section would issue detailed instructions as to when certain people were to be sent to the death chambers. Truly one can say of him, in the language of the Scriptures: "Where the slain are, there is he."¹

We shall prove that Eichmann and his Section became the central authority for all the Reich ministries in regard to Jewish affairs. All apply to him, and his fiat is decisive. The Foreign Ministry asks Eichmann to keep alive thirty thousand Jews with foreign citizenship, so that they may be exchanged for Germans living in their countries. When he thinks that Rumania is permitting the emigration of Jews with means, he warns the Foreign Ministry that very soon none but impoverished Jews will remain in that country, adding:

"In order to implement the final solution of the Jewish problem without any impediments and according to plan, I herewith request that this development be restrained by suitable means, and likewise that I be kept notified of the state of affairs."

The intention is clear. There is a danger that in Rumania murder will be done without plunder—and of course the "final solution" was not planned that way. When even the Slovakian government, which ruled by the grace of the Nazis, expressed shock at the rumours of what had happened to the Jews of that country, who had been deported nominally to work in the East, and asked permis-

¹ Job 39: 30.

CHAPTER IV

sion for one of its representatives to visit the labour camps—Eichmann turned down the request and suggested to the Foreign Ministry that it explain to the Slovakian government that all was well with the deportees. Proof was available in the form of postcards received from them, and articles on the subject published in the press, which Wisliceny, the Adviser for Jewish Affairs in Bratislava, would be glad to supply. But the German Ambassador in Bratislava received another request for permission to visit the camps, and Tuka, head of the Slovakian government, intervened. The Foreign Ministry again approached Eichmann with a request to permit the visit, but Eichmann refused. His refusal is understandable: the Jews they wanted to visit were no longer alive.

A proposal for the emigration of 5,000 Jewish children from Hungary is transmitted by the Foreign Ministry to be handled by Eichmann. He receives a report on the sailing of a shipload of emigrants from Spain to Palestine. An application from the Spanish government with reference to property confiscated in Salonika from Jewish citizens of Spain reaches his desk. The German Foreign Ministry apologizes to him for daring to give instructions concerning Jews to the Vichy administration in France after the German invasion—and explains that it did so only because of the urgency of the matter and Eichmann's absence from Berlin at that time.

Eichmann took special pains to frustrate emigration to Palestine. He had obligations on this subject, he argued, to the Mufti of Jerusalem, Haj Amin el-Husseini, whom he had met and with whom he had established contact. The impression these two men made on each other was so strong that el-Husseini asked Himmler to provide him, after the War, when he would enter Jerusalem at the head of the Axis troops, with a special adviser from Eichmann's department to help him to solve the Jewish question in the same way as it had been solved in the Axis countries. Eichmann offered the job to his assistant Wisliceny.

The government of Argentina enquired about one of its citizens, Gerson Millner, who lived in Lwow, and the German Foreign Ministry asked Himmler to take into account their special relations with Argentina and not send the man to a concentration camp. Eichmann's cynical answer was that the Jew in question had died of a weak heart, despite the excellent treatment he had received for his ailment.

In 1942, Eichmann decided to treat Hungarian Jews resident in

THE "FINAL SOLUTION"

the Reich in the same way as German Jews. The Foreign Ministry, which was then at the height of a political controversy with satellite Hungary, did not agree, but Eichmann got his way.

We shall see him spurring on his officials and assistants to finish the job quickly. He was impatient with any delay. Once, when a deportation train from France did not leave, he declared that such things were not permitted to happen under his command, and that if hindrances of this kind were to recur he would have to consider whether or not to dispense with France as a country to be cleared of Jews. His subordinate, Roethke, was of course appalled by this threat, lest (God forbid!) he might be blamed for the survival of French Jewry; and he apologized and promised that thenceforth all would go well. When Knochen, an official of the Security Police, had trouble with the Army in trying to introduce the Jewish badge into Belgium, he asked Eichmann to use his influence with General Reder, chief of the military administration in occupied Belgium, to agree to its introduction.

When he learned from a secret source that the Jew Golub, in the Drancy camp in France, was to be granted the citizenship of a South American State, that would enable him to emigrate—Eichmann cabled the Gestapo headquarters in Paris ordering them to despatch Golub quickly to Auschwitz.

When the German Foreign Ministry interceded with him to save individual Jews, in whom for one reason or another the occupation authorities were interested, such as Roger Masse, a senior French officer, who was captured and imprisoned as a Jew, or the Greek citizen Jeanne Cuenca, or many others—the answer was always that for reasons of principle the request could not be granted.

At times, another reason is given by Eichmann and his Section for turning down requests of the Foreign Ministry. The Jewesses Vialica and Belsica, though Swiss citizens, cannot be permitted to leave the General-Government because they know about the methods used for implementing the deportations. In another instance, a Jewish correspondent of the Hungarian press agency in Warsaw, cannot return to Hungary, because he has seen many things in Warsaw that he would no doubt report in a manner inconvenient for Germany. He should therefore be sent to a concentration camp.

The Commander of the Army of Occupation in France was asked to permit the entry of German Jews to join their relatives in occupied France. He asked for instructions, and Eichmann replied that

Jews must not be permitted to evade the deportations to the East; therefore the request should be refused.

Benzler, the German Minister to the puppet government of Serbia, asked for directives concerning the treatment of the Serbian Jews. It was dangerous to keep them in camps because of the threat of partisan attacks; on the other hand, there was a shortage of trains for sending them East, to Poland or Russia. In the margin of the letter you will find a memorandum by Rademacher, director of the appropriate section of the Foreign Ministry, containing these words: *Eichmann schlägt erschliessen vor*—"Eichmann suggests shooting". And when Rademacher wanted to confirm this instruction, and asked Eichmann again on the telephone, the accused answered: "Shoot", and cut the conversation short. Thus, with one word, he sentenced to death some ten thousand Jews.

That was the man, and that was his power.

On one occasion, the Foreign Ministry was not satisfied with the negative reply of Eichmann's deputy, Guenther, and applied to him personally in the case of Andreas Michaelis, who was married to a Swiss citizen. The Foreign Ministry stated that, for urgent political reasons, the request to save this Jew should be granted, in view of the importance attached in his district to the woman's father because of his favourable attitude to Germany. Eichmann's personal answer was:

"After re-examining the matter, I regret to state that, for reasons of principle, I am unable to permit the stateless Jew Miachelis to leave for Switzerland."

We shall present to the Court many such examples. We shall prove that he dealt with both the community and the individual, with every concentration of Jews and every individual Jew with whom he came to be concerned—and always with one goal: death.

When the Germans sought a man to serve as French Commissar for Jewish Affairs in Laval's government, Eichmann was asked about the candidacy of Du Paty de Clam. Eichmann's office answered that the man seemed most suitable for the job, since his father was the French officer who had arrested Dreyfus.

The Swedish Foreign Ministry sought to save thirty Norwegian Jews born in Sweden, by granting them Swedish citizenship. "They too are human, those unfortunates", the representative of the Swedish Embassy in Oslo explained to the Gestapo. Eichmann's answer was:

THE "FINAL SOLUTION"

"The efforts should be frustrated, and I intend to include those Jews as soon as possible within the framework of the general Jewish activities."

When he learned that a Swiss priest had published a book containing accounts of the fate of the Jews in the French deportation camps, he issued instructions that priests should henceforth be kept away from them.

We shall prove in this trial how much attention and care Eichmann devoted to closing every breach through which it might have been possible for any single Jew to slip through the net. Typical was his handling of an urgent application of the Foreign Ministry on 26 May 1943 with reference to Mario Sasson of Zagreb, married to a Christian German woman with three brothers serving in the German Army on the eastern front, who had been sent to Auschwitz. In view of the desperate situation of the woman Eichmann was asked to transfer Sasson to Germany and enable him to be reunited with his family. Eichmann delayed his answer a long while, until his office was in a position to reply that Sasson was no longer alive.

When his envoy in France, Dannecker, encountered difficulties in getting trains for a transport to Auschwitz, a personal application to Eichmann was enough to arrange the matter.

In 1944, what was being done to the Jews in the area of German rule was already known in Europe. A number of Jews imprisoned in the Westerbork camp in Holland, destined for transport to Auschwitz, had received, through the efforts of relatives and friends in Switzerland, passports of Honduras, Peru, El Salvador and other countries, and this gave them the right to leave Europe. On Eichmann's order, these passports were held up, but the question remained, how to explain to the Swiss authorities the fact that registered letters sent from that country had not reached their destinations. The Swiss Post even demanded compensation. The accused's office issued an order: The German Post will notify the Swiss Post that the letters were lost because of "enemy action". The letters should not be returned, and no compensation should be paid for their loss.

At times, we shall see the accused and his Section even letting go the strict camouflage and speaking frankly about the extermination, at least to the extent of internal exchanges within Nazi government circles. To the Assistant Director-General of the Foreign Ministry,

CHAPTER IV

Luther, who had drawn his attention to complaints received about steps taken against Jews, Eichman's office replied:

"Where wood is being chopped, splinters fall. The enemy will always try to exaggerate the measures used against him, in order to arouse pity, and in the hope that they will be discontinued. Ever since we have begun to intensify our measures against the Jewish enemy, he has been trying by means of anonymous letters to practically all institutions of the Reich to escape the fate he deserves."

It is hardly necessary to mention that this "Jewish enemy" was a defenceless civil population, including infants, children, women and old men, and their fate—death.

We shall see how Eichmann contended with German diplomats themselves, and with various authorities in the occupied zones, who did not co-operate or do everything he wanted. We shall see his anger at Italian officials, who on many occasions frustrated his plans; his wrath at the fact that Denmark, through a noble and dangerous operation, had smuggled her Jews to Sweden; his struggles with all the governments of the occupied countries to make them co-operate in his work. When the Pope himself interceded for the Jews of Rome, who were arrested "practically underneath the Vatican windows" (in the words of the German Foreign Ministry), and Eichmann was asked to leave them in Italian labour camps and not deport them, the request was rejected—the Jews were sent to Auschwitz.

But no part of all this bloody work is so shocking and terrible as that of the million Jewish children whose blood was spilt like water throughout Europe; how they were separated by force from their mothers who tried to hide them, murdered and thrown out of trucks in the camps, torn to pieces before their mothers' eyes, their little heads smashed on the ground—these are the most terrible passages of the tale of slaughter. You will hear evidence of actions which the mind of man does not want to believe.

You will hear about little ones thrown out of hospital windows when they failed to respond to orders to report for parade.

We shall present to you the instructions issued by Eichmann and his office about the transport of children. One of these said that the children were to be divided among the transports intended for Auschwitz. Children of fourteen were considered "independent" for purposes of transport to the extermination camps.



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THE "FINAL SOLUTION"

Nor can we say who suffered the more terrible fate: those who died, or those who concealed themselves in every conceivable hiding-place and crevice, who lived in perpetual terror of expulsion, who survived by grace of Christian neighbours who agreed to hide them. Children would come home from the schools and centres organized by the community to find their parents' home empty, for they had been sent by some *Aktion* or "operation" to their deaths; and the apartment was in the meantime occupied by others.

You will hear evidence of tender infants pressed by their mothers to their bodies in the gas-chambers so that they were not immediately poisoned, until the executioners came and threw them alive into the furnaces or the ready graves.

Those unhappy children who lived for years in fear of the beating of a rifle butt on their door; who had been sent by their parents to the woods in an attempt to save them, who had been taught to choke their tears and sighs because a weeping child would be shot on the spot; who had been ordered to deny their origins and pretend to be Christians; who saw their fathers being lashed with whips before their eyes; in front of whom "discussions" would be carried on by the German executioners as to who should be killed first—the father of the son; who went to the open grave with "Hear, O Israel!" on their lips—these children and youths, who despite all the desperate measures and concealments would finally fall into the hands of their hunters, they are the soul of this indictment. Those Anne Franks and Justine Draengers and a million others, those unplumbed treasures of radiant youth and hope for life and achievement—they were the future of the Jewish people. He that destroyed them was seeking to destroy the Jewish people.

We shall submit pictures of some of those children, swollen with hunger, frightened and crushed, with eyes frozen with terror. We shall show you the photographs of their starved bodies thrown into manure wagons, of the helpless little ones on the threshold of the extermination chambers. Perhaps we shall succeed in painting a pale and inadequate picture of the calamity, wide as the ocean, that beset the House of Israel.

It is no wonder that the German Foreign Ministry passed on for Eichmann's information the warning, broadcast by London Radio, that those responsible for the murders in Auschwitz would be brought to judgment. Even on the verge of the German collapse in April, 1945, in that atmosphere of *Götterdämmerung*, when the Allies from

CHAPTER IV

the East, West and South were closing in—Eichmann still told a representative of the Red Cross that he could not agree to the more humanitarian methods of dealing with Jews then being considered by Himmler.

Is it any wonder, then, that one of those days he said to a close assistant that he would be ready to commit suicide, and that he would gladly leap into his grave, after he had succeeded in exterminating five million Jews? In this too he was but following in the footsteps of his master, Hitler, who also said that he would die happy with the knowledge of Germany's great achievements and her contribution to history.

Many millions of non-Jews also perished in the World War II. We shall not attempt to decide here, at this trial, which of the acts of hostility were "permissible" and which were "forbidden" by the rules of war laid down by international law. But we shall say, with all the emphasis at our command, that the extermination of the Jewish people was not connected with any military action. It cannot be compared with the bombing of cities, submarine warfare or the like. These were acts of war, and whether they were legitimate or not—a question which we shall not attempt to decide here—they were carried out in connection with, and in the process of, waging war. The extermination of the Jews had no connection with the war effort of Germany and her allies. The extermination was carried out *at the time* of the war, when the smoke of battle to some extent covered and concealed the atrocities; but it was not done in pursuit of war, nor was it impelled by war needs.

This was a separate and special action in itself, which could be implemented more easily—more conveniently, with less intervention from internal or external elements—during the War, since it was then possible to camouflage what was done behind the cover of the war effort.

And indeed, even in the Nazi documents dealing with the extermination of the Jews and explaining the decision to take this action, we shall nowhere find it stated that what was being done was in order to advance military operations. Quite the contrary: if there were some Nazi leaders or their henchmen who wanted to postpone the "final solution" for a while, they did so on the ground of the need to exploit Jewish labour power in wartime. We shall present proof for this contention, and at this stage I shall mention one piece of evidence: when the Germany Army invaded the Soviet Union,

instructions were given for the immediate destruction of the Jews by the Special Action Groups. We shall see later, in the sequel, how these orders were carried out. In Report No. 81 of the *Einsatzgruppen*, dated 12 September 1941, we read the following.

"One should note, as an exceptional phenomenon, the discovery of Jewish 'kolkhozes' (collective farms). Between Krivoi Rog and Dniepropetrovsk there are Jewish 'kolkhozes' in which not only the directors, but also all the labour force, is Jewish. These are, as far as we can see, not very intelligent Jews, who have therefore been transferred by the political leadership to farm labour. *Einsatzkommando* 6 has decided, in this case, not to shoot these Jews, in order to enable them to continue working; and they contented themselves with liquidating the Jewish management and replacing it with a Ukrainian one."

We see that for the sake of the war effort the Special Action Group departed from its orders and left a few Jews alive.

But this is not all. Means of transport were of decisive importance to the German war effort, and especially when the fronts expanded in the East, South and West. When the Army needed every locomotive and railway car, and there was a severe shortage of transport, trains were still found for shipments to the extermination centres. And while the front was crying out for manpower, the units needed for the work of annihilation were found.

The extermination programme was to have been kept secret, for a variety of reasons. First, in order to delude the victims themselves and make them believe that they were merely being brought to labour camps. We shall see later how many ingenious devices the Nazis used to camouflage the gas-vans as dwelling-places, to erect a sham railway station in Treblinka so that it would seem to be merely a transit-point. And even at the gates of Auchwitz they inscribed: *Arbeit macht frei*—that is, "Work makes free". To facilitate the camouflage, the prisoners in the camps were ordered to write postcards to their relatives, saying that they were well; and the postcards would arrive after their writers had long been consumed by the flames. But the device, of course, served the purpose of momentarily allaying apprehensions, fostering illusions and dampening the will to rebel, since it seemed to indicate that the deportees were still alive, and that the horrible stories about extermination were perhaps not true.

Secondly, the camouflage was needed to hide what was happening from the eyes of the world. That was why the Führer commanded that everything relating to these activities be kept a strict secret, that no one should know more than what he had to know to do his duty, and that the necessary instructions should be transmitted only very close to the actual implementation. The German military command ordered that the expression "transportation to forced labour" should be used instead of "transfer to the East" or "deportation". In the Gestapo itself, an atmosphere of secrecy and camouflage prevailed.

But the secret, of course, could not be kept for long, especially after the circle of the conspirators, the planners, executors and others concerned, widened as the extermination effort grew ever wider. Not only did the thousands in the *Einsatzgruppen* know about it, but also the postmen who had to return mail marked "Address Unknown", the clerks in the registration offices who had to cross the deportees' names off their books, and the thousands of soldiers on leave from all the fronts—so that finally, one way or another, the knowledge reached many millions of the German people. From Eichmann himself we shall hear that at first there were instructions to use camouflage (*Tarnung*), and that the fact of extermination was kept a strict State secret. "I know only", he says, "that towards the end, during 1943, 1944, 1945, to use a somewhat exaggerated expression, the sparrows were already chirping this from the rooftops."

In a long speech of encouragement and praise delivered by Himmler to S.S. officers in Poznan on 4 October 1943, while expressing approval and commendation for the courage, strength of character and other precious attributes of his men, he said:

"Here I shall speak . . . with complete frankness about an especially difficult chapter. Among ourselves let us for once be quite frank, but in public we shall never speak of it . . . I mean the evacuation of the Jews, the extermination of the Jewish people . . . Most of you will know what it means to have a hundred corpses lying together, or five hundred, or a thousand. To live through all this and at the same time . . . remain decent, that made us hard. That is a noteworthy page in our history, which has never been written, and which will never be written."

THE "FINAL SOLUTION"

It was in such episodes as these that a German leader saw the greatness of his people; yet it was something to be kept hidden and secret. Since then the matter has been revealed. What those villains regarded with pride is now their badge of eternal shame; and what they did in concealment, in the hope that the greatest murder in history would remain strictly secret—all this will be told here openly, will be revealed and branded in the light of day.

And now let us trace the bloody work of Adolf Eichmann in the various countries through which the Nazi rule passed like a rod of wrath.

CHAPTER V

THE EXTERMINATION IN POLAND

Poland was the first country to savour the bitter taste of the German *Blitzkrieg*, when a million and a half soldiers, armed with a range of destructive weapons, protected by a gigantic umbrella of war planes and equipped with all modern instruments of communication, swept into the country at the outbreak of World War II. Poland had always been especially hated by the Nazis: it was the offspring of the Versailles Peace Treaty, which they regarded as an insult to the German people; it separated East and West Prussia; and it controlled Danzig. These facts were featured in the campaign of incitement conducted by the Nazis, while they were fighting for power, against the idea that Germany might accept the consequences of her defeat in World War I.

After coming to power, Hitler succeeded in misleading the Polish statesmen of the day, who fell unsuspectingly into his trap. As far back as 1934, he managed to drive a wedge between Poland and France, thus enticing the Poles to sign a non-aggression treaty, and while he was busy making conquests without war in other places, he led them to believe that he sought peace. This situation did not last long, however, and the Teutonic fury was directed against Poland in the lightning invasion which began on 1 September 1939.

Nazi race doctrine regarded the Slav peoples as inferior beings, whose historic destiny it was to serve "higher" and "nobler" peoples. It was, therefore, the declared aim of Nazi policy to subjugate the Polish people and never to allow it to recover. Thus, after the conquest, Hitler told Frank, the Reich Governor-General of Poland:

"The Government-General [of Poland] will serve only as a reservoir of unskilled labour. Workers required by the Reich will be brought from the Government-General... There will be only one master for the Poles—the Germans... and therefore all the representatives of the Polish intellectuals are to be destroyed..."

"We shall see to it that the Poles do not die of hunger and so forth, but they must not reach any higher level . . . If once the Poles reach a higher level of development, they will cease to be the manpower reservoir which we need . . . The humblest German worker or farmer must always be at least ten per cent higher than any Pole."

If that was the attitude of the Nazis to the Poles, to the Jews of Poland it was immeasurably worse. They were simply abandoned to their fate. In so far as there were any divisions of opinion between the Government-General and the RSHA on the attitude to be adopted towards the Polish Jews, they related solely to the choice of the appropriate date for their extermination. While Frank tried to carry out his mission as Governor of the "Corridor to the Reich" by supplying labour, manufacturing ammunition, food and other commodities, and destroying Jews only after they had contributed their sweat and manpower to German industry, orders come from Berlin to exterminate them, and besides, the Gestapo machine acted on its own responsibility, without co-ordination with, or regard for, the Government-General.

This aroused Frank's anger to fever pitch. We have in our possession Frank's diary, which contains minutes of meetings of his administration and notes from his speeches. I shall quote a few extracts from this document.

At a meeting held on 9 December 1942, Frank complained that the Jewish labour force was being taken away from him.

"It is obvious that they are making our work very difficult if in the middle of this war work an order comes to send all the Jews for extermination. The responsibility for this does not rest on us. The order to exterminate Jews comes from higher authority . . . Taking the Jews away has caused immense difficulties in the labour field . . . Now the order comes to take the Jews out of the munitions factories."

Let us not delude ourselves into thinking that Frank wanted to save the Jews from their doom. A year earlier he had said at a meeting of his government:

"As far as the Jews are concerned—this I must say frankly—they must be finished off in one way or another . . . There

CHAPTER V

is criticism of many measures at present being employed in the Reich against the Jews. There is talk of atrocities, brutalities, etc. I must ask you first to agree with me before I go any further on one formula: We shall have sympathy for the German people alone, and not for anyone else in the world . . . As a veteran National-Socialist, I have to say that if the Jewish community in Europe survives the war, after we have sacrificed our dearest blood to hold Europe, then we shall have achieved only partial success in this war. I have, therefore, basically one expectation of the Jews—that they shall disappear!”

There were, however, differences of opinion as to the method of their “disappearance.” From time to time, Frank asked the Gestapo to leave him at least the skilled workers and not to send them off to be killed, but generally the Gestapo paid no attention to his requests, and the accused and his accomplices went ahead with the destruction of the Jewish community in Eastern Europe.

Frank complained bitterly that the Gestapo was acting independently in the area under his rule and creating a state within a state: “We have established in the Reich a plethora of authorities, which are actively engaged in warring one against the other.” The quarrel reached the point where Frank submitted his resignation in May 1943, but Hitler did not accept it. By then the greater part of Polish Jewry had been destroyed, and internal Nazi struggles for power brought no relief whatsoever to the Jews. And when the ashes of the last of the Polish Jews were heaped up on the sandhills of Auschwitz, Frank said: “We started here with 3½ million Jews, of whom only a few labour companies are left. All the rest have—let us say—emigrated.” The minutes add that amongst those present there was a general atmosphere of joy at hearing this description of the extermination process.

The extermination of the Jews was not Frank’s work. We have already heard Buchler, the head of his government, announcing at the Wannsee conference that this matter belonged to the RHSA, namely to Adolf Eichmann. Nor were the death camps under Frank’s control, and this too was stated explicitly at those meetings: “. . . These camps were set up directly by the S.S. from Berlin, whence they were administered, and for everything which takes place in those camps the Centre in Berlin is responsible.” So in fact it was, and we shall receive evidence of this from others also.



DIGNITY AND DEGRADATION

EXTERMINATION IN POLAND

In Poland, Jewish suffering began with the entry of the German army. Pogroms, brutality, degradation, the burning of synagogues, the plunder of property, collective fines, all these immediately became the lot of the Jews in Occupied Poland. Thousands fell victim in the very first weeks and were killed in a variety of ways. The Jews of Jaroslav were brought to the banks of the River San and drowned in their hundreds, and the Jews of Bydgoszcz (Bromberg) were butchered. In Lodz, a pogrom was laid on in honour of Goebbels' visit. Atrocities against the Jews were the order of the day. Their beards were forcibly torn out, with the skin. Synagogues were set on fire and often, as in Wloclawek, the Jewish leaders were arrested and forced to sign a declaration that they had been the incendiaries—and then, on the basis of that declaration, the Jews of the city were fined 100,000 zlotys on account of the fire. Within a few weeks, hundreds of synagogues and schools were burned down, blown up, or converted into stables or public lavatories. The Jews were ordered to clean the streets with their prayer shawls, to burn holy books, and to dance around the bonfires, all these spectacles being photographed for publication in the *Stürmer* and other Nazi newspapers. Simultaneously, the Nazis began the systematic plunder of Jewish property by various methods, including collective fines, confiscation of houses and their contents, and at times straightforward theft—on the pretext of searching for weapons, valuables could be seized and carried away.

Jews were kidnapped and carried off for forced labour. Passers-by were seized in the streets. A man would go out in the morning and not know whether he would come home in the evening. Some would return with "labour cards" in their possession. Others did not return at all and the Germans explained that they had been sent off to work "outside the city"; they were never seen again. S.S. men would burst into the Jewish quarters and, with blows, force the Jews to come out and perform degrading tasks such as digging open pits and then filling them up, moving mounds of stones and putting them back again, and the like. The Jews were transformed into a herd of terrified, degraded and depressed beings, lacking all human rights. Their synagogues were closed; their public life came to a standstill; their sources of livelihood dwindled.

This, however, was for the time being the period of "minor terror." The tragedy and destruction of Polish Jewry was yet to come.

Heydrich's instructions of 21 September 1939 regarding the treat-

ment of the Jews, which I have already mentioned when I spoke of the planning of the Holocaust, laid down that the first phase was the identification and concentration of the Jews, as intermediate steps towards the final solution. Adolf Eichmann was associated with this. It was not very difficult to carry this out in Poland, where in any case most of the Jews lived in the cities and little towns. The order for every Jew to wear the yellow badge was issued at once: violation of it was punishable by death.

Hitler, Goering and Keitel issued orders on 7 October 1939 for the establishment of settlement areas for Germans in the East, from which other ethnic groups were to be removed. Himmler was given almost unlimited powers. The implementation of this programme devolved on the Security Police, whose chief, Heydrich, gave the following order on 12 December 1939:

"Important reasons make the central handling of all police and security matters connected with the execution of the evacuation in the Eastern areas necessary.

"I have, therefore, appointed SS-Hauptsturmführer Eichmann (deputy, SS-Hauptsturmführer Guenther) as my special representative in the Reichsicherheitshauptamt, Bureau IV."

The objectives of this action were defined in a detailed document describing the aims of German policy in the areas of Poland annexed to the Reich. These aims included the deportation of all the populations which could not be restored to the bosom of the German people by a process of "Germanization" and the resettlement of the whole area by Germans. The Jews were to be deported as swiftly as possible and all their rights annulled.

The task of making the detailed plans and carrying out the deportations devolved upon Eichmann. It was also thenceforth his function, *inter alia*, to carry out Himmler's orders for the deportation of all the Jews from what was called the *Ostraum*. From then on, Eichmann operated in the East in the name of the Reichsfuehrer himself and with his authority.

In September 1939 orders were also carried out with regard to organized plunder of Jewish property, confiscation of their factories and warehouses and, after that, pillage of whatever came to hand. In addition, they began to impose financial levies on the Jewish communities, simply according to whim. In October 1939 the East-

ern Trustee Authority (*Treuhandstelle Ost*) was set up to handle the plundered property, with a head office in Berlin and branches in a number of the leading Polish cities. Himmler issued regulations for co-operation with this authority, which was given unlimited rights to confiscate Polish and Jewish property.

In January 1940 we already find a representative of the *Treuhandstelle Ost* present at a meeting to deal with the deportations, presided over by Eichmann. At that meeting there was a discussion on the methods used so far to carry out the deportations to the area of the Government-General, and it was reported that in one transport several hundreds had frozen to death. It was decided that at an early date about 350,000 Jews would be deported from the Warthegau area, which included Lodz and Posnan, to the area of the Government-General, in co-ordination with Frank's authorities. The only property that a Jew would be allowed to take with him would be 100 Polish zlotys. Reports on each transport were to be submitted to police headquarters in Cracow and to Adolf Eichmann.

At a meeting of the administration of the Government-General, this movement was described as a "modern migration of peoples," and two years later Frank was to describe this operation as follows:

"... Then came the fantastic transfer of hundreds of thousands of Jews and Poles to the Government-General. You will recall the terrible months during which freight trains fully loaded with people rolled in day by day; there were trucks filled to overflowing with corpses. That was a terrible time, when every district chief, every local and municipal officer, had to chase around from morning to night to get rid of this influx of these elements who had become unwanted in the Reich, and whom they had suddenly decided to shift... All this we had to endure."

What the victims of that dreadful journey had to endure, what suffering and torment, how they fell by the wayside with their little ones, how they dragged through the mud and snow—of all this of course, Frank had nothing to say. This deportation encompassed about half a million people and was carried out by a special RHSA department, IV D4, headed by Adolf Eichmann. Included also in this deportation programme were the Jews of East Prussia.

Finally, in view of Frank's protest that the transports gave him and his assistants too heavy a load of work, Goering, on 23 March

1940, ordered that there should be no more deportations to the area of the Government-General without Frank's prior consent.

In the meantime, the concentration of the Jews in Poland and the plunder of their property continued, in accordance with the master-plan of 1939. Ghettoes were established in the worst districts of the cities, where it was quite impossible to establish even elementary conditions of hygiene. The inhuman overcrowding and filth soon produced severe epidemics. To leave the ghetto meant public execution. The ghetto itself became an instrument of extermination.

Let us listen to an authentic description:

"... On the Day of Atonement in 1940 the radio announced the German order for the setting up of a Jewish quarter in the city of Warsaw. Within a few days the Jews had to leave their homes outside and to enter the quarter without being told into which part they were to go. In this way about 100,000 Jews entered the Jewish quarter, which was already overcrowded. They became refugees, carrying their worldly goods by hand or on a cart, wandering through the streets, stopping at a house, standing confused, not knowing where to go. At that time the ghetto was still open and there was contact with the outside world. It was still possible to go to work outside the Jewish quarter.

After a short while, and without previous notice, the Jewish quarter was isolated and walled off and German or Polish police stationed at every gate or exit. All at once the ghetto was cut off from its sources of livelihood, from places of work, and from all possibility of obtaining essential commodities, and its inhabitants felt that prison walls had closed in upon them.

During that period, tens of thousands of Jews were brought into the Warsaw Ghetto from nearby provincial towns. These people were ordered to wind up their affairs on two hours' notice and to take with them what they could carry in their hands and on their backs, and they were all brought by foot into the Warsaw Ghetto. Generally, anyone who faltered or stumbled, who stopped for a moment with a groan, was shot dead. Once again, a stream of refugees came into the ghetto, once again people were seen standing or sitting in the ghetto streets without roof or food, waiting for salvation. Life in this ghetto became an unbearable hell. There was frightful overcrowding, with rooms jammed tight with people. The sanitary

conditions were appalling, and this led to epidemics and disease.

Since it was impossible to find work, except in the German slave enterprises, or to obtain food, starvation soon followed. Entire Jewish families—men, women and children—could be seen sitting on the pavements, swollen with hunger. During the curfew hours, when it was quiet in the streets, the voices of little children could be heard on all sides, begging for a piece of bread (*a shtickele broit*), but all they could get were a few crumbs from Jews who had pity upon them. In the morning, corpses—especially of children—were found on the pavements near the gates, covered with paper—for during the night even their clothing had been taken.

Of course, the most difficult plight was that of the refugees who had come in from the neighbouring towns, as it was impossible to find any unoccupied space for them within the ghetto, and they were packed into refugee houses. In these it was impossible to pass—there was not an inch of space unoccupied. Their food consisted only a plate of soup and a piece of bread per day. Every day, hundreds of Jews were buried.

Every morning those Jews assigned to the factories set up by the Germans ran out to work, hoping thus to save their lives. Many never managed to reach the workshops because the Germans would enter the ghetto, take up positions in the middle of the street and begin to shoot. The Jews did not know where the danger points were and generally gathered together in one place. Then the S.S. men would close off the streets, collect the Jews together in one place and take them off to an *Umschlag* (deportation point), always on the pretext of examining labour cards. They would release a few people 'because of their work'. There were heart-rending scenes. They would catch a Jew who had a labour-card, but take his children away from him, while he pleaded for permission to go with his children—but to no avail. They would provide carts for the old and the sick, and these people could be seen with their pitiful bundles travelling through the streets on their last journey. At the same time, the terror within the ghetto did not cease during the whole period of the deportations. Using 'resistance' as an excuse, they would kill scores of Jews as an

example to others. There were SS men who caught little children and smashed their heads on the paving-stones. In many cases it seemed that, apart from the deportations, Germans were treating Jews with brutality simply for the pleasure of doing so.

As the famine grew worse, the S.S. men developed a 'new method'. They announced that volunteers for deportation would receive six pounds of bread and two pounds of jam for the journey, and indeed many were compelled by the insupportable pangs of hunger to present themselves at the deportation point. Again, convoys of Jews were seen moving towards the *Umschlag*, carrying their goods and their children."

One of the first ghettos was set up in Lodz (Litzmannstadt), where 160,000 persons were crowded together in an area of less than three square miles. People lived six to a room. In the first year and a quarter, about 15,000 of them died. In spite of the terrible conditions, Eichmann pushed into the city another 20,000 Jews and 5,000 gypsies from the Reich. The District Commissioner complained to Himmler himself that Eichmann had apparently given incorrect facts with regard to the capacity of the ghetto, which was being swept by epidemics. He compared Eichmann's methods with those of gypsies at a horse market. When he wrote this on 9 October 1941 he did not know that a decision had already been taken to exterminate all the Jews and that it did not matter by what methods this end would be achieved.

In the fateful summer of 1941, ideas and plans for the extermination of the Jews were being mooted in Germany. Eichmann's representative in Posnan, Sturmbannfuehrer Heppner, wrote him a personal letter in which, inter alia, he suggested that all the Jews from the Warthegau area (about 300,000 in number) should be concentrated in a place where they could work in the coalmines. He thought that in this way he would overcome the danger of epidemics that existed in Lodz and other ghettos, and also get control of the problem. In this camp all the Jewish women would be sterilized, so as to finish off the Jewish problem in this generation. He added:

"There is a danger that this winter we shall be unable to feed all the Jews. It is worth considering seriously whether it would not be the most humane solution to finish off the Jews, in so far as they are not fit for work, by some quicker method.

EXTERMINATION IN POLAND

At all events this would be more pleasant than to let them die of hunger."

In a covering letter, Heppner wrote that possibly his proposals seemed fantastic, but they were practicable. Apparently he did not know the degree to which plans of this kind had been prepared for implementation as part of the final solution.

In the summer of 1943, Eichmann came to the Lodz Ghetto and there, after consultation with those concerned, the conclusion was reached that the ghetto was no longer worth maintaining. It was therefore decided that it should be turned into a concentration camp, in which only persons fit for work would be left. The others would be transported.

Another method used by the Gestapo to liquidate Polish Jewry was that of the labour camps. As early as the second month after the conquest, all Polish Jews between the ages of 14 and 60 were told to register for work. They were ordered to carry out the most difficult assignments under a regime of blows and severe physical punishment. In these camps men soon began collapsing, because the effort demanded of them exceeded human strength.

According to the official report of the Polish Government Committee for the Investigation of Nazi Crimes in Poland, there were more than 300 such labour camps. The prisoners built roads, put up fortifications, diverted streams and worked in factories, quarries and so forth. In the ghettos also, labour duty was the general rule.

Evidence will be brought as to living conditions in such a camp. In Plaschow, near Cracow, the day's work started at 4.00 a.m. and finished late at night. The living quarters consisted of huts, in each of which several hundred people slept in three-tiered bunks. Work was carried out continually on the run. Those who fell behind received twenty-five strokes on their bare bodies. For food, there was a little bread, twice a day a drink that was called coffee, a weak soup at midday and, at times, a little fat. The inmates were always hungry, but it was forbidden to bring food in from outside, and offenders were shot or hanged. At times, a whole group would be punished for this offence. Very often, mass beatings would be carried out on the parade-ground. Punishment parades were frequently held, and on these occasions people were ordered to stand for hours without moving. Anyone who weakened was shot on the spot. Hangings were carried out in the presence of all the camp inmates.

CHAPTER V

Here is a sample picture of these horrors: 20,000 people standing in the square, surrounded by electrified barbed wire, with machine-guns mounted in the turrets of the observation towers. Before their very eyes, a youth of fifteen is hanged. The rope snaps and the youth pleads for his life, but they hang him a second time. The next person sentenced to death cuts his veins while awaiting his fate, and is brought bleeding to the gallows.

You will hear evidence of dogs being set on human beings who were bitten and torn to pieces; of S.S. men who would go up to people and shoot them just because they felt like doing so at the moment; of selection parades in which the weak, the old and the children, were despatched to the extermination camps while cradle-songs were played over the loudspeakers. And to move was forbidden. The slightest movement set the machine-guns off.

The mortality rate in the camps was frightful; they too served as instruments of extermination.

Here is an eye-witness account of what happened at Lwow:

"On 2 July 1941, I was arrested with about 5,000 other Jews. After three days of suffering, a few of us escaped. All the others were killed. Two days later, I was taken off for work with a hundred Jews. In the evening, twelve returned; the others had been killed. In February 1942 I was taken to the Janowska concentration camp, where I got typhus and pneumonia. On 8 June, I was taken away to be shot. They gave us spades to dig our own graves. When we had finished, everyone was called by name, two descended into the pit and lay down side by side, faces to the ground—and were shot. The next two poured a little sand over those who had gone before them, themselves went into the pit, laid themselves down and were shot . . . At the last moment I escaped.

"In June 1943, I was taken to the Death Brigade Commando Unit 1005. This Brigade was created to erase all traces of the German crimes. Our job was to open graves, burn the bodies, after extracting gold teeth and gold rings, and then scatter the ashes. Every day we collected about twenty pounds of gold. When a new batch of victims arrived, they would shoot them and burn them on the spot. Sometimes 2,000 would arrive in one day. I was there until 19 November, when I escaped."

EXTERMINATION IN POLAND

We also have a picture of the Holocaust in Eastern Poland, as seen from the German side. There has survived for the information of future generations a report by S.S. Gruppenfuehrer Katzmann, exterminator of the Jews in Eastern Galicia. He describes the introduction of the Jewish badge, the setting-up of labour camps, the transfer of the Jews to the ghetto and, on this occasion, the "special treatment" administered to "all the work-shy and anti-social elements in the Jewish mob."

It soon became clear, Katzmann adds, that the Jews saw in their assignment to labour duties and the procurement of a labour card only an opportunity to escape severer measures. Accordingly, new operations were carried out, as a result of which thousands more Jews were sent for "special treatment." It was necessary to "despatch" (*Aussiedeln*) more Jews—in tens of thousands—because it was apparent that they could obtain labour certificates by bribing Germans.

While these transports were being despatched, Katzmann became aware of "unusual difficulties," since, according to his account, the Jews tried to hide in cellars, bunkers, ditches and "the most unthinkable places." But of course the brave S.S. men succeeded in overcoming difficulties of this kind by using fire or gas to force the Jews out of their hiding-places. Some Jews managed to obtain weapons. There were even some attempts to escape abroad. "Finally," writes Katzmann, "I was compelled to use brutal measures": the remaining Jews of Lwow were exterminated by burning or demolishing their houses and hiding-places. "At least 3,000 Jews committed suicide."

The report contains the information that 434,329 Jews were exterminated by Katzmann, that in a number of camps in his area there were only 21,156 Jews left, and that this number would gradually diminish.

Attached to this report is a long list of plundered property. Pictures, too, were enclosed. Katzmann gives the following list of his losses during the liquidation of Galician Jewry: 18 men died from typhus which they had caught from the Jews; 8 were "murdered" by the Jews; and 2 died as a result of accidents during the operations. And Katzmann concludes his report on the extermination of Galician Jews as follows:

"In spite of the extraordinary burden of work imposed on every member of the S.S. and the police during these opera-

CHAPTER V

tions, their spirit remained firm and praiseworthy from the first day to the last. Only because of the sense of personal duty felt by every officer and man was it possible for us to get control of this plague in the shortest possible time."

Whenever Katzmann or other Nazi leaders speak of *Aussiedlung*—"expulsion" or "despatch"—the true reference is to the deportation of Jews to extermination camps, of which I shall speak later. During the years 1941-44, Polish Jewry in its millions was destroyed in these camps.

Adolf Eichmann, as head of the Gestapo Department for Jewish Affairs, commissioned specially for the extermination of the Jews, bears direct responsibility as the initiator and implementer of this blood-bath. We shall bring proof of his initiative and his control over the ghettos, his responsibility and his role in the setting-up and operation of the extermination camps, and his responsibility for the destruction of Polish Jewry.

Here too we shall come across Eichmann's work both in overall terms and in detail. He implemented the Heydrich Plan of 21 September 1939. He approached the Ministry for Foreign Affairs and requested its agreement for the application to foreign passport holders in the Warsaw Ghetto of all the police measures used vis-a-vis the general population of the ghetto. He made a journey to Warsaw to "deal" with matters. He carried out the enormous deportations of Polish Jewry to the extermination camps. At the same time we shall find him dealing with "minor matters", such as sentencing four Jews to death in Ciechanów and, later, ordering the hanging of another seven Jews in a nearby ghetto in the presence of all its inhabitants. Eichmann also informed the Ministry for Foreign Affairs that Hersch Reifer of Lwow, a Rumanian Jewish citizen, had disappeared and apparently fled to Rumania.

Property, too, was not forgotten. We shall present to the Court the specific instructions which were given in regard to plunder. An order issued by the S.S. Head Office for Administrative and Economic Affairs—*Wirtschafts- und Verwaltungs-Hauptamt*—in regard to Polish Jews deported to the Lublin area and Auschwitz stated that Jewish property should be described as "confiscated property" because it was stolen or smuggled. A whole series of instructions follows: cash was to be sent to the Reich Central Bank; watches, fountain-pens, torches, wallets and other personal belongings were

to be repaired and cleaned, and sold at minimum prices to the soldiers at the front. Men's and women's clothing was to be sold to the *Volksdeutsche* settled in the eastern areas. So were blankets, umbrellas, children's carriages and a long list of other articles. Linen and tablecloths were to be supplied to the army. Spectacles were to be sent to the Ministry of Health and furs to the S.S. Head Office. Finally, there were two standing instructions:

"Particular care must be taken to see that the Jewish badge is be removed from all clothing and overcoats."

"All items of clothing are to be examined to see whether any valuables are hidden therein."

A further devilish invention of the S.S. was the employment of the Jews themselves in handling, cleaning and repairing these clothes. A special S.S. unit was engaged in what was known as "Operation Reinhard," so named in memory of Heydrich, who was killed with a hand-grenade in June 1942 by a Czech partisan in an act of great bravery. Globocnik, Chief of Police in the Lublin area, was appointed to take charge of this operation, the purpose of which was the general plunder of all Jewish property in Poland and the killing of its owners. Globocnik presented a report containing a list of foreign currency, valuables and personal belongings that had been pilaged. According to his own account, he placed a nominal value only on the property and reached a total of two hundred million marks. It may be assumed that the greater part of the property was stolen for private purposes by those who carried out this task and was not included in the report, for at a meeting of the administration of Frank's Government-General the plundered property was assessed at many milliards.

In order to exploit the Jewish labour force in the ghettos and camps, the S.S. set up and administered a company called *Ostindustrie G.m.b.H.*, or OSTI for short. The purpose of this company was to establish undertakings in which Jews would be employed, to take possession of all Jewish-owned equipment and raw materials, and to operate concerns which were previously in Jewish hands. Many private German enterprises were also established and supplied with Jewish slave-labour.

Globocnik reported on the success of this undertaking and the mobilization of tens of thousands of Jews for unpaid labour in the OSTI factories. "On the whole it was successful," he writes. "Only

in one place was there a failure: in Warsaw, where the operation was not properly carried through on account of misunderstanding of the situation."

The Warsaw Ghetto was the largest in Europe, not only because the Jewish population of the city was considerable but because many Jews fled to Warsaw from the surrounding districts and towns. It appears that at one time it contained about half a million people. Himmler noted that the German economic enterprises of Toebebens made millions by exploiting Jewish slave-labour, but he gave orders that the Jews should be gradually removed from industrial undertakings. "We must make an effort to bring in Poles in place of the Jewish workers. Of course, there as well the Jews will have to disappear one day in accordance with the Fuehrer's wish."

Himmler was not prepared to accept the argument that it was desirable to keep the Jews alive because these undertakings were working for the army. "The army will give us its orders and the items of clothing which it requires will be supplied. I have ordered steps to be taken, come what may, against all those who believe that they can oppose our steps with the so-called munitions pretext but who actually want to help the Jews and promote their interests."

In the middle of 1942, there were no longer any illusions in Warsaw with regard to the purpose of the Germans' deportations. Until then the Jews still hoped, still deluded themselves, and did not listen to the underground movement's pleas for violent resistance to the Germans. The Chairman of the Ghetto Council, Adam Czerniakow, committed suicide by poison together with his wife in July 1942, when the Germans demanded that more Jews be supplied for "despatch". But the transports continued, in their thousands. In September more than 100,000 Jews were assembled in the area known as "The Pot"; 30,000 were "freed" for labour and the remainder despatched to the extermination camps. This time Jewish police from the ghetto were also transported.

Listen to this account :

"The Germans are transporting the surviving Jews into "The Pot", between Zamenhoff, Stawki, Smocza and Gęsia Streets. A wooden gate blocks off the whole width of the pavement. Through this gate of life and death, the crowd passes slowly in single file. Each person has to submit to a thorough search. There is a line of young, alert S.S. men, on guard . . . , revolvers hanging from their uniforms. 'Quicker, quicker!'

they yell, accompanying their threats with lashes of the whip.

The crowd marches on in endless line, through the gate of life and death. Pale and confused figures pass by, their eyes red with fear. Men help their wives, mothers clasp their little ones. Daughters carefully guide their old mothers. Families try to keep together and cling solidly to each other. Each person holds firmly in his hands the 'work-card', which gives him the right to live. They hold on to this document desperately, for it is the only guarantee of their right to live, and—even more important—the right of their dear ones to live.

Today is the great day. The weather is pleasant. The sun is shining brightly. Untersturmfuehrer Handke wipes the sweat from his fat, red face. Then he wipes his neck and gets ready again for action. He lashes out again with the whip and strikes the terrified victims on their heads and faces and any other part of the body he can reach. An energetic and aggressive officer is showing the confused people which way to go.

Left—towards Stawki—is the gate of death, leading to the train that will carry them off to Malkinia and Treblinka. This is the place marked out for the women, the old, and the crippled.

A gesture of the hand to the right—this is the way to Leszno, Karmelicka, and Nowolipki streets, the way to life. To the right go those from whose toil and sweat some profit can still be wrung.

That is how the selections were carried out in the ghetto."

The youth movements were longing for action, but they had no weapons. The Polish underground supplied nine revolvers and five hand-grenades. With this equipment, they had to go into action.

Finally a co-ordinating committee for underground activity was elected, headed by Mordechai Anielewicz, with Yitzhak Zuckerman as second-in-command. There had been isolated instances of desperate resistance before, but from now on activities were co-ordinated.

In January 1943, the underground acted for the first time, and the first German victims fell. When his ammunition was spent, Anielewicz fell on the nearest German soldier with his bare hands, snatched his rifle and disappeared. Later he was to fight and command in many a battle.

The spirit of the oppressed Jews rose once more, for they saw

CHAPTER V

that the Germans were vulnerable, and that it was possible to inflict casualties on them.

Yitzhak Katzenelson, a poet of the Holocaust, who himself was killed later, wrote :

"They did not know, they did not believe.

"The Jews are shooting!"—I heard an ugly voice in a corrupt mouth

Before he breathed his last, unclean breath;

No normal shout I heard—

Only a horrified cry: 'Is it possible? !' "

The fight was on. It was a desperate struggle without a shadow of hope, without prospects, without a chance of success, but they would no longer go as sheep to the slaughter—they would strike at the despicable killers. The underground was reorganized, the ghetto was divided into areas, and feverish efforts were made to acquire weapons from the Christian side of the city. A revolver cost thousands of zlotys. Weapons were smuggled in by all possible means, through the sewage canals, by bribing the watchmen, in the food trucks.

"If only we could get the weapons and ammunition we need," wrote Anielewicz on the eve of the revolt, "the battle for the ghetto could cost the enemy an ocean of blood. But even so we shall prove the power of our faith and confidence in our strength."

They began setting up bunkers as hiding-places and underground passages for storing weapons, for use as lines of communications and to facilitate the fighting.

The Nazis were struck with amazement. After wiping out the first nests of resistance, they tried their usual wiles: "All we want is to send a number of Jews to work camps. What is all the fuss about?"

Once more the S.S. tried threats against the Ghetto Council, but the latter replied that they no longer had control over the Jews.

Himmler gave orders for the destruction of the ghetto. "This quarter, so far inhabited by 500,000 sub-human creatures, who in any case are of no use to the Germans, must disappear!"

On 19 April 1943, on the eve of Passover, Waffen-SS forces, commanded by Juergen Stroop, who had recently been appointed Police Commander in Warsaw, began to move in the direction of the ghetto. The attacking force consisted of 2,100 soldiers, supported by tanks. The Jewish underground opened fire, and many of the

Germans were wounded. The tanks were driven off with Molotov cocktails.

Anielewicz wrote to Zuckerman, who had been sent to the other side of the city to secure supplies and assistance from the Polish underground :

"Something has happened which is beyond our wildest dreams. The Germans have fled twice from the ghetto... This evening we pass over to partisan methods of action. Three of our squads go out tonight, with two objectives: food and weapons... I cannot describe the conditions under which the Jews are living here. Very few will hold out. Sooner or later all the rest will perish. The die is cast. In all the bunkers where our comrades are hiding, it is impossible to light a candle at night for lack of air... Keep well, dear friend. Perhaps we shall still meet again. The main thing is—the dream of my life has come true. I have lived to see a Jewish self-defence force in the ghetto in all its greatness and glory."

The heroic and desperate battle began. The Germans laid siege to the ghetto, opening up a merciless bombardment, which was followed by the entry of S.S. units. They took prisoners and destroyed buildings and bunkers. The tens of thousands of prisoners were wiped out, some on the spot and others in the camp at Treblinka. In his last report, dated 16 May 1943, Stroop, who quelled the revolt, reported that 56,065 Jews were killed in the process. One cannot refrain from pointing out that this butcher and murderer calls his victims "bandits". We shall submit to the Court Juergen Stroop's report, which begins with these words: "There are no Jewish habitations left in Warsaw." We shall also submit to you the photographs which he attached to his report—the famous photograph of the little child standing with his hands up (he too an enemy of the Reich!) and the picture of the girl fighters with the shadow of death in their eyes.

In this case against Adolf Eichmann, I shall not describe the whole scope of the Warsaw Ghetto revolt. It will for ever be enshrined in Jewish history as an act of supreme valour, as the last desperate stand of national heroes, who succeeded in holding their positions for nearly a month against the might of the Nazi army. When organized resistance came to an end, they kept up the struggle for months amongst the debris, and from the sewers and hideouts, in

spite of all the weapons of destruction the Germans deployed against the fighters. Even in September 1943 isolated clashes continued, until the sound of the heroic struggle was stilled, and the last of the fighters had fallen.

Warsaw was not the only place where the Jews organised resistance against their destroyers. Before and after Warsaw, there were military operations in Czesochowa, Vilna, Cracow, Będzin, Białystok and many other places. Later there were uprisings in the heart of the extermination centres, at the gas chambers of Treblinka, Sobibor, and Auschwitz. In fact, there were hundreds of individual examples of heroism, resistance and revolt. The Jews tried everywhere and at all times to stand firm against the destroyers without losing the image of God and the dignity of man. The S.S. forbade religious services, but the Jews secretly organized prayer meetings in all manner of places, even in the very death camps and on the threshold of the gas chambers. The Germans forbade all communal activities and mutual aid—but the Jews set up hundreds of welfare institutions. The teaching of children was forbidden, but the Jews found a way of teaching their children secretly. Death was the punishment meted out by the Germans for listening to foreign radio stations, but the Jews secretly published newspapers containing news from the Allied side. Tens of thousands of Jews joined the partisans and fought against the Nazi-Germans in combatant units. The great wonder was that after years of oppression, degradation and hunger, the Jews found spiritual strength for all these instances of revolt and resistance, in face of the mighty Gestapo machine and its deadly power of destruction, on the one hand, and—on the other—the Nazis' trickery, deception and concealment of their intention to exterminate the Jews.

After the suppression of the revolt, the survivors in the rest of Warsaw formed a Jewish national organization, calling on the Jews, in July 1944, to combine and fight the enemy. "The Jewish people lives," they wrote, and they foretold the emergence of a free, democratic state, in which the long-suffering Jewish people could develop and be creative, as the only historic compensation for their afflicted people—which, they said, had lost five million souls. Their proclamation concluded :

"If we have been condemned to die, let it be in battle. Each of us has already been face to face with death so many times that it no longer holds any terrors . . . Every Jew who has

been saved must regard himself as a soldier in the Jewish army of mutual aid and battle, a fighter for democracy and freedom."

But it was the Revolt of the Warsaw Ghetto which has become a symbol of heroic struggle, the like of which had not been known in Jewish history since the days of Bar Kochba. They fought without the slightest hope of victory, but in the clear conviction that their death would give meaning to the lives of others. They and their companions in revolt and in resistance to the oppressor were no longer able to save Jewish lives, but they redeemed the honour of their people.

Israel mourns their death and will bequeath to its children the heritage of their valour.

The bitter end of Polish Jewry came, as I have said, in the extermination camps to which millions were transported by order of Eichmann and his accomplices in crime. The end came in Auschwitz, Belzec, Treblinka, Sobibor, Maidanek and Chelmno, and of what happened there I shall speak later.

CHAPTER VI

THE EXTERMINATION IN THE SOVIET UNION AND ANNEXED COUNTRIES

Now let us turn eastwards and see what happened to the Jews of the Soviet Union in those areas which fell into the hands of Nazi Germany.

I have mentioned that in each country the method adopted for the extermination of the Jews was related in one way or another to the general conduct of the Nazis towards that country's population. All the Jews were destined for extermination, but the mode of implementation varied. It was one thing in Norway and Denmark, for instance, where the Germans showed a certain consideration for the sensitivity of the population, and another in Poland, which was regarded as nothing more than a reservoir for slave labour, or in the Soviet Union, Hitler's most hated rival, against which he only succeeded in quenching his wrath for a while because of his wish not to become involved in a war on two fronts. When he had completed his conquests in the West, and it became apparent that it would take time to subdue England, Hitler decided to execute his long-standing plan to launch an onslaught on the Soviet Union, which now embraced the Baltic States, Eastern Poland and all of Bessarabia. "Operation Barbarossa" was made ready in the spring of 1941. Nazi Germany wanted a savage lightning campaign which would deal the Soviet Union a fatal blow with the maximum speed. Pains-taking preparations were therefore made, incorporating the most drastic measures to ensure that the intended blows would prove effective, and that the rear of the Germany Army would be secured. With this in mind, the SS organized new Special Action Groups (*Einsatzgruppen*) in May-June, 1941. Heydrich and Streckenbach of the RSHA dealt with the matter personally. Eichmann was a party to everything concerning Jews. He took part in the secret meeting held at the Prinz Albrecht Palace in Berlin, at which Heydrich explained to the Commander of the *Einsatzkommandos*, from which the *Einsatzgruppen* were formed, the nature of their mission to exterminate all the Jews. It was agreed with the Army

that the handling of the Jews would be left to the Security Police and the S.D., which would operate independently, though in co-operation with the Army. Von Brauchitsch, Commander of the invasion force, agreed to grant the widest powers to the Security Police. The instructions issued by the RSHA to the Special Action Groups were to kill the Jews, including women and children, together with all non-Jewish Communist leaders and officials.

On 17 July 1941, instructions were issued by Bureau IV of the Gestapo to the following effect:

In the first instance all professional revolutionaries, all Comintern officials, all political commissars of the Red Army, the whole of the Soviet intelligentsia and all Jews were to be rounded up. It was also stated in these instructions that these people were to be detained and weekly reports forwarded to the RSHA. The "special treatment" was to be carried out in former Soviet territory. Executions were to be carried out within the confines of the camps. Detailed reports on the application of "special treatment" were also to be made.

We shall submit to you the reports on the extermination, documents which, in simple official language, speak of the mass murder of tens of tens of thousands and hundreds of thousands of human beings.

The Commander of *Einsatzgruppe D.*, Otto Ohlendorf, later gave testimony regarding the murder of 90,000 Jews and the manner in which he carried out the order he received:

"The men, women and children were brought to the place of execution which was generally sited close to deepened anti-tank ditches. They were then shot, kneeling or standing, and the bodies thrown into the pit. I at no time permitted any individual to fire, but instructed a number of my men to shoot simultaneously, so as to avoid any direct personal responsibility, but the officers in charge had to fire a final shot at the victims who were not dead. At the beginning of 1942, the Head of the Security Police and the S.D. sent us gas vans from Berlin . . . Whenever a unit had rounded up a sufficient number of victims, the vans were despatched for the extermination. We stationed these vans near the transit camps where the victims were assembled. The victims were told that they were to be moved elsewhere, and must enter the vans for this purpose. The doors were then closed and the gas flowed in through pipes. The victims died within 10-15 minutes. The vans were then

driven to the burial site, where the bodies were extracted and buried."

Stahlecker, Commander of *Einsatzgruppe A*, which operated in the Balkan states and in the North, reported that, to his surprise, he had not succeeded in arousing the local Lithuanian population to carry out pogroms on a sufficiently large scale. In Latvia, the total pogrom death toll was no more than 400.

"It was to be expected", wrote Stahlecker, "that by pogroms alone the Jewish problem in the Eastern areas could not be solved. Consequently, large-scale executions in cities and open areas were carried out by special units in Lithuania, and in Latvia with the help of the Latvian auxiliary police."

The special units, the auxiliary police and other forces drawn from the inhabitants of the conquered countries acted under the orders of the invaders and, in particular, the various S.S. units.

Stahlecker reported on the resistance in Kovno, in Latvia, according to his report of 15 October 1941, he had managed, so far, to execute 30,000 Jews. For the time being he set the women to work. Meanwhile he established ghettos in Kovno and Riga, in the most run-down quarters of these towns; and ordered the inmates to wear the badge of shame. He reports on a sum total of 135,567 persons killed.

We shall submit to you the *Einsatzgruppe* reports in our possession. These are blood-curdling and hair-raising documents. One reads these dozens of reports, studies the proceedings of trials which dealt with the same subject, the evidence of witnesses and the few survivors, and at first glance everything seems clear in print; but one asks oneself again and again: "How could it ever have happened?" It is almost impossible to believe that for many months, thousands of people daily, in cold blood, deliberately and of set purpose, murdered multitudes of human beings with their own hands, the numbers rising steadily until they totalled three-quarters of a million. It is difficult to accustom oneself to the idea that such beasts ever walked the face of this earth.

Murder was committed here as a matter of daily routine: after every such blood-bath, the murderers would eat a hearty meal, have a smoke and a chat about this and that, and then they were ready for the next group of victims, who had meanwhile been placed in line. Sometimes, the murderers would know their victims per-



A MATTER OF DAILY ROUTINE

A MATTER OF DAILY ROUTINE

sonally, as, for instance, in the case of the Jews of Memel, who were lined up facing the muzzles of their fellow citizens' rifles. And then one of the victims shouted: "*Gustav, schiess gut!*"— "*Gustav, shoot well!*" This was the last favour he wanted—to die quickly and without needing a second bullet to put him out of his agony.

So the victims arrived, in long columns, Rabbis in their long, velvet coats, young children, babies, old men. They were all brought to the edge of the open grave, shot and buried, and the next in turn laid down on top of them. So, in a routine office report, together with general information on affairs in the occupied areas and the attitude of the local populations, we read of the massacres of 55,000 Jews in White Russia, 54,696 in the Simferopol region, 10,000 in Dnepropetrovsk, some 10,000 in Czernigov, 45,467 in the area of the Central front, 16,964 in the Minsk and Moscow districts, 5,000 in Nicolayev, and many, many more in other cities. Together they combine to create a picture of wholesale slaughter of hundreds of thousands of people along the total length of German-occupied territory in the Soviet Union and annexed areas.

At first, people were murdered in their clothes. Later, as testified by Paul Blobel, a member of Eichmann's unit, the system was changed. The victims were ordered to undress and were left naked. Let us listen to a description of the procedure:

"The people who had got off the trucks—men, women and children of all ages—had to undress upon the order of an S.S. man, who carried a riding or dog whip, and put down their clothing in fixed places, sorted according to shoes, top clothing and under clothing. I saw a heap of shoes of about 800 to 1,000 pairs, great piles of underlinen and clothing. Without screaming or weeping, these people undressed, stood around in family groups, kissed each other, said their farewells and waited for a sign from another S.S. man, who stood near the pit, also with a whip in his hand.

"No complaints or pleas for mercy were heard. A family of about eight persons passes by—a man and a woman, both about fifty, with their children of about one, eight and ten and two grown-up daughters of twenty and twenty-four. An old woman with snow-white hair was holding the one-year child in her arms, singing to it and tickling it. The child was cooing with delight. The couple were looking on with tears in their eyes. The father was holding the hand of the ten-year

CHAPTER VI

old boy and speaking to him softly; the boy was fighting back his tears. The father pointed towards the sky, stroked his head, and seemed to explain something to him. At that moment the S.S. man at the pit shouted something to his comrade. The latter counted off about twenty persons and instructed them to go behind the pit. Among them was the family I mentioned.

"A girl, slim and with black hair, as she passed my by, pointed to herself and said, '23 years' . . . People were closely wedged together and lying on top of each other so that only their heads were visible. All had blood pouring from them. Some of the people shot were still moving. Some were lifting their arms and turning their heads to show that they were still alive. The pit contained about 1,000 people. The executioner was an S.S. man who sat at the narrow opening of the trench, his feet dangling inside. He held a machine gun on his knee and a cigarette in his mouth. The people, completely naked, descended a few steps cut into the clay wall of the trench and placed their heads on the heads of those already lying there as instructed by the S.S. man. They lay before the dead or wounded. A few stroked those who were still alive and spoke to them softly. Then came a volley of shots. In the trench the bodies were twitching on top of the motionless bodies that lay under them. Blood was running from their necks. The next batch was already approaching. They went down into the pit, placed themselves by the earlier victims and were shot."

First, the articles and valuables were taken and plundered, and then—to the open grave. In Kiev, within the space of only two days, 33,771 Jews were massacred. Throughout, the report speaks in clear and simple language of executions and extermination.

The reports were received in Berlin, and Eichmann was able to keep a continuous check on the bloody work in the East, where the number of killings mounted from tens to hundreds of thousands. I have already mentioned Eichmann's visits to Minsk and Lwow, where he saw with his own eyes the operations of the murderers. We have already seen why Eichmann rejected the system of direct murder. The S.S. men themselves began to grumble. Eichmann considered that the methods used turned people into sadists while others said that it was not an elegant way of killing. It was then that the gas vans were delivered, and these were camouflaged in

diverse ways. From the summaries of the exterminations in these districts, covering a period of eight months during 1941-42, we obtain the terrible total of over 720,000 Jews murdered. But even then the tragedy was not yet complete.

I have already spoken of Rosenberg's "Brown File" and the changes introduced by Eichmann into the instructions issued by the Minister for Occupied Territories: the Jewish problem in the Eastern region, so Eichmann determined, would not be solved *after* the war, but during the war, and without delay. He provided Rosenberg with the directives on the treatment of the survivors of the *Einsatzgruppen*-operations. These called for their internment in ghettos, their isolation from all other sections of the population, and the plunder of their property.

In accordance with these directives, ghettos were set up at Riga, Minsk, Kovno, Vilna, Bialystok, and Shavli, among other places. These, too, were only preparatory steps towards speedy extermination while serving temporarily as a means for the exploitation of Jewish labour. But they did not take much trouble with the preparatory stages and in the first weeks of occupation mass shootings of the ghetto residents began. Before the slaughter, they suffered much brutality and harsh treatment. Thousands fled to the forests, where they joined the partisans, took up arms, fought and wrote the glorious chapter of the Jewish partisan in the history of the Holocaust. But not many escaped in this way. Most of the Jews were imprisoned in the ghettos and put to death.

Eichmann was particularly occupied with the Riga and Minsk ghettos. These housed Jews from the Reich who were temporarily put to work until their destruction. As early as October 1941, he spoke of this plan of his to Dr. Wetzel of Rosenberg's Ministry. In December 1941 the Düsseldorf police reported on the transport to Eichmann. Attached was an exact list of the 1,067 deportees, listed according to age, sex, and occupation. You will see the markings made by the transport officer who indicated each group of five with four perpendicular lines and one diagonal.

Later, we once again hear of these deportations in the *Einsatzgruppe A* report, No. 154. The deportees arrived at Riga and Minsk and were herded into the ghettos. These Reich deportees were told that they were being moved for re-settlement, on the lines of the type of agricultural settlement found in Palestine. The report states:

CHAPTER VI

"It was noticed that some of these Jews created for themselves a completely false picture as to their future, regarding themselves, for instance, as pioneers sent to settle the East... In the meantime, the senior S.S. and Police Commander in Riga, Obergruppenführer Jeckeln, fixed the execution by shooting to take place on Sunday 30.11.41. It was to include some 4,000 Jews from the Riga ghetto and some of the Reich deportees."

So it was that the ghettos which had been set up were eventually liquidated; in part as a result of starvation and disease, and in part by direct killings. In the smaller towns, the people were ordered to report with spades. They were then taken outside the town, told to dig graves, then shot in the neck and kicked into the open graves. The Jewish masses lost all hope of being saved, and many sought a quick death to escape further sufferings and beatings. The scene was repeated in every village and town, where mothers and fathers sanctified the Divine Name, asking their children to recite the "Hear, O Israel" and dying together. The labour-camps of Latvia and Estonia were liquidated by killing off all the inmates. The Vilna Jewish community was liquidated by executions in the Ponar Forest close to the city, and in the ghetto itself.

When a barefoot, dishevelled, wounded woman with a bewildered look in her eyes appeared on the Vilna streets and related fearfully in whispers to the doctor who treated her that she had fled from the valley of slaughter at Ponar and that they were literally killing Jews there, she was not believed. Her listeners thought she was out of her mind. They said she was imagining things. Afterwards she sat terrified in the surgery, afraid to return, afraid to reveal her secret publicly, lest the Gestapo send her back once more to Ponar.

Here again the ghastly episodes of selections, work-cards, enticements, deceit and murder, already familiar from the tale of Poland, were repeated. A man would be faced with the choice of obtaining a work-card either for his wife or his mother. He would return home, cursing the day of his wedding, and tell his mother that he no longer had a work-card for her. This meant that she was doomed to immediate death. The mother would bless her son for his choice, present her Yiddish prayer-book to her daughter-in-law, embrace her, and wish her the bliss of being spared to witness the end of the terror.

The same story was repeated in Kovno. The executions in Fort VII began at the end of June 1941, preceded by cruel tortures, and followed by recurrent nightmares of outrage and murder. Women were paraded naked in the streets, while the S.S. thugs carried out searches on their bodies. An order was issued forbidding pregnancy and births. Massive selection parades took place and thousands were sent off for execution. Here, too, we shall hear of unfortunate children torn from their parents and sent to their deaths; of mothers going mad with grief and terror. Jewish mothers began smuggling children past the ghetto fence to hand them over to farmers who hid them on their farms. Not many of the children escaped. While the parents were at work, the S.S. murderers would come, kidnap the children and take them off for execution.

Soon it was the turn of the adults. The liquidation of the Kovno ghetto was implemented, as in other places, with brutal efficiency. The ghetto was liquidated in 1944, when the last survivors were transferred to the fearful concentration camp at Stutthof.

To obtain some insight into the suffering of the Jews of Kovno, consult the book called *Responsa from the Depths*, rulings given by the Rabbis of the day on problems such as the following: What is a Jew to do if he is ordered by the murderers to tear up and desecrate the Holy Scroll of the Law? Is it permissible to wear the clothes of the Jewish dead? Are the survivors of "actions" in which more than 10,000 were killed, entitled to recite the Prayer of Thanksgiving for Deliverance? In the case of a woman whose pregnancy will result in her being murdered, is an abortion permissible to save her life?

Even at the gates of Hell these stiff-necked Jews still clung to their ancestral traditions, but the murderers swiftly caught up with them and their Rabbis and judges.

Here again we shall meet Eichmann handling matters of general and major import, and various matters of detail. He sent Suhr, his representative, to a meeting which decided who should be regarded as a Jew, as far as the Eastern territories were concerned, and to whom the extermination orders should apply. Suhr took an active part in drawing up these instructions. Eichmann dealt with questions concerning foreign nationals in the Eastern territories. It was his Department which issued the instruction applying to all Eastern occupied areas, that *Einsatzgruppe* commanders should "for the time being" exclude foreign nationals of the countries detailed in the in-

struction, from the preliminary general operations against the Jews, the *Allgemeine Judenmassnahmen*. The foreign citizens were only to be interned, and enemy aliens were to be imprisoned separately.

Eichmann also continued to concern himself directly with individual cases. A Jewish woman by the name of Cozzi, married to an Italian Christian, succeeded in calling the attention of the Italian authorities to her fate. The Italians requested that she be released from Riga. Eichmann replied requesting the Italian authorities to cease their interest in the woman. The Foreign Ministry informed Eichmann a second time that the Italian authorities were insistent, and requested that he do what he could to meet the request, even if this would entail her temporary transfer to Bergen-Belsen. The Fascist Party also officially approached the Nazi Party, but Eichmann was adamant. The following was his final reply to his Foreign Ministry: "Pending further instructions, I have ordered that the Jewess Cozzi be further detained at the concentration camp at Riga".

The Court will forgive me if I shorten this chapter and leave it to the documents and the witnesses whom I shall call to depict the atrocities suffered by the Jews of the Soviet Union. I have no words at my command to describe these terrible deeds in full. Let me therefore recite one of the partisan poets, Shmerke Kaczerkinski:

"Quiet, quiet, my son, let us speak softly,
 Here grow the graves
 Which they that hate planted.
 Here are the paths.
 The roads lead to Ponar,
 There is no way back.
 Father has gone, never to return,
 And with him the light.
 Quiet, my son, my treasure.
 Let us not cry in pain.
 In any case, we have wept;
 The enemy does not understand.
 The sea has limits and a shore—
 This, our suffering
 Is limitless,
 Is endless."

CHAPTER VII

THE EXTERMINATION IN NORTHERN, WESTERN, AND SOUTHERN EUROPE

I now turn to what happened in Western Europe.

In these opening remarks, I shall concentrate especially on one part of this story, the tragedy of Dutch Jewry. When the German Army turned westward, in May 1940, it laid low the Netherlands, among other countries. A Reichskommissar was appointed with full legislative and executive authority. In the office of the Security Police Commissioner, we shall find the special department for Jewish Affairs, which later had the same designation as Adolf Eichmann's department—IVB4. Heading this department in Holland were Eichmann's representatives, Zoepf, Rajakowitsch, and others. In Amsterdam, an Emigration Centre was set up, the true purpose of which was to discover the names and addresses of the Jews and to mark them down for the "final solution."

The anti-Jewish campaign began immediately after the occupation, following the pattern already familiar to us from the decisions of 21 September 1939, which constituted the master-plan for the extermination programme everywhere: anti-Jewish legislation depriving the Jews of human and civil rights; identification of Jews by compelling them to wear the badge of shame; theft of Jewish property; and finally—deportation of the Jews for extermination.

The legislative programme was initiated in 1940 with a series of laws parallel to those in occupied France, and which were implemented there in co-operation with Eichmann and his department. We shall submit to you an official report by the Dutch Government on this series of decrees, which began by ousting Jews from economic life; went on to dismiss Jewish officials; and branched out to copying the Nuremberg laws. Free movement and transfer, and attendance at theatres and places of entertainment, were forbidden; the practice of free professions was restricted; special identity cards were issued; Jewish children were expelled from the schools, and every Jew was to wear a badge of shame. Later, Jews were forbidden to use telephones and public means of transportation, or to enter non-Jewish stores; an evening curfew was imposed, and visits to

non-Jewish homes were banned. The use of bicycles, so popular in Holland, was also forbidden to Jews, and they were ordered to give up all bicycles in their possession.

Here too the problem of children of mixed marriages troubled the occupation authorities. In Germany proper, the issue had been raised by the military authorities, tens of thousands of whose soldiers were one-eighth or one-quarter Jews, and had to fight for the Führer and the Fatherland under the shadow of their "unclean" origins. These would go home on leave to a partially Jewish father or mother, after witnessing with their own eyes, or carrying out with their own hands, the slaughter by the *Einsatzgruppen* of the Jews in the East—that is to say, of those people who were being killed for no other crime than that of belonging to the very same group as the father or mother of the German soldier. That was why Hitler himself insisted that care be exercised in dealing with this situation during wartime, and we shall see the series of special instructions relating to it.

One of those in charge of anti-Jewish legislation in Holland prepared a report on his discussions of the problem in Berlin and noted that Eichmann, in those consultations, had expressed extreme opinions—more extreme even than Hitler's—and demanded the inclusion of all children of mixed marriages in the anti-Jewish legislation.

Finally, a solution was found for this too. The accused and his subordinates gave instructions that the children of mixed marriages were to be sterilized, in order to prevent them from having families.

But in Holland for the first time the Nazis encountered resistance on the part of the local non-Jewish population to the abominations they committed against the Jews. After the rounding up of the Jews in Amsterdam, a general strike broke out in the city in February 1941, and it spread to Utrecht, Hilversum and other places. Gas and electricity undertakings were brought to a standstill, and passengers were taken off the trains. Revolt broke out. The Nazis quickly alerted SS and Deathshead units from Germany, the police was reinforced, and orders were given to shoot to kill at crowds. The leaders of the Dutch resistance movement were arrested, some put to death, others imprisoned and taken as hostages. Jewish children of mixed marriages were despatched to concentration camps and tortured to death. The strike was smashed by Nazi might and terror, and the process of extermination continued.

Zoe pf, Eichmann's envoy and subordinate in Holland, reported on 8 June 1942 that the rest of the anti-Jewish legislation too had already been planned and was soon to be published. Things did not go so easily with the introduction of the "Jewish badge". As a demonstration of solidarity with the persecuted, non-Jews in their thousands also began wearing the yellow Star of David, "but we have taken energetic steps to prevent this", Zoe pf reported. At first the Jews, to Zoe pf's surprise, were proud of their badge of shame, but later the fear of what lay ahead became stronger, he wrote. And meanwhile, as it were by the way, the burning of synagogues had been organized in a number of districts.

Along with the implementation of the first stage, i.e. the identification and isolation of the Jews and their segregation from the rest of the population, came the additional steps: their concentration in camps and special neighbourhoods, and the pillage of their property. The machine worked efficiently.

In January 1942, the transfer of Jews to labour camps began, first to the Ellerkom Camp, which soon became notorious for the acts of terror and cruelty performed there, and later also to other camps—Vught, Westerbork, and so forth. A "purge" of the various parts of Holland, and the transport of Jews to camps, was begun. This applied to *all* Jews, men and women, children and infants, difficult cases from mental hospitals, those who had sought refuge in old people's homes or homes for the blind, and even sick people in hospitals awaiting medical treatment. German "thoroughness" was in full evidence.

At first the Germans did not know what to do with the Sefardi Jews of the Spanish and Portuguese community in Holland. Did these belong to the people doomed to destruction, or not? Then Eichmann's office came and resolved their doubts by ruling that these were full Jews in all respects, and subject to extermination with the rest of their brethren.

Holland was the scene of frequent manhunts for Jews, and forced transfers to camps. The Jews began to hide, as in the case of the well-known family of Anne Frank. In November 1943, the accused gave instructions to increase the reward promised to anyone revealing hidden Jews, and a monthly quota was fixed of Jews to be handed over for deportation and extermination.

At that time, the twin phase of "the final solution" was also implemented—the theft of property. This too was the concern of

CHAPTER VII

Zoe pf and Rajakowitsch. In May 1941, the Jews were ordered to register all their moveable property for sale, and later to register all their property and deposit it with a German firm. The Dutch Government report adds these facts: in September-October, 1941, all the public institutions of the Jewish communities were liquidated, and their property was deposited in a specified bank. In May 1942 the Jews were ordered to hand over all their money, gold, jewellery and objects of art.

For purposes of blackmail and theft, the Germans were ready even to permit an occasional Jew to save his life. Eichmann's department issued instructions that, for 100,000 Swiss francs, the emigration of *old* Jews would be permitted. Many such applications were made, but only a few could make all the blackmail payments; only 28 Jews in this category were permitted to emigrate in accordance with this scheme. Zoe pf reported that, as exceptional cases, he had permitted 8 Jews to emigrate in exchange for the transfer of an industrial plant to the Reich, because of its great economic value.

At the same time, a special branch carried out a programme of collecting Jewish moveable property, including furniture, household utensils, and objects of art. We shall submit an official German report about this operation of the Rosenberg HQ (known as "Operation M"), with all the details of the plundered property. There are detailed lists describing the contents of hundreds of crates of kitchen utensils, articles of clothing, mirrors, curtains, lamps, pianos, and libraries—besides priceless objects of art. There is also a list of places to which the loot was sent, such as Berlin, Hamburg, Rostock, Bonn, Linz, Kiel, Hanover, Graetz, Bremen, Lübeck, Düsseldorf, Stuttgart, Ludwigshafen, Königsberg, Munich and many other places. The thieves saw to it that the entire German people, in all parts of the Reich, should profit from the plunder. Altogether 29,436 freight cars were sent, in 735 special trains, laden with the stolen property of Western European Jews.

Now already roofless, homeless and destitute, the Jews were crowded into camps to await their bitter fate. Adolf Eichmann learned "from a top secret source" that a number of people—a mere twenty hapless Jews—had been sent passports and emigration papers. Immediately he ordered a strict inquiry, gave notice that he alone would determine their fate and, in order to prevent the recurrence of "such undesirable occurrences", gave instructions that henceforth contact with the outside world from the camps should

be made more difficult. A Jew would be permitted to send only one postcard per month; the postcard must be written in German and its contents restricted to greetings and information about personal matters. All such mail must be sent to Eichmann's office in Berlin, whence it would be forwarded to its destination.

The problem of the property of foreign nationals had to be solved. Eichmann wrote to the German Foreign Ministry asking for a decision on the property of Jews who were not Dutch nationals, and also of Jews of foreign domicile living in Germany. He suggested a meeting on the question, to be attended by representatives of all the ministries concerned. The principle was there laid down, thenceforth to apply to all the satellite countries, that Nazi Germany "surrendered" her right to receive from foreign countries the property of the German Jews resident in those countries when they were sent to extermination camps, and on the other hand decided not to transfer to foreign countries the property of their Jewish citizens who had been resident in Germany and would be deported therefrom. This rule was established for all the satellite countries in the following terms:

"In order to facilitate the operation already begun, and in order not to endanger the solution of the Jewish problem in Europe, which is being implemented, it is hereby laid down that the negotiations with foreign governments relating thereto shall be conducted *on the basis of the territorial principle.*"

In other words: the property of Jews sent to be exterminated would remain in the country from which they had been despatched, without regard to their citizenship.

This is another example of the fact that the plunder was closely linked with the killing, as two aspects of one and the same operation.

This territorial principle henceforth constituted the guiding principle for the satellite countries and an acceptable bribe for them to deport their Jews, and above all, their Jews of foreign nationality, in order to enable them to confiscate their property. In a number of places, as we shall see, the expulsion of stateless or foreign nationals was begun, and after people there had grown accustomed to the idea of Jews being deported and their property stolen, then as a rule the turn of the local Jewish citizens would come.

Let us return to Holland. Now that the decision about property had been reached, everything was ready for the final steps. The Jews

CHAPTER VII

had been segregated, labelled, assembled, robbed of their property, squeezed dry to the last drop. Now came the phase of their transport to camps in the East, where their bodies would be further exploited by sweat and exhausting labour; their hair would be clipped for various uses, and finally they would be sent to the gas-chambers. After death, their gold teeth would be extracted from their mouths and their wedding rings removed from their fingers—these too were valuable. And when this ghastly work was done, their corpses would be piled into furnaces, and of these human beings only a pile of ashes would remain.

Order was maintained and efficiency prevailed. The transport arrangement "to the East" were made by Eichmann and his department. We shall submit the documents calling meetings in Eichmann's office, the minutes of the meetings he conducted, and the instructions he issued. Officially, in correspondence with the German Foreign Ministry, these were still couched in terms of the "deportation for labour" and "assignment for work in Auschwitz" of 40,000 Jews from occupied France, 40,000 from Holland and 10,000 from Belgium. In this correspondence Eichmann repeatedly emphasized that only people capable of work were involved.

At a later stage I shall discuss the meaning of "deportation to Auschwitz". But let me say immediately that here Eichmann was deceiving his Ministry for Foreign Affairs. In his operation orders to his units he laid down that each transport from France, Belgium and Holland was to include 10 per cent of Jews unfit for work. It is clear that those capable of work were to give of their strength and energy as slave labourers, while the rest would be passed on for immediate extermination.

The deportations from Holland began in the middle of July 1942. After a month and a half of accumulated experience, Eichmann convened his envoys for consultations in Berlin, and each presented a report on his operations. Eichmann demanded that the deportations be completed by the end of the year, fixing July 1943 as the final date. He demanded special efforts during the ensuing months and stated that the railway management would be unable to provide transport during November to January, but undertook to arrange for at least one train a day.

The deportations proceeded apace. At the end of April 1943, Zoepf reported to Eichmann that he had not succeeded in completing his work, and that only 68,300 Jews had been deported so far, leaving

about 71,000. A more vigorous operation was immediately decided upon and Eichmann named the end of 1943 as the ultimate date for its conclusion. He demanded 8,000 deportees during May and 15,000 in June. Detailed instructions were issued on the compulsory sterilization of children of mixed marriages. Eichmann decided on further encouragement for Dutch informers against Jews in hiding, who, in return for information on a large number of Jews, would be relieved of the obligation to report back to prisoner-of-war camps, which had then been imposed on part of the Dutch population in reprisal for intensified underground activities.

In order to avoid possible difficulties on the part of Sweden, the protecting power for Holland, it was decided to enact a special law whereby Dutch Jews, like those of the Reich, would lose their nationality the moment they crossed the State frontier on their tragic journey eastwards.

Zoe pf was enjoined to carry out the orders to the letter and indeed the second half of 1943 was a period of increased activity. The trains rolled eastwards loaded with their human cargo.

Finally, only isolated groups of Jews were left in Holland. These included such people as skilled diamond craftsmen, whose services were required by Germany; their future was left to be decided by Himmler himself. There were also a few Jews employed in collecting metals for the German war industry and some who had fought in the ranks of the German army during the First World War. Altogether, these totalled 870 persons, and they too were imprisoned and deported to Theresienstadt.

Over a thousand Jews were still employed in German armament plants at the Vught Camp. These, too, were eventually deported, and the street searches after those in hiding continued. About 110,000 Jews were deported to extermination camps in Poland; a few were deported to other places, and of all these about 6,000 survived.

This, in brief, is the tale of extermination in one country where Adolf Eichmann operated. The same story will be repeated in all the other countries, with some slightly different nuances in style, with minor adaptations to local conditions—variations on a single theme of atrocity, murder and extermination.

Let us begin with the North. In Norway, there were a handful of Jews, some 1,750 in all. About half fled to Sweden; the remainder were deported to the extermination camps in Poland. The Nor-

CHAPTER VII

wegian underground did what it could to smuggle out Jews. The people resisted the extermination campaign and accordingly brought upon themselves a campaign of bloodstained terror. Here also human rights were abolished; property was looted; identification cards were stamped with the Jewish mark; searches and arrests were instituted; and finally, towards the end of 1942, came the deportations.

The treatment of Jews was in the hands of the Commander of the Security Police (B. D. S.), about whom Eichmann said, "This was my office." He did all he could to frustrate the Swedish Government's efforts to rescue the Jews of Norway. His office wrote to the German Foreign Ministry:

"The Swedish Government, in relation to these Jews, is conducting a transparent naturalization stratagem . . . which should not be agreed to."

In another document, Eichmann complained that the Swedish Government "is attempting to frustrate the efforts adopted against the Jews."

Of the 800 Norwegian Jews deported, 21 survived.

At the time of Denmark's capitulation, about 6,500 Jews were living there. For special reasons, the Germans at first permitted the local authorities to continue to function. They hoped to establish Denmark as a *Musterprotektorat*—a model protectorate. King Christian remained the formal ruler of the State and the Danish Government continued to function. This explains why the anti-Jewish laws were not enacted, nor was the Jewish badge introduced. The King intervened personally on behalf of the Jews of his country.

The Germans themselves were hesitant, and the Foreign Ministry doubted the advisability of imposing the extermination campaign on Denmark. But when it came to the Jews, a man like Eichmann would never retreat. As early as April 1943, he told von Thadden, of the Foreign Ministry: "They will shortly persuade you to change your attitude." And indeed Eichmann won through. An outbreak of strikes and the intensification of the anti-German underground operations provided a convenient opportunity: a state of siege was declared by the occupation authorities; in September 1943, the S.S. angel of death, the senior commander of the Security Police, the B. D. S., appeared in Copenhagen and immediate plans were laid for hunting down the Jews.

We shall submit to you the Danish Government's official report

which describes the activities of the Commander of the Security Police, Dr. Mildner. To make everything sure, Eichmann sent his second in command, Rolf Guenther, to Denmark together with a number of other people from his department. For reasons of its own, the German Army of Occupation was doubtful whether to co-operate in the hunt. The Foreign Ministry then approached Eichmann, as the one having unlimited authority on Jewish questions, and requested him to persuade the Army to recant.

The round-up finally took place during the first two days of October 1943. The barbarians broke into Jewish homes, seized Jews in the streets and brought them in. But then something occurred that stunned the assassins: most of the Jewish homes turned out to be empty. The Danish people, having prior knowledge of the murderous plot, had organized courageously and at great risk, under the very noses of the occupation authorities, an underground rescue operation which became known as "The Miniature Dunkirk". Fishing and excursion boats and any other vessel able to float were mustered at the ports. The Jews were escorted to the coast by scouts, students and other volunteers, put on board and secretly taken to Sweden. In this way, some 6,000 Danish Jews were rescued; only a few hundreds fell into the hands of Eichmann's accomplices.

When it became clear to Eichmann that this small part of his quarry had escaped his grasp, he was beside himself with rage. He had a complaint lodged against the occupation authorities, and shortly afterwards he went to Copenhagen in person to ascertain what had occurred and the reasons for the failure. But it was too late. Thanks to the courage and nobility of its people, most of the Jews of Denmark were saved.

In Belgium, the picture was entirely different. Here, we meet the well-tryed system: anti-Jewish laws from the latter part of 1940; compulsory registration, the wearing of the Jewish badge, curfews, the round-up of Jews in Antwerp, Brussels, Liege and Charleroi and their imprisonment in the Breendonck camp. It was in this camp that whenever any one of them was executed, the Jews were ordered to march before the corpse singing the camp anthem: "Wir werden nie Breendonck vergessen, das Paradies der Juden"—"Never shall we forget Breendonck, the Jewish paradise."

In the Belgium Government's official report on the extermination, this phase was called "*la phase préparatoire*"—"the preparatory

CHAPTER VII

phase." This was followed by what the report called "la phase d'extermination"—"the extermination phase". Here again we witness the looting of property and the deportations, first to collection and concentration camps and then—eastwards. The following is an extract from this official Belgian report on the deportations to the collection camp at Malines:

"When they arrived at Malines and the doors were opened, a terrible sight was revealed. When they opened the doors of each tragic truck, thick fumes and a disgusting odour escaped, and out of the doors, forced open by the pressure from within, there poured—like fish spilling out of a fishing boat, one of whose sides had been removed—a horrible conglomeration of bloated, reddened and bluish bodies, their eyes protruding from their sockets and clothes soaked in sweat and excrement. Nine corpses were removed from the trucks; eighty unconscious people were transferred to the infirmary."

The mass arrests began in July 1942. In August, the deportations to Auschwitz commenced.

Through the various documents we shall submit to you, we shall prove Eichmann's direct responsibility for the extermination of tens of thousands of Belgian Jews. Only a part of the Jewish community of this country survived, thanks to the assistance of the underground, which on one occasion attacked a deportation train and enabled some of the condemned to escape, and to the fact that the Christian population hid a number of Jews. Some of the Jews were saved by fleeing to other countries.

Eichmann sent his assistant Burger to Belgium, and, in accordance with his directives, the first step was the deportation of stateless Jews; at a later stage the scope of the operation was extended to Belgian nationals. Here again we see Eichmann planning, initiating, and pushing aside every obstacle in the path of the extermination.

In France, too, we shall find Department IV B4 operating in accordance with the familiar formula. Here Eichmann operated personally, together with his lieutenants who headed the Jewish Section of the Security Police Headquarters. First came Dannecker, followed by Roethke and finally, Alois Brunner; and the Frenchmen, Pierre Laval and Darnand, who collaborated in their work.



DEPORTATION TO THE EAST

In France we shall see the same path of suffering: the denial of human rights in the series of laws of 27 September 1940; compulsory registration; the marking of business establishments; night curfews and the Jewish badge.. Concurrently, the plunder of property took place in Paris itself. The captured Jews were taken to collection camps: Drancy, Compiègne, Pithiviers, Beaune La Roland, and others. From there they were consigned eastwards—to death. The Vichy authorities also abandoned the Jews to the tender mercies of the Germans; in the first instance, the stateless Jews were taken, followed by foreign nationals, and finally, despite Marshal Petain's opposition, French citizens as well. And here again we shall see the underground, the French Maquis, doing what it can to help people to hide and escape. But German "efficiency" triumphed. Eichmann dealt personally with the deportations from France and his representatives went to Pierre Laval to bargain over the expulsion of the Jews. His stewards forcibly separated children from parents, the mothers holding on to their offspring and begging the butchers to leave them together.

You will hear a description of these dreadful scenes. At the end, no more than 4,000 children between the ages of two and 14 were left. On 21 July 1942, Dannecker recorded the substance of Eichmann's orders with respect to the children in these words:

"He [Eichmann] decided that once it would be possible to renew the transports to the Government-General, children's transports can get under way."

And indeed as early as 14 August 1942, Roethke reported to the accused and informed the Auschwitz Camp Command that the deportations of the children had been started. Listen to a description of how these children arrived at Drancy:

"The children would arrive at the Drancy Camp packed in buses guarded by policemen; they would be put down in the courtyard surrounded by barbed wire guarded by a platoon of French gendarmes. The police and the gendarmes, hard people, not easily moved, could not hide their feelings and abhorrence for the task they were compelled to carry out. On the arrival of the buses, they would begin to remove the children and lead them in groups to the halls, the older ones holding the hands of the smaller children or carrying them in their

CHAPTER VII

arms. They did not weep, the children; they walked terrified, disciplined, miserable, and complied with the orders like a flock of sheep, one helping the other . . .”

Listen how they were deported from Drancy:

“On the day of deportation, they would be wakened at 5 o'clock in the morning. Irritable, half-asleep, most of the children would refuse to get up and go down to the courtyard. The volunteer women would have to urge them, gently, patiently and so tragically, so as to convince the older children that they must obey orders and vacate the halls. On a number of occasions the entreaties did not help; the children cried and refused to leave their mattresses. The gendarmes would then enter the halls, pick up the children in their arms as they screamed with fear, struggling and grasping at each other. The halls were like a mad-house; the scene was too terrible for even the hardest of men to bear.

“In the courtyard, they would call out the names of the children one by one, mark them off in the register, and direct them to the buses. When a bus filled up it would leave the camp with its cargo. Since many of the children remained unidentified and others would not answer to their correct or assumed names, they would include them in the convoy to make up the number.

“Each convoy consisted of about 500 children and 500 adults chosen from the camp prisoners. Within a period of about three weeks, during the second half of August and the first part of September 1943, 4,000 children, thus made into orphans, were transported in this fashion, intermixed with adult strangers.

“Hauptsturmführer Roethke was present at these transports and would inspect personally the parading of the children, the roll-call and the loading into the buses.”

Eichmann thought that France was backward in carrying out the deportations, and a ramified correspondence ensued. In April 1944, Department IV B4 issued an order to arrest all Jews irrespective of nationality. Eichmann ordered that informer money, to be drawn from their property, be paid for information leading to the apprehension of Jews in hiding.

Southern France fell to the Italians. Mussolini was prepared to co-operate with the Nazis in the extermination programme, but a section of the Italian administration was unenthusiastic and thwarted the operations. With respect to the solution of the Jewish Problem in Italy proper, the Nazis decided to call in Himmler himself to conduct the talks with the Duce. In so far as other countries under Italian occupation were concerned, Eichmann and his associates complained bitterly over the "saboteur" Italian administration in Southern France, Greece and Yugoslavia. These complaints were summarized, among other things, in a letter drafted by Eichmann on 25 February 1943, addressed to the Foreign Ministry and signed by the head of the Gestapo, Müller, who also referred to Eichmann as his source in the body of the letter. The letter complained of the Italian authorities' attitude and their constant habit of taking the side of the Jews. This greatly interfered with the "final solution", Müller wrote, and even partially thwarted its implementation, since other countries pointed to this attitude on the part of one of the Axis Powers as an excuse for their hesitation to act against the Jews. Heavy pressure was exerted on the Italian authorities through the Minister for Foreign Affairs, Ribbentrop. All these approaches were prepared by Eichmann, who refused to reconcile himself to the escape of a few tens of thousands of Jews from the dragnet covering Europe.

As a general rule the Italians adopted delaying tactics, and succeeded in saving thousands of Jews from certain death.

When the Italians left Monaco, Eichmann asserted that 15,000 Jews were living within the territory of the Principality, and demanded their incorporation in the scope of the general operation. The German Consulate in Monaco stated that the number of Jews was no more than a thousand, but Eichmann persisted, claiming that he knew, as a result of a personal visit, that the number specified by him was the correct one. Ultimately, even he had to admit that the number of Jews in question was only between 1,000 and 1,500, and his office requested that appropriate steps be taken against them. Apparently the operation was successfully carried through, for in July 1944 the German Consul in Monaco was able to report that there were no more than 40 to 50 Jews left in the Principality.

The same energy, the same care to seal up every rescue loophole, are to be seen in other areas as well. An *Einsatzkommando* operated in Luxemburg and looked after legislation, the looting of property, the introduction of the Jewish badge, territorial concentration, at

Fünfbrunnen, and the deportation of Jews. Eichmann's henchmen, Bosshammer and Dannecker, operated in that part of Italy occupied by the Germans after the fall of Mussolini and Badoglio's surrender. On 16 October 1943, an extensive round-up of Jews in Rome took place and from there the wave of arrests spread to the North of Italy. Thanks to the assistance of the Italians, who hid many Jews at the risk of their own lives, the hunt proved unsuccessful. The Italian clergy also rescued Jews and hid them in monasteries. The Pope himself intervened on behalf of the arrested Roman Jews. Confronted with this attitude on the part of the Italians, the anger of the Germans grew more intense. After the re-establishment by Mussolini of the Fascist Republic in Northern Italy, the Duce continued to maintain an embassy in Berlin. On one occasion this embassy asked the German Foreign Ministry for information on the fate of a certain Jew, Bernardo Taubert, an Italian national and a resident of Lwow. Guenther, Eichmann's deputy, replied to his Foreign Ministry in the following terms:

"We are refraining from fulfilling the request of the Italian Embassy regarding the holding of an investigation to obtain the requested information regarding the whereabouts of the above-mentioned Jew. It would be advisable to recommend to the Italian Embassy that it desist from making such superfluous requests so as to facilitate all necessary concentration on our intensified and general operations. In the fifth year of the War, the German authorities have other and more important duties to carry out than to investigate the fate of a deported Jew. It is to be regretted that the Embassy of the Italian Fascist Republic persists in its former habit of enquiring into Jewish matters."

In the various regions of Yugoslavia, we shall also come across the activities of the accused and his men, which follow the pattern already familiar from other places. Here we find additional manifestations, such as the burning down of synagogues and the extortion of heavy collective fines. The Serbian and Croatian Jews were concentrated in camps, including Jasenovac, where 20,000 Jews were executed. The women and children were concentrated in Stara Gradiska and Djakovo, and many died either from disease or through direct extermination. Jews from Germany, Czechoslovakia and Aus-

tria, en route to Palestine, were captured in Yugoslavia on the Danube. These people, 1,107 in all, were taken by the Germans to the Sabac camp and there exterminated. The Serbian Jews were thus done to death, mostly on Serbian soil, in accordance with Eichmann's personal suggestion to which I have already referred: "Eichmann recommends shooting."

The surviving victims were rescued as a result of partisan operations, in which the Jews took part.

In Croatia, the accused operated through his representative, Abromeit. The Croatian Jews were deported to the extermination camps between March and July 1943—after the Jews had been isolated and anti-Jewish legislation had been passed by the Croatian Government and its Minister of the Interior, Artukowicz. In April of the following year, Department IV B4 complained that the operation in Croatia had still not been completed, and the Foreign Ministry explained in reply that this was due to the large numbers of mixed marriages in the region.

In Slovenia, a part of Yugoslavia, Adolf Eichmann had an additional task: the deportation of the non-Jewish Slovenian population to Serbia and Croatia in order to evacuate the area and "to resolve national problems in accordance with the Führer's decision". We shall submit to you the deportation orders and the 30 reports on the operation carried out against 14,000 Slovenians who were wantonly uprooted from their homes, where their fathers had lived before them, and deported to Serbia and Croatia. The execution of this task too was placed in the hands of the experienced uprooter of populations, Adolf Eichmann. The planning of this deportation involved a quarter of a million people.

The extermination in Slovakia, which had been established as a separate political unit, was conducted in accordance with the general pattern. Here also, the territorial principle on such matters as looting of property was applied. Those deported for extermination were compelled to sign declarations "of voluntary relinquishment" of their property, which was valued at a total of some 7 billion crowns.

Eichmann's representative in this sector was Dieter Wisliceny, and Eichmann also came personally to deal with matters. Slovakian allies were found in Prime Minister Tuka, and Mach, the Minister of the Interior, who were among the first leaders of the satellite countries to co-operate in deporting Jews. After 55,000 Jews had already been deported from Slovakia, an attempt was made to ransom the

lives of those remaining in return for money. Some 20,000 dollars were transferred to Wisliceny, according to his own account, while other sources claim that the amount involved was between 40 and 50 thousand dollars. Slovakian officials also received money. Pressure was exerted through Church circles, and the Slovakian government began to have doubts about continuing the deportations. Ludin, the German Ambassador, reported that owing to the influence of the Church and the corruption of the Slovakian administration, the 35,000 Jews remaining in Slovakia had been issued with documents exempting them from deportation. In the meantime, Wisliceny succeeded in deporting another 3,000 Jews.

Eichmann immediately applied counter-pressure. He commissioned Fritz Fiala, a local German journalist, to write articles in the Slovakian Press describing how he had visited work-camps in the East, and seen "with his own eyes" the good living conditions that the Jews enjoyed there. Strong pressure was also applied by the German Foreign Ministry, and ultimately Wisliceny and, later, Alois Brunner, returned to Bratislava. The round-ups began in September 1944 and once again more than 12,000 Jews were deported, while many more thousands were killed in Slovakia itself.

Eichmann decided to try and extort additional profits from the Slovakian Jews. He demanded of the Slovakian Government a payment of 500 marks "transfer money" for every Jew deported to the work-camps. Here, too, we see Eichmann's hand in everything. Important matters were handled by him personally, through direct contact with Tuka, the Prime Minister, and the Interior Minister, Mach. It was to him that the Foreign Ministry addressed repeated requests to allow Slovakian representatives to visit the "work-camps" to which the Jews were ostensibly being sent. He refused so adamantly, however, that the Foreign Ministry replied that his refusal would endanger the possibility of having more Slovakian Jews deported. The Foreign Ministry explained that Mach, "despite all his good intentions, would be unable, under existing conditions, to overcome the opposition of his Government colleagues to additional deportations to the East". Eichmann retorted that a visit to the Polish camps by the Slovakian representatives was simply impracticable. He requested, however, that the Slovakian politicians be pacified and that it should be explained to them that their concern for the Jews was unfounded. This was written on 7 February 1944, when, of course, the 1942 Slovakian deportees had been dead for a long time.

The life and soul of the rescue organization in this region was Gisi Fleischmann, a noted public worker and a woman of noble heart who endangered her own life on scores of occasions in order to save others. She was eventually deported to Auschwitz by the specific command of Alois Brunner, Eichmann's grim emissary. Kastner appealed to Becher in Budapest to intervene on her behalf, and on Becher's insistence, Eichmann cabled Brunner to refrain from deporting her, immediately following this telegram with another cancelling the first. Thus her fate, too, was sealed. Rabbi Weissmandel, one of the noble leaders of Slovakian Jewry, was also deported to his death but succeeded in escaping from the train en route to Auschwitz.

Operating in Rumania on Eichmann's behalf was Hauptsturmfuehrer Richter. Under his influence and persuasion, anti-Jewish laws were enacted and the looting of property began. Germany relinquished her rights to the property of her Jewish nationals residing in that country. As early as 1941, the Germans began deporting Jews across the Bug to the territory of the Government-General, but the Germans were not yet ready to "absorb" them. As you will see from an official letter to the accused, the 28,000 Jews who were removed to the Government-General were exterminated in keeping with Eichmann's threat. With regard to the remaining Jews, however, the authorities on both sides agreed that they would be temporarily held in concentration camps in Rumania until it would be possible to remove them to the East. I have no doubt that Eichmann later bitterly regretted this agreement, since, when he finally prepared the deportation of the remaining Jews to the extermination camps in the summer of 1942, the Jews had meanwhile succeeded in exerting influence on the Government to prevent their deportation.

The deportation was to have begun on 10 September 1942. All the plans were ready in Eichmann's Office. The German railway administration had made all necessary arrangements, and the accused made direct representations to the Rumanian Government and obtained the consent of the Deputy Prime Minister for a general deportation. On 26 July 1942, Eichmann reported to Himmler that the Rumanian Jews would be deported to Lublin. Those capable of work would be employed, and the rest would be handed over for "special treatment". On the same day, the accused wrote to the Foreign Ministry that *only* those capable of work would be deported from Rumania. When it became apparent that Eichmann was even

leading the German authorities astray and that he was going over the head of the Bucharest Embassy in order to bring about the extermination of the Jews, the German Ambassador in Bucharest, Von Killinger, wrote in an official letter:

"I wish to point out that all our letters to SS-Obersturmbannfuehrer Eichmann passed through the Foreign Ministry so that this Ministry knew what had occurred. It in no way surprises me that Herr Eichmann, naturally, did not deem it necessary to maintain contact on this matter with the Foreign Ministry, because the operational methods of the gentlemen of the S.S. are only too well known to me."

But in the meantime, it became apparent that the Rumanians had changed their minds. Richter tried every means of pressure, recruited the assistance of the Commissar for Jewish Affairs, Lecca, instigated the publication of inflammatory articles in the press on "The Jewish Slaves in Bucharest", contacted the authorities, threatened, but all to no effect. The Rumanians concentrated the Jews in camps, in Transdnistria, where ten of thousands of Jews were killed and died. But the deportations to the extermination camps were circumvented. In the meantime, in 1943, the counter-attack of the Soviet Army began and German pressure was no longer so effective.

Despite all this, Rumanian Jewry was bereaved of tens of thousands of its sons and daughters. We shall prove the stubborn efforts made by the accused to exterminate this community utterly and to foil all attempts to save a part of them through emigration to Palestine. Eichmann suspected the French Commercial Attaché in Bucharest of assisting Jews, and accordingly complained to the Foreign Ministry. He was annoyed by an obituary on a Jewish journalist which had appeared in a Rumanian newspaper, and Richter, his representative, wrote to the Rumanians in 1942, that the publication of a eulogy on a Jew in 1942 "testifies to a lack of an appropriate attitude".

The son of Dr. Fildermann, a leader of Rumanian Jewry, was living in France and maintained contact with his father and with people assisting Jews to escape to other countries. Fildermann Jr. was arrested by Eichmann's men and brought to Berlin for interrogation. The Rumanian Government intervened and requested his release. In answer to this request, Eichmann's department stated that they were not prepared to reveal the whereabouts of Fildermann Jr. to

the Rumanians, and suggested hoodwinking them by informing them that he had already been released and was now in France.

The machinery in Bulgaria operated on the lines of the prepared formula: the enactment of anti-Jewish legislation on the part of the Bulgarian ally, the looting of property, the compulsory wearing of the Jewish badge, and similar measures. Here Eichmann worked through his agent, Theodor Dannecker, who had already gained experience in the extermination of French Jewry. Various sections of the Bulgarian public, including King Boris himself, opposed the extermination. It was thus no mean achievement on Dannecker's part to induce the Bulgarian Commissar for Jewish Affairs, Alexander Belev, to sign an *agreement* with him on 22 February 1943, to deport 20,000 Jews to German-occupied territory in the East. This "agreement" represents Bulgaria's contribution to the tale of atrocity. It was agreed in writing that 20,000 Jews would be deported, irrespective of age or sex, and that the Germans would provide the means of transport, to be paid for by the Bulgarians. Agreement was reached on dates, the locations from which the deportations would be made, and the number of trains and deportees to be included in each operation. The Bulgarian Government undertook to refrain from making further requests for the return of the deported Jews. At first the agreement stated that these measures were to be applied only to Thrace and Macedonia, which had been annexed to Bulgaria from Greece and Yugoslavia. However, as you will see from the document itself, this line was crossed out, though in such a manner as to leave the text legible. The significance of this erasure is explained in Dannecker's report to Eichmann. Bulgaria did not want to throw its Jews to the wolves; it was easier to induce the Bulgarians to hand over "foreign Jews" from recently annexed territories than the Jews of Bulgaria proper. Consequently, in accordance with an official decision, it was originally written into the agreement that the deportations would only affect the newly acquired areas. However, as reported by Dannecker, both sides were aware of the fact that 20,000 Jews were not to be found in these areas and that about 6,000 would still be lacking from the quota, and Commissar Belev undertook to supply these from Bulgaria proper. At least half would come from Sofia, wrote Dannecker, and those to be taken would be "influential Jews . . . that is to say, those whose economic position is sound or who have contacts with official Bulgarian circles."

CHAPTER VII

In answer to Belev's question whether he could prepare additional deportations, Dannecker replied in the affirmative. An attempt to deport Jews from Old Bulgaria was frustrated at the last moment as a result of intercession in Sofia. Consequently, according to the German report, the deportation embraced "no more" than 11,343 Jews, who were transported for extermination to Poland. After the Jews of Thrace and Macedonia had been handed over for extermination, an attempt was made to avoid deporting the others. The Jews were removed to scores of forced labour camps, but the Bulgarian authorities opposed their deportation to Germany. Naturally, from the point of view of the Gestapo this territorial concentration was the normal preparatory phase leading to the final extermination. This was why it was stated in the official report:

"After having expelled the Jews from Sofia we shall, certainly, according to our knowledge of the situation on the spot, be confronted with new problems until we succeed in removing them to the eastern regions. In the meantime, however, the Jewish Question has substantially moved forward in the direction of the transportation to the east. Things are on the move. There is no longer a way back."

But the Bulgarians nevertheless refused to deport additional Jews. Eichmann then contended that the deportation of the Jews to the work camps was nothing but "an excuse to avoid deporting the Jews to the East, which, for Germany, is the desired solution". In spite of the pressure, the Jews were left in the forced labour camps. Conditions were harsh and difficult, and many broke under the strain, but they were not handed over to the Germans. By this time things were moving at the front, and Bulgaria sought a way to extricate herself from her ties with the Axis countries. The Jews who remained were saved.

The Jews of occupied Greece also passed through the valley of the shadow of death, especially the Salonika community, where the majority of Jews in occupied Greece lived. Brutality, arrests, plunder, the loot of property accompanied the German conqueror, in addition to anti-Jewish legislation, the Jewish badge and the establishment of ghettos. Here Eichmann operated through his accomplices Wisliceny, Alois Brunner and Burger, who worked in close association with the Military Governor, Dr. Merten. Once again, we shall witness the

result of their activities: kidnappings for forced labour and the ally which they introduced into the Jewish quarter—typhus. Finally, in March 1943, the death deportations began, in cattle and goods wagons. With all speed and energy, about 54,000 Salonika Jews were removed to the extermination camps. Eichmann issued specific instructions that the sick and the diseased were also to be deported. We shall hear a description of how these Jews went to their deaths, transport after transport, how one of the best organized communities in the world was destroyed.

At the beginning of June 1943, the "transport of intellectuals" was deported from Salonika and in August of the same year the operation was brought to a close. After this, Eichmann continued to deal with Jews of foreign nationality in Salonika and ensured that they were included in the "final solution".

Eichmann also sought to lay his hand on the handful of Jews in the Italian-occupied area and especially in Athens, but the Italians did not co-operate. Wisliceny went to Athens to hunt down the Jews and even succeeded in arresting the Saul family, the head of which was the legal adviser to the Italian Legation in Greece. The Italians threatened to arrest Wisliceny on their territory and Eichmann reacted post haste, threatening to report to Himmler that the Italians had taken it into their heads to arrest a German police officer in the pursuance of his duties. The German Foreign Ministry eventually explained Wisliceny's journey as being occasioned by "special reasons which have no connection with police operations". Eichmann naturally received a report of this explanation, but continued to complain bitterly at the lack of co-operation on the part of the Italians. "We shall only be satisfied if the Italians adopt in their territories the same measures as we are accustomed to adopt in our occupied territories, namely the removal of all Jews to the East."

The Holocaust also swept other communities in Greece. The Jews of Rhodes, some of whom were removed to Auschwitz and some drowned; the Jews of Corfu, Thessaly, Epirus, the Peloponnese and the Greek islands.

Now let us take a look at those areas which the Germans considered as a part of the Greater Reich. The work in the Czech Protectorate was carried out according to the familiar pattern: anti-Jewish laws, the appropriation of property and enclosure in ghettos. Here, too, we shall find a special Nazi invention—it is called Theresien-

CHAPTER VII

stadt. At a meeting of S.S. Commanders on 10 October 1941, in which Eichmann and Heydrich took part, the solution to the Jewish Problem in the Protectorate was discussed. It was stated that, in view of the Czech attitude to Jews, which differed from that current in the territory of the Government-General in Poland, due allowances would have to be made.

According to the minutes, Eichmann suggested that 5,000 Jews be deported from Prague "to Communist prisoner-of-war camps under the command of Nebe and Rasch". These two last-mentioned were then the commanders of the *Einsatzgruppen* which had received orders for the direct extermination of Jews. The meaning of his suggestion was clearly to send 5,000 Jews to immediate death. He did carry out the operation, and we have already met these Jews, doomed to a certain and cruel death, in the Riga and Minsk ghettos.

A substantial part of the remaining Jews were removed to the Theresienstadt Ghetto which was set up by Eichmann, and was under his direct command. Tens of thousands of Jews were concentrated in this camp, which was intended to serve a number of purposes: firstly, to pacify the Jews themselves in away, since Theresienstadt deportees were ostensibly to be granted life by the evil regime. The Jew who sought some consolation was allowed to deceive himself into believing that if he were deported to Theresienstadt he would not be killed. Secondly, here was a kind of official window-dressing to satisfy those who claimed that all the Nazis were capable of doing was to kill. Red Cross representatives and journalists could be brought to Theresienstadt, as could heads of States in the countries from which Jews had been expelled, who feared for their fate. In Theresienstadt Jews could be put on show; it would be a place in which the Jews supposedly lived and worked under their own independent administration and—most important of all—alive. All this was only a means of deception and camouflage since, from the very outset, this camp was meant to be nothing more than a pretence. In the internal decision on its establishment, it was stated that:

"...The Theresienstadt camp is to be placed under the control of the Central Authority for Jewish Emigration. After the Jews are expelled from this temporary collection point (where at all events they will be severely and rapidly decimated) it will be possible to transport all of them to the East and to transform the place into a model German settlement."

It was decided on the spot that Theresienstadt would have no cemetery, only crematoria to burn the bodies. It was also stated that in the event of a shortage of living quarters for the Jews, they should dig holes and tunnels for themselves in the ground.

This became a part of the official policy of the extermination programme. On the one hand, the extermination of millions, and on the other, Theresienstadt, ostensibly under its independent Jewish administration. Naturally, the administration was entirely in the hands of the Eichmann gang. From time to time, punitive measures were showered on the Theresienstadt Jews: executions as a punishment for sending post contrary to the rule, the prohibition of births, the compulsory abortion of women, the prohibition of smoking, etc. The children were housed in an institution within the precincts of the ghetto and were permitted to see their parents once a week. Violators of the ghetto administration's orders were punished by beating.

We shall submit to you the orders of the day of the ghetto administration, and you shall see how Eichmann held his victims under constant terror. It was necessary, however, to obtain the consent of Himmler himself to expel Theresienstadt inmates to Auschwitz or the eastern regions for extermination. Needless to say, this consent was generally given whenever it was asked for. The death-rate in Theresienstadt was appalling, owing to the terrible conditions. Those who were not despatched by this camp—were finished off at Auschwitz. This was, in actual fact, a collection and transit camp for extermination. Those who passed through it were Jews of the Protectorate as well as many foreign nationals—ten of thousands of Jews from Germany, Austria, and other places.

To Eichmann's crimes in the Protectorate should be added the slaughter of the Christian children of Lidice. Lidice was a Czech village which was wiped off the face of the earth in revenge for the attempt on Heydrich's life. About a hundred unfortunate children from this village were removed to the Lodz Ghetto, there to suffer the same fate as the Jews. Krumei, one of Eichmann's assistants, asked him for instructions with regard to the application of "special treatment" to these children. The murder of innocents—this everywhere was Eichmann's business.

So to Austria, where once again we shall meet with the operations so familiar from elsewhere. At first, pressure was maintained to ex-

pedite the forced emigration. Eichmann was even prepared to hand over Herzl's remains in Vienna, providing that these would leave together with at least 8,000 Jews. Afterwards, with the change in the general policy, came the familiar operations: anti-Jewish legislation, looting, deportation to extermination areas, i.e. to the operational areas of the *Einsatzgruppen*, and to Poland. Jewish property was confiscated and transferred to German ownership; the Jews were told that since they had not succeeded in migrating from Germany, the Germans would have to begin removing them to Poland "for labour". The community institutions were ordered to supply lists of deportees. Later on, they would speak simply of "removal" to the Government-General.

The Viennese Jews were transported to their deaths via Theresienstadt, Lodz, Minsk, Riga and other places. Others were consigned directly to the extermination camps in the East.

All these operations were carried through by Eichmann under his direct supervision. All Jewish affairs in Austria were under his control.

In Germany itself, the deportations to Poland had already begun at the beginning of 1940. The Jews of Stettin and Schneidemuehl were deported, it was stated, because of the need to vacate apartments for Germans. Eichmann carried this into effect within the scope of his eviction authority. He deported the Jews from Baden and Pfalz to Vichy France at the end of 1940. Later on, the deportation of Jews from Germany became part of the "final solution".

Those Jews were sent to an immediate death in Minsk and Riga, or despatched for execution later via the Lodz Ghetto.

We shall submit to you the detailed instructions for the deportations to the extermination region in Lublin, issued by Eichmann from the beginning of 1942 to all police units—*Stapostellen*—and to the commanders of the Security Service—S.D.

On 30 May 1942 Eichmann informed the representatives of the communities of Vienna, Prague and Berlin that the Reich, Austria and the Protectorate were to be "cleaned" of Jews. In Berlin, roll calls, known as "Eichmann Roll calls"—*Eichmann Appelle*—took place at which the deportation selections were made.

Once again, we see the direct hand of Adolf Eichmann, planning, executing and tackling all matters, both small and large, relating to the "final solution".

CHAPTER VIII

THE EXTERMINATION OF HUNGARIAN JEWRY

Finally, in 1944, Hungary was the only country within the sphere of influence of the Reich left with a considerable Jewish population. After the annexation of Southern Slovakia, Northern Transylvania and Carpatho-Russia, there were about 800,000 Jews living in Hungary.

Since 1942, when a representative of the German Ministry for Foreign Affairs had demanded of the Hungarian ambassador to fulfil the Führer's wish and take part in the "solution of the Jewish problem", there had been constant Nazi pressure on the Hungarian government to fall in line on the Jewish question. As usual, the promise was made that Jewish property would be turned over to Hungary. The objectives outlined by the Foreign Ministry to its representative in Budapest were to demand that the Hungarians remove the Jews from all influence in cultural and economic life, introduce the Jewish badge, uproot the Jews and deport them to the East.

The Magyars, however, contented themselves in the first place with legislation denying the Jews a number of rights. Prime Minister Kallay did not hide his anti-Semitic feelings, but he did not agree to throw the Jews to the wolves. Replying to a question from a member of the Arrow Cross party in the Hungarian Parliament, Kallay stated in December 1942 that the time was not appropriate for imprisoning the Jews in labour camps and ghettos.

Naturally, Eichmann received from the German Foreign Ministry a report on this development.

Eichmann was already looking forward to the extermination of Hungarian Jewry. When the German Foreign Ministry proposed action against Jews who had taken refuge in Hungary, Eichmann stated that he objected to partial operations. On 25 September 1942 he wrote:

"In my view, it would be necessary for this purpose to set in motion the whole deportation machine... without thereby bringing us closer to the solution of the Jewish question in

Hungary . . . It would be better to wait until Hungary is ready to include her own Jews in the scope of this operation”.

So he waited for his quarry, knowing that it would not escape him.

In the meantime, the Germans' anger grew, and in April 1943 Horthy, Regent of Hungary, was summoned to a meeting at the Klessheim Palace with Hitler and his Foreign Minister, Ribbentrop. According to a minute of this conversation, Ribbentrop declared that there were only two ways: to imprison the Jews in concentration camps, or to exterminate them. Hitler said that the Jews should “be treated like tuberculosis bacilli” and showed his knowledge of history in the following statement:

“People who have not protected themselves against the Jews have been doomed to extinction. One of the most famous examples is the decline of such a great and proud people as the Persians, who now lead a miserable existence as Armenians.”

Horthy was not convinced.

At the end of 1943, Veesenmayer, who was later to be German Ambassador in Budapest, sent a secret report to the Ministry for Foreign Affairs, proposing that Germany should no longer rest content with the fact that independent Hungary was her ally, but should actually occupy the country. One of the declared purposes of the occupation was to harness Hungary to the programme of exterminating the Jews.

This was done. When Horthy was invited a second time to meet Hitler on 17 March 1944, an ultimatum was presented to him, and while he was still debating with himself what to do, the German Army crossed the border and took control of the whole country without resistance. With the entry of the Germans, Eichmann and his special unit moved in. The fate of Hungarian Jewry had been sealed.

Eichmann brought into Hungary his whole troop of accomplices, the entire gang of murderers, who together with him had carried out the extermination programme in the various occupied lands: Krumei, Wisliceny, Dannecker, Abromeit, Hunsche, Novak, Burger, Alois Brunner and others, all those who had already sent millions of Jews to the slaughter, who through their experience throughout Europe knew all the tricks of persuasion and incitement of the local popula-

tion. All of these, who had already proved their efficiency and talent, now swooped down upon Hungarian Jewry. Here there was no time to delay. The Soviet Army had already re-occupied the Ukraine and was advancing on the Carpathian mountains. There was serious ground for the fear that unless the destroyers completed their evil work quickly, they would never be able to do so. The top echelons of IV B4 therefore, after being released from their duties in other countries, where the extermination programme had been completed or was continuing under its own steam, were assembled. Here was a conspicuous sense of urgency, a firm desire to finish the job at all costs, a drive to concentrate all stages of the preparatory work, at times even to skip some of them, to cut procedures short, above all to reach quick results.

The gang had at its disposal all the military might of Nazi Germany and, after Szálasi, a puppet of the Germans, was appointed Prime Minister, the Hungarian civil service. It is doubtful whether the Nazis any longer believed at that time that they could win the war, but they wanted at least to complete the destruction of the Jews. On this front, come what may, they wanted to guarantee themselves a victory.

The arch-exterminator himself was placed at the head of this group: he himself took the field to control the dirty work. Here he appears not only as the wire-puller, directing, planning, stimulating, generally responsible for implementation, but also as an independent executive officer. Himmler had laid down that Eichmann was his plenipotentiary, according to the evidence of Vajda Gabor, the Hungarian Minister of the Interior. His faithful colleague was Endre, the Hungarian Secretary of State for Jewish Affairs.

The lesson of the Warsaw Ghetto revolt had been well learned. Eichmann was determined that this disgraceful episode would never be repeated. Particular attention was devoted to ensuring that it would never occur to the Jews to revolt or attempt to escape, that their property would not disappear. The Nazi aim was to murder and to inherit at one and the same time. The entire familiar programme of oppression was put into action here at one fell swoop—accompanied, as usual, by inducements and the raising of false hopes. Expectations of rescue were raised while the property was being plundered; consideration was shown in trivial matters; and the illusion was spread that no harm would come to those Jews who were ready to work.

But in the meantime all the necessary preparations were being made in the death camps, which had by now in fact ceased operations. Rudolph Hoess was ordered to set Auschwitz in motion again and to make all preparations for intensified extermination, and he went to Budapest to co-ordinate arrangements with Eichmann. Eichmann insisted on an intake of frequent transports, but Hoess contended that he would be unable to handle such large numbers. Finally they compromised; two trains one day and three the next. And indeed Auschwitz had never witnessed a period of such feverish activity as in the summer and autumn of 1944. The gas chambers and furnaces worked day and night. Matters reached such a pitch that bodies were burned in the open field. There were times when more than 10,000 Jews were destroyed in a single day.

The extermination process in Hungary began in earnest on the morrow of the occupation. Already on 20 March 1944 Wisliceny and Krumei, Eichmann's principal aides, convened all the Jewish leaders, and announced the dissolution of the various community institutions and organizations, and the establishment of the Central Jewish Council as the only body recognized by the Germans. At the same meeting, in which a sergeant stood by the German tyrants with a revolver pointed at the 15 Jewish representatives, it was furthermore stated that henceforth all Jewish affairs in Hungary came under the control of the Special Unit of the S.S. The Jews, however were not to worry—so long as they behaved themselves.

Eichmann, chief and commander of the Special Unit, which was called after him *Sondereinsatzkommando Eichmann*, now became the lord of life and death, the absolute master, of Hungarian Jewry.

From that time on, the flood of the all too familiar laws and decrees broke: the prohibition to leave one's place of residence, the prohibition to use transport, the disconnection of telephones, the freezing of bank accounts, house curfews, the closure of shops, registration of all property, and the like. When the community representatives lodged complaints, Eichmann retorted that all orders must be carried out without delay.

At the beginning of April all Hungarian Jews of the age of six and over had to wear the yellow badge. An air raid on Budapest was a pretext to commandeer 500 Jewish apartments, to be turned over, complete with furnishings and equipment, to Hungarians. While the Jewish representatives were seeking to mitigate the decree, the number of apartments demanded was raised to 2,000.

HUNGARY

Jews were hunted on trains and in the streets. Those taken were assembled in camps, the most infamous of which was the Kistarcsa Camp. A round-up of Jews was started in the provincial towns, according to pre-arranged plans. In a number of towns ghettos were set up where conditions were so wretched that they defy description.

To carry out the round-up in Budapest in one sweep was no easy task, as its quarter of a million Jews were scattered throughout the city. It was thus found necessary to operate in stages, the houses in which Jews were ordered to live being marked with a large yellow sign.

Here too, Hungarians and Jews were informed that the Jews were only wanted for work. The Hungarian Government agreed to put 50,000 Jews at the disposal of the Reich for "work in Germany". But the official German correspondence, all in the name of the accused, clearly indicates the true objective—Auschwitz.

The mass deportations began in the middle of May 1944. Reports exist on the different stages of the operations, the details of which were worked out by Eichmann. While negotiations, marked by extortions and promises of rescue, were in progress, a daily average of 12,000 were being deported. Wisliceny contacted Pinchas Freudiger, a leader of the orthodox community, whose grandfather had been the recipient of an Austrian title of nobility and who was consequently addressed as Baron Freudiger. In return for two million dollars Wisliceny offered to rescue Jews and even received a substantial payment on account. Parallel negotiations interspersed with threats of extermination and promises of rescue were in progress between Eichmann, Kasztner and Joel Brand. Kasztner was the representative of the Jewish Rescue Committee and it was Brand who was chosen as the emissary to bring Germany's fantastic offer—"Blood for Goods"—to the Western World. Jews were to be saved in return for trucks, coffee, tea, and soap. The Jews were told that the trucks would not be used on the Western Front. Brand accompanied by Bandi Gross, on Eichmann's orders, was instructed to travel to neutral Turkey to bring the offer to the Jewish bodies.

Another motive on the part of the Germans was revealed in an official report sent by Ambassador Veessenmayer to Ribbentrop, the German Foreign Minister. Ribbentrop, on hearing of the suggested deal over the London radio, requested his Ambassador to forward full details immediately. The latter reported that because of the shortage of certain commodities, Brand had been despatched with an

CHAPTER VIII

offer that in return for these goods "a number of Jews would be allowed to leave for Turkey". According to Ribbentrop's testimony at the Nuremberg Trial, the Foreign Minister promptly intervened to cancel the deal, since it would be beneath German dignity to receive payment in return for stopping the extermination. Kurt Becher, a high-ranking S.S. officer, was delegated by Himmler to conduct these negotiations and his aim was to extort as much as possible from the Hungarian Jewish community. Himmler told Becher that he could promise what he liked: "What we shall carry out, however, is a different matter." In order to facilitate the negotiations Becher obtained Himmler's consent to allow one train containing 1,684 people, to leave. The train was directed to Bergen-Belsen and from there, on two separate occasions, those released were permitted to travel to Switzerland. The Nazis extorted 1,000 dollars from each person travelling on the train.

When explaining the release of the second batch from Bergen-Belsen for Switzerland, Schellenberg, a high-ranking S.S. officer, indicated that Himmler had something quite different in mind in allowing these people to be rescued. Himmler, he said, wanted to ingratiate himself in the eyes of the Western press, as the one who had put a stop to the murders, the redeeming angel with whom it would be proper to establish contact with a view to a cease-fire and armistice. It is known that Himmler did have some such scheme in mind, already despairing of the possibility of victory on the battlefield and believing that Hitler would be unacceptable to the Western Powers as a party to any negotiations. Consequently, Himmler wanted to groom himself for such talks. A few months later, when the end was nigh, he repeated the attempt. But the premature publication of the matter over the London radio naturally thwarted the whole initiative which, among other things, had been conceived as a means to split the Western Allies and the Soviet Union. Becher was interested in extortion, Himmler in a "good name".

But there was one man who disapproved of the whole deal, who carried out Himmler's instructions to send Brand to Istanbul with unconcealed distaste, who strove with all his might to sustain the extermination and murder operations. This man was Adolf Eichmann. He started mass deportations immediately after Joel Brand had set off. He announced that if an immediate affirmative reply was not received from Brand, "the mills of Auschwitz will go on working" and, while pretending that the survivors would be saved

if the deal succeeded, he persisted in his satanic operations of extermination.

The looting of Jewish property continued, as did the arrests. Naturally the Jews tried to escape, particularly to Palestine. Eichmann knew of this and insisted on energetic steps to seal all outlets. "It should be explained to the Hungarian authorities in an unequivocal and clear-cut fashion," he wrote on 24 July 1944, that "migration to Palestine within the scope of this operation will not be approved by the Germans". He complained about the Swedish and Swiss Embassies issuing the Jews papers which enabled them to emigrate from Hungary. The main target of his venom was a young Swedish diplomat, Raoul Wallenberg, an architect by profession and a man of saintly qualities, who had made the rescue of Jews his life's vocation. Wallenberg gathered around him a whole team of workers, issued passports granting the holders rights of residence in Sweden and, at the risk of his diplomatic status and even of his life, instituted rescue operations. He rented and acquired buildings, in which he housed Jews under the protection of the Swedish flag and, at one period, assembled as many as 40,000 Jews. When the "Death March", of which I shall speak later, began, Wallenberg escorted the marchers with trucks laden with food, medical supplies and clothing. He also tried to remove from the march anyone to whom Swedish papers of protection could feasibly be issued. Wallenberg, who may be credited with myriads of survivors, also enrolled the support of other diplomats in Budapest and of the Red Cross.

All this was the work of one bold man, who had the strength to act according to his conscience and belief. His deeds, like those of King Christian of Denmark, again give rise to the sombre thought: how many could have been saved, even in the countries of actual extermination, had there only been some more like him among those who had the power to act, whether openly or in secret.

It is not surprising that Eichmann let loose a flood of anger against this liberator. The Swedish Embassy in Berlin lodged a complaint that Eichmann had told the Red Cross in Budapest he had it in mind to shoot "the Jewish dog" Wallenberg. The Foreign Ministry apologized to the Ambassador, stating that no doubt the words were not meant seriously. In the written exchange it was explained that Eichmann's reaction had to be understood against the background of Wallenberg's "illegal" activities to rescue Hungarian Jewry, and were meant to restrain him from persisting in his efforts.

The deportations were carried out in secret. Nothing was mentioned about them in the newspapers or was broadcast, and the Germans took special measures to avoid publicity, lest the Jews of Budapest should become alarmed. The deportees, on arrival at Auschwitz, were ordered to send soothing postcards to their relatives. The text of the postcards was dictated by the Auschwitz butchers, who instructed that an Austrian resort, "Waldsee", be designated as the place of despatch. The postcards stated that those transported for work were all well; they usually arrived after their senders had been consumed in the Auschwitz furnaces. In response to a Red Cross request that a representative accompany the transport, Eichmann did not object to one being present during the despatch though only after the transport had been prepared by Eichmann, but "the accompaniment of the transport by a representative does not come into consideration".

Meanwhile the German position at the front deteriorated. The advance of the Soviet Army continued. Pressure was put on Horthy from different quarters to stop the deportations, and at the beginning of July he mustered up courage and ordered that they should cease. According to an official report of their Foreign Ministry, the Germans had succeeded, up to the end of June 1944, in sending 437,402 Jews for extermination. Horthy's instructions frustrated the plans prepared for the middle of July 1944 to deport *all the Jews of Budapest on one day* by mobilizing all available manpower, including even municipal workers and postmen. The details of the plan were drawn up with Eichmann. The Germans looked for a convenient excuse for this lighting operation, and the Director of the Foreign Ministry Press Office suggested that explosives "be discovered" in synagogues. Veessenmayer rejected the suggestion on the grounds that the synagogues had for a long time been under the strict supervision of the police and therefore the excuse would not hold water.

In spite of Horthy's order, Eichmann tried to continue the deportations. At the beginning of July he attempted to despatch an extermination transport from the Kistarcsa Camp. The matter became known to the Budapest Jewish leaders. These intervened with Horthy, who ordered that the transport be stopped at the frontier and sent back. When Eichmann saw what had happened his lieutenants convened the whole of the Community Council a second time, ostensibly for discussions, and kept them occupied the whole day with inconsequential matters simply in order to detain them, while his agents

in Kistarcsa loaded 1,200 Jews into a deportation train and sent it on its way. The Jewish leaders, virtually the prisoners of Eichmann's stewards in Schwabenberg, had a presentiment that something was wrong. When evening came and they were released, they heard about the train and hastened to Horthy to countermand the decree again. But it was too late. The train had crossed the Hungarian border and, as has since been ascertained, the community representatives were only released after the receipt of a message from Eichmann's Unit that the train was safely on its way to death.

When Wisliceny afterwards met Freudiger he told him: "Did you really think that Eichmann would allow the old fool Horthy to frustrate his wishes?" This operation too proves Eichmann's satanic initiative. No one at that time demanded that he act; Horthy did not agree to the continuation of the deportations. No one could have pointed an accusing finger at Eichmann had he refrained from action and awaited the results of the diplomatic and military pressures applied by the Germans to Hungary to renew the extermination. But when the extermination of the Jews was at stake, Eichmann acted over and above any instructions.

A letter and a postcard from Jakob Reich, who was in the two Kistarcsa transports, have been persevered. He wrote the letter from the Camp on toilet paper after having been miraculously saved in the first transport, following the appeal of the Jewish leaders to Horthy. On being deported a second time, he wrote the postcard, which it seems he threw from the train and on which was scribbled: "Blessed be the hand that sends this postcard." Such a hand was found, and the postcard was delivered to his wife in Budapest. This is what it said:

"It is Wednesday afternoon . . . They have packed us in and we are travelling. God be with you, my dear family. God be with you. I embrace you and many kisses. Father."

Reich was not privileged to see his family again. His widow will submit to you his letter and postcard.

The German pressure to renew the deportations did not cease. Hitler himself intervened and ordered his Foreign Minister to warn Horthy that Germany would not suffer any delay in measures against the Jews, and that Horthy's attitude would bring catastrophe on the Hungarian people. To frustrate any possibility of the Jews leaving Hungary for neutral countries, Eichmann took steps, reported

by Veessenmayer in the following terms to the Foreign Ministry on 25 July 1944 :

"... It has been agreed with Eichmann that when the renewal of the deportations of the Budapest Jews... becomes possible, these should be carried out with the utmost despatch, so that the Jews who come into question for migration be deported before they have time for any formalities."

Austria, at that time, was in urgent need of workers for fortification work. The German war plan expected heavy defensive battles in this area. At the beginning of June 1944, Blaschke, the Mayor of Vienna, approached his friend, the head of the RSHA, Kaltenbrunner, with the request to assign a number of deportation transports to carry out this fortification work. Kaltenbrunner replied that he had ordered some 12,000 Jews to be sent to Vienna and that they were to be kept in closed camps. The women, children and those incapable of work would be taken for "special treatment", i.e. extermination.

The representatives of Hungarian Jewry, however, were informed by Eichmann and his accomplices that Jews could be saved "by consignment to Austria", in return for ransom money. Anyone paying as demanded would be saved by travelling to Austria. Eichmann said that he would be prepared to "keep on ice"—his own expression—in Austria 30,000 Jews capable of work; the families would live in camps at the expense of the Budapest Jews. In return, he demanded a ransom of 5 million Swiss francs, the equivalent of 200 dollars per head. Some 15,000 Jews were apparently consigned to Austria in this way.

In the autumn of 1944 Horthy attempted to withdraw his country from the war on the side of Germany. But the Germans, who knew of his activities, took control of Budapest by force in Operation "Iron Fist". They arrested Horthy and, on 15 October 1944, put Szálasi, the leader of the Arrow Cross, in power. Now once again were the Jews at the Nazis' mercy. Eichmann, who had left Budapest when the deportations had ceased on Horthy's instructions, returned on 18 October, and the operations against the Jews were renewed with full vigour.

And now, with the infamous operation known as "The Death March", came the finale of Eichmann's campaign of murder. There were no longer any trains available. Himmler had in the meantime

ordered all exterminations to be stopped, but Eichmann found a way to circumvent Himmler's instructions. He organized, with the help of the Hungarian Fascist allies, a march of Jews in the direction of Austria, ostensibly to provide labour for the fortifications, but actually to murder them. Eichmann's calculation was simple: the weak would fall by the way, the sturdy would arrive at their destination to build the fortifications, and would afterwards be destroyed. The 120-mile march began in November in rain, snow and cold. They lodged in the open or in pigsties. Thus were the women, children and old folk deported. Anyone who found the going difficult was shot by the guards, who beat and tormented the victims every step of the way. Those who had no strength left collapsed and died. Hundreds committed suicide or died of the typhus raging among the marchers. Food was allocated once a day—hot water and some bread. People died like flies. The whole route was strewn with corpses. The number of those who fell by the way is estimated at between six and ten thousand. The horrors attained such proportions that even the escorting Hungarian officers and soldiers began to mutiny, and requested to be sent to the front. Even Szálasi's intervention to put an end to the march, had no effect.

And then an astonishing thing occurred. Himmler himself reprimanded Eichmann for organizing this operation, and only then did the dreadful march end. The Soviet Army had by this time surrounded Budapest, and the remnants of the Jewish community in the capital were saved.

CHAPTER IX

THE CAMPS

I have already spoken of the character and quality of the Nazi concentration camp as a medium to consolidate the dictatorship and to terrorize the opponent, so as to break him or to bring him round. There were hundreds of concentration, collection and transit camps in Nazi Germany and the occupied territories. In so far as the Jews were concerned, these all had a single aim; their utter destruction. Even if the Nazis had not introduced methods of direct extermination, it would not have taken long for the inmates of the ghettos and labour-camps to die of starvation, exhaustion and disease. But the "final solution" could not wait. Extermination camps were therefore set up. In the other camps, such as Mauthausen, Bergen-Belsen and Dachau, tens of thousands also perished as a result of the planned maintenance of a way of life which was bound to kill. In these camps too Eichmann had control over all matters pertaining to Jews, and we shall submit evidence to prove it. In these opening remarks, however, I wish only to dwell on those special camps known as extermination camps, which were, from the very start, constructed to implement the "final solution", and in which millions of Jews met their deaths.

In Hitler's book *Mein Kampf* the idea of exterminating Jews by poison gas is already mentioned. He wrote that if 12-15,000 Jews had been poisoned during World War I, a million Germans could have been saved. After the *Einsatzgruppen* murder operations by shooting had been found unsatisfactory, the idea was mooted, as I have already mentioned, to use gases against the Jews. The first experiments were made by Globocnik in Poland. Eichmann, who saw its effectiveness, adopted this process for the implementation of his role in the "final solution". He confirmed this to Dr. Wetzel of the Ministry for Occupied Territories, who presented a written report on the matter. Eichmann personally travelled to Globocnik, to inform him that his experiments would be adopted for use on a general scale in the area under his authority, as well as in other

THE CAMPS

places, and sent him a man called Guenther, together with a poison gas expert. Eichmann made a tour with Rudolph Hoess to select a suitable site for the erection of gas installations at Auschwitz, and also visited the Treblinka and Chelmno extermination camps to examine their effectiveness. He was satisfied with the system, which he considered preferable to shooting. He and his Department dealt with the obtaining of *Blausäure* gas, termed Zyklon B. composed of hydrogen cyanide. This gas was employed in a number of extermination camps. As late as the beginning of 1945, on the threshold of the end of the War, Eichmann was still planning to wipe out all the Jews still alive at Theresienstadt in gas installations to be erected there on his initiative, although by then all the others had ceased to function.

On Eichmann rests the direct responsibility for the operation of these fearful camps set up for the implementation of the "final solution". In a few of them, a last effort was made to extort a work and labour force from the Jews before sending them to their destruction.

The Court will permit me to describe briefly what occurred in these places, all of which were set up by the S.S., the exterminations themselves being conducted by the RSHA.

THE MAIDANEK CAMP, near Lublin, was established in 1941. At first, prisoners of war were detained here, but later Jews began to arrive from Czechoslovakia, France and Greece, and the camp expanded. It contained separate units called "fields". In the spring of 1942 gas extermination installations were constructed, as well as two ovens for burning the bodies. In the summer of the same year Polish Jews began to arrive in large numbers.

In the spring of 1943 a wave of Jewish deportees from Warsaw arrived at Maidanek and immediately the killings were speeded up, reaching a climax in November when, in one day, 18,000 Jews were shot.

Conditions in the camps, even without taking into account the installations for direct execution, were so arranged that the prisoner was bound to perish, whether from hunger, disease or pure physical exhaustion. The food provided was about one-third of the necessary minimum. The clothing left the prisoner exposed to the mercies of the elements; the quarters were draughty huts, each housing 500 people or more, two to a mattress. The work on which the prisoners

CHAPTER IX

were employed until they were killed was in itself a means of extermination, designed to destroy the body. The same purpose was pursued by cruelty and beating during work and the employment of men on completely aimless tasks.

The prisoners' clothes and mattresses were perpetually teeming with lice, bugs and insects. Tuberculosis and typhoid were rampant. At Maidanek, the cure for typhus was execution by shooting.

The sick people would undergo selection: anyone capable of running before the selection committee was spared for the time being. Those who stumbled were removed for immediate killing.

On rainy and stormy days the prisoners were deliberately ordered to eat in the open. During parades, the sick and the dying were instructed to lie in the mud and snow.

Jewish prisoners were brought in their tens of thousands to the gas chambers without even undergoing registration or selection. The women's hair was shorn; gold teeth extracted. Confirmation has since been found that nine crates of gold and valuables were dispatched to the Reich from Maidanek. The death rate in the camp was frightful—some 180 people a day. Children died like flies.

The selection procedure at the Maidanek Camp was as follows: males to the right; females to the left; children and old people to the centre. Mothers who clung to their children were separated by the lash. You will hear the evidence of a woman who obstinately refused to let go of her baby. An S.S. man approached her, smashed the child's head on the ground, and handed the woman the blood-soaked body with the words: "Now take your child". There were cases of babies being torn asunder by the bare hands before the very eyes of the mothers, who went out of their minds in horror.

There was only one place in Maidanek where children were treated kindly: at the entrance to the gas chambers each one was handed a sweet.

To all intents and purposes, the prisoners were at the mercies of all S.S. men in the camp, who could kill or outrage them at will. Every Sunday a "run" was held. Each prisoner had to run and if any of them lost a wooden shoe or stumbled, he was killed on the spot.

According to the most careful estimate of the Polish Government committee, at least 200,000 Jews were destroyed at Maidanek.

THE TREBLINKA CAMP was set up in the Warsaw district in

an isolated region close to a small Polish village. It was in existence during 1942 and 1943. Years after the Germans themselves had destroyed the Camp in November 1943, domestic items, clothing and suitcases were still left scattered about the place. It is still possible to find in the area mounds of sand intermingled with human ashes and bones.

Here camouflage devices were employed, starting with the camp's threshold. A sham railway station was built with sign-boards pointing to the restaurant, changes for other destinations, a waiting room, signals and the like. It was all so arranged that, from the outside, the illusion would be preserved that Treblinka was just another normal camp. But it was difficult to cling to this illusion for any length of time. Waiting at the station were S.S. men and Ukrainian police, who would lash out at the arrivals with whips to make sure they would lose no time in alighting from the coaches.

Dawdlers were shot on the spot.

In the camp itself, a further attempt at camouflage was made. Sick people, invalids, old folk and children would be transferred to a hut marked with the Red Cross and the word *Lazaret*—"Hospital". Inside was a "waiting room", furnished with red upholstered couches, with an exit to another place, where an S.S. man stood; and as a person entered he shot him in the back of the neck so that he fell straight into a pit. All these "arrangements" were made so that the healthy ones destined for the gas chambers could proceed without interruption from the children, the aged and the invalids, and without interference from the "slower" victims. The bodies of those who had died en route in the wagons, or had been killed on arrival at the railway station, were also thrown into the *Lazaret*.

At the station the new arrivals were ordered to hand over all the money and valuables in their possession. The victims' effects were sorted, repaired and sent to Germany. We know of 203 wagon-loads of clothing alone which were sent in this way.

Before the killing, the hair of the women was shorn, and the remaining belongings of the candidates for execution were pillaged. The hair was placed in sacks and sent to Germany. The males were then ordered to undress and chased into the gas chambers to the accompaniment of beatings and blows from rifle butts. Thus they were herded inside naked, with their hands above their heads, so that more people could be squeezed into the chamber. The hatch was then closed, the engine was turned on and the poison gas pumped

in to kill them. When the doors of the chamber were opened and the gas fumes dispersed, the gold teeth were extracted and the bodies flung into pits. Later, installations were constructed to burn the bodies. There is a case of a man who was thrown into the death pit while still alive. He succeeded in escaping, but the farmers of whom he asked shelter returned him to the camp authorities. He was brutally attacked by an S.S. man, Kurt Franz, who finally beat him to death with a stick. This Franz had a big, strong dog, who was trained at the call *Jude*, to pounce on prisoners and bite them.

There was a case of a transport of Jews from Grodno who resisted entering the gas chambers. One of them even threw a grenade at the murderers' Ukrainian assistants. Immediately, deadly fire was opened up and the Jews were chased fully clothed into the extermination chambers. It may be confidently stated that at least 7,550 wagon-loads of Jews arrived at Treblinka, bringing to their deaths at least 750,000 people. It was here that hundreds of thousands of the Jews of Warsaw met their end, together with deportees from Radom, Czesochowa, Kielce and Bialystok, Jews from Germany, Austria, Czechoslovakia, Bulgaria and Greece. Old people from Theresienstadt were also sent to Treblinka for extermination.

Secret preparations for an uprising were made in Treblinka. The ringleader was a physician, Dr. Choronzecki, on whom the Germans found a sum of money intended for the mutineers. The doctor knew what to expect and immediately swallowed poison. The murderers made strenuous efforts to revive him so that they could torture him to death. Franz forced open his mouth with a knife, poured water down his throat and began jumping on his stomach in his jackboots. But Dr. Choronzecki was already dead, and the S.S. butchers only had his corpse on which to vent their wrath.

Plans for the uprising nevertheless proceeded in secret. A number of prisoners joined forces, succeeded somehow in stealing a small amount of ammunition, and on 2 August 1943 attacked the guards, who included S.S. men and Ukrainians. In spite of deadly fire a number of people succeeded in breaking through the wire fence and escaping. One of the mutineers was Rudolf Masaryk, apparently a nephew of the famous Thomas Masaryk, who, out of his love for his Jewish wife, had followed her to the death camp. The mutineers set fire to a number of camp installations, and in their flight to the forests they paused a moment to look back at the great slaughterhouse going up in flames.

THE CAMPS

This incident marked the beginning of the dissolution of the camp, and in November 1943 its operations ceased entirely. The Germans ploughed over the area and settled Ukrainians on the site.

CHELMNO, in German Kulmhof, in the vicinity of Lodz, was from the very outset set up solely as an extermination camp. Here people were not employed in any way or utilized for labour—they were slaughtered immediately. The S.S. commander would tell the new arrivals that they were being taken to work and that before their departure they would have to wash and hand over their garments for disinfection. They were led to a building, in which they undressed. On the walls were prominently placed signs reading: *TO THE DOCTOR, TO THE WASH ROOM*. The Jews would then be ordered to go out naked, or with nothing but a shirt to their backs and board grey vehicles marked *Sonderwagen*, each one of which held 80 to 100 persons. These, they were told, would take them to the "wash place". When the doors were closed, the engine was switched on and the victims killed by fumes of the exhaust. Once the screams had died down the vehicle moved off to the nearby forest where Jewish forced labourers, *Waldkommando*, would remove the bodies. After the teeth had been extracted and the rings removed, they would throw the bodies into pre-prepared pits. The *Waldkommando* worked with their legs in chains. They too were put to death from time to time, and new forced labourers were chosen.

The exterminations at Chelmno began at the end of 1941. A few months later crematoria were built here, too, for the disposal of the bodies. The ashes were removed and after the bones had been ground down, they were buried in pits or thrown into the river.

In April 1943 the extermination camp ceased operating and the furnaces were demolished. But in 1944 it became apparent that the work was not yet completed; the camp was re-established and new furnaces installed. Once again they operated in accordance with the well-worn procedure: death by gas and the burning of the bodies. After several months the work of slaughter was completed. The killers dismantled the camp, obliterated the evidence of their murders and set about executing the forced labourers, now called *Sonderkommando*, who had been engaged in burning the bodies. A few of them resisted, and two succeeded in escaping—two of the only four survivors of this Camp who were left alive to tell the world of its horrors.

CHAPTER IX

According to a conservative estimate, some 340,000 Jews were exterminated at Chelmno. These were mainly from the Lodz area, Posnan and Warsaw, in addition to Jews from Germany, Austria, France, Luxemburg and Holland who had passed through the Lodz ghetto.

Here too, the effects and clothing were looted. On 9 January 1943, the "German People's Winter Aid Campaign" wrote to the German administration of the Lodz ghetto complaining that a part of the clothing sent from Chelmno had not been adequately cleaned, and—Be astonished, O ye heavens at this!—that the "Jewish Badge" had not been removed from one of the coats. Since the garments were intended for German settlers, so the communication stated, such neglect could not be tolerated, as it brought discredit to the "Winter Aid Campaign": *Das Winterhilfswerk damit in Misskredit kommt.*

SOBIBOR was another extermination camp set up at the beginning of 1942 in the Lublin district. Here, as elsewhere, Polish investigators after the liberation uncovered mounds of ashes, bones and human fat. Here, too, there were gas chambers and installations for burning the bodies. You will hear evidence of how the hangmen brutally treated their victims. People who begged for a drink of water were taken to the public lavatories and smeared with faeces. Here, too, you will hear of dogs which were set on people to tear them to pieces, of punishment parades when the unfortunate victims were ordered to pass between rows of S.S. men brandishing whips.

Sobibor was the terminal for large transports and, according to an estimate of the Polish authorities, at least a quarter of a million Jews were exterminated there.

The men and women were stripped naked and led in single file in long rows to the gas chambers. As in other places, the old people and children were shot separately, so as not to get in the way of those marching to the gas chambers. Sobibor was the grave of Jews from Poland, Holland, Czechoslovakia, Austria and France. Here, also, the familiar processes of plundering, of extracting teeth and clipping hair, were repeated.

Sobibor too was the scene of an uprising. In October 1943 a few hundred prisoners escaped to the forests after a number of Jewish workers employed in the camp mutinied, succeeded in getting hold of arms and killed some of the S.S. men. Following the uprising



"NO HARM WILL BEFALL YOU"

THE CAMPS

the camp was dismantled and the buildings demolished, and the Germans planted a wood over the graves of their victims.

At *BELZEC*, on the road between Lublin and Lwow, the extermination camp was set up in the winter of 1941. By the end of February 1942 the huts and installations were ready for operation. The Jews transported to this camp came from Lublin and district and from Eastern and Western Poland. It was here that Galician Jewry was done to death, in addition to many Jews from other countries.

When the trains arrived at Belzec, as at other camps, many of the deportees had died en route from thirst and exhaustion. Each transport comprised 10-60 railway carriages. I should like to quote a description of one such transport from Lwow, consisting of 6,700 people. The S.S. men and the Ukrainian assistants are already waiting at the station :

"The doors of the wagons are opened and, to the lashing of whips, the people are ordered to get out. The instructions are relayed over loudspeakers; everyone is ordered to hand over clothes and belongings—crutches and spectacles as well . . . All valuables and money are handed over at the window marked "Valuables" . . . The women and girls then go to a barber who, with two cuts of his scissors, shears off their hair, which is put in potato sacks . . . After this the march begins. To the right and left there are barbed wire fences, and at the rear scores of Ukrainians with rifles . . . Men, women, girls, children, babies, one-legged people, all of them naked as the day they were born, march together. At the corner, before the entrance to the building, stands a smiling S.S. man who declares in an ingratiating voice: 'No harm will befall you. All you have to do,' he says, 'is to breathe in deeply. This strengthens the lungs; inhaling is necessary as a means of disinfection.' He is asked what will happen to the women and replies that the men will of course have to work at road and housing construction. The women, he says, will not have to work. They may, if they want, help in the kitchen or do housework . . . For a number of men there still flickers a lingering hope, sufficient to make them march without resistance to the death chambers. The majority know with certainty what is to be their fate. The horrible, all-pervading stench reveals the truth. Then they

CHAPTER IX

climb some small steps and behold the reality. Silent mothers hold their babies to their breasts, naked; there are many children of all ages, naked. They hesitate, but nevertheless proceed towards the death chambers, most of them without a word, pushed by those behind, chased by the whips of the S.S. men. A woman of about 40 curses the chief of the murderers, crying that the blood of her children will be on his head. Wirth, an S.S. officer, himself strikes her across the face with five lashes of the whip and she disappears into the gas chamber. Many pray . . . The S.S. men squeeze people into the chambers. 'Fill them up well,' orders Wirth. The naked people stand on each other's feet. About seven to eight hundred people in an area of about a hundred square yards. The doors close. The rest of the transport stands waiting, naked . . . In the winter, too, they stand waiting, naked. But the diesel engine is not functioning . . . 50 minutes pass by; 70 minutes. The people in the death chambers remain standing. Their weeping is heard. S.S. Sturmbannführer Professor Dr. Pfannenstiel, lecturer on hygiene at Marburg University, remarks: 'Just like in a synagogue' . . . Only after two hours and 49 minutes does the diesel finally begin to work. Twenty-five minutes pass by. Many have already died, as can be seen through the small window. Twenty-eight minutes later a few are still alive. After thirty-two minutes all are dead . . . Jewish workers open the doors on the other side . . . The dead, having nowhere to fall, stand like pillars of basalt. Even in death families may be seen standing pressed together, clutching hands. It is only with difficulty that the bodies are separated in order to clear the place for the next load. The blue corpses, covered with sweat and urine . . . , babies and bodies of children, are thrown out. But there is no time! A couple of workers are busy with the mouths of the dead, opening them with iron pegs: "With gold to the left—without gold to the right," is the order. Others search in the private parts of the bodies for gold and diamonds . . . Wirth points to a full preserves tin and exclaims, 'Lift it up, and see how much gold there is' . . ."

That is how it was done at Belzec and elsewhere. At the entrance to the gas chambers were the words: "WASHING AND INHALATION EQUIPMENT".

THE CAMPS

In 1943 the Germans stopped operations at Belzec and here too they began to cover up the tracks of their crime. The bodies were first exhumed and burnt on bonfires. The Jewish survivors of the workers' teams employed in covering the tracks were sent to Sobibor for extermination. The S.S. staff was sent to Yugoslavia to fight the partisans.

At Belzec, the Nazi Moloch consumed more than 600,000 Jewish victims.

And now to the largest and most terrible of the extermination camps—*AUSCHWITZ*, the death factory for millions, which will always be remembered in the annals of humanity as the symbol of horror and infamy.

Auschwitz, in Polish Oświęcim, is a small townlet to the west of Cracow. It is a small place, neglected by nature, an area of swamps and sand dunes, mists and dampness, fever and putrid water. It was here that this camp was established, in the sure knowledge that it would be a slaughter-house. The S.S. guards were told that they must not even rinse their mouths with unboiled water. This enormous concentration camp contained 39 branches, including auxiliary camps (*Nebenlager*), exterior camps (*Aussenlager*), work camps (*Arbeitslager*) and branch camps (*Zweiglager*). At the end of 1941, Auschwitz had a capacity of 18,000 persons; in 1943 there was room for 30,000. According to the first confession of the commander of the camp, Rudolf Hoess, about two and a half million people were exterminated in it, and a further half million died of disease, hunger and torture. Not only Jews were brought here. There were many others, whom the evil regime had resolved to afflict with forced labour and put to death—for instance, thousands of Soviet prisoners of war, gipsies, and opponents of the regime from other countries, amounting in all to many tens of thousands. But the Jews were brought here in their millions.

The Camp and its branch, Birkenau, were surrounded by a high-tension electrified wire fence, over twelve feet high. All who touched it were killed. Along the fence were watch-towers containing S.S. men armed with machine-guns. At night searchlights lighted up the inside of the Camp.

The transports were of various kinds. Sometimes the Jews were taken directly to the giant extermination chambers. At other times they were screened: those capable of work were placed in the slave

CHAPTER IX

camp and others sent to their deaths. The workers were employed in the I.G. Farben factory, or manufactured hand-grenade parts in the Krupp armament works, known here as "Union". They worked in other enterprises as well, in mines, in the fields and in the forests. From those firms to which the workers were consigned for labour, the camp command received six marks a day, but their daily maintenance amounted to no more than 30 pfennigs. Before death, profit was still to be made out of the sweat of Jewish toil. But labour promised life; so people tried to appear healthy, to stand up straight, to swell out a lean breast, to raise their heads, to act as if there were nothing wrong with them. Otherwise, during the selection parade, Dr. Mengele would point his finger to the left, and that meant death. In these screenings, the fate of 500 people was decided in about a quarter of an hour. Anyone classified as incapable of work was removed to a special place and there waited death. If this was postponed for a day or two, the guards did not trouble to feed the unfortunate victims.

In the registration cards of the Jewish prisoners which have been discovered, it was recorded who sent them to Auschwitz: Department IV B4 of the RSHA. And we shall also hear evidence that with respect to the Jews in this camp Eichmann had complete control. The poison gas was delivered by several German firms. Some of the invoices have survived and we shall submit them to the Court. To look at, these invoices are like any other bills for goods sold: Place of delivery: Auschwitz; Goods: 13 cases of Zyklon B, containing 195 kilograms of cyanide gas; Price: 975 marks. A dozen pounds of this material were sufficient to exterminate 1,500 people. Every bill of this kind meant, therefore, the sure death of 42,500 persons.

Eichmann was in Auschwitz and saw what went on there. He directed the operations and gave instructions which transports were to be sent for immediate extermination and which were to be kept for extermination later on; this was generally after the victims had written "soothing" postcards to Theresienstadt and other places. He also dealt with the tremendous plunder which continued right up to the gates of this hell. The pillage attained fantastic proportions. The looted diamonds were sold in Switzerland and, in Eichmann's words, influenced the whole of the Swiss market for precious stones. According to one witness, the looted valuables alone were valued at over a milliard marks. The giant warehouses containing the effects

THE CAMPS

of those sentenced to death were given the name "Canada"—perhaps a corruption of the words *keiner da*—"no one here". Hundreds were employed in them. We shall submit to you a report on the delivery of these effects to Germany. During 47 days between 1 December 1944 and 15 January 1945, 99,922 sets of children's clothing, 192,652 sets of women's clothing and 22,269 sets of men's clothing were despatched. After Auschwitz fell to the Red Army, there were still hundreds of thousands of sets of clothing, tens of thousands of pairs of shoes, enormous piles of shaving brushes, artificial limbs and spectacles. We shall submit pictures to the Court so that you may see it with your own eyes.

The killings in Auschwitz were carried out by every method: shooting, hanging and beating, but mainly in the massive gas chambers. Here once again, we are confronted with the signboards: *Wasch- und Desinfektionsraum*—Washing and Disinfection Room. In each such chamber 2,000 people were herded together for a "shower". The "shower" was a flow of poison gas which the S.S. men introduced with their own hands. The death factory operated unceasingly. The extermination of 2,000 people lasted 25 minutes, after which the bodies were taken to one of the four huge furnaces. When there was no room in the furnaces the bodies were burned in the open.

Here, too, the hair was shorn, the teeth extracted and the rings removed. About 40 people were employed to handle the teeth alone, and day-by-day pounds of gold were melted down, sometimes as much as 26 pounds a day. At first, the victims' ashes were buried in pits, but later they were thrown into the Vistula.

At Auschwitz, medical experiments were made on human beings as if they were guinea pigs. Parts of female sex organs were cut out, or limbs were subjected to X-rays until the unfortunate creatures writhed in pain prior to their death. Men were castrated; experiments were made on the effects of paraffin and petrol injections on human skin, and the effects of chemical substances on mental resistance. Associated with Auschwitz is a collection of skeletons found at Strassburg by Allied soldiers when they entered that city in 1944. We shall prove that, at Eichmann's order, 150 Auschwitz prisoners were "supplied" for death in the Natzweiler Camp in Germany, so that their skeletons might be sent for anthropological research at the S.S. Institute of Race Research (*Ahnenerbe*), which had requested skulls of "Jewish Communist Commissars". The letters have been preserved and we shall submit them to the Court.

CHAPTER IX

The prisoners who were brought to the camp and who were not destined for immediate extermination would go through a quarantine process. Here the first selection of the prisoners was made—by starvation and torture. Sometimes people were held in quarantine for days and weeks. Thousands of people were kept in stables; frequently there was not sufficient room in these stables and people were left in the open—in winter in the snow and mud. At parades the prisoners would be ordered to stand from evening until noon the following day without moving. They had to sing at the command of the “kapos” and to carry out frightful “physical exercises”, crawling, standing and rolling.

In the work-camp, the working-day would begin at 4.30 a.m. To the sound of the camp band the slaves would go out to work and return in the evening, exhausted, wounded and carrying their comrades who had been killed by the guards.

The methods of punishment at Auschwitz would not have shamed the most cruel barbarians in history. Beating on the naked body was a comparatively light punishment. Water was poured into peoples' ears, fingernails were pulled out and prisoners starved until they went out of their minds. In the bunker of those sentenced for punishment by starvation a dead prisoner was found, and bent over him—a second prisoner, also dead, grasping the liver from the corpse of the first. He had died while tearing at the liver of a fellow human being. The Nazi contribution to the European culture of the twentieth century was the reintroduction of cannibalism.

Hunger reigned supreme in Auschwitz. The prisoners received only a third of the minimum human requirement of food; even after their liberation hundreds of survivors died from exhaustion and undernourishment.

The Germans tried to cover up their tracks and even to erase the memory of the hell they had created. The burning of the bodies in the crematoria began in 1942 under an order transmitted by Eichmann to the Auschwitz commander through Standartenführer Blobel. Afterwards, as a prelude to the dismantling of the camp, they changed the names of the places, turned crematoria into air-raid shelters, demolished furnaces, transformed execution sheds into sham clinics, burned documents and books. In the confusion of the demolitions, in early 1945, a hut was burnt down together with all the sick prisoners in it. Some of the installations were blown up. Other prisoners were evacuated in a dreadful route march to the West.

THE CAMPS

The Nazis believed that their crimes would not be revealed, **that** their secret would remain intact. But the secret of these **atrocities** has been laid bare, and we must fulfil the dying injunction of **an** anonymous poetess who wrote, before being put to death in Auschwitz:

“There is no more hope in the white skull
Among the barbed wire, under the ruins,
And our dust is scattered in the dust
Out of the broken jars . . .
Our army will go forth, skullbone and jawbone,
And bone to bone, a merciless line,
We, the hunted, the hunters, will cry out to you:
The murdered demand justice at your hands!”

CHAPTER X

A WORLD THAT HAS VANISHED

On whose head did this venomous orgy of extermination and murder fall?

We shall prove that the Jewish people was bereaved of many millions, certainly close to six million people. But this meant more than the destruction of over a third of the total; it meant the extinction of those Jewish communities which represented the most important element of the nation from the point of view of inspiration and national consciousness, creativity, cultural and spiritual resources, and devotion to the Jewish people and its values. Not without reason did the Nazis believe that should they succeed in wiping out this part of Jewry, they would be victorious in their fight against all Jewry. By the grace of the Divine Providence, refusing to decree the destruction of all Jewry and determined to preserve a remnant of His people outside Europe and the *Yishuv* in Palestine, and thanks to the fact that a few hundred thousand living brands plucked from the flames turned their faces to the homeland, here to rebuild their lives—this murderous design was thwarted.

From the point of view of Europe, a national community was exterminated which had resided there from the second century before the Christian era, and was an integral part of its human landscape. The historian H. A. L. Fisher wrote of this people in the introduction to his *History of Europe*:

“As the sunshine of religious toleration spread through central and western Europe, the Jews were admitted to civic rights. The hospitality of the Christian state was amply repaid in noble contributions to art, science, and literature” (p. 5).

Of the 257 Nobel Prize winners during the first 50 years of this century, 34 were Jews, 12 of whom were expelled by the Nazis. I shall not list here all the outstanding Jews stemming from those countries which suffered the hand of Hitler. It is sufficient to men-

tion great geniuses like Albert Einstein and Sigmund Freud; Fritz Haber, the chemist; Henri Bergson, the philosopher; Paul Ehrlich and Ilya Mechnikow, the biologists; Niels Bohr, the physicist; Otto Warburg and Ernst Boris Chain, the physiologists; thinkers like Martin Buber; jurists like H. Lauterpacht, L. Brandeis and H. Kelsen; writers like Emil Ludwig, Stefan Zweig, Franz Kafka, Franz Werfel, Jacob Wassermann, Max Brod and Lion Feuchtwanger; sculptors and painters like M. Antokolsky, M. Chagall, A. Modigliani and Max Liebermann; Max Reinhardt, the producer; musicians like B. Hubyman and A. Rubinstein, to give some idea of the contribution of European Jewry to European culture in recent years.

The relationships between Jewry and Germany constitute a tragic chapter in human history. Anyone who peruses Simon Bernfeld's *Book of Tears*,¹ which is an account of the martyrdom suffered by the Jewish people, will readily see that Germany was the country where Jews suffered more than in any other place. And yet, how great was the affection and devotion of the Jewish people for Germany! It carried its folk-language, Yiddish, itself patterned on German, to every country of its dispersion, to Poland, Russia and across the oceans. It was in German that Herzl wrote his classics of Zionism, that the proceedings of the Zionist Congresses were held, that standard works on Jewish history and philosophy were written. Jews also settled in other European countries and attained positions of distinction, but nowhere in recent generations did they display the same degree of devotion and enthusiasm as in Germany. Karl Marx and Ferdinand Lassalle created German Socialism, which spread throughout the world, and it was their pupil, Eduard Bernstein, who founded Reform Socialism.

When World War I broke out, the German Jewish community flocked to the colours with patriotic zeal; the aged philosopher, Hermann Cohen, stepped from his rostrum in the university and called for a supreme effort on behalf of Germany. Fritz Haber harnessed himself tirelessly to scientific problems, and by discovering how to extract nitrogen from the air, rendered such signal service to the German war effort. The German Jewish community was proud of every soldier and officer to be decorated. After the defeat, the Jews devoted themselves to the reconstruction of the country. Walter Rathenau, first as Minister of Economic Affairs and later as

¹ *Sefer Ha-Demaot*, 3 vols. (1923-26).

Foreign Minister, achieved much on behalf of Germany. Hugo Preuss, the Jewish Minister of the Interior, prepared the draft of the Weimar Constitution, one of the most progressive constitutions in Europe.

But all this only served to fan the Nazi's wrath. Rathenau was assassinated by nationalist plotters. The Jewish contribution to Germany was represented by the Nazis as a foreign growth, which had to be uprooted—and this became an accepted aim in their campaign of incitement.

In terms of the Jewish people, European Jewry on the eve of the Holocaust was the nation's heart, the source of its vitality. The great majority of its spiritual guides and leaders either dwelt there or were of European origin. Here were to be found the principal religious scholars, the successors of the great Rabbi Elijah of Vilna,¹ in the renowned *Yeshiva* of Volozhin.² It was here, in a suburb of Kovno, that the Slobodka *Yeshiva* was situated, in which the Lithuanian tradition of study was maintained in the spirit of Rabbi Izhaq Elhanan. It was from Europe that the former Chief Rabbi Kook and Rabbi Israel Meir Kahan, known as the "Hafetz Hayyim", came; that the visionaries of the State, the architects of Jewish nationalism, its leaders, thinkers and writers, emerged. This was the Jewry which, in the last generation, gave to the nation Theodor Herzl and Max Nordau, Ahad Ha'am and Leo Pinsker, Ch. N. Bialik, S. Tchernichowsky, Z. Schneour and Shalom Aleichem, Ch. Weizmann, D. Ben Gurion and V. Jabotinsky. It was from here that the daring pioneers—the Halutsim—set forth in their quest for the Promised Land, the members of the first and second Aliyot—waves of immigration—who laid the foundations on which the State of Israel was constructed. From here came the dreamers and the fighters, the moulders of the new Jew's way of life, thought and character, men like A. D. Gordon, Berl Katznelson, Kurt Blumenfeld, Shmaryahu Levin and many others. I have mentioned but a few by name, and I know I have passed in silence over many others who should have been mentioned; and for that I am sure I will be forgiven.

These millions who were destroyed were waiting for their State, but were not privileged to see it. It was in these communities which

¹ The Gaon of Vilna, one of the greatest Talmudical scholars of the eighteenth century—Editor.

² One of the best known of the *Yeshivot* (Talmudical Colleges) of Lithuania, established in 1803—Editor.

were destroyed that the inspired and inspiring Jewish youth movements, imbued with national and social ideals, sprang up in the years between the wars—their members burning with faith, pure of body and heart, for whom Zion was life itself.

Ancient communities were destroyed, of which I shall mention a few, by way of illustration only. There was the illustrious Jewry of Amsterdam, shelter of the Spanish Marranos, where Menashe ben Israel dwelt, where Baruch Spinoza lived and wrote. Gone is the Jewry of Prague, with its magnificent synagogues, which had been in existence since the 10th century, the city of Rabbi Liva ben Bezalel, known affectionately to this day as the "Maharal", and of Rabbi Yehezkiel Landau, author of the *Noda Biyehuda*. The Jewish community of Berlin—the home of Moses Mendelssohn and Israel Hildesheimer—was blotted out.

Catastrophe befell the Jewry of Vienna, with a history going back more than a thousand years, where Theodor Herzl wrote and worked. Gone for ever are the glorious Jewish centres of Poland, headed by the illustrious Warsaw community, the heart of Polish Jewry, steeped in Jewish lore, the city of I. L. Peretz, David Frischmann and Nahum Sokolow. Lwow Jewry has vanished, that great centre of Jewish religious learning and enlightenment, that focus of Jewish education, cradle of leaders and guides, the city of Rabbi David ben Samuel Halevy, author of *Turei Hazahav*, and of S. I. Rappoport. Even its ancient cemetery, itself a glorious record of Jewish history, was uprooted and is no more. The Jewry of Lodz, a city of industry and trade, of Jewish craftsmanship linked with a rich Hebrew culture, was obliterated. All past is Jewish Vilna, known traditionally as the Jerusalem of Lithuania, the home of the Vilna Gaon, replete with learning, wisdom and study, depicted by the poet W. L. Wolfson as "City of spirit and righteousness; steeped in Jewish thought, where all night through quiet prayer and meditation blend". It was from here that the famous edition of the Talmud was printed and distributed to all Jewish communities throughout the world.

The Jewry of Cracow has gone, city of enlightenment and scholarship, bearer of a wonderful tradition and culture, the city of Jews who combined East and West, the city of Rabbi Moses Isserles. The Kovno community is no more; it was here that Rabbi Israel Salanter lived and worked. The Odessa Jewish community was exterminated, the cultural nursery of Bialik, Mendele Mocher Sefarim, and Ahad Ha'am. Alas for the Jewish community of Kiev, which once so

proudly confronted the blood libel in the Beilis trial.¹ Gone is the ancient community of Salonika, where Jews lived for some 2,000 years, the city which gave shelter to the refugees from Spain and Portugal² and in which Jewish scholars and great religious luminaries grew up side by side with Jews strong of muscle and healthy of body, the city of Rabbi Moshe Almosnino and of the Dönmehs.³ Gone for ever is the Jewry of Bratislava, or Pressburg, the zealous guardian of the Law and the commandments, the city of Rabbi Moses Sofer, commonly known as the "Hatam Sofer". Vanished is the community of Budapest, where Jews probably lived even before the Magyars came, a city of renown in Jewish life, birthplace of some of Jewry's greatest luminaries.

The Jewish townlet of eastern and southern Europe, the *shtetel* so lovingly described by Shalom Asch, is destroyed; the home of myriads of Jews, each with its study-centre and lodging house, each a reservoir of scholarship and of love for Israel, where the Jewish spirit was nurtured until the last generation, where the tradition of Jewish family life was preserved in the typical small Jewish homes, which no buffeting could shake, stronghold of Torah and tradition, of yearning for the days of the Messiah—this too is no more.

Gone is an entire civilization, with its characteristic way of life, its atmosphere and its faith.

Landmarks of Jewish history have been engulfed. The heart of the Jewish people has been wounded. Adolf Eichmann knew what he was about: Were he to succeed in destroying *this* Jewry, he would destroy all Jewry. The rest, he hoped, would perish, or be assimilated.

By the grace of the Rock of Israel, who preserved a saving remnant, Adolf Eichmann's evil counsel was brought to nought and the word he spoke did not stand to the end.

¹ A well-known "Blood Libel" trial which took place in 1913, in which the Tsarist Government, in effect, indicted the whole Jewish people. Beilis was ultimately acquitted—Editor.

² After the expulsion of the Jews from the Iberian Peninsula in 1492.

³ Dönmehs—followers of the false messiah Shabbethai Zvi who later adopted Isdam—Editor.

CHAPTER XI

THE CHARGE AND THE EVIDENCE

Adolf Eichmann's guilt lies in the planning, initiation, organization and execution of the crimes specified in the indictment. We shall prove his guilt as planner, initiator, organizer and executor of the crime known as "the final solution of the Jewish problem", his direct part in the implementation of this criminal programme, his role as administrator, director and commander of the operation, as well as the part he played as partner and accomplice in the implementation of the programme by others. He was the pivot of the criminal conspiracy to exterminate the Jewish people, wholly or in part, and he was partner in the crimes committed by the S.S., the S.D., the Gestapo, including the members of the *Einsatzgruppen*, the Security Police commanders, senior S.S. and police officers, their emissaries and branch offices, and all those who were under their command and carried out their instructions in respect of all the acts of murder, plunder, torture and persecution specified in the indictment.

We shall prove that Eichmann performed all these deeds with the intention of destroying the Jewish people.

We shall prove that his deeds were crimes against the Jewish people, crimes against humanity, and war crimes, as specified in the indictment.

We shall also prove the offences he committed against persons of other nationalities.

In support of the charge, we shall produce extensive written and oral evidence. May I say immediately that the central archives of the Gestapo, including the archives of Eichmann's department, are not in our possession and have not as yet come to light; but abundant documentary evidence is to be found in the gigantic archives of the Ministry for Foreign Affairs and other Ministries of the German Reich, in correspondence between the accused and his partners in crime within these ministries, in the offices of the Security Police and other official bureaux, in German cities and in the lands

occupied by the Nazis. Further, there are documents and reports which have been published by governmental institutions for the documentation and investigation of Nazi crimes, e.g., those in Poland, France, Holland, Denmark and Belgium. Much material is available in the records of proceedings of the various courts which tried Nazi war criminals at Nuremberg, in the liberated countries and in Germany Documents have also been preserved by various persons, and many of them are in our hands.

We shall call witnesses who met Eichmann at the time of these acts and others who will describe his actions and crimes as they experienced them in their own persons and will give evidence of what they saw and heard during the period of the Holocaust. The extermination of millions of Jews means the extermination of millions of witnesses, but witnesses still survive who can report what they saw with their own eyes, heard with their own ears and suffered in their own persons.

To the best of our ability, we shall try to demonstrate to this Court in full what Adolf Eichmann did to the Jewish people, but we shall not be able to bring proof as to the fate of each community or the destruction of each Jewish group. This will remain the task of the historian. Accordingly, we shall bring before the Court all the evidence at our disposal on the decisions made to carry out the extermination programme, the methods by which these decisions were carried out, and evidence as to the role and responsibility of the accused therein. We shall also submit historical evidence as to the demography of the Jewish people before the Nazis came to power and the picture of destruction which was unfolded when the smoke of battle lifted at the end of hostilities during the Second World War. We shall also bring proof of the various forms of extermination used and the methods employed by the accused to carry out this programme in every place in which he operated. We shall then show the fate of a number of Jewish communities and, in the light of the extermination decision on the one hand and the fact of the Holocaust on the other, we shall request the Court to conclude that what will have been established in regard to a number of localities occurred also to the whole House of Israel in occupied Europe. It is beyond our power to give a complete description of this terrible disaster in all its depth.

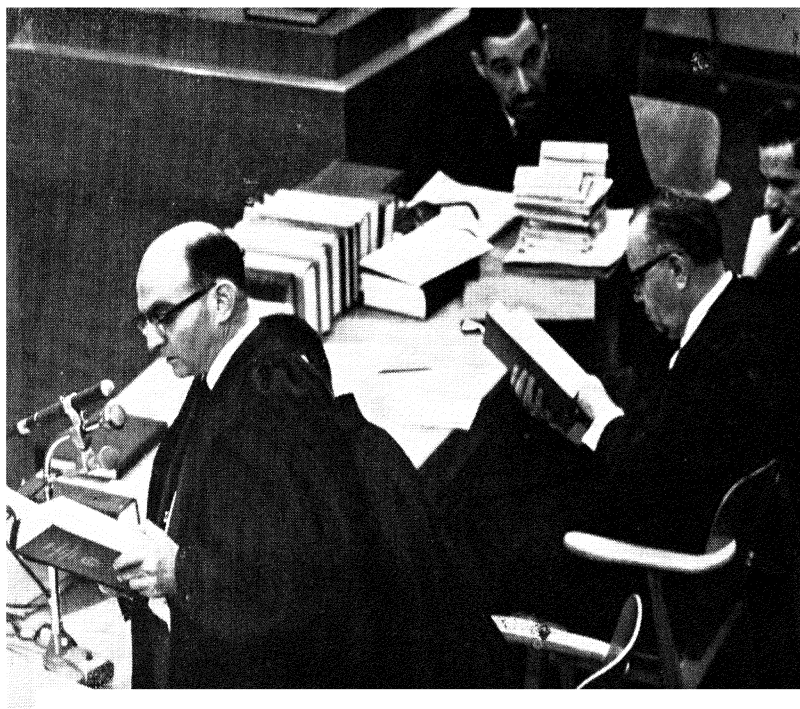
I am afraid that even after submitting all the evidence and material which is in our possession, we shall not be able to do more

THE CHARGE AND EVIDENCE

than give a pale reflection of the enormous human and national tragedy which beset Jewry in this generation.

Adolf Eichmann will enjoy a privilege which he did not accord to even a single one of his victims. He will be able to defend himself before the Court. His fate will be decided according to law and according to the evidence, with the burden of proof resting upon the prosecution.

And the judges of Israel will pronounce true and righteous judgment.



FOR THE PROSECUTION
MR G. HAUSNIR MR J. ROBINSON MR G. BACH MR Y. BAROR

PART II

THE QUESTION OF JURISDICTION

Before pleading to the indictment the Defence raised a series of objections to the jurisdiction of the Court relating to: the question of a fair trial in Israel; the incompatibility of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, with international law, on the grounds that it infringes a principle of non-retroactivity of criminal laws, and is extraterritorial; and the illegality of Eichmann's apprehension and transfer to Israel. Discussion of these objections occupied the first five sessions of the Court, between 11 and 14 April 1961. A deviation from the normal Israeli procedure was permitted to the Defence, which was allowed to present its oral arguments in summary form accompanied by a full written statement of its contentions, whereas the Attorney-General abided by the strict Israeli procedure, which requires all these arguments to be presented orally. Furthermore, by way of exception, the Defence was granted the right to reply, and thus had the last word.

The Court's decision, rejecting the objections, was given at the sixth session on 17 April, after which the accused was asked to plead. Upon his plea of "not guilty" the trial proceeded with the Attorney-General's opening speech.

SESSION No. 1

11 April 1961 — Morning

The President: Are you Adolf, the son of Adolf Karl Eichmann?

The Accused: Yes.

The President: Are you represented in this trial by Dr. Robert Servatius and Mr. Dieter Wechtenbruch?

The Accused: Yes.

The President: You are accused before this Court on an indictment which contains fifteen counts. I will read the indictment and it will be translated for you into German.

(The President read the indictment in full.)

The President: Have you understood the indictment?

The Accused: Yes.

The Defence Objections

Dr. Servatius: May it please the Court, I am asking for permission to present an objection before the accused answers the question whether he is guilty or not.

I have two reservations to make. They relate, first, to apprehension that the Court may have a preconceived idea about the case, and the second to the lack of jurisdiction of the Court.

Fair Trial

I am asking the Court to be so good as to examine whether there are not reasons which would prevent a judge from sitting in this case or whether he himself would not declare himself to have his mind already made up. The exclusion of a judge could be the consequence of a situation in which a judge himself, or a near relative, was hurt by the acts referred to in the indictment. Such a feeling is not improbable. It would flow from the fact that the whole of the Jewish people was embroiled in the Holocaust. It is up to the Court, first and foremost, to examine the question if in this case such circumstances do not exist which require the exclusion of a judge.

Furthermore, it follows from the nature of the substance of this cast that the accused must feel apprehension about the possibility

of bias on the part of the judges. Not prejudice in the true sense of the word is what is decisive; it would be enough, having regard to the fundamental concept of a fair trial, if the accused had justified fear on that account. I myself am not giving vent to such fear on account of the fact that an individual judge may in some previous case have expressed an opinion on the accused. I have not succeeded in reaching any determination regarding any such previous opinions which could give rise to anxiety concerning a judge's impartiality in the present case. This apprehension regarding possible prejudice exists to an equal extent in regard to all of the judges. The reasons flow generally speaking from the very substance of this trial. Fear of this nature may derive from the fact that the general interest of any one of the judges is likely to be affected to a considerable degree, so that he would be unable to find the necessary distance which would enable him to reach his decision without partiality.

Even public expression has been given to fears of this nature. The President of the Supreme Court of Israel, Mr. Justice Olshan, himself gave expression to this in one of his judgments. This is what he says . . .

The President: What is the number of the judgment? Can you please give me the correct citation?

Dr. Servatius: With your permission, I will do so later. I do not have the number of the judgment before me.

This is what he says: "It is not sufficient that counsel, the prosecution and the judges are convinced of the individual impartiality and lack of bias of the judges. If the public should have reasonable grounds for anxiety that bias exists on the part of the judges, that would be sufficient for the judge not to sit in a given case."

In the present case the public is the whole world. The Court itself acknowledged this in its preliminary decision permitting the installation of television apparatus.¹

Important personages in the world at large have also expressed such fears. They suggested to establish a neutral Court, an International Court, or a Mixed Court; that is what should be done.

There is another reason for these apprehensions. This case is not concerned with a simple criminal matter in which it is necessary to decide whether acts were performed because of the criminal instincts of an individual. The subject matter of this case is participation in

¹ See *Jerusalem Post* of 14 March 1961, p. 2 — Editor.

THE QUESTION OF JURISDICTION

events of a political character. They are acts in which the State of Israel and the Jewish people have a political interest. To this has to be added the influence of the political press which has already condemned the accused without hearing. This political aspect which prompts this trial must have decisive influence on the judges. The government has the right to take a partisan position on a matter of concern to its people. The government may be biased. The prosecutor has the right to represent this attitude. But the judges must ask themselves if they are capable of rising above the material of the trial. They must ask themselves if the accused is not entitled to be absolutely free of anxiety with regard to possible bias on the part of the Court. Complete disinterestedness on the part of the judges is the foundation for the later acceptability of the judgment.

No Jurisdiction

My second objection relates to the lack of competence of this Court. I contend that the Court should hold that it is without jurisdiction to examine and decide upon the present indictment. This lack of jurisdiction is a consequence of the following points:

First, the Nazis and Nazi Collaborators (Punishment) Law¹ is contrary to international law;

Secondly, the accused was taken by force and kidnapped and brought before this Court.

The Israeli Law and International Law

The Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, lays down the law regarding persons and acts which took place before the establishment of the State of Israel, outside its borders, against persons who were not residents of the State of Israel.

International law does not recognize the extension of state sovereignty to include the administration of justice in cases such as the present. Neither the territorial principle, nor the principle of protection, nor the personal principle, nor indeed any principle of international law will recognize the legitimacy of conducting legal proceedings against a foreign national such as is being contended for here. The underlying principles of international law in this matter can be expressed very briefly. They are the guarantee for collective international co-existence and they themselves must be pro-

¹ For text, see Appendix I — Editor.

tected. This is not a matter of legalistic refinement, as the case before us will show. The hands of the Defence are, in fact, tied. He does not have the economic ability to bring his witnesses before the Court. Witnesses who themselves are S.S. officers are anyhow afraid for their freedom and for their security if they should appear before this Court.

There is no doubt that as a matter of principle the State of Israel recognizes these fundamental principles of international law. But it seems that they think that special circumstances exist to give it the right to enact exceptional legislation such as the Nazis and Nazi Collaborators (Punishment) Law. This is exceptional legislation like the London Agreement and Statute, which formed the basis for the International Military Tribunal at Nuremberg and its jurisdiction.

In circumstances of emergency there may be room for exceptional legislation. Exceptional legislation may also be just law if it has a just objective, but the exceptional law with which we are concerned has a punitive objective. The object of punishment should be the protection of the State itself and the protection of the citizens of the punishing state. This protection is achieved by restraining the criminal and restraining others who think to do like he does. But the punishment which this law presupposes cannot serve any of these purposes. The notion of revenge is making an appearance.

The State of Israel itself has rejected the idea of revenge. The Minister for Foreign Affairs, Mrs. Golda Meir, did this in a Security Council meeting of 22 June 1960 when she said, "It is not a matter of revenge. In the words of the Hebrew poet laureate, Bialik, 'The devil himself cannot think up a revenge for the murder of one single child.' " ¹

But there is room for the idea of expiation. That can be justified, but that does not need an exceptional law. Expiation can be achieved through the instrumentality of a competent Court. Judicial process is guaranteed in Germany and on the basis of the London Charter judicial process is guaranteed in every country in which the impugned acts took place. True, the Government of the Federal Republic of Germany has not made any application for extradition, but Generalstaatsanwalt (Attorney-General) Bauer of the Land Hesse, and the Defence have already suggested this to the Federal Government.

¹ Security Council, *Official Records*, Fifteenth Year, 866th Meeting, 22 June 1960, para. 37.

If the objective here is expiation, how will the accused expiate his crime? He cannot atone for the death of the great part of a people. He cannot be made to expiate for the tortures afflicted by his State to that people. If what is involved here is moral reparation, let the State which acted through the person of the accused make that reparation. That State was involved in his acts and that State is morally responsible for the consequences. This is a matter of imposing responsibility without guilt, just as the accused here is being tried for responsibility without guilt for events into which he was dragged by his State.

The Federal German Republic has already taken upon itself this moral responsibility. Reparations have been paid for measures taken by the previous organs of the State. Great material help has been extended to the State of Israel in consequence of previous persecutions.

The judgment of the International Military Tribunal at Nuremberg was something different. That related only to the leadership. That judgment was rendered shortly after the end of the War. Those leaders paid the penalty for their leadership and its acts. Here the accused does not belong to that group of leaders and he cannot be punished by the same standards. World public opinion judges blindly and far too quickly, but even responsible publicists do not constitute a Court.

Accordingly the basis of my objection is that the Nazis and Nazi Collaborators (Punishment) Law is itself open to objection. It is *ex post facto* legislation and therefore is not valid. I do not wish to take a too detailed position on this matter which has already been discussed more than enough. I am going to ask the Court to accept this written statement of my legal argument.¹ I have already given a copy of it to my colleague, the Attorney-General.

The President: Do you wish to submit it now?

Mr. Hausner, have you any objection?

Attorney-General: No, I received a copy of it this morning.

The President: Perhaps you have two further copies for the other judges?

Dr. Servatius: I only had a few copies. I can make some more.

The President: Please do so as quickly as possible.

¹ This written statement, though part of the Court Record, has not been published and is therefore not included in this volume — Editor.

Dr. Servatius: Immediately.

The memorandum deals with two points. The first, the right of the state to exercise its jurisdiction, second, the question of *ex post facto* legislation.

The President: Are you now bringing a new objection?

Dr. Servatius: Yes.

The President: We will now recess for a quarter of an hour.

Eichmann's Abduction

Dr. Servatius: As I said, the Court's lack of jurisdiction also derives from a matter of procedure. The kidnapping of the accused and the way he has been brought before this Court cannot constitute a basis for the exercise of jurisdiction. The accused after he had been kidnapped signed a declaration according to which he voluntarily accepts the jurisdiction of the Israeli Court. This is the text of his declaration :

"I, the undersigned, Adolf Eichmann, declare of my own free will that, since my true identity has been discovered, I realize that it is futile for me to attempt to go on evading justice. I state that I am prepared to travel to Israel to stand trial in that country before a competent court. I understand that I shall receive legal aid, and I shall endeavour to give a straightforward account of the facts of my last years of service in Germany so that a true picture of the facts may be passed on to future generations. I make this declaration of my own free will. I have been promised nothing, nor have any threats been made against me. I wish at last to achieve inner peace. As I am unable to remember all the details and may be confused about certain facts, I ask to be granted assistance in my endeavours to establish the truth by being given access to documents and evidence.

Buenos Aires, May 1960

(Signed) Adolf Eichmann"

There is no need for me to take a long time explaining why this declaration of willingness to appear before an Israeli Court was made under pressure. I reserve my right to bring, at the appropriate time, evidence which will prove that that declaration and this letter were signed under pressure and under threats. That being so the declaration is completely worthless. It cannot constitute a basis for the jurisdiction of the Court. A man who had been in hiding for fifteen years

THE QUESTION OF JURISDICTION

in order to avoid being brought before a Court does not suddenly come into the open and ask to be brought before a Court, much less before a Court in that very State where more of his victims live than anywhere else and of whom he has most occasion to feel afraid.

Oh yes, indeed, there are precedents from different countries of the world over the last 150 years which might at first glance convey the impression that judicial process is permissible even though the accused has been kidnapped. But a more careful examination will establish that no reliance can be placed on these precedents. I will not go into details now. I only want to make one point. In cases such as this, the judges usually closed their eyes and ignored the fact that the accused had been kidnapped and took the position that they were only concerned with the judicial process already commenced before them and that the judicial process was legally correct. These Courts have refused to pay attention to previous acts of violence. For Courts which act in this way Heinrich Heine's words are appropriate: "Die Juristen drehen das . . . Stueck so lange hin und her, bis es ihnen . . . gebraten zu sein scheint." Those precedents are of no value and are quite irrelevant to this case because here the whole process of kidnapping was entirely different.

It appears from the political literature which has grown up around the Eichmann case that the accused was kidnapped on the orders of the Government of Israel itself and on its orders was brought to Israel for trial. If that is so, then the Government acted contrary to international law and the Court is prohibited from giving any validity to that action.

In order to prove that the kidnapping of the accused in Argentina was ordered by the supreme authorities of the State, I wish to commence by bringing evidence, and I repeat the suggestion which I have already made in writing. I wish to hear the two witnesses, Mr. Zvi Tohar, Ramat Gan, Yivtah 3, and Mr. Jack Shimoni, Ramat Gan, employee of El Al. His former name was Jack van Couverdon. The first witness, together with others, kidnapped the accused on 22 May 1960 in Buenos Aires . . .

The President: What is the date?

Dr. Servatius: 22 May 1960. He deprived him of his freedom and transferred him to the State of Israel. Correction. The kidnapping took place on 11 May. Witness number 2 was the pilot or the commander of the aircraft belonging to the El Al Company in which the

THE QUESTION OF JURISDICTION

accused was transferred from Buenos Aires to Israel. These witnesses can prove that the kidnapping of the accused, Adolf Eichmann, from Argentina was undertaken following an official instruction from the Government of the State of Israel. This evidence is important for the objection of lack of competence of this Court which I, as defending counsel, am now presenting.

That concludes what I wish to say.

Attorney-General's Reply

Attorney-General: May it please the Court. The question of the apprehension of Adolf Eichmann and his transfer to Israel was the subject of discussion before the supreme executive organ of the organized community of nations, the Security Council of the United Nations. And in its Resolution of 23 June 1960...

The President: Will you please repeat the date?

Attorney-General: 23 June 1960, the Security Council, *inter alia*, decided:

“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...”

I am now submitting a Certificate by a Public Servant containing the full text of that resolution of the Security Council.

The President: I number this exhibit T/1.

Attorney-General: The Security Council did not decide that Eichmann was guilty. The burden of proving his guilt for these odious crimes rests on myself and on my colleagues and I accept this burden. But the Security Council decided that Eichmann should be brought to trial. In fact, Members of the Court, that had been decided long ago, as far back as the judgment of the International Military Tribunal at Nuremberg. Eichmann was not accused before that Court and therefore what that Court had to say is not a finding against him, but his name is twice connected with the persecution and destruction of the Jews. I am not mentioning this as a matter of proof before you. I have already taken upon myself the burden of proving these things. I am simply mentioning this as justification of my argument that the conscience of the world for fifteen years has been demanding that this man be brought to trial. The judgment

THE QUESTION OF JURISDICTION

of the International Military Tribunal states the following at page 252: "Adolf Eichmann, who had been put in charge of this program by Hitler, has estimated that the policy pursued resulted in the killing of 6 million Jews, of which 4 million were killed in the extermination institutions."

A little earlier at page 250, it said: "This 'final solution' meant the extermination of the Jews, which early in 1939 Hitler had threatened would be one of the consequences of an outbreak of war, and a special section in the Gestapo under Adolf Eichmann, as head of Section B4 of the Gestapo, was formed to carry out the policy".¹

Nuremberg, Members of the Court, laid down the indictment. The Security Council repeated it. The family of nations has decided that Adolf Eichmann is answerable for his crimes and today he stands in judgment before you.

No Conflict of Jurisdiction

There is no State which has declared its willingness or readiness to try him and there is no conflict of jurisdiction between the State of Israel and any other State as regards the trial of Adolf Eichmann. Counsel for the Defence mentioned here that he has submitted an application to the Government of the Federal German Republic...

The President: I think, Sir, that it is necessary that you should stop after every few sentences so as to help the interpreters.

Attorney-General: Willingly.

Counsel for the Defence declared here that he has applied to his Government that it should request the extradition of Eichmann and his trial in Germany. In the name of the Government, I inform you that no such request has been received by the Government of Israel and at this moment, when the accused stands before you, no one else is asking to try him except the State of Israel.

The Independence of the Judges

Before I deal with the various arguments raised by Counsel for the Defence, I want to reply very briefly to his first argument which, in fact, aims at the wholesale disqualification of every Jewish judge,

¹ *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 Nov. 1945–1 Oct. 1946. 42 volumes. The citations are from vol. 1.*

not only an Israeli judge, to try any person who is accused of an attempt to destroy his people. The argument runs like this: since you are the victims, since you are the injured ones, perhaps members of your families were injured—for that reason you Jews should not try Adolf Eichmann. Let him be judged by those who were not injured by him; let neutrals judge him.

Perhaps instead of replying to this argument directly I will content myself with a quotation from the well-known article by Prof. A. F. Goodhart, published in the April 1946 issue of the *Juridical Review*. The article is entitled "The Legality of the Nuremberg Trials."

"It has been argued that the Tribunal cannot be regarded as a court in the true sense because, as its members represent the victorious Allied Nations, they must lack that impartiality which is an essential in all judicial procedure. According to this view only a court consisting of neutrals, or, at least, containing some neutral judges, could be considered to be a proper tribunal. As no man can be a judge in his own case, so no allied Tribunal can be a judge in a case in which members of the enemy government or forces are on trial. Attractive as this argument may sound in theory, it ignores the fact that it runs counter to the administration of law in every country. If it were true then no spy could be given a legal trial, because his case is always heard by judges representing the enemy country. Yet no one has ever argued that in such cases it was necessary to call on neutral judges. The prisoner has the right to demand that his judges shall be fair, but not that they shall be neutral. As Lord Wright has pointed out, the same principle is applicable to ordinary criminal law because 'a burglar cannot complain that he is being tried by a jury of honest citizens'.

"There are three grounds on which one can with confidence assert that the Tribunal satisfies the essential elements of fairness. The first is found in the character of its judges. Although the court is described as being 'The International Military Tribunal', its members are not professional soldiers but legal experts who have been trained in the evaluation of evidence. It was at one time suggested that they should be given the rank of Major-General for the purpose of the trials, but it was decided that it was not desirable to disguise their essential

THE QUESTION OF JURISDICTION

legal character. The second reason is that the trials are being conducted in the full glare of world publicity. In such circumstances it would be almost impossible for a tribunal to act in an obviously unfair manner. It is worth remembering that at the Reichstag trials in 1933 even a court composed of subservient Nazi judges was forced to acquit Dimitroff because it had become obvious that he was not guilty. The third reason is that Article 26 of the Charter provides that 'the judgment of the Tribunal as to the guilt or the innocence of any Defendant shall give the reasons on which it is based'. This provision, which is far stricter than the practice followed in the ordinary national courts where a simple verdict of guilty is sufficient, is the strongest guarantee of fairness, because the judges in such circumstances must realize that their judgments will be subject to public scrutiny both now and in the future. The first essential of a legal trial is therefore satisfied by the character of the Nuremberg judges and by the conditions under which they function."¹

That refers to that Tribunal established by the four occupying powers which tried the major war criminals at Nuremberg.

That is what Prof. Goodhart had to say and if he is right there, how much more so is what he said appropriate here. No one can ask you to be neutral towards the crime of genocide and if Counsel for the Defence thinks that there is any man in the world who can be neutral towards that crime, that person would be disqualified as a judge. But it is possible to be just even in face of such a serious crime. A fair trial is possible even when the judges are under the duty of bottling up in their hearts their personal or national distress so as to judge only on the basis of the evidence before them. Members of the Court, I am not asking you to judge on any other basis.

Counsel for the Defence referred to a judgment of our Supreme Court. During the recess I tried to identify which of the two judgments he was referring to because it seems that the passage which he cited was contained in a judgment not by the present Chief Justice but by his predecessor. If I am not mistaken the Defence is referring to Miscellaneous Application 3/50, which was published in *Piskei Din*, vol. 4 (1950), p. 592. In that case, the accused tried to disqualify a judge because on some previous occasion that person

¹ *Juridical Review*, vol. 58 (1946), pp. 1-19.

had behaved improperly before the same judge and he thought that the judge would be inclined against him.

The President: Is that the *Weinberg* case?

Attorney-General: Yes.

The second case which I thought the Counsel for the Defence might be referring to is the case of *Tryfus v. Attorney-General*, Criminal Appeal 152/51, *Piskei Din*, vol. 6 (1952), p. 17. There too our Supreme Court laid down the principle that justice must not only be done but it must be seen to be done, and these matters are well known. That argument related to the disqualification of an individual judge because of a particular action of his.

The President: Mr. Hausner and Dr. Servatius, you will find a judgment on the same question rendered by the Supreme Court a few days ago in the case of *Ulamei Gil v. the Business Tax Appeal Committee in Tel Aviv*.¹ You should look at it.

Attorney-General: Thank you, Sir. I must admit that I have been too busy these last days preparing this case and have not been able to look at other judgments.

At all events, the contentions which have been raised here are not sufficient to disqualify judges on account of their national character, which is what the Defence is arguing. I ask you to reject this contention. If I shall succeed in replying to the other objections against the jurisdiction, and I hope I shall succeed in so doing, there will be nothing to disqualify a Jewish judge, an Israeli judge, from trying the persecutor of his people. On the contrary, we can congratulate ourselves that there is one place in the world in which Jews have sovereignty, law courts, a public prosecution and the ability to bring to trial a man who sinned against them.

As I shall show to the Court, the rule has become established in England and in the United States to the effect that the manner in which the accused is brought within the jurisdiction is not relevant to the question of jurisdiction. An infringement of the sovereignty of a State by an act of arrest or imprisonment within its boundaries and the removal of a man from its territory can be the subject of discussion between States and, indeed, in this case this was a matter of discussion between the State of Israel and the Government of Argentina. But in all the authorities which I shall immediately cite it is established that an accused person cannot base his argument on

¹ Not yet published — Editor.

the infringement of the sovereignty of a foreign State. A claim of that nature belongs to the foreign State itself. As far as concerns the court before which a man is brought on indictment, the question of jurisdiction can arise out of a rule of substantive law of the State in which the trial takes place or out of a matter of procedure. Adolf Eichmann is charged under a valid substantive law, and I will shortly deal with the Defence's objections to the validity of the law, while section 4 of the Criminal Procedure (Trial upon Information) Ordinance¹ establishes the competence of the Jerusalem District Court.

Fair Trial

Having regard to extraneous circumstances, naturally the question can arise whether the accused has been guaranteed the possibility of fair trial. The Court sees before it Defence Counsel who has been appointed by the accused himself. In order to enable the Defence Counsel to appear here this morning, the Knesset had to amend the Advocates Ordinance.² It can safely be presumed that the Court will carefully protect all the other provisions which our legal system bids the Court to observe in order to guarantee a fair trial.

Before analysing the authorities, I want to say a word or two about that letter which Defence Counsel read and which according to him was signed under pressure and by threats. I am not basing my case on this letter and I am certainly not asking you to hold that because of that letter you have jurisdiction. Adolf Eichmann's signature on that letter does not confer on any Israeli Court jurisdiction to try him. I am only surprised why that letter is so invalid for any purpose and yet was sufficiently valid for Dr. Servatius to rely on it on 22 December 1960 when he applied to the Minister of Justice with a request that the State of Israel should bear the expenses of the defence.

The President: I do not understand your argument.

Attorney-General: I do not understand why the letter was read at all. I am not basing the jurisdiction of the Court on that letter. But I do not see how it is possible to say: the letter is invalid as far as concerns Eichmann but it binds you, as the Defence has written.

¹ *Laws of Palestine*, cap. 36. By that provision the Jerusalem District Court has jurisdiction when the criminal act was committed outside Israel.—Editor.

² See the Advocates Ordinance (Amendment No. 3) Law, 5721-1960.

THE QUESTION OF JURISDICTION

The President: That letter is not before us.

Attorney-General: I am ready to submit it. Dr. Servatius' letter to the Minister of Justice states in the relevant paragraph as follows: "I hereby refer to the declaration signed by Adolf Eichmann in May 1960 when he was apprehended in Argentina. In that declaration he expects to receive legal aid and expressed his readiness to come to Israel because of that promise and to stand trial before a competent Court."

On that basis, Dr. Servatius *inter alia* asked the Government of Israel to share in the costs of the Defence, a request which was granted.

The President: Are you submitting that letter? Do you have a Hebrew translation?

Attorney-General: I did not think of submitting it until this morning.

The President: (To the interpreter) Translate it please.

Judge Halevy: Where is the accused's letter of May?

Attorney-General: Here is the original. It was correctly read by the Defence.

The President: I mark as exhibit T/2 the letter dated 22 December 1960 of Counsel for the Defence. Are you also submitting the other letter?

Attorney-General: Judge Halevy asked me to do so and I am doing so.

The President: I mark it T/3.

Judge Halevy: Are you arguing that the letter of May 1960 was signed voluntarily by the accused?

Attorney-General: I am saying, as I will immediately submit, that it makes no difference whether it was signed voluntarily or not. The letter has no value from the point of view of jurisdiction and I would not have mentioned it at all and I had no intention of referring to it had it not been for what we heard earlier this morning on the same matter.

Judge Halevy: In fact, neither of the two letters is relevant.

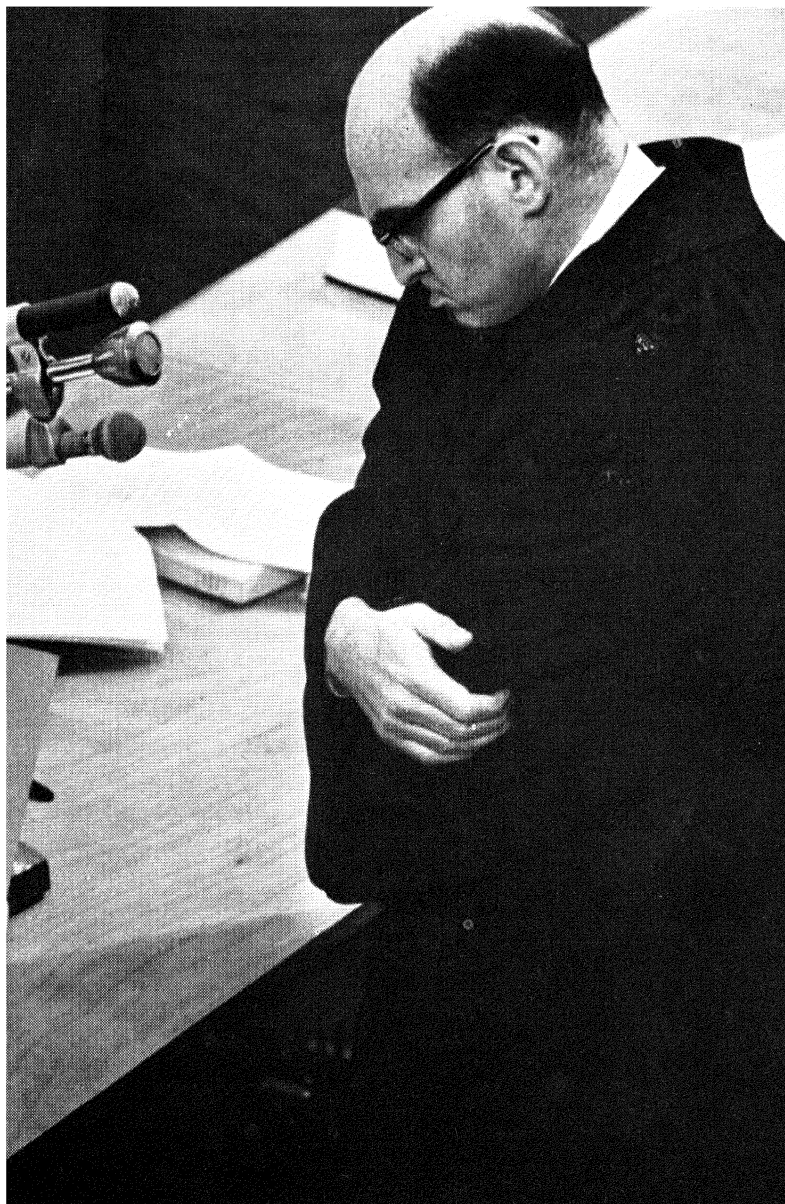
Attorney-General: Neither of them is relevant.

The President: You said that it makes no difference if the declaration was signed...

Attorney-General: Voluntarily or involuntarily.

Dr. Servatius: I ask the Court that exhibit No. T/3...

The President: Exhibit T/2.



THE BURDEN OF PROOF

ATTORNEY GENERAL
MR. GIDEON HAUSNER

Dr. Servatius: Since the Prosecution says that it adds nothing, that it should be declared to be irrelevant.

Attorney-General: I am not relying on that letter, nor on the first one either.

Judge Halevy: May I ask Dr. Servatius if he is relying on his client's letter of May 1960 or perhaps that can be removed from the record?

Dr. Servatius: I am referring to the letter which Adolf Eichmann wrote himself, which is exhibit No. T/3.

The President: I understood before that you were referring to the letter which you yourself wrote, namely exhibit No. T/2. It seems I made a mistake.

Judge Halevy: You asked to have Adolf Eichmann's letter removed from the record. Is that correct? Or are you referring to your own letter to the Minister of Justice, or to both of them?

Dr. Servatius: I am asking only that the letter which I, Counsel for the Defence, wrote to the Minister of Justice be declared to be irrelevant, but not the letter which Eichmann wrote which in my opinion is relevant.

The President: At last it is clear. We are talking about exhibit T/2.

Judge Halevy: Why, Dr. Servatius, do you think that the accused's letter is relevant?

The President: If you have anything further to say on the question of the two letters as it has arisen here, please continue.

Dr. Servatius: In brief, only Adolf Eichmann's letter itself is relevant to the decision of the Court and the Attorney-General's views on its relevancy are of no decisive weight.

Attorney-General: May I continue, Mr. President?

The President: Please.

Attorney-General: I mentioned Dr. Servatius' letter and I submitted it because I object to the double standards. He is not entitled, on the one hand, to attribute, in his words, to the official representatives of the State of Israel an act of coercion in so far as concerns the signing of the letter and, on the other hand, to rely on that very letter when it suits his purpose. Either it is completely invalid or it is completely valid in which case it can be used for every purpose. I only objected to this manner of pleading.

If it please the Court, I now want to continue with my analysis of the authorities.

Dr. Servatius: May I please say something?

The President: The procedure is that if Counsel wishes to make objection he makes his objection and then the other side replies, and only with the special permission of the Court may the initial objector advance further argument. There must be an end to the debate. This time I will allow you to make your comments.

Dr. Servatius: The document contains two different things. The first, the agreement of the man under coercion. The second, a promise by him who had the power in his hand. That promise must be kept.

The President: I understand that your argument is that that part of the letter which contains a promise is admissible and the second part inadmissible. Is that your argument?

Dr. Servatius: Yes, indeed.

The President: Dr. Servatius, I'm sorry, but I must ask you something else. I understood your last remark to refer to the letter of 22 December and not to the accused's declaration. So far as concerns the letter of 22 December, you said that part of it is admissible and part inadmissible. Have I understood you correctly or are you referring to exhibit T/3, the accused's declaration itself?

Dr. Servatius: I think I may not have expressed myself clearly. The letter signed by me, exhibit T/3, is correct in all its parts and no question is being raised about it. I was only replying to the Attorney-General's argument, since my request was based on promises which were contained in Eichmann's letter which I say was dictated to him.

The President (after deliberation): Decision No. 1: we admit letter T/2 as an exhibit without expressing any opinion on its probative value.

I want to explain to you, Dr. Servatius, that in future if you wish to object to the submission of a document, you must make your objection before the document is marked by the Court. Otherwise, you will be out of time.

Dr. Servatius: I understand.

Defence Witnesses

Attorney-General: Before I pass on to an analysis of the authorities, I want to refer to one problem which Counsel for the Defence raised this morning, namely, difficulties placed in the way of the Defence on account of the fact that the trial is being held in Israel. He is arguing that he cannot bring witnesses here, that some of

THE QUESTION OF JURISDICTION

them are afraid for their personal security; and as for others that no one can pay for their journey and expenses here. Already in an earlier consultation with the Defence I said that I would support any request—and only the Court can decide upon it—for the introduction of evidence by affidavit. If Counsel for the Defence knows of persons who are willing to give evidence to help the accused, I will not stand in their way, even though I would be depriving myself of the right to cross-examine them if I agreed. I nevertheless agree to accept such affidavits, of course, after their relevance has been established. **Judge Halevy:** You say you will be willing to accept affidavits of defence witnesses from abroad and forego your right to cross-examine them?

Attorney-General: No, I am not expressing myself so generally. If Counsel for the Defence convinces me that indeed he has some things to say which are relevant to the Defence but he cannot bring his witness to Israel, because he is likely to be charged because of offenses he himself has committed, or on the ground that the Defence does not have the necessary financial means, I shall be ready to discuss each individual case and if I am satisfied that the cause of justice so requires that the evidence should be brought before the Court, I will support any request.

Judge Halevy: But difficulties will still remain in certain cases. How can the Court be satisfied of the credibility of a witness if there is no cross-examination? Generally, so far as concerns witnesses who appear in Court, when one side foregoes its right to cross-examine, that is considered an indication that there is no dispute as regards the evidence. But if that is not the case here, how is the Court to decide which evidence is reliable and which is not reliable?

The President: It is too early to go into that. When the question arises in a concrete case, we will discuss it.

Judge Halevy: At this stage, I see the relevance of the matter in that the Attorney-General is replying to an argument that no fair trial is possible because of the impossibility of bringing certain witnesses from abroad. The reply to the effect that affidavits may be a substitute, creates certain difficulties because it means that there can be no cross-examination of these witnesses, and the Court is likely to be flooded with affidavits.

Attorney-General: I am not afraid of any such flooding. The Court will have enough material after we have finished our case in order to weigh up what is the truth and what is untruth and will itself

be able to separate the wheat from the chaff in the light of other things which I hope will be reliable. But be that as it may, we are discussing a law which has special provisions in the matter of evidence.¹ One of the difficult aspects of this case, as I see it, will be the matters requiring decision from the point of view of the law of evidence. Therefore I am not overworried.

But I am ready to go one step further. One of the arguments of the Defence is that these people are not willing to volunteer to make affidavits and I cannot compel them to make affidavits. But if the trial was being conducted in Germany, I could through the Court compel them to give evidence. On the other hand, I cannot compel them to make an affidavit before a notary or a Consul. If that is the argument, I am ready to declare now that in an appropriate case I will be ready, and after I am satisfied that *prima facie* it would be proper to do so, to operate the arrangement for judicial assistance existing between Israel and the Federal Republic of Germany so that persons who have something to say should appear before a judge in Germany. There they can be examined by the representatives of both sides. There there can be cross-examination. There the veracity of their statements could be tested. And I will request this Court, more accurately I will join a request by the Defence, because he is the interested party, to submit such material as evidence in this trial. I think that in this way I have gone as far as I possibly can to assure the defence that all relevant evidence, if any exists, is brought before this Court.

At the same time, I have not to this very day received from Counsel for the Defence any statement that he is interested in any particular witness who is afraid for his personal security or of the possibility that he might be brought to trial in the State of Israel.

Eichmann's Abduction

And now, if it please the Court, in the time that is left, I will deal with the legal problems arising out of the arrest and transfer of a man from one jurisdiction into another.

My contention is that when a person is charged properly with the commission of an offence and he is held in lawful custody at

¹ See section 15 of the Nazis and Nazi Collaborators (Punishment) Law. For the Court's decisions to date in the matter of evidence, see Appendix II — Editor.

THE QUESTION OF JURISDICTION

the time when he is brought before the Court, which is about to try him, the Court will not go into the circumstances which preceded the bringing of the accused before that Court. In other words, the circumstances of his arrest, of his apprehension, and of his transfer are not relevant to the jurisdiction of the Court. They have no influence on the jurisdiction and since they are completely irrelevant, there is no need to discuss those circumstances or to hear evidence about them.

This rule is established in the common law countries since the case of *Ex parte Scott*, which appears in vol. 109 of the *English Reports*, p. 166. Here are the facts. A bill of indictment in Britain was laid against a woman named Suzanna Scott for perjury. Warrant for her arrest was issued. If it please the Court, I will read the rest of the facts from the judgment itself.

"I appeared by the affidavits that a bill of indictment for perjury had been found against her; and on the 11th of February, Lord Tenterden C. J. granted a warrant for her apprehension, in order that she might appear and plead to the indictment, and Ruthven, a police officer, to whom the warrant was specially directed, apprehended Scott at Brussels; she applied to the English Ambassador there for assistance, but he refused to interfere, and Ruthven conveyed her to Ostend, and thence to England, and on the 9th of April, she was brought before Lord Tenterden, and by him committed to the K.B. prison.

"Brougham and Platt showed cause. A true bill having been found against the prisoner for a misdemeanor, there is no doubt that she is now rightfully in custody for want of bail. And when a party is liable to be detained on a criminal charge, the Court will not inquire into the manner in which the caption was effected."

On the next page, Lord Tenterden said:

"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

THE QUESTION OF JURISDICTION

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."

One hundred and twenty years later the same question arose in Great Britain, in the case of *Rex v. O.C. Depot Battalion, R.A.S.C., Colchester, ex parte Elliott*, (1949), 1, *All England Law Reports*, p.373. This case related to a deserter from the British forces who was arrested by British officers at Antwerp two years after his desertion and he was brought to Great Britain. He was granted an order *nisi* on the basis that he was held in custody unlawfully, having been transferred from Belgium involuntarily and under coercion. I am reading from the judgment of Lord Goddard at p. 376 :

"On the applicants's behalf two points have been taken. It is said that his arrest was illegal because (i) the British authorities had no authority to arrest him in Belgium and he was arrested contrary to Belgian law, and (ii) his arrest was not in compliance with the provisions of s. 154 of the Army Act. 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. If he has been arrested in a foreign country and detained improperly from the time that he was first arrested until the time he lands in this country, he may have a remedy against the persons who arrested and detained him, but that does not entitle him to be discharged, though it may influence the court if they think there was something irregular or improper in the arrest. Once he is before the court, it can hold him to bail until his trial and conviction."

In other words, the question of kidnapping might be of some relevance to the question of release on bail. After referring to *Ex*

THE QUESTION OF JURISDICTION

parte Scott the Court passes on to an analysis of some Scottish decisions and then continues at p. 377 :

“That, again, is a perfectly clear and unambiguous statement of the law administered in Scotland. It shows that the law of both countries is exactly the same on this point and that 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.”

During the Mandate the Supreme Court of Palestine in Criminal Appeal No. 14 of 1942, *Afouneh v. Attorney-General, Law Reports of Palestine*, vol. 9 (1942), p. 63, adopted the same rule. In that case it was established that a man, suspected of having committed a murder, who fled to Syria, had been arrested in Damascus by a British sergeant and brought back to Palestine for trial. He argued that his arrest was illegal and that he should therefore be released. The Supreme Court rejected the argument. I am reading from p. 66 :

“Counsel on neither side was able to refer us to any direct authority covering a case such as the present where a person has been irregularly apprehended not as a result of extradition proceedings at all. In our opinion, that 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.’”

In the United States of America there are special constitutional guarantees for the protection of the rights of the individual. Being a Federal State, it is particularly sensitive to the question of the competence of the central government and of the state govern-

THE QUESTION OF JURISDICTION

ments of which the Federation is comprised between the various States of the Union, and also it is sensitive to the relations of the United States as a whole with foreign countries. Furthermore, the American courts have laid down that public international law is part of the internal law of the United States, applying both to the relations of the United States with foreign countries and to the relations of the States of the Union between themselves. The Court can see this rule in *American Jurisprudence*, vol. 30, p. 440-1 as follows :

“As Constituting a Part of the Law of the Land. — Unless there is some treaty or statute to the contrary, the law of nations is to be treated as part of the law of the land. The courts of all nations judicially notice this law, and it must be ascertained and administered by the courts of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. Occasionally the statutes conferring jurisdiction to hear and determine particular controversies require the courts to render their decisions in accordance with the rules of international law. It has been held that an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.

“When the United States declared their independence, they were bound to receive the law of nations in its modern state of purity and refinement. International law forms a part of the law of the several states. It is a part of the law of every state which is enforced by its courts without any constitutional or statutory act or incorporation by reference, and while a court may be without jurisdiction to enforce international law in a given case by reason of some controlling statute, nevertheless, relevant provisions of the law of nations are legally paramount whenever international rights and duties are involved before the court having jurisdiction to enforce them.”

And in that country which has this attitude of principle toward international law, the general rule has been laid down which I will first of all read from the *Corpus juris secundum*, and which afterwards I will analyse in detail.

The President: Will you please give us the reference to the *Corpus juris secundum*, and with that we will recess the morning session?

THE QUESTION OF JURISDICTION

Attorney-General: I am quoting from the section on criminal law in vol. 22, p. 236, para. 144, which lays down the law as follows :

“Custody of the accused by the court, or his presence therein on a proper charge, is essential to the jurisdiction of the court over him. The manner in which accused is brought before the court, however, is ordinarily immaterial in so far as jurisdiction over him is concerned.

On p. 242, para. 146 :

“In accord with the general rule stated in § 144 supra, to the effect that a court will not inquire in to the manner in which accused is brought before it, the fact that accused has been illegally arrested, or that he has by trickery, force, or without legal authority, or by any illegal means, been brought within the territorial jurisdiction of a state or federal court, does not oust the jurisdiction of that court. Even if in any case there should be a conflict of jurisdiction between two courts, accused, who is before one court for trial, cannot take advantage of the fact that his presence has been illegally or improperly obtained.”

The President: Mr. Hausner, is that a convenient place to stop?

Attorney-General: If it please the Court.

The President: That being so, we will break off now. This afternoon's session will commence at 16:30, exceptionally, to enable us to take part in the funeral of the State Attorney, whose death we are mourning.

(The Court recessed at 13:05).

SESSION No. 2

11.4.1961 — Afternoon

The President: Mr. Hausner, pray continue.

Attorney-General: When we broke off, I was dealing with American decisions on the manner in which a man is brought to trial. On the question of competence, I will now cite a line of cases of the United States Supreme Court and also of other federal courts in the United States, and as I have already said, their importance is

considerable since those Courts decide according to the principles of public international law considered as part of the law of the land of the United States. I want to start not with the first of these decisions in point of time—I will come back to that later—but with a judgment which clarifies and answers most of the questions which have arisen here. I am referring to the case of *Pettibone v. Nichols*, 1906, 51 L. ed., p. 148. I will start with the facts of this case as published on p. 151 and the formulation of the legal issue on p. 154:

“On the 15th of March, 1906, after the final judgment in the supreme court of Idaho, Pettibone made application to the circuit court of the United States, sitting in Idaho, for a writ of habeas corpus, alleging that he was restrained of his liberty by the sheriff of Canyon county, in violation of the Constitution and laws of the United States. As was done in the supreme court of Idaho, the accused set out numerous facts and circumstances which, he contended, showed that his personal presence in Idaho was secured by fraud and connivance on the part of the executive officers and agents of both Idaho and Colorado, in violation of the constitutional and statutory provisions relating to fugitives from justice. Consequently, it was argued, the court in Idaho did not acquire jurisdiction over his person.”

P. 154 : “As the petitioner is within the jurisdiction of Idaho, and is held by its authorities for trial, are the particular methods by which he was brought within her limits at all material in the proceeding by habeas corpus? It is contended by the state that this question was determined in its favor by the former decisions of this court. This is controverted by the petitioner, and we must therefore, and particularly because of the unusual character of this case and the importance of the questions involved, see what this court has therefore adjudged.”

At this point the authorities, to which I will return later, are reviewed, and on p. 155, it is said in connection with the well-known case of *Ker v. Illinois* :

“If Ker, by virtue of the treaty with Peru, and because of his forcible and illegal abduction from that country, did not acquire an exemption from the criminal process of the courts of Illinois, whose laws he had violated, it is difficult to see

how Pettibone acquired, by virtue of the Constitution and laws of the United States, an exemption from prosecution by the state of Idaho, which has custody of his person."

I now come to the principles of the decision on page 157.

"These principles determine the present case and require an affirmance of the judgment of the circuit court. It is true, the decision in the Mahon Case was by a divided court, but its authority is none the less controlling. The principle upon which it rests has been several times recognized and reaffirmed by this court, and is no longer to be questioned. It was held in *Cook v. Hart*, 146 U.S. 183, 192, 36 L. ed. 934, 939, 13 Sup. Ct. Rep. 40, that the cases of *Ker v. Illinois* and *Mahon v. Justice* established these propositions: '1. That this court will not interfere to relieve persons who have been arrested and taken by violence from the territory of one state to that of another, where they are held under process legally issued from the courts of the latter state. 2. That the question of the applicability of this doctrine to a particular case is as much within the province of a state court, as a question of common law or of the law of nations, as it is of the courts of the United States;' in *Lascelles v. Georgia*, 148 U.S. 537, 543, 37 L. ed. 549, 551, 13 Sup. Ct. Rep. 687, that it was settled in the Ker and Mahon Cases that, 'except in the case of a fugitive surrendered by a foreign government, there is nothing in the Constitution, treaties, or laws of the United States which exempts an offender, brought before the courts of a state for an offense against its laws, from trial and punishment, even though brought from another state by unlawful violence, or by abuse of legal process;' and in *Adams v. New York*, 192, U.S. 585, 596, 48 L. ed. 575, 579, 24 Sup. Ct. Rep. 372 (the same cases being referred to), that 'if a person is brought within the jurisdiction of one state from another, or from a foreign country, by the unlawful use of force, which would render the officer liable to a civil action, or in a criminal proceeding, because of the forcible abduction, such fact would not prevent the trial of the person thus abducted in the state wherein he had committed an offense'."

The President: What Court gave that decision?

Attorney-General: The Supreme Court of the United States, Sir. I am continuing from page 158 :

"It is said that the present case is distinguishable from the Mahon Case in the fact that the illegal abduction complained of in the latter was by persons who neither acted nor assumed to act under the authority of the state into the custody of whose authorities they delivered Mahon; whereas, in this case, it is alleged that Idaho secured the presence of Pettibone within its limits through a conspiracy on the part of its governor and other officers. This difference in the cases is not, we think, of any consequence as to the principle involved; for the question now is — and such was the fundamental question in Mahon's Case—whether a circuit court of the United States when asked, upon habeas corpus, to discharge a person held in actual custody by a state for trial in one of its courts under an indictment charging a crime against its laws, can properly take into account the methods whereby the state obtained such custody. That question was determined in the negative in the Ker and Mahon Cases. It was there adjudged that in such a case neither the Constitution nor laws of the United States entitled the person so held to be discharged from custody and allowed to depart from the state. If, as suggested, the application of these principles may be attended by mischievous consequences, involving the personal safety of individuals within the limits of the respective states, the remedy is with the law-making department of the government. Congress has long been informed by judicial decisions as to the state of the law upon this general subject.

"In this connection it may be well to say that we have not overlooked the allegation that the governor and other officers of Idaho well knew at the time the requisition was made upon the governor of Colorado, that Pettibone was not in Idaho on December 30th, 1905, nor at any time near that date, and had the purpose in all they did to evade the constitutional and statutory provisions relating to fugitives from justice. To say nothing of the impropriety of any such facts being made the subject of judicial inquiry in a Federal court, the issue thus attempted to be presented was wholly immaterial. Even were it conceded, for the purposes of this case, that the governor of Idaho wrongfully issued his requisition, and that the gov-

THE QUESTION OF JURISDICTION

ernor of Colorado erred in honoring it and in issuing his warrant of arrest, the vital fact remains that Pettibone is held by Idaho in actual custody for trial under an indictment charging him with crime against its laws, and he seeks the aid of the circuit court to relieve him from custody, so that he may leave that state and thereby defeat the prosecution against him without a trial. In the present case it is not necessary to go behind the indictment and inquire as to how it happened that he came within reach of the process of the Idaho court in which the indictment is pending. And any investigation as to the motives which induced the action taken by the governors of Idaho and Colorado would, as already suggested, be improper as well as irrelevant to the real question to be now determined."

We learn two things from this. First, it makes no difference how a man is brought within the jurisdiction. Second, it makes no difference if he was brought within the jurisdiction by private individuals or by an official arm of the government. Before I return to the authorities, may I please cite a decision of the Federal Court of Appeal in the case of *Hatfield v. Warden of State Prison of S. Michigan*, 1950, 88 *Fed. Sup.*, p. 690. I'm sorry. That was the District Court, the United States District Court of Michigan. The facts appear on p. 691.

"On February 10, 1950, Charles D. Hatfield filed herein his petition requesting the issuance of a writ of habeas corpus to inquire into the legality of his detention by the Warden of the State Prison of Southern Michigan under judgment of the Circuit Court for the County of St. Joseph, upon conviction for a murder committed in said County. An examination of this petition discloses that petitioner's sole complaint is one which is currently popular in petitions for habeas corpus emanating from the State Prison of Southern Michigan, namely, that instead of being legally extradited from the State of Texas to the State of Michigan to answer such charges, he was, in effect, kidnapped and transported against his will from Texas to Michigan by Michigan State Police officers."

The law is set forth on p. 692 as follows :

"Where a person accused of a crime is found within the terri-

THE QUESTION OF JURISDICTION

torial jurisdiction wherein he is so charged, and is held under process legally issued from court of that jurisdiction, neither the jurisdiction of the Court nor the right to put him on trial for the offense charged is impaired by the manner in which he was brought from another jurisdiction, whether by kidnapping, illegal arrest, abduction or irregular extradition proceedings, and Federal statutory or constitutional provisions are not violated by reason of the illegal means adopted in bringing an accused within a jurisdiction where he is then held under proper process, and, specifically the trial of a person brought into a state by forceful abduction is not a violation of the provisions of the Federal Constitution prohibiting the deprivation of life, liberty, or property without due process of law."

I am asking you not to read into my argument any admission that in our case the facts are as the Defence Counsel alleges. My argument is that it makes no difference. My argument is that it is quite immaterial whether the persons who apprehended, arrested and transferred Adolf Eichmann to Israel were private citizens or not. And as this is of no significance, there is no need for the Court to enter upon an examination of that question.

Now, let me deal with the various cases in order. The first and the most important of them is *Ker v. Illinois*, 1886, L. ed., vol. 30, p. 421. These are the facts. Ker was accused of theft in the State of Illinois. His extradition was requested from Peru. The officer of the U.S. Government charged with implementing the extradition went to Lima, the capital of Peru, and instead of obtaining the extradition through lawful and regular means arrested Ker, and brought him to the State of California. The authorities of the State of California arrested him, and transferred him to the jurisdiction of the Court of Illinois. I will not read all the decision here because in fact, the Court has already heard it. The decision is found at the bottom of pages 423-4 but the end of this judgment is important:

"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."

THE QUESTION OF JURISDICTION

If I may break off for a minute, if there was any contradiction between Ker's rights according to the laws of the United States and the claim of the State of Illinois to try him, then the Supreme Court would surely have had to have gone into the question and have examined which of the two was right. But the Supreme Court of the United States says: There is no need to go into this question and no need to decide at all because no legal rights of Ker were infringed by the fact that he was brought albeit by force into the jurisdiction of the Illinois Court.

Let me now return to that judgment:

"However this may be, the decision of that question is as much within the province of the state court as a question of common law, or of the law of nations, of which that court is bound to take notice, as it is of the courts of the United States. And though we might or might not differ with the Illinois court on that subject, it is one in which we have no right to review their decision.

"It must be remembered that this view of the subject does not leave the prisoner or the Government of Peru without remedy for his unauthorized seizure within its territory."

In other words, Peru could have complained through appropriate diplomatic channels, but the arrested person is not competent to argue, "my arrest is an infringement of the sovereignty of the state of Peru."

In *Ex parte Johnson*, 1897, L. ed., vol. 42, p. 103, the question arose of the legality of a judgment given against a person who had been unlawfully arrested. The decision is found on p. 105:

"Indeed, there are many authorities which go to the extent of holding that, *in criminal cases*, a 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 his trial in such court."

And here comes a long list of authorities:

"... Although it has been frequently held that if a defendant *in a civil case* be brought within the process of the court by a trick or device, the service will be set aside and he will be discharged from custody... The law will not permit a person

THE QUESTION OF JURISDICTION

to be kidnapped or decoyed within the jurisdiction for the purpose of being compelled to answer to a mere private claim, but in criminal cases the interests of the public override that which is, after all, a mere privilege from arrest."

Also when an attempt is made to disqualify judicial process even before the trial starts, as the Defence is trying to do in this case, there is no difference. The rule which I have mentioned applies not only as regards judicial processes already completed, but also as regards judicial processes which are still *in limine litis*. This was decided in *Leahy v. Kunkel*, 1933, 4 Federal Supplement, p. 849. The facts appear on p. 850 as follows:

"The facts are stipulated and are briefly as follows: Petitioner was indicted by the grand jury of the Marshall county circuit court for bank robbery. He lives in Chicago. The sheriff of Marshall county, accompanied by one Indiana police officer and two police officers of the city of Chicago, arrested petitioner in Chicago without a warrant, took him to a detective bureau, and locked him up. Thereafter he was handcuffed and placed in the sheriff's car and driven to Indiana. At South Bend he was placed in jail over night and the next morning he was taken to Marshall county, where a warrant of arrest was read to him. He was then taken to the Marshall county circuit court, where bond was fixed, and upon his failure to give the bond . . . was delivered . . . to respondent, who is warden of the Indiana State Penitentiary at Michigan City, Ind. He then filed his petition for writ of habeas corpus in the Marshall county circuit court, which petition was by the judge thereof dismissed and his case set for trial. Petitioner contends, not without logic, that having been arrested without right and forcibly taken from the state of Illinois to the state of Indiana—'kidnapped', in other words, with all the ugly terrifying meaning that word implies—he is entitled to be discharged, or at least returned to the state of Illinois.

And this is what the Court decided. I am reading from the bottom of the page.

"The petitioner is here seeking by the exercise of the extraordinary remedy of habeas corpus to prevent his trial in a state court on the ground that his apprehension and subsequent

THE QUESTION OF JURISDICTION

arrest are illegal, and for that reason no jurisdiction exists in the state court, to put him to trial.

The law is well settled that a person charged with crime in one state, and who is found in and abducted from another state and brought into the state where he is indicted, is not entitled to be discharged upon habeas corpus in a District Court in the United States. Neither the Constitution nor the laws of the United States entitle such person to a discharge. *Pettibone v. Nichols* . . .”

President: Which Court was that?

Attorney-General: United States District Court, Indiana.

Another case dealing with the question of arrest and unlawful transfer is the *United States v. Insull*, 1934, 8 Fed. Sup., p. 310. The facts are a little odd. I am reading them from the judgment.

“Where defendant, a United States citizen, was, while on Greek vessel in Bosphorus, forcibly seized by Turkish police, allegedly at instance of United States government, incarcerated in Turkish prison and then delivered onto American vessel to agent of American government and brought to United States where federal indictment against him was pending, federal court *held* not deprived of jurisdiction, even if offense was not within any extradition treaty between Greece or Turkey and the United States, and court had no power to inquire into such alleged facts.”

Applicant in that case put forward exactly the same plea as the Defence is doing here. I am reading from p. 312.

“The defendant contends that a treaty is involved, and that the government of the United States of America cannot enter the jurisdiction of a sovereign nation with which it had a treaty governing the extradition of fugitives from justice, and, without pretending to comply with the proceeding provided for in such treaty, by its agents forcibly seize an alleged fugitive, and by force and without the consent of such alleged fugitive bring him into the jurisdiction of a District Court of the United States of America for trial.”

What the Court had to say on this is found on p. 313:

“If the rights of the defendant have been violated, or the

THE QUESTION OF JURISDICTION

peace or dignity of the Hellenic Republic or Turkey trespassed upon, that is not a matter for this court, even assuming that the offense for which the defendant stands charged is not within the treaty, if one existed, between the countries; and the mere fact, if true, as stated by defendant, that he was kidnapped from the Hellenic authorities, would not give this court power to examine such fact, and, if true, release the defendant. The court has no such power. That is a matter which rests between the defendant and the parties abducting him, or between the political powers of the governments of Turkey or the Hellenic Republic and that of the United States . . .

"If either the Hellenic Republic or Turkey, by proper complaint, sought to vindicate its laws by protesting against the kidnapping of this defendant within its territory, it is reasonable to assume that the United States would enter into such negotiations with those countries as would secure justice for all parties concerned."

Let me here break off and say that the State of Israel did enter into negotiation with the Government of Argentina concerning the apprehension and transfer of Adolf Eichmann and after the resolution of the Security Council a joint communiqué was published on 3 August 1960 in Jerusalem and Buenos Aires by the Governments of Israel and of Argentina showing that the incident is closed. I am now submitting a Certificate by a Public Servant signed by Ambassador Shabtai Rosenne, Legal Adviser of the Ministry for Foreign Affairs, containing the text of this joint official communiqué. The communiqué is in Spanish.

The President: That will be marked exhibit No. T/4.

Attorney-General: I will immediately submit it to the Court or read it in translation.

The President: I think we can understand it.

Attorney-General: Thank you. But perhaps I will read it for the record.

"The Governments of Israel and of the Republic of the Argentine, imbued with the wish to give effect to the resolution of the Security Council of 23 June 1960, in which the hope was expressed that the traditionally friendly relations between the two countries will be advanced, have decided to regard

THE QUESTION OF JURISDICTION

as closed the incident that arose out of the action taken by Israel nationals which infringed fundamental rights of the State of Argentina."

Not that that is of importance to this case. The Court could continue to try the case even if differences between us and the Argentine had not been settled and even if Argentina had brought judicial proceedings against us in the International Court at The Hague. This Court would still be competent to try Adolf Eichmann.

I also want to show that also from the point of view of international law and from the point of view of the possibility of conflict of jurisdiction there is no conflict at present now outstanding. In the language of the judgment in *United States v. Insull*, Argentina did seek to vindicate its laws, did seek to redress the infringement of its sovereignty and the Government of Israel did express its apologies and in that way the incident was liquidated.

When the question arose again in the United States in 1944 in United States Court of Appeals, District of Columbia, in the case of *Sheehan v. Huff*, 142, Fed. 2nd, p. 81, the facts were as follows: "Petition for writ of habeas corpus alleging that, prior to trial in criminal prosecution, petitioner was brought from Virginia to the District of Columbia without extradition proceedings in spite of his protest and his unwillingness to waive extradition, presented no substantial question, and denial of petition without appointment of counsel for defendant was not error."

It was not even necessary to appoint Counsel for the Defendant. That is what the Court of Appeals said to this accused person. I was not even considered to be "error" justifying an application to the Court of Appeals.

And on page 81 we can read: "Counsel for petitioner, appointed by this court to represent him on appeal, has filed a persuasive brief. It admits that the Supreme Court has decided that jurisdiction in a criminal case is not impaired by the fact that the accused was brought before the court in an unlawful manner, but urges these decisions should not be followed. We believe, however, that the question is so well settled that it cannot be reopened here."

A case which calls to mind the one with which we are concerned, at least from the factual point of view, although there is no complete analogy so far as concerns its legal implications, is *Chandler v. United States*, 1948, 171, Fed. 2nd, p. 921. There is a certain difference in

the facts, because that case concerned a matter of treason. Chandler had become so convinced by anti-Semitic propaganda that he decided to go over to Nazi Germany. And this is what the Court said at p. 925:

"Over the years Chandler had developed an anti-Jewish outlook, and his fierce emotions on that theme were accentuated by certain personal setbacks which he attributed to malignant Jewish interference. He came to believe, or to profess to believe, in the existence of a sinister world-wide Jewish conspiracy. Naturally he found the anti-Jewish climate of Nazi Germany congenial. While in Germany before the war his interest was cultivated by one Hoffman, an attaché in the German Press Department, serving as contact man for foreign journalists. He was favourably impressed with what he saw in Germany and came to regard the Nazi regime as the bulwark of Western civilization against what he thought to be the Jewish Bolshevik menace."

On p. 933 certain facts are recalled relating to illegal arrest, according to Chandler's allegation, in Germany.

The President: Who arrested him?

Attorney-General: The American army. And on p. 934, it is stated:

"It is said that the manner in which the court below acquired jurisdiction of the defendant violated the law of the forum in three particulars, that is to say, (1) it violated the terms of the extradition treaty between the United States and Germany; (2) apart from treaty, it violated the right of asylum guaranteed by international law to political offenders; and (3) it violated the Act of June 18, 1878, 20 Stat. 152, 10 U.S.C.A. § 15, prohibiting the use of the army of the United States as a posse comitatus."

The Court rejected every single one of these arguments, laid down that the trial should proceed in accordance with law, and that judgment rendered by the Court below was legal.

Another Nazi collaborator who was brought involuntarily from Germany to the United States, Mrs. Skillers, maintained the same arguments. *Skillers v. United States*, 1950, 182 Fed. 2nd. I will not read from this judgment. I will only draw your attention to it. It follows the same rule.

THE QUESTION OF JURISDICTION

The law has been briefly but very clearly summarized in two important judgments. The first is *Pebly v. Knotts*, 1951, 95 Federal Supplement, p. 283, and I call the Court's attention to what is stated on p. 286 without reading it. The second case is *Dean v. Ohio*, 1952, 107 Federal Supplement, p. 937. I am reading now from p. 939 as follows:

"In passing on the subject of the petitioner's extradition to Ohio it should be noted that it is virtually a universal rule that where an accused is found in a jurisdiction wherein he is charged with a crime, the circumstances surrounding his actual presence within that jurisdiction will not be inquired into. If he was brought from another jurisdiction by kidnapping, stratagem or illegal extradition he may still be tried if he is presently being held under process legally issued from a court of that jurisdiction."

The matter again came before the United States Supreme Court in 1952 in the case of *Frisbie v. Collins*, 1952, 96 L. ed., p. 541. In his judgment Justice Black said at p. 544:

"Acting as his own lawyer, the respondent . . . Collins brought this habeas corpus case in a United States District Court seeking release from a Michigan state prison where he is serving a life sentence for murder. His petition alleges that while he was living in Chicago, Michigan officers forcibly seized, hand-cuffed, blackjacked and took him to Michigan. He claims that trial and conviction under such circumstances is in violation of the Due Process Clause of the Fourteenth Amendment and the Federal Kidnapping Act, and that therefore his conviction is a nullity."

And on p. 545 Justice Black says pithily: "This Court has never departed from the rule announced in *Ker v. Illinois*, 119 US 436, 30, L. ed. 421, 7 S Ct 225, 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."

So it is in the United States, a country which, as I have repeatedly stressed, is most sensitive to relations between States, between the States of the Union, and with foreign countries. And the same rule,

THE QUESTION OF JURISDICTION

the same principle, can apply here with exactly the same force and with the same degree of self-confidence. Adolf Eichmann is lawfully before this Court on the basis of the committal order issued in accordance with the law. He has been given notice of charge in accordance with law and an indictment has been filed against him in accordance with law. The crimes attributed to him are crimes according to the law of this country. He is given the opportunity of conducting his defence. He will be given every opportunity to defend himself and the circumstances in which he was brought here are of no concern to this Court. It is completely irrelevant and has nothing to do with us here.

Accordingly, I request you not to call the witnesses whom the defence is asking you to call because their evidence will not throw any light on any problem which this Court is called upon to decide. Their evidence will not throw any light on the guilt or innocence of Adolf Eichmann under any one of the counts of the indictment. That is what is relevant. Even in the hypothetical case of the Defence being able to obtain from these witnesses what it hopes to obtain, that would add nothing to your decision, and with all respect I say, your decision should be to continue with this trial according to the indictment duly filed.

If it please the Court, I now want to pass to another matter, if there is time today.

The President: I think we will continue until 18.30.

Punishment of Nazi Criminals

Attorney-General: May it please the Court, the legal problem which arises in connection with the punishment of Nazis and their collaborators is the consequence of a very special and unique development in the history of law, because Nazi Germany trampled upon the most sacred principles of legal order and by a whole range of unprecedented crimes created a vacuum, legal chaos, complete abdication of law, just as it created political and military chaos by complete abandonment of all its international obligations, above all its obligations to maintain international peace.

Against Nazi Germany's abandonment of its obligations to maintain international peace mankind had to employ military means and take up arms to defend its very existence. Against the legal vacuum and chaos, mankind applied new legal principles or, more accurately, gave expression to accepted and hallowed principles which

are the heritage of all civilized peoples. Anyone who wants to seek for the sources of the universal international law before Grotius and Vattel can find it in Chapter 4 of the Book of Amos, "For three transgressions of Edom, yea, for four I will not reverse it." But perhaps we do not have to go so far back. In order to fill up the legal vacuum, it was essential to establish a formulation of already existing principles since without that formulation the greatest sinner would have reaped the greatest of rewards. The very ones who abolished justice, the very ones who said it was permissible to throw overboard every moral and legal restraint would have been rewarded because there would have been no written law which they broke, because the only written law before which such a wrong-doer could have been made answerable after victory had been gained would have had to have been formally retroactive. Later we will deal with the question whether Adolf Eichmann's acts were legal even according to the law of Germany and even in accordance with the internal code of the S.S. We are not dealing with that now. What I am saying is that mankind had no alternative except to proclaim a formulation of principles of international law and say openly that these principles applied also when you performed your acts and all your terrible crimes, because otherwise there would be no written law under which the Nazi criminals could be judged.

Let us now see how this idea has developed in various stages in international life. The first enunciation was the Moscow Declaration of 1 November 1943, signed by Roosevelt, Churchill and Stalin. The Court can find it with much other material in the so-called Green Series, *Trials of War Criminals*,¹ an official American publication of what have come to be known as the subsequent trials in distinction from the major war criminals. I am reading from Vol. 4, p. X:

"The United Kingdom, the United States and the Soviet Union have received from many quarters evidence of atrocities, massacres and cold-blooded mass executions which are being perpetrated by the Hitlerite forces in the many countries they have overrun and from which they are now being steadily expelled. The brutalities of Hitlerite domination are no new thing and all the peoples or territories in their grip have suf-

¹ *Trials of War Criminals before the Nuremberg Military Tribunals*, Washington, D.C., 15 vols.

THE QUESTION OF JURISDICTION

fered from the worst form of government by terror. What is new is that many of these territories are now being redeemed by the advancing armies of the liberating powers and that in their desperation, the recoiling Hitlerite Huns are redoubling their ruthless cruelties."

This declaration warns and establishes that the war criminals will be brought to trial and will be punished for their acts.

After the victory we have the so-called London Agreement of 8 August 1945, which can be found in the same volume at p. XI. This Agreement was made between the Governments of the United States, France, United Kingdom and the USSR and established that an international military tribunal would be set up to try the Nazi criminals and that other courts would be established for the same purpose. On the basis of this Agreement the four Powers drew up the so-called Charter of the International Military Tribunal, the text of which can be found in the same volume at page XIII. Here we find the definition of the crimes for which the criminals will be brought to book. Article 6(a) deals with crimes against peace, 6(b) with war crimes and 6(c) with crimes against humanity. Let me read this last definition of crimes against humanity in its English version:

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

The Charter continues:

"Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan."

The next step was when the occupying Powers in Germany enacted Control Council Law No. 10, the text of which can be found in the same volume, at page XVIII, as follows:

THE QUESTION OF JURISDICTION

"In order to give effect to the terms of the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945, and the Charter issued pursuant thereto and in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, other than those dealt with by the International Military Tribunal, the Control Council enacts as follows:

Article I

"The Moscow Declaration of 30 October 1943 'Concerning Responsibility of Hitlerites for Committed Atrocities' and the London Agreement of 8 August 1945 'Concerning Prosecution and Punishment of Major War Criminals of The European Axis' are made integral parts of this Law. Adherence to the provisions of the London Agreement by any of the United Nations, as provided for in Article V of that Agreement, shall not entitle such Nation to participate or interfere in the operation of this Law within the Control Council area of authority in Germany.

Article II

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

"(a) Crimes against Peace. Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, or a war of violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

"(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.

"(c) Crimes against Humanity. Atrocities and offences, in-

THE QUESTION OF JURISDICTION

cluding but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

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

I submit that all these declarations are nothing more than formulations, codifications of principles, which have long been accepted by civilized nations. There is nothing new in them. They simply established one thing, that murder is murder, that persecution is persecution, that robbery is robbery, and even if one shouts *Der Führer befahl, wir befolgen*¹ even then murder is murder, oppression is oppression and robbery is robbery.

And that is just what the international military tribunal said in its judgment. At this point allow me to point out that the judges of that tribunal were lawyers of the highest calibre from the states which established it. They were not military judges. Even though the tribunal was called a military tribunal, it was composed of professional judges of the highest rank from each one of the four participating powers. Among them were judges who are occupying to this very day the highest judicial office, and if ever there was a time at which all mankind came together as one body in the sphere of law to lay down a common law for all, it was on that great occasion at Nuremberg. I am reading now from the judgment which is published in Vol. 1 of the English edition. That is called the Blue Series, Members of the Court, and the judgment is found there twice in Vol. 1 and also in Vol 22, in English, German and French, all of it in an official edition.

Speaking of the law of the Charter, the International Military Tribunal says at p. 218, and I am reading from the judgment:

“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. The Signatory Powers

¹ “The Führer has ordered—we obey”—Nazi slogan (Editor).

THE QUESTION OF JURISDICTION

created this Tribunal, defined the law it was to administer, and made regulations for the proper conduct of the Trial. In doing so, they have done together what any one of them might have done singly; for it is not to be doubted that any nation has the right thus to set up special courts to administer law."

In simple language the Court is saying: we have not come to make any innovations and we have not come to make any additions. We have come simply to establish in words and phrases what perhaps should have been so clear as not to need redefinition in words and phrases. But after what has happened in Europe mankind decided that apparently it was necessary and set the matter down by way of codification. In one of the judgments of one of the American military tribunals which were set up in Germany, one of those subsequent trials, known as the Justice Trial, the Court sat in the following composition: the presiding Judge was Judge Karrington T. Marshall, Chief Justice of the Supreme Court of the State of Ohio; Judge James T. Brand of the Supreme Court of the State of Oregon, and Judge Malroy B. Blaire of the Court of Civil Appeals of the State of Texas. This judgment is found in Vol. 3 of the Green Series. That was also Case No. 3, although the number of the case is not always identical with the number of the volume. This case is also called the *Justice* case. The judges, at page 967, quote with approval some words of Lord Wright,¹ and say the following:

"But international law is progressive. The period of growth generally coincides with the period of world upheavals. The pressure of necessity stimulates the impact of natural law and of moral ideas and converts them into rules of law deliberately and overtly recognized by the consensus of civilized mankind. The experience of two great world wars within a quarter of a century cannot fail to have deep repercussions on the senses of the peoples and their demand for an international law which reflects international justice. I am convinced that international law has progressed, as it is bound to progress if it is to be a living and operative force in these days of widening sense of humanity.

"For the reasons stated by Lord Wright, this growth by

¹ Lord Wright, "War Crimes Under International Law", 62 *Law Quarterly Review* (1946), 41.

THE QUESTION OF JURISDICTION

accretion has been greatly accelerated since the First World War. The IMT Charter, the IMT judgment, and C.C. law 10 are merely 'great new cases in the book of international law'. They constitute authoritative recognition of principles of individual penal responsibility in international affairs which, as we shall show, had been developing for many years."

And on p. 970 :

"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; 87 L. ed. 3; 63 S.Ct. 2; *In re: Yamashita*, 327 U.S., 90 L. ed)."

The President: What decisions are those?

Attorney-General: Judgments of the United States Supreme Court. I will deal with them further in the course of my argument.

"... However, enforcement of international law has been traditionally subject to practical limitations. 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. Thus, notwithstanding the paramount authority of the substantive rules of common international law, the doctrines of national sovereignty have been preserved through the control of enforcement machinery. It must be admitted that Germans were not the only ones who were guilty of committing war crimes; other violators of international law could, no doubt, be tried and punished by the state of which they were nationals, by the offended state if it can secure jurisdiction of the person, or by an international if of competent authorized jurisdiction."

And on p. 982, the Court says :

“Finally, we quote the words of Sir Hartley Shawcross, the British Chief Prosecutor at the trial of Goering, et al.: ‘The rights of humanitarian intervention on behalf of the rights of man trampled upon by a state in a manner shocking the sense of mankind has long been considered to form part of the [recognized] law of nations. Here, too, the Charter merely develops a pre-existing principle.’”

We shall be returning to this judgment later in my argument.
The President: Will you please come to a point at which it will be convenient to stop.

Attorney-General: I can stop now, if you like.

The President: Will you be ready to reply tomorrow to the argument which Dr. Servatius submitted in writing?

Attorney-General: I will do my best. I will try tonight so far as possible to study the material and I will try to be ready to reply tomorrow, but if I should not succeed I will seek the indulgence of the Court.

The President: The Court does not wish to impose upon you too heavy a burden. The material is considerable.

Attorney-General: I have agreed to something which is not usual in our procedure. We do not have written pleadings in criminal matters, but I did not wish to place any obstacle in the way of the Defence. Therefore, I made no objection when the Court asked me. But at the same time, I must study the submissions. Dr. Servatius took some 100 pages to expound his argument. It would certainly have taken at least a half a day to have read them.

The President: Another matter. This actually applies to both parties. We already see that in Dr. Servatius’ written arguments many authorities are referred to and they are not in our possession, books and other legal material. We would ask you to submit these books to the Court as far as is possible. This also applies to the Attorney-General. We are asking you to hand this material to the Clerk of the Court.

Attorney-General: Certainly.

The President: How about you, Dr. Servatius?

Dr. Servatius: I will try and get hold of these books. Some of them will certainly exist in the libraries and can be borrowed.

The President: In Israel or abroad?

THE QUESTION OF JURISDICTION

Dr. Servatius: In Germany. I will see if I can get them.

The President: That will not be so convenient. Perhaps our local libraries can be of assistance to you.

Dr. Servatius: I will try and find out how far these books are found in the libraries.

The President: One final matter, Mr. Hausner, what about the committal order? Have you a valid committal order?

Attorney-General: Yes, Mr. President.

The President: For how long is it valid?

Attorney General: To tell the truth, I will have to examine this. I will tell you tomorrow. I think we are covered. If necessary, I will ask for an extension in accordance with the law.

The President: Yes please, Sir.

The Court is now in recess until tomorrow morning at 09:00.

(The Court recessed at 18:37).

SESSION No. 3

12.4.1961—Morning

The President: I open the third session of the Court. I am reading *Decision No. 2*: On application of the Attorney-General, and in accordance with the power vested in me by Section 16 of the Criminal Procedure Amendment (Investigation of Felonies and Causes of Death) Law, 5718—1958,¹ I order the arrest of the accused until the termination of the trial in this Court.

The Attorney-General may continue.

Attorney-General: May it please the Court, when we broke off yesterday, I was dealing with the question whether the International Military Tribunal at Nuremberg was laying down any new rule of international law in comparison with what had previously existed and I now want to continue with my argument to the effect that all of the Moscow Declaration and the London Agreement and the Nuremberg Charter and the judgment of the International Military Tribunal, as well as the other judgments which were given against Nazi war criminals, constituted no innovation. They merely set

¹ *Laws of the State of Israel*, vol. 12 (5718—1957/8), p. 66.

THE QUESTION OF JURISDICTION

down in black and white what had been obvious all the time. What are the sources of public international law? This is stipulated in Article 38 of the Statute of the International Court of Justice (the Court which sits at The Hague), which was signed at San Francisco on 26 June 1945. When the United Nations was established and the jurisdiction of the International Court was delimited, the following was laid down in Article 38 :

"The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

Those are the sources of public international law recognized by the family of nations. And, too, this is how the matter was expressed in one of the judgments of the American Military Tribunal in Case No. 11, presided over by Judge Renacin of the Supreme Court of Iowa, with Judge Carter of the Supreme Court of Nebraska and Judge George Burke, of the Supreme Court of the State of Michigan. I am reading from Vol. 11 of the Green Series in the case of *United States v. List*, known as the *Hostages Case*, on p. 1235.

"The sources of international law which are usually enumerated are (1) customs and practices accepted by civilized nations generally, (2) treaties, conventions, and other forms of interstate agreements, (3) the decisions of international tribunals, (4) the decisions of national tribunals dealing with international questions, (5) the opinions of qualified text writers, and (6) the diplomatic papers."

"These sources provide a frame upon which a system of international law can be built but they cannot be deemed a complete legal system in themselves. Any system of jurisprudence, if it is to be effective, must be given an opportunity to grow and expand to meet changed conditions. The codification of principles is a helpful means of simplification, but it must not be treated as adding rigidity where resiliency is

essential. To place the principles of international law in a formalistic strait-jacket would ultimately destroy any effectiveness that it has acquired.

"The tendency has been to apply the term 'customs and practices accepted by civilized nations generally', as it is used in international law, to the laws of war only. But the principle has no such restricted meaning. It applies as well to fundamental principles of justice which have been accepted and adopted by civilized nations generally. In determining whether such a fundamental rule of justice is entitled to be declared a principle of international law, an examination of the municipal laws of states in the family of nations will reveal the answer. If it is found to have been accepted generally as a fundamental rule of justice by most nations in their municipal law, its declaration as a rule of international law would seem to be fully justified."

I submit that the acts which were defined as crimes in the Nuremberg Charter and subsequently in a great number of countries, including, I am glad to say, the State of Israel, are general principles of law, are rules of behaviour between man and man, which are essential if any human society is to exist. The fact that Hitler's regime trampled these principles underfoot is of no relevance. Despite that, they are and remain principles of international law. Perhaps it would not be superfluous to point out that a Court in Germany itself today recognizes that wrong law, *unrichtiges Recht*,¹ is not law and there is no need to observe it. May I draw the Court's attention to the judgment of the District Court of Nuremberg (this is a German case, not an international case) of 10 May 1949, in Case No. 230/48. I will submit the whole judgment with the translation of the section on which I am relying.

The President: Does this case concern a question of international law or is there also something in it relating to incompatibility between an ordinary law and the constitution?

Attorney-General: That too, but I am relying on it simply to show that also in post-war Germany, it is recognized that during the Nazi period laws were passed which cannot be regarded as law.

¹ *Richtiges Recht, unrichtiges Recht*—philosophical concepts implying a juristic value-judgment as to the "rightfulness" or "wrongfulness" of a law that is formally valid—Editor.

The President: You mean Nazi laws?

Attorney-General: Yes. Germany too recognizes that today.

Dr. Servatius: I object to this document which to my opinion is completely irrelevant and does not concern us. It must be established if it concerns the question of international law or not. The question whether the Nazi laws were rightful laws or not is of no importance here and does not concern the matter we are discussing. Again the judgment in question is not a judgment of a superior court but of a *Landgericht*, of a court of one of the *Länder*.

The President: Dr. Servatius, I think there may be some misunderstanding. The Attorney-General is not submitting that judgment as an exhibit in the case, that is to say as evidence, but simply as legal authority. We usually accept legal authority of that kind quite freely. The only question which could arise is whether the copy is a true copy.

Dr. Servatius: I have no objection to the submission of the judgment in that form. I would be grateful to receive a copy of it.

The President: Do you have a copy?

Attorney-General: We will make some and give one to Dr. Servatius.

The President: Are those sheets of paper the translation of passages from the judgment?

Attorney-General: They are the translation of one passage only, that passage to which I referred dealing with *unrichtiges Recht*. In a recent judgment of the Supreme Court of the Federal Republic, published in *Neue Juristische Wochenschrift* of 9 February 1961, we can read a similar opinion. That appears on p. 276.

After the end of the Second World War, great efforts were made to guarantee the fundamental rights of man. International treaties were made in order to ease the problems of the oppressed and suffering human beings, in order to proclaim to the whole world what are the rights of man as a human being on earth. The Court will see from the authorities which I have cited that in this supreme effort to assure human rights to all the inhabitants of the earth, there has been one deliberate and systematic exclusion, namely as regards war criminals. The right to try these people has always been carefully reserved, and it is still said in all these treaties that despite anything contained in them war criminals may be brought to trial for their acts. The Universal Declaration on Human Rights is the basic document. I am reading from an official publication of the United Na-

tions which translated this document into the languages of all the different members of the U.N., also into Hebrew, and published it with the sign of the U.N. on the cover. Fundamental rights of freedom from arrest, of equality, of fair and public trial, are proclaimed for all mankind, and this is what Article 11 (2) says: "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed..."

In this fundamental declaration on human rights, mankind accepted to punish crimes against international law and to punish men, not states, to punish individuals, not groups. The principle of individual responsibility, about which I shall have more to say later, is laid down in this fundamental text which grants rights but does not impose obligations. All human beings have this right. There are fundamental freedoms, but there is a duty, the duty to behave in accordance with the principle of justice and law, accepted by the peoples of the world, and whoever does not behave in that way may be brought to trial for a breach of international law.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, the text of which can be found in the *Yearbook on Human Rights for 1950* at p. 418 states in Article 7 as follows:

"Art. 7 (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. (2) This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations."

The President: What treaty is that?

Attorney-General: The European Convention drawn up at Rome on 4 November 1950 and to which many States are parties, not all of them members of the U.N., and included amongst these is the the Federal Republic of Germany.¹

¹ For reference to later developments on this aspect in the United Nations, see p. 271 below.—Editor.

THE QUESTION OF JURISDICTION

As far back as 1947 the U.N. decided to request the International Law Commission, the body second in importance dealing with international law, to draft the principles of international law as recognized in the Nuremberg Charter and in the judgment of the International Military Tribunal. I ask this Court to take note of the fact that it was a matter of drafting existing principles. As I have already said, civilized nations had recognized that these principles had existed for some time. In accordance with that request, the International Law Commission drafted the principles and I am submitting the official report of the International Law Commission to the General Assembly covering its second session, 1950.

The formulation of the Nuremberg principles can be found in part 3 of the Report. On p. 11 we read:

“95. Under General Assembly resolution 177 (II), paragraph (a), the International Law Commission was directed to ‘formulate the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal’.

The principles as adopted are as follows:

PRINCIPLES OF INTERNATIONAL LAW RECOGNIZED IN THE CHARTER OF THE NÜRNBERG TRIBUNAL AND THE JUDGMENT OF THE TRIBUNAL

PRINCIPLE I

Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

PRINCIPLE II

The fact that international law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

PRINCIPLE III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State

THE QUESTION OF JURISDICTION

or responsible Government official does not relieve him from responsibility under international law.

PRINCIPLE IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

PRINCIPLE V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

PRINCIPLE VI

The crimes hereinafter set out are punishable as crimes under international law:

a. Crimes against peace:

- (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
- (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i)."

b. War crimes:

Violations of the laws or customs of war which include, but are not 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, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

c. Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connexion with any crime against peace or any war crime.

THE QUESTION OF JURISDICTION

PRINCIPLE VII

Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

President: That is a report of the International Law Commission?

Attorney-General: Yes.¹

President: What happened to it?

Attorney-General: The United Nations have been quite busy between 1950 to 1961 with many urgent matters and this report has been passed on from agenda to agenda and is still on the agenda of the U.N.² But so far as concerns the implementation, the task of formulating the principles, and this is what counts, the International Law Commission, composed of jurists of the different nations, considered the matter and formulated the principles which, in the Commission's opinion (and it is a very important body), are principles of international criminal law. It is quite unimportant whether the U.N. General Assembly has approved or not approved that report. The decisive fact is that the principles have been formulated in accordance with the previous decision of the General Assembly.³

An additional development occurred when on 28 July 1951 there was drawn up at Geneva the Convention relating to the Status of Refugees [U.N. Treaty Series, vol. 189, p. 150]. When the U.N. had to resolve the problem of refugees in the world, they drew up this treaty which has as parties not only members of the U.N. but also Switzerland, the Vatican and West Germany. The object of this treaty is to ease the plight of refugees, but it lays down in Chapter 1, Article 1, para. F(a) that the provisions of the Convention shall not apply to any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

And when the U.N. decided to draw up a Convention dealing with the Status of Stateless Persons (the treaty can be found in Is-

¹ United Nations Document A/1306, *Yearbook of the International Law Commission*, 1950, Vol. 2, p. 364 — Editor.

² See Resolutions of the United Nations General Assembly Nos. 488 (V) of 12 December 1950 and 1186 (XII) of 11 December 1957.

³ See pp. 245–6 below.

THE QUESTION OF JURISDICTION

rael *Treaty Series*, vol. 8, No. 245, p. 553), it is again stated in Article 1, para. 3, that the treaty shall not apply to persons with respect to whom there are serious reasons for considering that they have committed a crime against peace, a war crime, or a crime against humanity as defined in the international instruments drawn up to make provision in respect of such crimes.

I am citing all this to show that from 1945 onwards the generally accepted principles of crimes against humanity have become firmly established in the juridical conscience of the peoples of the world and are no longer a subject for debate and that all enlightened civilization willingly established in a number of instruments that acts of this character constitute a crime. Germany too has signed the last two treaties without any reservation. When the State of Israel decided to make provision in its domestic legislation for the punishment of Nazis and their collaborators, it based itself on that. Legislation similar to our legislation in one form or another has been made in a number of different countries. In the United Kingdom the matter was done by means of a Royal Warrant of 14 July 1945, which the Court can find in the book called *Military Courts Manual* by Treadwell, at p. 101. He speaks of war crimes which that Royal Warrant defines as follows:

“ ‘War crime’ means a violation of the laws and usages of war committed during any war in which His Majesty has been or may be engaged at any time since the 2nd September 1939. Any expression used in these Regulations has the same meaning as in the Army Act, or the Rules of Procedure made pursuant thereto. ‘Military Court’ means a Military Court constituted and held under these Regulations.”

The United States acted in a similar way, publishing Regulations for the Trial of War Criminals, in the Mediterranean Theater of Operations, Provisions regarding Military Commissions in the European Theater of Operations, and Regulations concerning the Trial of War Criminals in the Pacific Theater of Operations.

The President: Of what year?

Attorney-General: It is not stated here but I am reading this from the report of the U.N. War Crimes Commission of 1 October 1946, which contains the first surveys of municipal legislation for the punishment of war criminals which had been passed up to that date in the different countries. However, since then the matter has

THE QUESTION OF JURISDICTION

become more complex and more comprehensive and has spread to many more countries,—I will be submitting to the Court this group of photostatic copies—countries from the east and from the west, from the north and from the south, all of which have found it necessary to do what the State of Israel has done, to pass this kind of legislation for the punishment of people who committed these crimes during the War. The Court will find that these laws come from Austria, Bulgaria, Belgium, Canada, Czechoslovakia, Denmark, France, Greece, Hungary, Italy, Luxemburg, Holland, Norway, Poland, Rumania, Yugoslavia and Australia. The State of Israel is in good company.

Judge Halevy: Mr. Attorney-General, I want to put a question to you. Are these permanent laws or only temporary wartime laws?

Attorney-General: They are laws which were passed for this specific purpose of plugging a hole broken open by the Nazi regime.

Judge Halevy: I asked the question because of the words "theater of operations."

Attorney-General: The Americans had their own way of proceeding in this matter. There is no general American legislation. The American legislation is always specific for a given theatre of operations. The laws which I have cited and which I shall submit to you are all regular laws. For instance, I will read one, that of Denmark. The English translation has been made by the U.N. War Crimes Commission:

"Danish provisions regarding punishment of war crimes: If a non-Danish subject, being in the service of Germany or serving under one of Germany's allies, has infringed the rules and customs of international law governing occupation in war, and has performed in Denmark or to the detriment of Danish interests and deed punishable *per se* in Danish law, an action can be brought against such person in respect of the crime committed and a punishment imposed in a Danish court in pursuance of this Act.

"In addition to the instances cited in paragraph 1, persons having committed the following crimes shall be liable to prosecution under this Act: war crimes, crimes against humanity—such as murder, maltreatment of civilians, prisoners or seamen, killing of hostages, looting of public or private property, requisitioning of money or other valuables, violation of the constitution, imposition of collective punishments, destruction by

THE QUESTION OF JURISDICTION

explosives or otherwise—all in so far as these actions were performed in violation of the rules of international law governing occupation and war. This Act shall further apply to deportation or other political, racial or religious persecutions contrary to principles of Danish law . . .”

I should like to emphasize:

“ . . . and further to all actions which, though not specifically cited above, are covered by Article 6 in the Charter of the International Military Tribunal. Order issued by the Danish Ministry for Foreign Affairs, Law Journal 7, dated 13th November 1945.”

The Court will find that similar language, sometimes at greater length, sometimes at less, is used in all the laws for punishing the Nazis and their collaborators.

Judge Ravch: What year was that law promulgated?

Attorney-General: I think in 1947—I beg your pardon, in 1946.

The President: Will you please submit this collection?

Attorney-General: I will submit this collection together with the Australian law which we do not have in photostatic form but which can be found, of course, in the official statute book of the Commonwealth of Australia.

Crimes against the Jewish People

The Court will find that many countries established special courts, even countries which do not usually establish extraordinary tribunals or special tribunals. They established courts of this character to try the Nazi criminals for their crimes during the War. We, in our law of 1950, did nothing new except for one thing, namely, that out of the concept of crimes against humanity we gave a special place to crimes against the Jewish people. Why did we do so? The Court will clearly understand the reason when I read what the Minister of Justice, Mr. Pinchas Rosen, said about this when he introduced the bill to the Knesset. I am reading *Divrei Hakeneset*, vol. 4 . . .

Judge Halevy: Does what the Minister of Justice have to say bind the Court?

Attorney-General: No. I simply want to show why the Knesset,

why the Parliament of the State of Israel, singled out from the crimes against humanity one special crime, the crimes against the Jewish people.

Judge Halevy: Is that not clear from the law itself?

Attorney-General: That is clear from the tragic history of the Jewish people. Disaster befell Australia, Canada and Hungary as a result of the war, but not complete destruction. Hitler's regime clashed with all these States in the military sphere but did not decide to annihilate any one of them. There was no need for any one to pass a law about crimes against the Australian people, but there was need for a law about crimes against the Jewish people because of what the Nazis did. We have done nothing new in formulating this crime. All of it is included in the concept of crime against humanity. When the persecution of the Jews, the atrocities which the Nazis did to the Jewish people, were mentioned in the different trials, in Nuremberg and elsewhere, the offenders were punished because they were crimes against humanity or war crimes. We too here have indicted the accused also under the section dealing with crimes against humanity. There was only one people which this wicked regime decided to destroy to the bitter end. That was the Jewish people. Therefore, when the Knesset of the State of Israel decided to enact its own law for the punishment of Nazis, it dealt specifically, and if I may say so it had to deal specifically, with this aspect as something apart from the crimes against humanity. And this is what the Minister of Justice said — I am reading from *Divrei Haknesset*, vol. 4, p. 1147:

"The Law for the punishment of Nazis and their collaborators, as the law also before the Knesset at the present meeting, the law for the prevention and punishment of genocide, the second reading of which the Knesset has already commenced but not yet finished, again brings before the Knesset the tragic chapter, the most tragic chapter, in the history of our people, the chapter of annihilation and destruction which cost the lives of six million of our brethren. Enacting laws such as these is no consolation. These laws will not restore our dead to us. To the extent that we can console ourselves we must direct our hearts to the work of construction and rebuilding and the ingathering of the exiles which is now being undertaken in this country. But by passing this legislation we are carrying out an elementary and natural duty

because it is not possible that a legislative body speaking in the language of law will pass to the next item on its agenda and overlook these crimes, the crimes of the Nazis, which in their cruelty shocked the whole world and wrought a complete revolution in legal thinking.

"These acts, completely unprecedented as they were, led to a number of innovations, the like of which have not been experienced before in the law. In the well-known Nuremberg Charter and in the well-known Nuremberg trials the legal principles were renovated. In the law which I am now presenting to you, too, you will find innovations and departures from notions which had been accepted in legal thought before the Nazis' crimes. These are departures from what might be called sacrosanct principles, which no criminal law would easily overlook, were it not for the Nazis' crimes.

"And these are the departures from the accepted canons of criminal law: First, the object of the law is to punish for acts which in part had not been formulated as crimes when they were performed. Second, under the proposed law offenders will be brought to trial for offences committed outside the boundaries of the State—here too, generally speaking, there is a marked departure from what is usual.

"Third, the law is retroactive. As is known, it is generally not admitted that criminal laws should be retroactive. The proposed law differs from the law for the prevention and punishment of the crime of genocide, which, as I have said, is now still before the Knesset. That law deals with the future. Its purpose is to prevent repetition of the type of acts which were done in the past, to prevent the repetition of crimes similar to those which the Nazis did. On the other hand, the law which I am now proposing deals with the past, with a definite period of history, which began when Hitler rose to power and ended with his own destruction.

"I think we have done well to separate these two laws. The present law deals with the past. We will not forget and we will not forgive. In it we are making our account with the past. Therefore, the law abolishes the principle of prescription in so far as concerns the most heinous of offences, those included in this law as war crimes and crimes against humanity, and as regards the murder of persecuted persons as

such. The principle of prescription will not apply to these serious crimes.

"The proposed law is an expression of the revolution which has occurred in the political situation of the Jewish people. While other people enacted their legislation near to the termination of the War and some of them even before the War came to an end, the Jewish people, whose account with the Nazis is long and very heavy, was until the establishment of the State deprived of political authority and of ability to bring the Nazi criminals to book. It had no political authority capable of demanding the extradition of these criminals or capable of bringing them to trial in its courts as it now proposed in this law. All this is now going to change."

The President: What volume of *Divrei Haknesset*?

Attorney-General: Volume 4, p. 1147. Under this law, before Adolf Eichmann, a number of people were brought to trial in Israel from 1950 onwards. And quite serious penalties have been imposed, not only on collaborators of the Nazis, including Jews who carried out their orders to the extent that these persons had no recognized defence as having themselves been persecuted persons. To the extent that that wicked regime blunted their moral sense and they were found guilty, they were punished according to law.

The President: Why are you referring to Israeli jurisprudence?

Attorney-General: Because it lays down how the Court looks upon the law and this is important. I am reading from Criminal Appeal 119/51, *Pal v. Attorney-General*, which can be found in Piskei Din, 6 (1952), p. 498 [International Law Reports, 1951, p. 542].

On page 502, para. 4, the President, Mr. Justice Olshan, had the following to say:

"If we compare section 1 with section 2, we shall see that all the offences contained in section 2 appear also in section 1, either in the definition of crimes against the Jewish people or in that of crimes against humanity, except that in section 2 they are in somewhat broader terms such as murder, extermination, enslavement, starvation, or deportation and other inhumane acts. The real difference is that section 1 refers to crimes against a group (civilian population) and section 2 to crimes against individuals. But even by section 1 a man can be convicted in respect of an act committed against in-

THE QUESTION OF JURISDICTION

dividuals if the act was committed with the intention of harming the group and the crime was in part performance of the evil intention against a whole group, whether the Jewish people or any other civilian population. (It may be mentioned that "civilian population" is a broad term which includes also part of a civilian population belonging to a national, religious, racial or political group.)"

Israel is a party to the Convention on the Prevention and Punishment of the Crime of Genocide [United Nations Treaty Series, vol. 78, p. 277]. Incidentally, to our great regret, Israel is one of the few signatories of this Convention which has fulfilled the obligation to enact necessary legislation to give effect to the Convention in the domestic law, and has passed a law for the Prevention and Punishment of the Crime of Genocide [Laws of the State of Israel, vol. 4, 5710-1949/50, p. 101]. The preamble to the Genocide Convention states that the parties were agreed in:

"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 cooperation is required."

By 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."

Obviously we cannot charge Eichmann under the law which was passed by virtue of that Convention, because that law, as was already explained by the Minister of Justice in the Knesset, looks only to the future.

The President: What is the date of the law.

Attorney-General: 1950.

International Law and the Law of Israel

I now pass to the problem of how public international law is incorporated into Israel domestic law. The law of Israel follows international law and statute law in Israel has to be interpreted in conformity with the principles of public international law. This has been laid down in a series of judgments. In *Amsterdam and*

others v. Minister of Finance, H.C. 279/51, Piskei Din 6 (1952), p. 945 [International Law Reports, 1952, p. 229], at p. 966 [233] it is said: "It is a well-known maxim that a municipal statute should—except where its contents require otherwise—be interpreted in accordance with the rules of public international law". In Jerusalem Civil Case 208/52, *Shebabo v. Heilen and others*, Pesakim Mehoziim, 8, p. 455 [International Law Reports, 1953, p. 391] it is said at p. 458 [393]:

"The rules of international law, accepted in all civilized countries, are also applicable in the State of Israel, if not by virtue of international law itself, then at least through their being part of the English common law which is valid in this country, failing any other regulation, by virtue of Article 6 of the Palestine Order-in-Council and Section 11 of the Law and Administration Ordinance, 5708-1948".

The President: Whose judgment is that?

Attorney-General Mr. Justice Vitkon.

When the question arose of the jurisdiction of the State of Israel over ships bearing the Israel flag on the high seas, the late Mr. Justice Heshin, Deputy President of the Supreme Court, found a number of sources for the application of international law in Israel. In the judgment in *Stampfer v. Attorney-General*, Criminal Appeal 174/54, Piskei Din 10 (1958), p. 5 [International Law Reports, 1956, p. 284] on page 14 [288] we can read:

"That principle has, in my opinion, become a part of the law of this country in three ways: First, by Article 46 of the [Palestine] Order-in-Council of 1922; second, by section 1 of the Admiralty Offences (Colonial) Act, 1849, which was incorporated in the law of this country by Article 35 of the Order-in-Council of 1932; third, by virtue of the sovereignty of the State of Israel".

On page 17 [291] of the same judgment it is said: "As to the question of the incorporation of the principles of international law in the national law, we rely on Blackstone *Commentaries on the Laws of England*, Book IV, Chapter 5:

... [I]n England ... the law of nations ... is ... adopted in its full extent by the common law, and is held to be

THE QUESTION OF JURISDICTION

a part of the law of the land. And those acts of parliament which have from time to time been made to enforce this universal law . . . are not to be considered as introductive of any new rule, but merely as declaratory of the old fundamental constitutions of the kingdom: without which it must cease to be a part of the civilized world."

The President: What page is that?

Attorney-General: Page 17. That is the end of the quotation from Blackstone. And the late Mr. Justice Heshin continues:

"The same goes for other countries, such as the United States of America, France, Belgium and Switzerland, where the usages of international law have been recognized as part of the national law, though some of these countries uphold the principle of the territorial jurisdiction of their Courts."

The President: Was that the judgment of the Court or only the opinion of Mr. Justice Heshin?

Attorney-General: That was the majority opinion. Mr. Justice Vitkon associated himself with Mr. Justice Heshin's opinion and Mr. Justice Goitein wrote a separate opinion.

On p. 15 [289] it is said:

"But in addition to all the above, it seems to me that even if we are not able to rely on Article 46 of the Order-in-Council and section 1 of the English Act of 1849, we still have to decide that the said principle has become a part of the law of this country by virtue of Israel's being a sovereign independent state. The Declaration of Independence gave the new State access to the international laws and customs which all States enjoy by virtue of their sovereignty, and enriched its legal system by the accepted principles of the law of nations. We no longer need to obtain those principles second-hand, through specially provided secondary channels, for today we are able, by virtue of Israel's membership in the family of nations, to go to the fountainhead by virtue of the closing passage of section 11 of the Law and Administration Ordinance, or even without that section and without any reference to it. The State of Israel sends its ships to the high seas under its own flag. The people on board those ships are

protected by its flag and enjoy its laws and jurisdiction. For these reasons I see no obstacle whatsoever to its courts extending their authority to all persons in those ships and trying them in accordance with its laws, as any other enlightened State will do in respect of ships flying its flag and the persons on board thereof."

Parenthetically, I would observe that in the common law countries it is an established principle that in the event that there should appear a contradiction between the provisions of the domestic law and the provisions of international law, the domestic law will prevail. I am saying this only in order to complete the argument because according to my basic submission there is no contradiction and therefore we have no need to apply that principle in this case, but if there should be a contradiction then the local law would prevail. This is what Dicey has to say in the tenth edition . . .

The President: What is the name of the book?

Attorney-General: Dicey, *The Law of the Constitution*, p. 62.

The President: Which edition?

Attorney-General: The tenth, Sir.

"Acts of Parliament, it has been asserted, are invalid if they are opposed to the principles of morality or to the doctrines of international law. Parliament, it is in effect asserted, cannot make a law opposed to the dictates of private or public morality . . . There is no legal basis for the theory that judges, as exponents of morality, may overrule Acts of Parliament. Language which might seem to imply this amounts in reality to nothing more than the assertion that the judges, when attempting to ascertain what is the meaning to be affixed to an Act of Parliament, will presume that Parliament did not intend to violate the ordinary rules of morality, or the principles of international law, and will therefore, whenever possible, give such an interpretation to a statutory enactment as may be consistent with the doctrines both of private and of international morality. A modern judge would never listen to a barrister who argued that an Act of Parliament was invalid because it was immoral, or because it went beyond the limits of Parliamentary authority."

Judge Halevy: In English law, in the common law, and also in the

law of Israel; therefore we know no such principle as that of *unrichtiges Recht*.¹

Attorney-General: No, sir, that is not usual, but I mentioned this in another connection. If I did not express myself well, perhaps I had better start again. When I referred to *unrichtiges Recht* what I wanted to say was that it was absolutely essential for civilized nations to fill that anarchy which the Nazis had created. The reply of international law to that situation of anarchy was: what you called laws were not laws but arbitrary acts. Therefore, from 1945 onwards, we are going to fill, "retroactively", that vacuum which you have created when you brought the principles of international law tumbling down from their elevated position as signposts for humanity at large and in its place installed arbitrariness as the sole principle for your acts, and international law goes on to say it is no answer for you to say we had a law because a law which is *unrichtiges Recht*—a wrongful law—is not law and it need not be taken into consideration when international law comes to fill the vacuum created by your own arbitrary and atrocious actions.

In Criminal Appeal 5/51, *Steinberg v. Attorney General, Piskei Din*, 5 (1951), p. 1061 [International Law Reports, 1951, p. 10], it is said at p. 1065 by Mr. Justice Zussman :

"It is a well known rule that in interpreting a statute the Court will as far as possible try to avoid a conflict between the municipal law and the obligations incumbent upon the State by virtue of international law. But this is only one of the canons of interpretation. That is to say, where we are dealing not with the common law but with a written statute which expresses the will of the legislator, then the Court must carry out the will of the legislator without considering if there exists a contradiction between the statute and international law. It may well be that international law imposes a certain obligation on the State. But since international law concerns not the relation of a state to its citizens, but a state's relations with other states, it follows that such obligations are for the benefit of other states, while the individual citizen is granted no right to insist upon the carrying out of the obligation. Furthermore, the Courts here derive their jurisdiction from municipal law and not from international law. Consequently, whenever a

¹ On this concept, see p. 224 above—Editor.

person is called upon to plead to a charge of infringing the municipal law, he cannot seek to defend himself by reference to international law, for the Courts apply municipal law and not international law in deciding as between an individual and the State."

But, Members of the Court, I am not inviting you to rely on that rule because it is not necessary to do so. The Nazis and Nazi Collaborators (Punishment) Law is nothing more than an Israeli version taking account of the specially tragic sufferings of the Jewish people, of principles which are firmly established and still existing in general international law.

In Criminal Appeal 22/52, *Honigman v. Attorney-General, Piskei Din* 7 (1953), p. 296 [International Law Reports, 1951, p. 542], we read :

"The purpose of the law is to 'enable justice to be done in Israel to the Nazis and those who associated and collaborated with them in the murder and extermination of the Jewish people and in their crimes against humanity'. That is the language of the explanatory memorandum which accompanied the bill. We do not cite this as a basis for our decision on the law but merely to explain the background of the enactment. Indeed, this law is fundamentally different in its characteristics, in the legal and moral principles underlying it and in its spirit, from all other criminal enactments usually found on the statute books. The law is retroactive and ex-territorial and its object, inter alia, is to provide a basis for the punishment of crimes which are not comprised within the criminal law of Israel, being the special consequence of the Nazi regime and its persecutions... It is more severe than criminal statutes. It authorizes an Israeli Court to judge for a second time in Israel a person already tried abroad for the same offence, account however being taken of any sentence served abroad. The rules of prescription have been abolished or modified. The General Amnesty Ordinance, 5709-1949, does not apply. The Court has special power to deviate from the rules of evidence. What is the reason for all this? Only one answer is possible. The circumstances in which the crimes were committed were extraordinary and therefore it was only right and proper that this law, its application, employment, and

the purpose which the State had in mind in enacting it—that these too should be extraordinary.”

Individual Responsibility for International Crimes

In the course of his argument yesterday, Counsel for the Defence explained what he thought to be the objectives of our law and if I understood him correctly, he was arguing that if there is room to talk about the accused expiating his crimes, it would be more appropriate to bring him to trial in Germany or in some other country. He also went on to say that the accused in fact cannot expiate these crimes, he, an individual for the crimes of his state. Expiation, according to Counsel for the Defence, must come from the State which despatched him to commit these crimes. According to Counsel for the Defence, the accused was dragged innocently into a morass of crime. This last argument must be proved and it is too early to go into it. I, for my part, am ready to say now that our argument is that Adolf Eichmann was not a little cog, and we will try and prove to the Court that he planned, initiated, executed and organized the destruction of the Jewish people in Europe. I agree that this is an argument of fact which at this moment is in dispute between the Defence and myself. I still have not proved my case but he has not proved his either and, therefore, the Court cannot make reference to this argument of fact for the purpose of this preliminary discussion. And on the question of expiation, the man sitting in the dock is not a repentent sinner on his way to Canossa, to atone for some moral offences. The man standing in the dock is accused of having committed crimes and individual responsibility for these crimes has been recognized in principle when other war criminals were tried at Nuremberg and in other courts. In the judgment of the International Military Tribunal—this time I am reading from Vol. 22 of the Blue Series in the English edition . . . **The President:** Why are you not being consistent and continuing to cite from Vol. 1?

Attorney-General: Last night the books were left locked up in this room and I needed the volume. The judgment is found in both volumes. On p. 465¹ we read:

“It was submitted that international law is concerned with the actions of sovereign states and provides no punishment

¹ Also in vol. 1 at pp. 227 ff. Editor.

THE QUESTION OF JURISDICTION

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, US, 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 offenses 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 provisions of Article 228 of the Treaty of Versailles, already referred to, illustrate and enforce this view of individual responsibility.

"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:

'Official position of defendants, whether as heads of state, or responsible officials in government departments, shall not be considered as freeing them from responsibility, or mitigating punishment.' "

And here comes an important paragraph:

"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."

And on page 496 and following, when the Court was discussing crimes against humanity and war crimes, we read at the bottom of pp. 496 and 497:¹

"The Tribunal is of course bound by the Charter, in the definition which it gives both of War Crimes and Crimes against Humanity. With respect to War Crimes, however, as has already been pointed out, the crimes defined by Article 6, section (b) of the Charter were already recognized as War Crimes under international law. They were covered by Articles 46, 50, 52 and 56 of The Hague Convention of 1907, and Articles 2, 3, 4, 46 and 51 of the Geneva Convention of 1929. That violations of these provisions constituted crimes for which the guilty individuals were punishable is too well settled to admit of argument."

In the *Justice* case, which is found in vol. 3 of the Green Series, we read at p. 968:

"The IMT Charter, the IMT judgment and C.C. Law 10 are merely 'great new cases in the book of international law.' They constitute authoritative recognition of principles of individual penal responsibility in international affairs..."

There was another remark in the speech of Counsel for the Defence on the matter of expiation to which I must reply. If I understood him correctly he said: Germany has already made expiation. You have received reparations. What more do you want? I want to say with all the emphasis at my command that the Reparations Agreement did not come as an act of expiation, did not come as an act of forgiveness, or to cause us to forget. There is no reparation for crimes. There is no forgiveness. There is no forgetting. We can only hope

¹ Ibid., p. 253.

and believe that future generations will be different from their forebears, that new generations will arise and the children will not bear the sins of their fathers. But for those who committed crimes, there is no pardon, there is no forgiveness, there is no atonement. The Jewish people remembers for more than 2,000 years he who perhaps for the first time in history tried to commit the crime of genocide, Haman the Agagite.¹ It will never forget the man who partly succeeded in carrying out this crime.

The President: How much longer do you estimate you will need to complete your argument?

Attorney-General: I think all the day.

The President: Will that be enough?

Attorney-General: Perhaps, Sir, since we are not sitting tomorrow, I might need another hour on Friday morning in order to reply to some of the written arguments after we have managed to examine them.

The President: Apart from that, today all day?

Attorney-General: Yes.

The President: We will break off now for a quarter of an hour or twenty minutes.

(After the recess)

The President: Are the witnesses Tohar and Shimoni in or near the Court? If so, please bring them.

(The witnesses enter the Court.)

The President: Mr. Tohar and Mr. Shimoni, I want to inform you that you are free until Monday morning next week. From Monday morning and onwards you will be at the disposal of the Court on three hours' notice by telephone. Please leave your telephone numbers with the Clerk of the Court.

Attorney-General: To my argument this morning, I want to add just this: if Article 38 of Statute of the International Court at The Hague, which I have already quoted, recognizes among the sources of international law the writings of publicists of repute, all the more can a recommendation of the International Law Commission of the U.N., which is composed of some of the best jurists of the civilized nations, be regarded as part of international law, so that if it has still not been translated into the language of a formal treaty or a formal decision of the U.N. General Assembly, nevertheless, there

¹ See the Book of Esther—Editor.

is no reason why it should not be regarded as one of the sources of international law.

Ex Post Facto Legislation

Counsel for Defence raised two major arguments against our law and against the trial of Eichmann under it. First, he says it is a retroactive criminal law and, secondly, that it is extraterritorial legislation. If I wanted to make my task easy, I would perhaps content myself with an extremely short reply: You, judges of Israel, must accept the law of the State as you find it and you cannot declare the law to be invalid. In fact that is what Dicey says in the passage which I read before the recess. But having regard to all the circumstances, may I be allowed to expand a little on this argument and to reply in somewhat greater detail to some of the things we have heard and some of the things which I have already managed to read.

I am not attempting to justify generally retroactive criminal legislation and there is no need in this case to lay down a general rule relating to the principle *Nullum crimen sine lege*, and if we are using Latin words, I might point out that we have the same principle in Jewish law—"There is no punishment without previous warning." My argument is—and in this respect I am following the prosecution at Nuremberg—that the *lex* is existing and that our legislation does not infringe the principle *nullum crimen sine lege*. The law existed but it was overlooked. They deliberately chose to break it. They preferred not to pay heed to it. That does not mean that the law was not there, and on this matter the International Military Tribunal said—and with the permission of the Court I will now return to vol. 1 of the Blue Series—at p. 219:

"It was urged on behalf of the defendants that a fundamental principle of all law—international and domestic—is that there can be no punishment of crime without a pre-existing law. '*Nullum crimen sine lege, nulla poena sine lege*'. It was submitted that *ex post facto* punishment is abhorrent to the law of all civilized nations, that no sovereign power had made aggressive war a crime at the time that the alleged criminal acts were committed, that no statute had defined aggressive war, that no penalty had been fixed for its commission, and no court had been created to try and punish offenders.

"In the first place, it is to be observed that the maxim *nulum crimen sine lege* is not a limitation of sovereignty, but it is in general a principle of justice. To assert that it is unjust to punish those who in defiance of treaties and assurances have attacked neighboring states without warning is obviously untrue, for in such circumstances the attacker must know that he is doing wrong, and so far from it being unjust to punish him, it would be unjust if his wrong were allowed to go unpunished. Occupying the positions they did in the Government of Germany, the defendants, or at least some of them must have known of the treaties signed by Germany, outlawing recourse to war for the settlement of international disputes; they must have known that they were acting in defiance of all international law when in complete deliberation they carried out their designs of invasion and aggression. On this view of the case alone, it would appear that the maxim has no application to the present facts."

When the legislator has to choose between violating the *nullum crimen* principle by passing a law which *ex post facto* will be applied against criminals in a criminal case, and between the possibility that unprecedented criminal acts will rest unpunished and without any possibility of judging them in any Court—in the event of conflict between these two principles, the principle "let justice be done" should prevail.

I have another quotation from that judgment, from p. 227:

"The Tribunal proposes, therefore, to deal quite generally with the question of War Crimes and to refer to them later when examining the responsibility of the individual defendants in relation to them. Prisoners of war were ill-treated and tortured and murdered, not only in defiance of the well-established rules of international law, but in complete disregard of the elementary dictates of humanity."

What must we do if we are seeking to do justice in the abstract—although my argument is that the Court decides a case in the concrete? Let us follow the Defence and examine the right of the Knesset to pass a law such as this, or the right of the Occupying Powers to pass a law such as Control Council Law No. 10, because that, in fact, is what the Defence is attacking. What should have

been done? Should it have been said that we must shut our eyes and close our mouths without any possibility of bringing criminals to trial and punishment for these acts? Or should it have been said: So be it; there is a principle of *nullum crimen*, but there is also a more important principle—let justice be done. My submission is that the second principle must prevail. And indeed it has prevailed. It prevails in the application of international law as it prevails in the legislation of the Israeli Knesset.

In case No. 9 of the Subsequent Trials, known as the *Einsatzgruppen* case, which will be found in vol. 4 of the Green Series—the Court sat under the presidency of Judge Musmanno—the following appears, and I am quoting from page 458:

“Defense counsel have particularly thrust at Control Council Law No. 10 with the Latin maxim *nullum crimen sine lege, nulla poena sine lege*. It is indeed fundamental in every system of civilized jurisprudence that no one may be punished for an act which was no prohibited at the time of its commission. But it must be understood that the “lex” referred to is not restricted to statutory law. Law does, in fact, come into being as the result of formal written enactment and thus we have codes, treaties, conventions and the like, but it may also develop effectively through custom and usage and through the application of common law. The latter methods are not less binding than the former. The International Tribunal, in its decision of 30 September 1946, declared —

‘International Law is not the product of an international legislature. This law is not static, but by continual adaptation follows the needs of a changing world.’

“Of course, some fields of international law have been codified to a substantial degree and one such subject is the law of land warfare which includes the law of belligerent occupation because belligerent occupation is incidental to warfare. The Hague Regulations, for instance, represent such a codification. Article 46 of those regulations provides with regard to invading and occupying armies that —

‘Family honor and rights, the lives of persons and private property, as well as religious convictions and practice, must be respected.’

“This provision imposed obligations on Germany not only

THE QUESTION OF JURISDICTION

because Germany signed The Hague Convention on Land Warfare, but because it had become international law binding on all nations.

"But the jurisdiction of this Tribunal over the subject matter before it does not depend alone on this specific pronouncement of international law. As already indicated, all nations have held themselves bound to the rules or laws of war which came into being through common recognition and acknowledgment. Without exception these rules universally condemn the wanton killing of noncombatants. In the main, the defendants in this case are charged with murder. Certainly no one can claim with the slightest pretense at reasoning that there is any taint of *ex post factoism* in the law of murder."

And in the *Justice* case, in vol. 3 of the Green Series, we read at p. 974 the following :

"The defendants claim protection under the principle *nullum crimen sine lege*, though they withheld from others the benefit of that rule during the Hitler regime. Obviously the principle in question constitutes no limitation upon the power or right of the Tribunal to punish acts which can properly be held to have been violations of international law when committed. By way of illustration, we observe that C.C. Law 10, article II, paragraph 1 (b), "War Crimes", has by reference incorporated the rules by which war crimes are to be identified. In all such cases it remains only for the Tribunal, after the manner of the common law, to determine the content of those rules under the impact of changing conditions.

"Whatever view may be held as to the nature and source of our authority under C.C. Law 10 and under common international law, the *ex post facto* rule, properly understood, constitutes no legal nor moral barrier to prosecution in this case.

"Under written constitutions the *ex post facto* rule condemns statutes which define as criminal, acts committed before the law was passed, but the *ex post facto* rule cannot apply in the international field as it does under constitutional mandate in the domestic field. Even in the domestic field the prohibition of the rule does not apply to the decisions of common law courts, though the question at issue be novel. International law is not the product of statute for the simple reason that there

THE QUESTION OF JURISDICTION

is as yet no world authority empowered to enact statutes of universal application . . .

"To the same effect we quote the distinguished statesman and international authority, Henry L. Stimson —

'A mistaken appeal to this principle has been the cause of much confusion about the Nuremberg trial. It is argued that parts of the Tribunal's Charter, written in 1945, make crimes out of what before were activities beyond the scope of national and international law. Were this an exact statement of the situation we might well be concerned, but it is not. It rests on a misconception of the whole nature of the law of nations. International law is not a body of authoritative codes or statutes; it is the gradual expression, case by case, of the moral judgments of the civilized world. As such, it corresponds precisely to the common law of Anglo-American tradition. We can understand the law of Nuremberg only if we see it for what it is—a great new case in the books of international law, and not a formal enforcement of codified statutes. A look at the charges will show what I mean.

'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 offense 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!' " ¹

This question of retroactive criminal legislation also arose in Israel in Criminal Appeal 1/48, *Sylvester v. Attorney-General*, published in *Pesakim* 1 (1948), p. 513 [Annual Digest and Reports of Public International Law Cases, 1948, 575]. Here the Court cites from the English case of *Philip Sylvester v. Ayre*, a judgment of Wills, J. which I think can be summarized in two basic principles: 1. although, generally speaking, retroactive legislation is undesirable, it is not right to lay down that it is always automatically and of necessity unjust. There are circumstances, and the security of the state is one

¹ "The Nuremberg Trial: Landmark in Law," *Foreign Affairs*, Jan. 1947, pp. 180, 184.

of them, which can justify retroactive legislation because normal laws design to regulate normal circumstances and common situations of society cannot always meet the requirement of justice. 2. The decision whether the particular circumstances justify retroactive legislation must rest with Parliament and not with the Courts. It is not the duty of the Courts to examine the necessity for this kind of legislation. In my submission this summary is an adequate answer to this argument of the Defence.

In this context, may I cite from the article of Sheldon Gluck, published in *Harvard Law Review*, vol. 59, p. 396. The title of this article is "The Nuremberg Trial and Aggressive War." I want to read two quotations. The first is on p. 443:

"That which Hitler and his clique did *not* know was while they would be given every reasonable facility for defense, they would not be permitted to escape personal liability by hiding their flagrant deeds behind the protective mantle of the convenient "State". Is their ignorance of that suddenly to transform them into innocents whose prosecution is frightfully unjust, and fatally 'illegal', and obnoxiously 'ex post facto' because it involves something of which they had had prior notice?"

The second is on p. 428:

"It is perfectly obvious that the application of a universal principle of non-responsibility of a State's agents could easily render the entire body of international law a dead letter. For any group of criminally minded persons comprising the temporary Government that has seized power in a State could readily arrange to declare all of its violations of the law of nations—either in initiating an illegal war or in conducting it contrary to the laws and customs of recognizedly legitimate warfare—to be 'acts of State'. Thus all its treaty obligations and international law generally could be rendered nugatory; and thus the least law-abiding member of the Family of Nations could always have a weapon with which to emasculate the very law of nations itself. The result would be that the most lawless and unscrupulous leaders and agents of a State could never be brought to account. If such a State won an aggressive war, the politicians, militarists and industrialists who had planned, ordered or executed even the most flagrant atro-

cities and cynical breaches of international and municipal law, would of course not subject themselves to prosecution in their own courts. And if they happened to lose—as Germany and its chronic militarists have in our day happened twice to do—they would again be assured of personal immunity through application of an irrational technicality. Only the State would have to pay reparations; and that would mean that either the war impoverished losing State would gradually wriggle out of its obligation and even transform it into a loss to the people of the victor State (as was true of Germany vis-a-vis the United States after the first World War); or many ordinary citizens of the losing State, who had had nothing to do with initiating or conducting an unjust and ruthless war, would be penalized through heavy taxation to meet the fine imposed upon their nation. The scoundrels at the top, who had actually plotted and carried out the breaches of international and municipal law, would conveniently escape with their lives and fortunes and conserve their strength for still another try at world domination—a process in which they have nothing to lose and everything to gain.”

To summarize then, this legislation which proclaimed the atrocities of the Nazis to be crimes and merely spelled that out is not retroactive legislation. It only appears as such. It sets forth in the language of statute what has always been the law. But even if we accept the submission, for the purpose of argument only, that this is retroactive legislation, then I say it is just and the justice which it embodies is stronger, more fundamental and more persuasive than the justice comprised within the principle of *nullum crimen sine lege*.

The Court will find a detailed analysis of this in the collections of judgments of war criminals. This time I am referring to the well-known British collection entitled *Law Reports of Trials of War Criminals*. In the last volume the Court will find discussion of this principle as it appeared in the various cases known as the *Hostages*, *Flick*, *I.C. Farben*, *High Command* and the *Einstazgruppen* cases.

The President: It that a judgment?

Attorney-General: No, an analysis by the editor of the collection, in which he reviews the principal defence arguments which were raised in the different cases. The Court will also find there mention of what the Netherlands Court of Cassation said in the case of the war

THE QUESTION OF JURISDICTION

criminal *Rauter* [Annual Digest and Reports of Public International Law Cases of 1949, p. 526]. Without reading it I would like to draw your attention to what is said on pages 166 to 170. I will only quote the last paragraph on p. 170:

"The view of the problem most commonly adopted seems, however, to be that since the rule against the enforcement of *ex post facto* law is in essence a principle of justice it cannot be applied in war crime trials where the ends of justice would be violated by its application."

Accordingly, my submission is to reject the argument of the Defence to the effect that our law is contradictory to the principles of international law and request you to reject the argument that this Court is without jurisdiction on the ground that the indictment is laid under a provision which is itself in violation of the law. To the contrary, the law gives expression to the most elevated principles of justice.

The Question of Exterritoriality

The second argument of the Defence runs something like this: the accused did not commit his crime on your territory, did not injure your state or your citizens because you were then not in existence when he committed the crimes attributed to him. Therefore, you have no jurisdiction to try him for two reasons. First, because he was brought here by force, and, secondly, because your law, which purports to be extraterritorial legislation in this respect, is contrary to the principles of international law. On the first point, I have already said what I wanted to say yesterday, and I only want to distinguish clearly between two different reasons which seem to me to have been confused in the speech of the Defence. There is no connection between the forcible bringing of a person within the jurisdiction of a State and the extraterritorial matter. If we assume for a minute that our law is invalid because it is extraterritorial...

The President: Do you not mean extra-territorial?

Attorney-General: As you like it. The American literature usually uses the expression extraterritorial but others use the expression extra-territorial and if the Court prefers extra-territorial...

The President: No, as you like.

Attorney-General: If our law really is invalid, then even if the accused came here of his own free will and not by force, then too it

would be impossible to try him under a law which is invalid. And if the fact that he was brought here forcibly invalidates the jurisdiction, it invalidates the jurisdiction for all purposes even as regards laws which are not extraterritorial, even as regard normal laws. That is why the two arguments must be carefully distinguished. There is no inherent connection between them. Counsel for the Defence combines them, but I request you to deal with each one separately because each one relates to quite different legal principles. On the matter of the forcible bringing of a person within the jurisdiction, I do not need to repeat what I said yesterday.

Now I will deal with the second part of the argument, that which seeks to invalidate our law because it applies to acts which were committed not on the territory of Israel and at a period of time at which the State of Israel was not yet in existence.

The principles by which jurisdiction in criminal matters can be acquired were examined before the Second World War by a group of some of the greatest jurists of the United States in a research project conducted under the auspices of Harvard University. The Court will find much valuable material in the report of this study group. It is a scientific study. I will read only a short extract from it. It is found in 29 *American Journal of International Law*, of 1935, in the Supplement, and I am quoting from p. 445:

“An analysis of modern national codes of penal law and penal procedure, checked against the conclusions of reliable writers and the resolutions of international conferences or learned societies, and supplemented by some exploration of the jurisprudence of national courts, discloses five general principles on which a more or less extensive penal jurisdiction is claimed by States at the present time. These five general principles are: first, the territorial principle, determining jurisdiction by reference to the place where the offence is committed; second, the nationality principle, determining jurisdiction by reference to the nationality or national character of the person committing the offence; third, the protective principle, determining jurisdiction by reference to the national interest injured by the offence; fourth, the universality principle, determining jurisdiction by reference to the custody of the person committing the offence; and fifth, the passive personality principle, determining jurisdiction by reference to the nationality or national character of the person injured by the offence. Of these

five principles, the first is everywhere regarded as of primary importance and of fundamental character. The second is universally accepted, though there are striking differences in the extent to which it is used in the different national systems. The third is claimed by most States, regarded with misgivings in a few, and generally ranked as the basis of an auxiliary competence. The fourth is widely though by no means universally accepted as the basis of an auxiliary competence, except for the offence of piracy, with respect to which it is the generally recognized principle of jurisdiction. The fifth, asserted in some form by a considerable number of States and contested by others, is admittedly auxiliary in character and is probably not essential for any State if the ends served are adequately provided for in other principles."

Therefore, it is quite incorrect to say that there is only one principle by which jurisdiction can be acquired and that is the territorial principle. There are a number of principles, some of them more usual, some of them less usual, some of them more frequent, some of them less frequent. In 1935 the research group of Harvard University could not have foreseen the Second World War and its crimes and the principles which would have to be developed in consequence. But even if we take as our point of departure the territorial principle and examine the right of the State of Israel to enact laws having application outside its boundaries, we will see that even before the Second World War, principles had become accepted which do not conform to what Counsel for Defence has been arguing here. The matter was discussed at some length by the Permanent Court of International Justice at The Hague in the well-known case of the *Lotus*. The facts and the judgment can be found in *Publications of the Permanent Court of International Justice*, Series A, No. 10. The facts as stated on p. 10 were that the French ship *Lotus*, proceeding to Constantinople, collided with the Turkish ship *Boz-Kourt* in the open sea. The fact that the collision occurred on the high seas is established clearly on p. 5. The Turkish ship was cut in two and eight Turkish citizens on board were drowned. When M. Demons, who was the officer of the watch of the *Lotus* at the time of the collision reached Constantinople and disembarked, he was arrested by the Turkish authorities, and placed on trial for an offence against Turkish citizens. He argued that extraterritorial Turkish law which laid

down that causing injury to a Turkish citizen in any place in the world was an offence against Turkish law was invalid, and, therefore, he went on to argue that the Turkish Court lacked jurisdiction in the case. The Court did not accept that argument, and when a dispute arose between France, Demons' state, and Turkey, which was seeking to exercise its jurisdiction, the two countries agreed to ask the International Court to decide the question of the legality of the Turkish law. I quote from p. 12 of the judgment:

"The violation, if any, of the principles of international law would have consisted in the taking of criminal proceedings against Lieutenant Demons. It is not therefore a question relating to any particular step in these proceedings—such as his being put to trial, his arrest, his detention pending trial or the judgment given by the Criminal Court of Stamboul—but of the very fact of the Turkish Courts exercising criminal jurisdiction. That is why the arguments put forward by the Parties in both phases of the proceedings relate exclusively to the question whether Turkey has or has not, according to the principles of international law, jurisdiction to prosecute in this case.

"The Parties agree that the Court has not to consider whether the prosecution was in conformity with Turkish law; it need not therefore consider whether, apart from the actual question of jurisdiction, the provisions of Turkish law cited by Turkish authorities were really applicable in this case, or whether the manner in which the proceedings against Lieutenant Demons were conducted might constitute a denial of justice, and accordingly, a violation of international law. The discussions have borne exclusively upon the question whether criminal jurisdiction does or does not exist in this case."

And now on p. 18:

"Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention.

"It does not, however, follow that international law prohibits

THE QUESTION OF JURISDICTION

a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law. Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases. But this is certainly not the case under international law as it stands at present. Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable."

And this is the final decision of the majority, on p. 32:

"The Court, having heard both Parties, gives, by the President's casting vote—the votes being equally divided—, judgment to the effect that, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamship *Lotus* and the Turkish steamship *Boz-Kourt*, and upon the arrival of the French ship at Stamboul, and in consequence of the loss of the *Boz-Kourt* having involved the death of eight Turkish nationals, Turkey, by instituting criminal proceedings in pursuance of Turkish law against Lieutenant Demons, officer of the watch on board the *Lotus* at the time of the collision, has not acted in conflict with the principles of international law . . ."

Judge Halevy: I have a question for the Attorney-General. Did the majority in the International Court accept the general principle or did the majority only decide in fact that Turkey had not violated a rule of international law, and was this majority itself composed of judges holding different views as to the underlying general principles?

Attorney-General: Yes [and see p. 262]. My immediate reply is that

we must examine not only the opinions of the majority but also the opinions of the minority and I want to ask myself if the *Lotus* case had been decided not when it was decided but today, what would those dissenting judges—the Netherlands judge, for example, or the Englishman—have said, having regard to developments in their own countries in the matter of extritorial legislation.

The Dutch judge said that a criminal law cannot apply outside the boundaries of the State which enacted it, and he stood pat on his territorial principle. But the law develops, and let us see what has happened in Holland in the meantime. In the International Law Reports for 1951 at p. 206, in the case of *Public Prosecutor v. L.*, we read :

“The defendant, a woman of Belgian nationality and domiciled in Belgium, was prosecuted in the Special Police Court of Breda on November 2, 1950, for having acted in Belgium as an accessory to offences committed by Netherlands subjects against the Dutch Currency Decree (*Deviezenbesluit*) of October 10, 1945 (*Staatsblad*, No. F 222), by giving them an opportunity and means to commit the said offences. Under Article 31(5) of the Decree the acts therein defined as offences were made punishable if committed in a foreign country. The defendant's contention that she was not subject to Dutch criminal law was not accepted, and she was convicted. The conviction was upheld by the Court of Appeal at 's'Hertogenbosch on March 7, 1951.

“The defendant appealed further.

“Held (by the Supreme Court) : that the accused was rightly convicted. The acts committed by the accused did not come under any of the general principles of applicability of Netherlands criminal law as laid down in Book 1, Section 1, of the Netherlands Penal Code. These acts could therefore only fall under the scope of Dutch criminal law in virtue of the special provisions contained in Article 31 of the Emergency Decree of 1945 on Currency Restrictions. Those provisions were directed not only against Netherlands subjects who committed currency offences in a foreign country, but also to foreign nationals abroad who were accessories to such offences.”

Dutch law, in the age of aircraft (perhaps I should now add in the age of jets and rockets) recognizes that it is impossible to stand

pat any more only on the territorial principle. We must break out from these fetters. There are offences which by their very nature are committed between States. True, in a relatively more primitive period the law did stand firmly by this principle: Here is where you committed your crime; here are your judges; here are the witnesses, here you are known—here you will be tried. But today with the advancement of the world and with the development of the principles of international law, there is no more rigid maintenance of the territorial principle, and I doubt if that British judge, Lord Finlay, who dissented from the majority opinion in the *Lotus* case, would today give the same opinion as he gave then.

The President: Why are you connecting this with the most up-to-date means of transportation—if we assume that rockets are means of transport?

Attorney-General: Rockets are only a sign of the times. It is a fact that the world is becoming one world; and in the light of the easy facilities of movement from place to place to commit crimes which do not know frontiers, the law must adapt itself to this new situation.

Let us take the well-known case of *Joyce*, known as Lord Haw-Haw, *Joyce v. Director of Public Prosecutions*, [1946] A.C. 347 [Annual Digest and Reports of Public International Law Cases, 1948, 91]. What did Joyce do? Joyce served the Nazi Germans by broadcasting broadcasts directed to England. He did not set foot on English soil when he was committing his criminal acts. His words reached England over the air. His insidious propaganda was regarded as treasonable and that is what brought judgment on his head, but I do not want to go now into the better known aspects of the *Joyce* case, the question of his British nationality and so on. I only want to mention the case in so far as it relates to the extraterritorial principle. When the case came before the Court, Joyce said: What do you want from me? This country, England, is the firmest upholder of the territorial principle. How can you judge me? I was not on English soil. And Lord Jowitt replied on p. 372 [97]:

“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.”

And in all simplicity Lord Jowitt completely ignored the territorial principle. It was quite unimportant where the offence was committed. The law has to be universal, and wherever you have committed this act, whenever you shall be captured by us, you will be brought to trial. The way the law has developed in this matter is most striking if we compare an authority quoted by Lord Finlay, the English judge, in the *Lotus* case. There he relied on the third edition of Oppenheim's *International Law*, which was published in 1920. In Vol. 1, *Peace*, the learned author states at p. 240:

"The question is, therefore, whether States have a right to jurisdiction over acts of foreigners committed in foreign countries, and whether the home State of such an alien has a duty to acquiesce in the latter's punishment in case he comes into the power of these States. The question, which is controversial, ought to be answered in the negative. For at the time such criminal acts are committed the perpetrators are neither under the territorial nor under the personal supremacy of the State concerned. And a State can only require respect for its laws from such aliens as are permanently or transiently within its territory. No right for a State to extend its jurisdiction over acts of foreigners committed in foreign countries can be said to have grown up according to the Law of Nations."

That is what Lord Finlay based his dissenting opinion on. Now, let us take the same book, the same volume, the 8th edition which came out in 1955, the same para. 147 which is found on p. 331. The paragraph begins the same but the continuation is quite different :

"The question is, therefore, whether States have a right to exercise jurisdiction over acts of foreigners committed in foreign countries, and whether the home State of such an alien has a duty to acquiesce in the latter's punishment in case he comes into the power of these States. Some answer this question in the negative. They assert that at the time such criminal acts are committed the perpetrators are neither under the territorial nor under the personal supremacy of the States concerned; and that a State can only require respect for its laws from such aliens as are permanently or transiently within its territory. This is probably the accurate view with regard to some cases. But it is not a view which, consistently with

THE QUESTION OF JURISDICTION

the practice of States and with common sense, can be rigidly adopted in all cases."

If Lord Finlay had to give judgment today in the *Lotus* case and wanted to be guided by Oppenheim's classic book, he at least would have had to have joined the majority.

The President: I am assuming that the 8th edition cites the *Lotus* case?

Attorney-General: Yes, because international law is always developing and that is its sole hope. Therefore, we need not wonder when we read the article by the late Sir Hersch Lauterpacht, who edited the latter book, in the *Cambridge Law Journal*, vol. 9 (1947), entitled "Allegiance, Diplomatic Protection and Criminal Jurisdiction over Aliens", which begins on p. 330. I am quoting from p. 345.

"There is international authority—in the Judgment of the Permanent Court of International Justice in the *Lotus Case*—in support of the extension, by reference to the place of effect, of the territorial principle. In that case the Court accepted as a valid proposition of law that it is certain that the courts of many countries, even of countries which have given their criminal legislation a strictly territorial character, interpret criminal law in the sense that offences, the authors of which at the moment of commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offence, and more especially its *effects*, have taken place there'."

I have emphasized the word "effects" because I will have another opportunity to speak of the effects and consequences of the acts with which Adolf Eichmann has been charged.

I will conclude this part of my argument with the concluding words of that same article by Lauterpacht on p. 348:

"It would be in accordance with an enlightened principle of justice—a principle which has not as yet become part of the law of nations—if, in the absence of effective extradition, the courts of a State were to assume jurisdiction over common crimes, by whomsoever and wherever committed, of a heinous character. Territoriality of jurisdiction is a rule of convenience in the sphere of the law of evidence. It is not a requirement

THE QUESTION OF JURISDICTION

of justice or even a necessary postulate of the sovereignty of the State."

The President: How does the law of evidence come into the matter?

Attorney-General: This way. The question is: Where are the witnesses and where are the judges?

(The Court recessed at 13:00).

SESSION No. 4

12.4.1961 — Afternoon

The President: The Fourth Session of the Court is open. The Attorney-General may continue.

Attorney-General: Before continuing, I want to return for a minute to the judgment in the *Lotus* case. I am afraid that there may be some misunderstanding as a result of my observations this morning to Judge Halevi. The majority judgment is of course a single opinion. But the Dissenting Opinions, those which dissent from the Opinion of the majority, are written individually and from different points of view. If my observations this morning could be understood as implying that the judges comprising the majority too reached their conclusion by different processes of reasoning, then that impression must be corrected. The majority judgment is a single decision which, it is true, was adopted through the casting vote of the President, but it is still a single decision embodying the common point of view. Amongst the dissenting Judges there are different points of view because each one reached his conclusions on his own.

And if I have touched on this point, there is something else I wish to say about the *Lotus* case. I want to recall what the Swedish judge Nyholm said on page 63, namely: "It will, however, be well to remember that international law is liable to continual variations . . ." And indeed I have already shown how right Judge Nyholm was because, as regards the territorial principle, international law is continually developing.

Also in the United States, which apparently was zealous in maintaining the territorial principle in its legislation and in the exercise of its jurisdiction, there now appear many cracks in this theory, even

before the United States actively embarked upon the process of punishing the Hitlerite criminals. I will mention here the article of Professor Lawrence Preuss, "American Conception of Jurisdiction with respect to Conflicts of Law on Crime", published in Volume 30 of the *Transactions of Grotius Society* for the year 1944 at p. 184. The article is long, and with the permission of the Court I will read simply its beginning and its end. This is what Professor Preuss says at the beginning:

"It is commonly asserted that the exclusive territoriality of the criminal law is the fundamental principle which distinguishes the Anglo-American conception of jurisdiction from that which prevails in countries which follow the traditions of the Roman law. This generalization, like so many that seek to draw a sharp distinction between the so-called Anglo-American and Continental schools of international law, is misleading in that it tends toward the oversimplification of a complex problem and results, at best, in half-truth. The territorial principle is basic to the common law, but it has in practice undergone so many exceptions that it is inaccurate to ascribe it, without numerous qualifications, to the British and American legal systems."

The article then deals with various exceptions from the rule, with the various "qualifications", to use the terminology of its author, and this is how he concludes, at p. 208:

"The dogmatic statement of the strict territorial principle viewed as an ineluctable consequence of the theory of sovereignty and without reference to the many modifications which it has undergone in practice, is responsible for the common attempt to draw a sharp contrast between the Anglo-American and the Continental conceptions as to the criminal competence of States. A more careful study of the interpretation and application of the territorial principle would show that the breach between the two systems is not great and that it has been virtually bridged by means of the broad interpretation given to the objective principle in the Anglo-American system. A clear realization of these facts should serve to withdraw the discussion of jurisdiction from the spheres of logic and of sovereignty. It should, furthermore, remove certain obstacles to a fuller co-operation by the United States in international

THE QUESTION OF JURISDICTION

movements for the repression of crime, movements which have up to this time been opposed by adherents of the strict territorial theory, which they conceive alone to be in conformity with international law."

And indeed we know perfectly well that by signing the London Charter America took up a definite position both as regards *ex post facto* legislation and as regards extritorial legislation...

The President: Do you mean the United States of America?

Attorney-General: Yes. But the punishment of war criminals is not the only subject covered by extritorial legislation. Many States, in the light of different circumstances, or for different purposes, have adopted extritorial provisions in their Criminal Codes for certain crimes. We will be submitting to the Court a list of these different texts. Here I will content myself with simply reading the names of the countries: Austria, Germany, the Soviet Union...

The President: Will you please be so good as to repeat what it is that these States have enacted.

Attorney-General: I am reading the names of the States which have given extritorial effect to certain provisions of their domestic legislation...

The President: What we call "Offences committed abroad?"¹

Attorney-General: Yes. I want to show that Israel is not alone in doing this but that it is a necessity of the times which many and different States have felt in order to protect the security of the State, the security of the population, economic security, by laying down that the arm of the State can punish acts committed outside its territorial borders. The Court will find legislation of this kind in the Criminal Law of Austria, Brazil, Czechoslovakia, Denmark, Finland, France, Germany, Holland, Italy, the Soviet Union and Switzerland. We will be submitting a detailed list of this legislation.

The President: Is that a complete list?

Attorney-General: No, it is a list which we have managed to compile on the basis of our preliminary research.

The President: You might have added the Ottoman law, which is close to us from several points of view.

Attorney-General: I will have to mention the State of Israel soon in this case, but we wanted to show that we are in good company

¹ See Penal Law Revision (Offences Committed Abroad) Law, 5716—1955. *Laws of the State of Israel*, vol. 10 (5716—1955/56), p. 7 — Editor.

with many countries which for one reason or another, and not necessarily only recently, have found it necessary to lay down rules for the punishment of acts which were committed outside the frontiers of the State. In Israel, too, explicit effect has been given to laws which have an extraterritorial quality. Let me mention here, without reading it, the case of *Lahis v. Minister of Defence*, H.C. 27/48, Pesakim 1 (1948), p. 236 [Annual Digest and Reports of Public International Law Cases, 1949, p. 96]. Perhaps I may also mention H.C. 100/57, *Weiss v. Inspector General of Police*, Piskei Din 12 (1958), p. 179 and p. 188. I am reading from a judgment of Mr. Justice Landau :

"Consequently we return to the general basic principles which we have summarized earlier and which derive from the *Amsterdam* case, to the effect that every law is of territorial application save where its provisions require otherwise whether specifically or by implication, and an intention to depart from the territorial principle can be implied from the general purpose of the law as appears from the whole of its text, or from the nature of the specific provision of the law which is the subject of discussion."

It is almost unnecessary to mention here Vattel, one of the fathers of the law of nations, but I just want to give a quotation from his *Law of Nations or the Principles of Natural Law* in the *Classics of International Law* published in 1916 by the Carnegie Institution, at p. 92 of the English translation:

"If a person has been exiled or banished from his country because of some crime, the Nation in which he takes refuge has no right to punish him for the offense committed in a foreign country; for nature only confers upon men and Nations the right to punish to be used for their defense and security (par. 169); whence it follows that we can punish only those who have done us an injury.

But this principle also makes it clear that while the jurisdiction of each State is in general limited to punishing crimes committed in its territory, an exception must be made against those criminals who, by the character and frequency of their crimes, are a menace to public security everywhere and proclaim themselves enemies of the whole human race. Men who by profession are poisoners, assassins, or incendiaries may be

exterminated wherever they are caught; for they direct their disastrous attacks against all Nations, by destroying the foundations of their common safety. Thus pirates are hanged by the first persons into whose hands they fall. If the sovereign of the country in which crimes of this nature have been committed requests the surrender of the perpetrators for the purpose of punishing them, they should be turned over to him as being the one who has first interest in inflicting exemplary punishment upon them; and as it is proper that the guilty should be convicted after a trial conducted with due process of law, we have another reason why criminals of this class are ordinarily delivered up to the States in which the crimes have been committed."

Universal Jurisdiction Over Certain Crimes

Regarding crimes of this kind, Blackstone writes, in his *Commentaries on the Laws of England*, Book IV, 12th edition, 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, *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 has 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."

In a new study recently published in Paris by Henri Meyrowitz, entitled *La Répression par les tribunaux allemands des crimes contre l'humanité et de l'appartenance à une organisation criminelle en application de la loi No. 10 du Conseil de Contrôle Allié*, we read on p. 163 the following :

"*Universal Competence*. The penal competence considered hitherto was the competence of the State or States directly concerned with the crime; the national State of the accused or the State harmed, whether by violation of its territorial penal laws, or by a criminal action directed outside its territory against its nationals, its interests or its protected persons. But in the

THE QUESTION OF JURISDICTION

matter of war crimes, international law does not recognize that only the interested States have the right to punish. The principle of universal competence, the principle that all States are under the duty to punish, has a long established basis. This is how Grotius puts it in *De jure belli ac pacis*, Book Two, Chapter XX, paragraph 40:

'We should understand also that kings and those who possess authority equal to theirs have a right to exact punishment not only for wrongs committed against themselves or their subjects, but for those that do not immediately touch them but are brutal violations of the law of nature or of nations, committed against anyone. For the liberty to preserve by punishment the welfare of human society, which originally, as we said, belonged to every individual, now, since the institution of states and courts, resides in the ruling authorities...' ¹

This is the end of the quotation from Grotius, and Dr. Meyrowitz continues:

"It is commonplace that international law has accepted the system of universal of universal competence in so far as concerns the repression of the crime of piracy. It did this basing itself on that conception . . .

There is no rule of general international law limiting exclusively to the law or the judges of the *locus delicti* criminal competence with regard to war crimes. It is notable that the formulations of the rules of the law of war in the Anglo-Saxon countries affirm that the right to punish war criminals belongs to the belligerent *into whose hands the culpable persons fall*, that is to say independently of the place in which the crime was committed and of the nationality equally of the criminal and of the victim. Here, too, we can observe the nexus existing between the theory of judicial competence and the theory of legislative competence . . . Similarly, international law does not forbid a belligerent State to try war criminals when the victims are not its own nationals. Restrictions of a character such as would limit the jurisdiction to the territorial judge or

¹ Hugo Grotius, *The Law of War and Peace*, translated by Louise R. Loomis, (New York, 1949), p. 226.

the national judge of the victim or even to an inter-Allied or international tribunal could only result from conventional stipulations such as those contained in the Declaration of Moscow, the London Agreement or Control Council Law No. 10.

"Immediately following the Second World War, a number of trials took place in Europe—not within the framework of the Statute of the International Military Tribunal and of the Control Council Law No. 10—and also in the Far East, which constitute an application of the principle of universal competence. In the first place we may mention the cases heard before American or British Military Tribunals relating to facts which took place outside the territory of the judging State but whose victims nevertheless had the nationality of that State.

"Those cases may be regarded as being connected with the system of passive personality. Nevertheless it seems more exact to see here an instance of the application of the principle of the universality of the right to punish, especially if attention is paid to the definition of war crimes applicable in these cases, a definition which no longer refers specifically either to the *locus delicti* or to the nationality of the victims. It is important to notice that in several of these cases the principle of passive personality was given precedence over the territorial principle even when the *locus delicti* was in an Allied State: France, Norway, Netherlands, Belgium, China.

"Now let us turn to some clear examples of universal judicial competence assumed by the British or American military tribunals. A British military tribunal sitting at Almelo in the Netherlands . . . convicted some Germans of war crimes committed in Holland, one against a British prisoner of war, another against a Dutch civilian. One of the accused was convicted only for this latter crime . . . In a case tried by the Military Tribunal at Hamburg . . . the principal *locus delicti*, not considered in this case, was Poland; the victims belonged to a great number of Allied countries but there were no British nationals amongst them. In the trial of the Torturers of the Concentration Camp of Bergen Belsen by a British military tribunal at Luneburg . . . the indictment referred by name to a number of victims, including two British nationals, a great number of Allied nationals, two Hungarians and one Italian. We may also cite the following judgments rendered by British

military tribunals: Singapore,—war crimes committed in Indochina by a Japanese against American prisoners of war; Brunswick,—war crimes committed in Germany by German civilians against children of Polish nationality; Rome,—war crimes committed at Rome . . . against Italian hostages.

"No less significant are cases tried by American military tribunals. For instance, in the trial of those responsible for the Hadamar sanatorium, before a military commission at Wiesbaden . . . the victims were several hundreds of Polish and Soviet nationals. There were no United States nationals amongst the victims of the crimes imputed to those responsible for the concentration camps of Dachau and Landsberg who were tried by a military court . . ."

Dr. Meyrowitz concludes with the following observations:

"Many, consistent and decisive as they are, these examples prove that international law recognises that in so far as concerns international competence over war crimes, by the side of the territorial system and by the side of the system of protection of nationals, there exists a third system, that of the universality of the right to punish. However, competence assumed by the State into whose hands an enemy criminal has fallen ought normally to give way if, in conformity with international agreements, his extradition is requested by the State of the *locus delicti* or by the national States of the victims."

President: When you were speaking earlier about older sources of international law in this connection, you mentioned piracy, slave-traders, and the white slave traffic. Is there any special reference to this in the sources?

Attorney-General: Not particularly. There are definitions of "*hostes humani generis*". These are people of whom it could be said, in a biblical turn of phrase, that they are branded with the mark of Cain. But while in such matters as the white-slave traffic, narcotic drugs, and so on, there are generally speaking international treaties which today lay down the right of jurisdiction, as far as concerns piracy the old general principle still remains in force, and it appears that even in the twentieth century such persons still exist. Here, for example, is the advice of the Judicial Committee of the Privy Council in *Re Piracy Jure Gentium*, which can be found in [1934] A.C. 586, at p. 589 :

"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."

The writer of the article "The Municipal and the International Law Basis of Jurisdiction over War Crimes"—I am deliberately saying "writer" of this article, because it is signed only with his initials, R.R.B.; I could guess who he is, but I do not really want to rely on his name—published in *British Year Book of International Law*, vol. 28 (1951), says on p. 392:

"If a neutral state should, by reason of the availability of the accused, witnesses, and evidence be the most convenient *locus* in which to try a war crime, there is no reason why that state should not perform that function."

And the State of Israel, members of the Court, having regard to the Holocaust, having regard to the witnesses saved from the Holocaust, having regard to its research institutes, the availability of material, the existence of a State institution such as the Remembrance Authority *Yad Vashem*¹ collecting historical material, the presence in the country of other research institutes occupied with the Holocaust—having regard to all this, Israel is a suitable place for trying a man charged with this offence.

In a book which recently was published by the University of California Press by Maurice Greenspan, *The Modern Law of Land Warfare*, it is said at p. 503 :

"Since each sovereign power stands in the position of a guardian of international law, and is equally interested in upholding it, any state has the legal right to try war crimes, even though the crimes have been committed against the nationals of another power and in a conflict to which that state is not a party. It will be remembered, for example, that each of the four Geneva Conventions of 1949 provides that each party is under the obligation 'to search for persons alleged to have committed, or to have ordered to be committed' grave breaches of the conventions, 'and shall bring such persons regardless of their nationality, before its own courts.'

¹ See Martyrs' and Heroes' Commemoration (Yad Va-Shem) Law, 5713—1953. *Laws of the State of Israel*, vol. 7 (5713—1952/3), p. 119—Editor.

THE QUESTION OF JURISDICTION

'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.' This obligation applies not only to parties to a conflict, but to neutrals. However, the state which had suffered the war crimes or against whose nationals the crimes have been directed, usually undertakes the trial of the offenders, either alone or in association with allied states."

In the organization of the General Assembly of the United Nations there is the Third Committee which deals amongst other things with Human Rights. In November, 1960, the Third Committee adopted the text of Article 15 of the Draft Covenant on Civil and Political Rights which I will be submitting to the Court so that you can see what the jurists of many different countries are saying on this matter. Here is the text of Article 15:

1. "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequently to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. "Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations."

Judge Halevi: This is more relevant to the previous part of your argument.

Attorney-General: To some extent it is also relevant to the previous part of my argument, but since we are talking about punishment in general and about general principles, I prefer to introduce it here, and the Court will find much interesting material in the legal debate on *ex post facto* legislation, on extritoriality and on other problems which arose before the Third Committee completed its deliberations and adopted the above text.

Trial Before International Tribunal?

We are told: Put Eichmann on trial before an international court. What international court? The International Court at The Hague deals only with disputes between States. It has no criminal jurisdiction over individuals. The International Military Tribunal which sat at Nuremberg has completed its task and no longer exists.

The President: I did not understand the argument as saying that any international court exists and can deal with this case.

Attorney-General: Also, the international tribunal which sat at Tokyo to try war criminals exists no more. What should the State of Israel have done? To have asked the United Nations to establish an international court? Already at Tokyo, when the honeymoon period of the immediate aftermath of the war was fast running out, quite a number of difficulties made themselves felt when that Court started to try war criminals. Is it seriously contended that it is a practical matter, that it is possible today, with all the complexities of the cold war and other international difficulties, to talk about establishing an international court? To whom shall we hand Eichmann over—to the Poles? To the Hungarians? To the Czechs? True, he sinned against all of them. But his first and his most emphatic and most obvious crime was against the Jewish people. The State of Israel wanted to see an international criminal court established. We made great efforts in the United Nations in the period 1951 to 1953 to see such an international criminal court established, since we are a small country interested in the existence of a supreme criminal tribunal which can give protection to the weak. I will be submitting to the Court the Report of the Committee on International Criminal Jurisdiction of 1951 [U.N. Doc. A/2136] and the Report of the 1953 Committee on International Criminal Jurisdiction [U.N. Doc. A/2645], which contain our proposals on this matter.

The President: Who established that Committee?

Attorney-General: The United Nations.

The President: Which one of its organs?

Attorney-General: The General Assembly. And perhaps here I may add that my colleague in the Prosecution, Dr. Jacob Robinson, was one of the most active members of that Committee for the establishment of an international criminal court. But why did it not come into existence? Because the big Powers did not want it, so that today

THE QUESTION OF JURISDICTION

there is no international criminal jurisdiction. Consequently, only one State can today try Adolf Eichmann, and according to its own law.

The President: How did all these discussions end, if at all?

Attorney-General: There are reports and there are recommendations, but no final solution has been reached yet.

The President: Is it still on the Agenda?

Attorney-General: Yes.¹

Dr. Servatius: May I please ask for copies of these two reports.

Attorney-General: I hope that the Ministry for Foreign Affairs will be able to make copies available to Dr. Servatius.

The Jewish People and the State of Israel

As the Court will see from the Indictment, Adolf Eichmann is charged first and foremost with crimes against the Jewish people. The Jewish people does not live only in Israel. There are Jewish communities outside the State, big ones and small ones, living under the protection of the laws of other countries. But the only country in the world which is a Jewish State, as it is declared in its Declaration of Independence,² as was recognized by the United Nations, having sovereign Jewish institutions, is the State of Israel. The right of the Jewish people to re-establish its national existence in its land was proclaimed already in the First Zionist Congress in 1897. In 1917 the Balfour Declaration looked with favour on the establishment of the Jewish National Home, and the Mandate which was conferred on Great Britain over this country incorporated that Declaration. The historical connection of the Jewish people with Palestine is recognized in the law of nations. The Jewish National Home which was established here during the period of the British rule was established for all the Jews, including those millions who are no longer alive. And if there is any State in the world which feels the effects of those crimes on its own body and soul—that is above all the State of Israel. There was the man-power, the faith and the inspiration for the Jewish State. As a State on the road to existence, it existed not only here but also there in every land which was tormented by the Holocaust. There too the Jews were waiting for their State.

¹ See General Assembly Resolution 1187 (XII) of 11 December 1957 — Editor.

² See *Laws of the State of Israel*, vol. 1 (5708–1948), p. 3.

THE QUESTION OF JURISDICTION

In 1936 the Royal Commission, known as the Peel Commission, was set up with instructions to make recommendations to the Mandatory power about the continuation of the Mandate. Dr. Chaim Weizmann, who was then the President of the World Zionist Organisation, and afterwards the first President of the State of Israel, appeared before that Commission. I am reading from page 32 of the Commission's Report.

The President: That is not the Report; that is the Minutes of Evidence.

Attorney-General: I shall be submitting the Report later. Speaking about the Jewish problem . . .

The President: From what page are you reading?

Attorney-General: Page 32. Even then Dr. Weizmann could see it as a national and an economic problem. He was speaking with the spirit of prophecy in his soul when he thought of the six million persons who should come to their State:

"It is, if I may say so, a world problem of considerable importance. Naturally it is one which primarily affects the Jewish community and secondarily affects the state of affairs in this particular part of the world, a part of the world which, since the war, has moved towards new forms of political and social life; at present not too strong—not too ripe politically and not too strong economically. These six million people to whom I have referred are condemned to live from hand to mouth, they do not know today what is going to happen tomorrow—I am not speaking now of organized anti-Semitism, but assuming the host nations were quite friendly—but there are objective reasons, purely objective reasons, existing in those parts of the world which tend to grind down the Jewish community and make it into the flotsam and jetsam of the world—grind it into economic dust, so to speak. Though it is generally known that the position of the Jewish people is not very happy, I think it is too little appreciated what its misery is and that is why I have permitted myself to dwell on it at some length. After all, it affects the fate of six million people."

These are the six million who were alive when Dr. Weizmann was speaking and on whose behalf he sought a Jewish State. They are no longer alive. Who is there to compare with us for feeling the consequences of the Holocaust and for sensing the terrible void

THE QUESTION OF JURISDICTION

which it has left behind in the life of the Jewish people? Who is there to compare with us as regards the right to judge for those consequences?

The Jewish *Yishuv* (Community) in Palestine, even in the period before the establishment of the State, was the only community able, thanks to its national development, to establish a Jewish fighting unit during the Second World War. This Brigade Group fought by the side of hundreds of thousands of Jews in the other Allied armies, but it was the only one which was able to fight under the blue-white flag.¹

The establishment of a Jewish State in Palestine entered into the contemplation of the world's statesmen as far back as the end of the First World War. The Report of the Peel Commission is good evidence. The Court will find evidence given by Mr. Lloyd George, who was Prime Minister at the time when the Balfour Declaration was issued. In Chapter 2, paragraph 20, of the Report his evidence is quoted verbatim:

"The idea was, and this was the interpretation put upon it at the time, that a Jewish State was not to be set up immediately by the Peace Treaty without reference to the wishes of the majority of the inhabitants. On the other hand, it was contemplated that when the Jews had meanwhile responded to the opportunity afforded them by the idea of a national home and had become a definite majority of the inhabitants, then Palestine would thus become a Jewish Commonwealth."²

In the end, the supreme international body, the General Assembly of the United Nations, recognized the particular quality of the Jewish community in Palestine, and the right of the Jewish people to a State of its own. On 29 November 1947 the General Assembly adopted its resolution [Resolution 181(II)] on the establishment of a Jewish State in part of the Mandated territory of Palestine. This constitutes *a posteriori* recognition of the fact that even before its adoption, the revived territorial consolidation of the Jewish people in Palestine was an existing fact—the process which began many years earlier, it began with the Return to Zion movement, and in

¹ The reference is to the Jewish Brigade Group formed at the request of the Jewish Agency for Palestine. See announcement of the British War Office in the *London Times* of 20 September 1944 — Editor.

² Palestine Royal Commission, Report, July 1937, Cmd. 5479, p. 24.

THE QUESTION OF JURISDICTION

our Declaration of Independence the aspirations of generations were realized.

It is no cause for surprise that the Luxembourg Agreement, that Agreement which was quoted by Counsel for Defence yesterday, and which can be found in *United Nations Treaty Series*, vol. 162, p. 205, stated in its preamble the following :

"Whereas unspeakable criminal acts were perpetrated against the Jewish people during the National-Socialist regime of terror . . .

"Now therefore the State of Israel and the Federal Republic of Germany have agreed . . ."

It was the State of Israel which, in one form or another, had to receive reparation for the unspeakable criminal acts which had been committed against the Jewish people.

Among the many trials of war criminals, the Court will find, as has already been mentioned in the passages which I have cited from Meyrowitz's book, cases in which the Courts of one country accepted jurisdiction with regard to offences committed against members of another nation. In the English series of *Law Reports of Trials of War Criminals*, vol. 1, p. 106, we read :

"That the appointment of Allied members of the Military Courts is not compulsory is strikingly demonstrated by the trial by a British Military Court at Singapore of W/O Tomono Shimio of the Japanese Army. In that case the accused was charged, found guilty and sentenced to death by hanging, by a Court consisting of British officers only, for having unlawfully killed American prisoners of war at Saigon, French Indochina. The *locus delicti commissi* was French territory, the victims were United States nationals."

Thus we see a British Military Court in Singapore trying a Japanese war criminal for offences committed on French territory against American nationals. Where does the British Military Court derive its competence from? The answer is found on page 53 in the following quotation,—from:

"The narrower theory that the United Kingdom did have a direct interest in punishing the perpetrators of the offence inasmuch as the victims were nationals of allies engaged in a common struggle against a common enemy."

THE QUESTION OF JURISDICTION

Members of the Court, if the British or the Americans could accept jurisdiction over crimes which were not committed on their territory and which did not harm their own nationals, and where their sole interest in the acts was that they were crimes against Allied personnel, how much the stronger is the right of an Israeli Court to try the man who is accused of intending to destroy the Jewish people. For us, the Jewish people are not simply "allies", our friends today, and tomorrow perhaps not a member of the same political or military alliance, today participating in the joint war effort and tomorrow perhaps even an enemy itself. If those Courts could accept jurisdiction on the ground that the victim were "allies", then our moral and legal right to try the man who attempted to destroy the Jewish people, our own kith and kin, is unassailable.

Judge Halevi: Perhaps this is the place to mention the counts of the indictment relating to Polish citizens and citizens of Czechoslovakia and other countries who, according to the indictment, were also victims. These, of course, were allies.

Attorney-General: Your Honour, we have charged Eichmann with all the crimes known to us. Since, according to our way of looking at things, crime against humanity is extraterritorial, we are permitted to try him in Israel also for crimes against Poles, against Slovenes, against Gypsies, just as a Polish or a Czech or a Hungarian Court was entitled to try criminals who had committed criminal acts against their own nationals and against nationals of other countries. When a Polish court convicted Rudolf Hoess, the Commander of the Auschwitz camp, it condemned a man who, it is true, had committed his crimes on the soil of Poland, but his victims were the nationals of a dozen States.

But I go further, Members of the Court. If we do not try him, if the Court will accept the objections of the Defence, it is very likely that no other Court will try him. And the unprecedented crimes of which he is charged may well go completely unpunished.

I have already said that no other State has requested Eichmann's extradition. No one else is asking to exercise jurisdiction over him. If this Court will divest itself of the competence which it possesses, the man will have to be freed. If he returns to Argentina...

Judge Halevi: I do not know that he can return to Argentina. After all, he was established there under a false name.¹

¹ In the course of the diplomatic correspondence between Israel and Argen-

THE QUESTION OF JURISDICTION

Attorney-General: At one stage of the diplomatic discussions with us, Argentina did demand his return. Had we returned Adolf Eichmann to Argentina, Ricardo Klement could have come out of his hiding place, if he was only afraid of extradition and not of any bodily harm, because according to the law of Argentina, as I shall immediately show to the Court, he was immune from extradition to any other country.

An Argentinian court has held that except where regulated by extradition treaties, it will not extradite a war criminal after the expiration of the legal period of limitation of fifteen years applicable to crimes under the law of Argentina. In a case which was heard in Buenos Aires on 18 July 1960, concerning a request by the Government of Czechoslovakia for the extradition of one Durcansky, the Argentinian court rejected the request. And this is what it said:

"The question now to be decided is, what is the applicable law, and in consequence what is the period of limitation.

"The Extradition Law No. 1612, Article 3, paragraph 5, lays down the inadmissibility of a request 'when in conformity with the laws of Argentina or those of the requesting State' the action is time-barred. In accordance with the rule laid down in paragraph 2 of the Criminal Code, the applicable rule is that which is the most favourable to the accused.

"This is also the traditional principle accepted in the majority of international treaties, as the State Attorney has noted. The request for extradition does not specify the rules regarding the limitation of this action in force at the time of the commission of the impugned acts, and in that situation it is appropriate to apply the Argentinian rules. Article 62 of the Criminal Code, in sub-paragraph 1, lays down the maximum period of limitation at fifteen years, a period which had already expired some time ago since the termination of the Second World War on 9 May 1945 up to the detention of the accused Durcansky.

"Therefore the inadmissibility of the request must be recognized. The accused cannot be indicted or tried in our country with regard to the impugned acts because of the operation of the Statute of Limitation which applies in his favour, and it

tina the Argentine Government admitted that Eichmann had entered Argentina under a false name of Ricardo Klement—Editor.

THE QUESTION OF JURISDICTION

is also impossible to grant his extradition so that he could be tried for those same acts in the requesting country."

I have a photostatic copy of this judgment, which was also published in the Argentinian legal periodical *Jurisprudencia Argentina*, July 1960, No. 2690, at p. 542.

Argentina has every right to pass a law of this nature. But if it is true, as Counsel for the Defence said yesterday, that Adolf Eichmann was apprehended on 11 May 1960, it follows that already by then he could have two days earlier emerged from his hiding place as Ricardo Klement without any danger of being extradited to any other country.

The President: Tell me, why did the Argentinian court say that the period of limitation had already expired for some time, as you read.

Attorney-General: From May until July is already some time. On 9 May 1945, the Second World War came to an end with the unconditional surrender of Germany.

The President: The request for extradition was surely submitted some time earlier. You are speaking of the date of the decision.

Attorney-General: The arrest was made . . .

The President: The arrest was on 18 July, was it not?

Attorney-General: Yes, that is after the expiration of the fifteen-year period.

Finally, on the same matter, I want to submit another Public Servant's Certificate signed by Ambassador Shabtai Rosenne, Legal Adviser of the Ministry for Foreign Affairs, annexing copy of a Note from the Embassy of the United States of America to the Ministry for Foreign Affairs, of 24 October 1950, the original of which is retained in the archives of the Ministry for Foreign Affairs. I am submitting signed copies of this certificate, which contains a request by the Government of the United States of America that the Government of Israel join with it in recognizing the termination of the state of war with Germany in the light of developments which occurred since a meeting held in London in May 1950. In the second paragraph of this Note the Embassy of the United States writes:

"Since the Ministers found that it was impossible to achieve the unification of Germany on a basis which respects the fundamental liberties, the Governments of the United States, the United Kingdom and France agreed to consider the Govern-

THE QUESTION OF JURISDICTION

ment of the Federal Republic as the only German Government freely and legitimately constituted and therefore entitled to speak for Germany as the representative of the German people in international affairs.

"The three Governments have therefore decided, as soon as action can be taken in all three countries in accordance with their respective constitutional requirements, to take the necessary steps in their domestic legislation to terminate the state of war with Germany. This action will not affect the rights and status of the three Powers in Germany, which rest upon other basis. It will however create a firmer foundation for the developing structure of peaceful and friendly relationships and will remove disabilities to which German nationals are subject. The three Governments hope that other Governments, including that of Israel if it sees fit, will find it possible to take similar action in accordance with their own constitutional practices at about the same time as the Governments of the United States, the United Kingdom and France. So far as can be seen at present this time is likely to be early in 1951, but in the meantime preparatory measures will no doubt be necessary in the countries concerned to bring about the termination of the state of war at the time mentioned. In the event of it being decided by the Governments of the Occupying Powers to take earlier action the interested Governments will be notified."

From this we see that the State of Israel was invited to join in terminating the state of war with the Federal Republic, and that these three Powers [similar Notes were sent by the Legations, as they then were, of the United Kingdom and France] recognized the fact that the State of Israel, although not in existence when the war was declared or when it came to an end, was a belligerent party entitled to be asked for its agreement and co-operation in terminating the formal state of war.

In its reply, our Ministry of Foreign Affairs—and this is found in Annex B. of the Certificate before you—wrote:

"The Ministry for Foreign Affairs presents its compliments to the British Legation and has the honour to refer to the Legation's Note of 24 October 1950 concerning decisions reached by the Foreign Ministers of the United Kingdom, the

THE QUESTION OF JURISDICTION

United States and France at their meeting in New York in September last.

"The Ministry has particularly noted the decision of the three Governments to take the necessary steps in their domestic legislation to terminate the state of war with Germany, and their affirmation that any action by the Occupying Powers as is more particularly described in the said Note in no way prejudices the final peace settlement.

"In the Note the hope was expressed that the Government of Israel if it saw fit, would find it possible to take action similar to that decided upon by the Governments of the United Kingdom, the United States and France, whose view it was that such action would create a firmer foundation for the developing structure of friendly relationships and would remove disabilities to which German nationals were subject. The Ministry for Foreign Affairs desires to inform the British Legation that in the view of the Government of Israel, which has given the matter its most careful consideration, the exceptional circumstances of this country do not warrant action on the lines suggested.

"In bringing the above to the notice of the Legation, the Ministry for Foreign Affairs desires to point out that the Government of Israel reserves fully its rights and position in relation to Germany and its claims against that country."

In Annex D. the Court will find the statement of our Foreign Ministry's spokesman of 9 July 1951:

"More than eighteen years have elapsed since the Nazi Government came to power and anti-Semitism became a major object of German policy. For twelve terrible years Germany pursued that hostile course against the Jewish people with a ruthless persistence that has no parallel in any war waged by one people against another. It spread that vicious creed in every country which fell under its sway, and in the end sealed that policy by the slaughter of six million Jews; the bulk of European Jewry.

"Six years after the end of hostilities the German people have not yet made any expiation or reparation for the crimes committed by the Nazis.

"To this day the German people had not found it within

THE QUESTION OF JURISDICTION

themselves to shake off the blood-stained heritage of their erst-while masters.

"To this day they have not abjured or solemnly dissociated themselves from the appalling record of these twelve years of Nazi rule.

"To this date they continue to enjoy the possession of property they stole from their Jewish victims before they sent them to the death chambers.

"To this day, as every new election shows, the evil doctrines of Nazism are rampant in Germany.

"As long as this state of affairs continues, Germany's war against the Jewish people cannot be regarded as having come to an end."

The President: I have marked the certificate Exhibit T/5.

Attorney-General: Since then things have changed. Ten years have passed since that Declaration of the Ministry for Foreign Affairs. The Luxemburg Agreement has been signed. An Israel Mission exists in Western Germany. The Federal Republic has officially repudiated the Nazi crimes, and the Head of that State has made the public declarations well known to all of us. The important thing about this document is that the three Western Powers approached Israel with a request that it would join in putting an end to the state of war with Germany, and thereby recognized in an international document, at least from their point of view, the special status of Israel, whose assent and legislation were necessary to put an end to that state of war.

Summary

To summarize, then, my submission is that an Israel Court is competent to try a case of crimes against the Jewish people. It is competent in accordance with the general doctrine of international law; it is competent because the victims of these crimes belonged to this country no less than the victims of Auschwitz were Poles, or the victims of Bergen-Belsen were victims of the country whose Court tried those criminals. The formal non-establishment of the State makes no difference. Israel judges would not be more fair in this case had the State of Israel come into existence in 1936 or 1937, as had been recommended by the Peel Commission. This confusion of the question of fair trial with the non-existence of the State is of no relevance

THE QUESTION OF JURISDICTION

to this point. The State of Israel has satisfied its own inhabitants, and the world, that it has a just judicial system and that it assures the rights of the defence of an accused person in accordance with its laws and the will of its population. The State of Israel is competent no less than any other State to try a man accused of crimes against the Jewish people. The seed of the State of Israel as a political entity had been in existence since 1917, and the historical connection between the Jewish people and this country has never been broken since the destruction of the Temple. By the law of nations, this State is recognized as a Jewish State.

Accordingly, I submit that this Court should decide that it is competent to try these offences.

The President: I understand that you need an additional hour in order to discuss the various authorities mentioned by Dr. Servatius in his written pleading?

Attorney-General: That is so. I have already dealt with part of them, but I still want to deal with a little more. I think an hour will be enough.

The President: Dr. Servatius, the Court will be ready to hear your reply after the Attorney-General has finished his argument. Of course, I mean a succinct reply. You should be ready for Friday morning, after the Attorney-General has finished.

Dr. Servatius: I think I will need about half an hour for my reply.

The Court recessed at 17:15.

SESSION No. 5

14.4.61 — Morning

President: I open the Fifth Session. The Attorney-General may continue.

Attorney-General: May it please the Court. I have already in the previous sessions answered most of the objections and arguments put forward by the Defence orally and in writing. To the extent that the Defence is relying on minority opinions in the Nuremberg judgments and on the opinions of those isolated publicists for whom the Nuremberg principles are still a matter of controversy, I have only

one thing to say: at the high price of the lives of millions of human beings, international law has at last, even if belatedly, found its way towards a clear formulation of its principles. It has not initiated anything new, it has only formulated. And this Court of that people which was the first in the history of mankind to proclaim "They shall beat their swords into plowshares"—this Court will not lend its hand to turning the clock back, to cancelling out the achievements which mankind has attained after two World Wars in one generation. The Nuremberg principles have since found their way into those international treaties and compacts which I have already mentioned. I have seen not one single judgment since the War in which a Court refused to pay attention to and to follow in the path of those principles. The State of Israel will not be the first and the only one to do that.

The Plea of "Act of State"

Now a little more fully on one argument which I have already dealt with, but which requires a more detailed reply in the light of the written pleading, and that is the argument based on "Act of State." This argument covers more than twenty pages of the written brief.

President: Is that Kelsen's theory?

Attorney-General: Yes, it is. Counsel for the Defence summarizes it on p. 35 of his brief as follows: "Therefore it follows from this paragraph that the theory of Act of State prevents the exercise of all jurisdiction by the State of Israel. All judicial process against Eichmann will therefore be an act contrary to international law." In so far as international law is relevant, the Nuremberg trials give a conclusive answer to this argument. It was rejected with both hands.

In the judgment of the International Military Tribunal, in the Blue Series, volume 1, p. 223, we read:

"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."

President: Kelsen's book was published before the Judgment.

Attorney-General: Yes, but the Defence is saying that Kelsen did

THE QUESTION OF JURISDICTION

not retract his views in the edition of 1952. He still maintains his teaching regarding the absence of a common denominator in international law for international criminal procedure and holds that each man should be judged by his own justice and his own law. Kelsen has still not accepted the great advance of the judgment of 1 October 1946 and he is among those who still dispute it to this day—although I do not know what he says in his more recent writings. But his voice is one of those few voices, and the balance was tipped in international legal circles in favour of acknowledging the law applied at Nuremberg. The balance was tipped in international treaties and in the literature of international law, and if the Court will take a look at what Oppenheim says today in volume 2—this is still only the seventh edition but it came out in 1952—the Court will see that Oppenheim rejects Kelsen's idea. I am reading from page 566, para. 251:

“In contradistinction to hostile acts of soldiers by which the latter do not lose their privilege of being treated as lawful members of armed forces, war crimes are such hostile or other acts of soldiers or other individuals as may be punished by the enemy on capture of the offenders. They include acts contrary to International Law perpetrated in violation of the law of the criminal's own State, such as killing or plunder for satisfying private lust and gain, as well as criminal acts contrary to the laws of war committed by order and on behalf of the enemy State. To that extent the notion of war crimes is based on the view that States and their organs are subject to criminal responsibility under International Law.”

And later, on page 568:

“The fact that a rule of warfare has been violated in pursuance of an order of the belligerent Government or of an individual belligerent commander does not deprive the act in question of its character as a war crime; neither does it, in principle, confer upon the perpetrator immunity from punishment by the injured belligerent. A different view has occasionally been adopted in military manuals and by writers, but it is difficult to regard it as expressing a sound legal principle.”

There is a different view, but that is not the correct view of the legal principle.

Judge Halevi: Mr. Attorney-General, does all the Indictment relate to the period of the War, or does it contain counts relating to the period before 1939?

Attorney-General: If you insist, I am prepared to answer at once, although that is interrupting my main line of argument on this point.

Judge Halevi: Are there earlier authorities?

Attorney-General: The authority of the International Military Tribunal relates to the War, but the authorities of the Green Series, based on Control Council Law No. 10, are not restricted only to the War. But then there happened an interesting incident relating to a comma and a semi-colon in the London Charter which led to a difference between the English and Russian texts of the definition of crimes against humanity. The Russian text read as though only those acts which were connected with war crimes are crimes against humanity, and in a special Protocol which was signed between the Powers this version was accepted for crimes against humanity. But already the International Military Tribunal itself dealt with the conspiracy to make war even as far as concerns the period before 1 September 1939 and it found the major war criminals guilty of that conspiracy also as regards actions which preceded the declaration of the Second World War. But it is true that as far as concerns crimes against humanity it limited itself to the period of the War only and that was because of that difference between a comma and a semi-colon which the Court will find following the Moscow Declaration, the London Agreement and the Nuremberg Charter on p. xviii of volume 3 of the Green Series.

President: I think we have a local precedent on this question.

Attorney-General: Yes, but I am going further and I am saying that the Control Council Law already had overcome that particular fault in punctuation and that the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, is not limited only to the period of the War but it applies to the whole period of the Nazi regime, and that is the Israeli contribution towards filling that vacuum about which I have already spoken at length; the legal vacuum which the Nazis deliberately and nefariously created to cover up their crimes.

As far as concerns the internal law of Israel, the defence of Act of State finds expression in Section 19 of the Criminal Code Ordinance of 1936. Both parts of it. This is the section which gives some justification for criminal acts . . .

THE QUESTION OF JURISDICTION

President: Mr. Hausner, does this concern the matter now under discussion? Does our domestic law relate to the matter now being discussed?

Attorney-General: Yes, I am saying that Section 19 does not apply. That is what the legislator laid down in the Nazis and Nazi Collaborators (Punishment) Law, and the effect is as though the legislator had introduced into our legislation the same provision as is found in the London Agreement, that Heads of State and officials and agents of the State are responsible. I am arguing that the non-application of Section 19 for the purposes of the Nazis and Nazi Collaborators (Punishment) Law is the equivalent of the introduction of a positive rule into our legislation making the agents of the State responsible even though they could argue that they did what they did while performing their official duties. Perhaps I could analyse this argument more fully if I have not explained it enough.

President: I understand. I am only hesitant. It might be that they wanted simply to abolish the limitations found in Section 19. Section 19 is limited.

Attorney-General: In Israel there is no defence of Act of State within the framework of our criminal law except in so far as Section 19 grants it. This is justification, that a man can say: "I did what I did in execution of the law"—that is Section 19(a): or "I did what I did in obedience to a lawful order which I received"—that is Section 19(b).

Judge Raveh: Mr. Hausner, are you in fact suggesting that we should decide this question without having heard evidence as to the facts?

Attorney-General: That is my alternative argument. But I am arguing that even for the purposes of the preliminary discussion, and even on the assumption that the Defence should succeed in establishing that all the accused's actions were performed in obedience to lawful orders, even then that is no defence, and that is no justification, and he can derive no help from it. We hope to prove to you that he went beyond the limits of his orders, that he was far more extreme, far more obstinate, far more zealous in annihilating the Jews than was required by the orders he received. We will establish this even if the Defence succeeds in proving that all that Adolf Eichmann did he did in the framework of orders. The non-application of Section 19, in so far as concerns the Nazis and Nazi Collaborators (Punishment) Law, and that follows from Section 8 of that Law

THE QUESTION OF JURISDICTION

which states specifically that Section 19 of the Criminal Code shall not apply, makes it impossible for him to rely on this defence.

Judge Raveh: Why do we have to go into this now when we are dealing with the question of jurisdiction?

Attorney-General: It is necessary to establish that the defence of Act of State is not a defence. It adds nothing and it subtracts nothing.

Judge Halevi: The Defence is not arguing at this stage that this is a defence on the merits. His argument is that it deprives the Court of jurisdiction, since to the extent that the Israel law does not recognize this defence, the law, in the view of Counsel for the Defence, is contrary to international law. For that reason there is no necessity now to go into the facts or into the internal law of Israel!

Attorney-General: What he is saying is: You should not have passed such a law. The Knesset of the sovereign State of Israel is not empowered to enact the law at all, and even less was it empowered to include Section 8.

President: Will you please be so good as to show us just what is Section 8.

Attorney-General: Certainly. And I will show you that Section 8 is in full accord with international law and with its general tendencies. May I refer you to the book by Sheldon Gluck, *War Criminals, Their Prosecution and Punishment*, 1944. Professor Sheldon Gluck is Professor of Criminal Law and Criminology in Harvard University. On page 134, discussing the argument of Act of State, he says:

"So runs the argument. But examination of the Act of State theory demonstrates its artificiality, legalistic nihilism and inapplicability when dealing with the effective enforcement of the laws and customs..."

The President: I think Dr. Servatius cited that passage in his brief. Of course he argues with him.

Attorney-General: He cited a nearby passage, but it makes no difference. I am saying that Sheldon Gluck correctly stated what the law is. And if we look at the judgments of the American Military Tribunals, which were only called military tribunals...

The President: On page 30 of the brief of Defence Counsel you will find the words "artificiality, legalistic nihilism and inapplicability".

Attorney-General: Yes, that is cited on the next page. Of course there is artificiality in this defence, because if the defence were

accepted then it follows that under conditions of dictatorship such as existed in Nazi Germany there could be only one accused, and that is Hitler, and since the man is no longer alive all the rest of those accused of war crimes could say: "Our hands are clean, our hands did not do this bloody deed, our eyes saw nothing, because he was the only one competent to give orders and we were all his soldiers under the duty of obedience."

Judge Halevi: And he too, since he was a Head of State, could claim that he was immune.

Attorney-General: He could claim immunity on the basis of sovereign act. I do not want to go into the question now of the extent to which the Head of a State enjoys immunity. International jurists have been divided on this question ever since Napoleon was exiled to Elba. There are some who think that action can be taken against the Head of State, but I do not have to go into that now. Not Adolf Hitler is sitting in the dock before you, but Adolf Eichmann. If we accept the theory of Act of State as a defence, then every person who executed Hitler's orders would have a justification for the most terrible crimes. The conscience of the world shrinks from that. This is what an American military tribunal had to say, in Case No. 4, the Concentration Camp case, *U.S. v. Pohl*. And you will find it in the Green Series, volume 5, p. 968:

"The Germans had become so accustomed to regimentation and government by decree that the protection of individual human rights by law was a forgotten idea. The fact that the people of the Eastern territories were torn from their homes, families divided, property confiscated, and the able-bodied herded into concentration camps, to work without pay for the perpetrators of these outrages—all this was complaisantly justified because a swollen tyrant in Berlin had scribbled "HH" on a piece of paper. And these are the men who now keep repeating, '*nulla poena sine lege*'."

And on p. 974:

"This disgraceful chapter in the history of Germany has been vividly portrayed in the judgment of the International Military Tribunal."

He then speaks particularly of the persecution of the Jews :

"Nothing can be added to that comprehensive finding of

THE QUESTION OF JURISDICTION

facts, in which this Tribunal completely concurs. From it we see the unholy spectacle of six million human beings deliberately exterminated by a civilised state whose only indictment was that its victims had been born in the wrong part of the world of forbears whom the murderers detested. Never before in history has man's inhumanity to man reached such depths."

In the case against the German Foreign Ministry, the *Wilhelmsstrasse-Prozess*, Case No. 11 in vol. 14 of the Green Series, pp.320-1:

"Is there personal responsibility for those who plan, prepare and initiate aggressive wars and invasions? The defendants have ably and earnestly urged that heads of states and officials thereof cannot be held personally responsible for initiating or waging aggressive wars and invasions because no penalty had been previously prescribed for such acts. History, however, reveals that this view is fallacious. Frederick the Great was summoned by the Imperial Council to appear at Regensburg and answer, under threat of banishment, for his alleged breach of the public peace in invading Saxony.

When Napoleon, in alleged violation of his international agreement, sailed from Elba to regain by force the Imperial Crown of France, the nations of Europe, including many German princes in solemn conclave, denounced him, outlawing him as an enemy and disturber of the peace, mustered their armies, and on the battlefield of Waterloo, enforced their decree, and applied the sentence by banishing him to St. Helena. By these actions they recognized and declared that personal punishment could be properly inflicted upon a head of state who violated an international agreement and resorted to aggressive war.

But even if history furnished no example, we would have no hesitation in holding that those who prepare, plan, or initiate aggressive invasions, and wage aggressive wars; and those who knowingly participate therein are subject to trial, and if convicted, to punishment."

And if Adolf Eichmann was on trial in that country where Counsel for the Defence wants to put him on trial, in the Federal Republic of Germany, there too he could find no justification and no defence in the argument which we have heard here.

THE QUESTION OF JURISDICTION

In one of the latest judgments of the Supreme Court of the Federal Republic of Germany, which the Court can find in the *Neue Juristische Wochenschrift* of 23 February 1961, at p. 373, the question is discussed of the application of Section 47 of the German Military Code. We will submit to you that Section 47. It lays down that an order can be justification but an illegal order cannot be justification for an illegal act. That Law was in force before the Nazis, it was in force in the time of the Nazis, and it is in force today. It even applied to the special Code of Discipline of the S.S., and this is what the German Supreme Court had to say, and I am reading it from the original:

“Nach Artikel 47 genügt es schon, wenn der Untergebene in seiner Vorstellungs- und Begriffswelt auf Grund der ihm eigenen und geläufigen Denkweise zu dem Bewusstsein durchgedrungen ist, dass die befohlene Handlung etwas Unrechtes darstellt.”

(According to Article 47 it is already sufficient if the subordinate—according to his ideas and concepts, through the processes of thought peculiar and familiar to him—has become aware that the act enjoined upon him is wrongful.)

That is to say, if a man has a feeling that what he is ordered to . . .

The President: It is said there: according to his concepts.

Attorney-General: Yes. Let Adolf Eichmann come and explain if the murder of millions, rounding them up into concentration camps, gassing them, let him come and say if according to his feeling and conscience, that is something illegal or not.

I also have before me the judgment of the Landgericht (District Court) of Ulm which tried a number of accused persons for minor actions of theirs in the Extermination. That judgment was rendered on 10 August 1959 . . .

The President: Will you please submit this to us.

Attorney-General: Yes. At the bottom of p. 145, and again on p. 146, the Court again lays down that the accused cannot argue . . .

The President: Is all that in the judgment?

Attorney-General: Yes.

The President: Good. Afterwards you will give us the judgment of the Supreme Court.

Attorney-General: There is a detailed analysis of acts which are quite similar to the actions for which the accused has been brought

THE QUESTION OF JURISDICTION

to trial. I want to show that even if we were to do what the Defence is asking us to do, this argument at least would avail him nothing. Consequently all his case to the effect that his position in Israel is much worse because we have the Nazis and Nazi Collaborators (Punishment) Law which deprives him of certain defences, is just not correct. These defences are not available to him anywhere, not even in that very country in which he wants to be tried and which itself has never asked to try him and which has left it to Israel to try him.

The President: Once more, as Judge Halevi has already mentioned, the problem is slightly different. The problem is at all events one of international law, and it seems to me that it is not a full answer to say that a German Court does not recognize this defence.

Attorney-General: I have already said two days ago that in so far as concerns a reply to this Court I can say quite simply: "There is the law and you, Judges of Israel, are asked to apply the law".

The President: If that is so, we do not need these judgments.

Attorney-General: Indeed all this was not necessary. We are told the accused will not have a fair trial. He cannot raise this argument before you. I say he cannot raise this argument anywhere.

The President: Good.

Final Summary

Attorney-General: To summarize: The international society, which has denounced the persecution of the Jews, has given full expression to its opinion that Eichmann should stand trial. He is now on trial in accordance with a law the provisions of which are the common property of civilized mankind. His argument that he was brought here by force makes no difference. I have brought you many citations from many judgments which show that whether a man was brought by private individuals, or by persons who are unofficial representatives of the authority, or even by persons who are the official representatives of the authority, and they bring a man within the jurisdiction—that is not a matter for examination by the Court and is not decisive either on the question of guilt or on the question of jurisdiction. The Court has jurisdiction and the accused is before it, and when he is indicted in accordance with law and when he is tried by a Court of competent jurisdiction from the procedural point of view, all the requirements have been fulfilled in his case.

On the question of territoriality, I have already spoken at length.

THE QUESTION OF JURISDICTION

These laws, by their very inherent nature, must be extritorial, and there is nothing to disqualify this kind of legislation even as regards other laws. The *Lotus* case shows that. Furthermore, the right to try Nazi criminals in accordance with rules which have become more and more crystallized is a universal right belonging to every civilized nation. The State of Israel has the right to try the man who attempted to destroy the Jewish people, no less, and indeed perhaps more, than any other country.

The President: On the question of extritoriality you can also rely on the German Criminal Code which punishes acts directed against the German people committed abroad by foreigners.

Attorney-General: I know that, Sir, but I am not very enthusiastic about relying on this law because it is a Nazi law. It was enacted in 1940 although it has remained in force up until today. I certainly have no liking to compare the Nazis and Nazi Collaborators (Punishment) Law with any law promulgated in Nazi Germany, even if it has remained in force up till today. There is a long list of such laws. I will give you this list. All the statute books of all enlightened civilised States, all the Codes which we have collected, together with the list—we will give the Court all these books in order to show you that our legislation is not something out of the ordinary but that it is valid and perfectly permissible.

And on the question of a fair trial, I am very sorry that Counsel for the Defence said what he said. True, he expressed himself with delicacy and with restraint. He said: "The accused must feel apprehension lest he will not have a fair trial". But the Judges here are Jews who must conduct themselves according to the principle: "Ye shall have one statute both for the stranger and for him that is born in the land". Judges who have the responsibility for administering justice will administer justice also to Eichmann, and he has no more good reason to be apprehensive here than he would had he been placed on trial before a tribunal of any other country in any other place.

— I submit that the Court should reject the arguments raised by the Defence and should decide that it has jurisdiction to try the accused and to order the accused to reply to the Indictment.

The President: Thank you, Mr. Hausner. I have one question of fact which arises out of the American authorities which you have cited. What is the situation regarding the extradition agreement between Israel and Argentina. Is it in force?

THE QUESTION OF JURISDICTION

Attorney-General: No, Sir. It was signed but it has not yet been ratified.

The President: Perhaps you can give me the dates.

Attorney-General: I am speaking from memory, but I will examine this. It was signed in 1960 but it has not been ratified and therefore it did not apply.

The President: It has not been ratified until today?

Attorney-General: That is so.

If the Court is interested in the exchange of letters between us and Argentina, these have just been published in the Official Records of the United Nations and I am ready to submit them to the Court. Naturally, this publication does not include the letters which were exchanged after June 1960, nor that letter which liquidated the incident, which I have submitted separately.

The President: Do these documents contain anything about the extradition treaty?

Attorney-General: No.

President: At all events, submit the documents. It will do no harm

One further question. Does Israel have an extradition treaty with West Germany?

Attorney-General: No.

The President: Dr. Servatius, please.

Final Defence Plea

Dr. Servatius: Mr. President, Members of the Court.

At this stage of the proceedings we are only discussing the jurisdiction of the Court. We are not concerned with the guilt of the accused or with the fairness of the trial. Therefore I will only discuss now the question of jurisdiction. The Attorney-General has, on the basis of important arguments, explained his view that the Nazis and Nazi Collaborators (Punishment) Law fills a legal vacuum and that it follows...

The President: Please repeat the last sentence which was a little fast.

Judge Halevi: The last sentence was: The Israel law follows the London Agreement.

The President: Pray continue.

Dr. Servatius: An examination will show that in fact the vacuum existing in international law after the Second World War was not filled. It appears that the London Charter relates only to the law of the victors applicable only to the vanquished. The subsequent

period has shown that atrocities in other parts of the world have remained without particular attention. Habits of political power have remained unchanged. Progress in the law, to which the world looked forward, has not taken place. The Genocide Convention was not made in accordance with any universal principle, and by reverting to the territorial principle is retrogressive. In the United Nations the drafts of the Commission on Human Rights and of the International Law Commission have remained an expression of the aims of idealists. At the same time, danger which must be avoided is threatening from different parts of the world, but the leaders of the countries do not want it otherwise.

The Attorney-General has expressed the view that even of its own initiative the State of Israel is entitled to fill the legal vacuum by its own law. This is a concept which has its roots in natural law. But international law has imposed limitations on natural law. According to international law, in order to justify the bringing of a man to trial, some connection must exist with the accused. The right to bring a man to trial may extend beyond the territory. The principle of protection shows this. This is indeed established by the *Lotus* case, which has been cited by the Prosecution. The same is true of the case concerning a currency offence between Belgium and Holland, or in the case of treason in the *Joyce* case in England. All these have been cited by the Prosecution in its statement. But a completely unrestricted extension of the right to bring a man to trial is contrary to the law of nations. Therefore the Nazis and Nazi Collaborators (Punishment) Law cannot, in the absence of a recognized point of contact, establish any sort of right to punish, or even to try, persons outside the jurisdiction.

The President: One of the recognized principles is the personal principle, and a subsidiary principle is the passive personal principle. What do you have to say about that in connection with our law—that is to say the principle of the protection of the victims of the criminal acts? This principle is very close to the principle of protection. I am going according to the customary division.

Dr. Servatius: Mr. President, but the victims were not citizens of this country at the time they suffered.

Judge Halevi: But is this not only a formal plea?

Dr. Servatius: The law is based on formal questions, and this is one of the matters which the Court will have to look into most seriously.

Judge Halevi: Mr. Counsel, one more question. The same question which I asked the Attorney-General regarding Section 4 of the German Criminal Code, which is still in force. I do not think this is a Nazi law although it was enacted in the Nazi period. Section 4 says:

“Für . . . [eine] Straftat gilt das deutsche Strafrecht, wenn sie durch das Recht des Tatorts mit Strafe bedroht . . . und . . . wenn die Straftat gegen das deutsche Volk oder gegen einen deutschen Staatsangehörigen gerichtet ist”.

(German criminal law is applicable to [the] offence if it is punishable under the law of the place where it is committed . . . and if . . . it is directed against the German people or against a German national.)

Dr. Servatius: That law goes very far, but it is the law of Germany today. I think that it is impossible to apply its principle here, since we are not concerned with citizens of the State of Israel.

Judge Halevi: But there it speaks of the German people and not only German citizens. The German people also.

Dr. Servatius: That is true indeed. But in this case the State of Israel was not even in existence. Of course that too is a formal point and derives from formal law, but the Court will have to examine how far these things are relevant here.

Judge Halevi: Yes, but the German people is a concept which is much wider than the German state, just as the Jewish people is a much wider concept than the State of Israel.

Dr. Servatius: If I may reply, I would say that the concept of the German people is not a legal concept in German law. The intention is to refer not to the whole German people but to the people of the German state, and that is a principle of the German Federal Republic.

If this was permitted from the legal point of view without some support recognized by the law of nations, then all the new States would be entitled to pass a law for the trial and punishment of those who are today called colonial overlords. But the law of nations will not permit this.

The Attorney-General pointed out that a number of States after the Second World War passed valid legislation designed to fill up certain gaps. But this only refers to those States which during the Second World War were occupied by Germany. In fact these laws

are nothing more than implementing legislation for the London Agreement and analogous post-War arrangements. They always are careful to observe the limitations derived from international law. But in this case, in the case of Eichmann, no such legal vacuum exists. There does exist a competent German court, and the German court judges in accordance with valid existing laws. The Prosecution itself recognizes this. And before the competent German court a great number of people have been tried and convicted of offences which are similar to those attributed to the accused.

One more point. The Court must be permitted to examine the validity of the law which forms the basis of this prosecution. Not everything which a legislator decides is law. The power of legislation has its limits.

The President: Dr. Servatius, as far as we are concerned, so it seems to me, the question is one of Israeli law which in this respect is derived from the English common law. The Attorney-General has already read to us a passage from Dicey's book explaining the common law approach to this question. What is your reply to that?

Dr. Servatius: My reply is: If according to the common law approach, in case of doubt the law of the land prevails over international law, then the development of international law requires a re-examination of that principle. It is essential that international law should have precedence over domestic law if we are aspiring to reach a universal order based on international law. The Constitution of the Federal Republic of Germany has that objective from a legal point of view. This is a fundamental principle which requires to be implemented in every country.

The Attorney-General cited a great number of previous decisions designed to establish the jurisdiction of the Court according to international custom. A great number of these precedents relate to the conditions subsisting between the different states of the United States of America. These are cases in which an accused has been brought to trial for acts committed in his own State before the only Court competent to try him. These are cases in which a man has been brought to trial before the Court of his own country. In these circumstances the Courts have always refused to examine the legality of the transfer from some foreign State because according to the law of his own country the accused has no right to go into that examination.

The judgment of 1893 in the case of *Lascelles v. Georgia*, which

has been cited here, clearly rejects the argument that international law applies in the relations of the States of the United States between themselves.

The President: Mr. Hausner, did you cite that judgment?

Attorney-General: Not directly. I cited a number of judgments to the opposite effect.

The President: We also do not remember Mr. Hausner citing that judgment directly.

Attorney-General: But if the Defending Counsel so wishes, I will be quite happy to bring it in a couple of minutes.

The President: Do you recall it?

Attorney-General: Oh yes.

Judge Halevi: What is the exact name of this judgment?

Dr. Servatius: *Lascelles v. Georgia*, of 1893, 148 U.S. Sup. Ct. Rep. p. 687.

The President: What does it say?

Dr. Servatius: It said that international law does not apply, and it stressed that the Constitution of the United States and its laws are what apply to the accused, and that the application of international law is not justified by sound legal opinion. I have the English original:

“There are decisions in the state courts, and in some of the lower federal courts, which have applied the rule laid down in *U.S. v. Rauscher*, supra, to interstate rendition of fugitives under the constitution and laws of the United States; but in our opinion they do not rest upon sound principle, and are not supported by the weight of judicial authority”. (at p. 690.)

This has been clearly supported in another judgment cited by the Prosecution, the case of *Pettibone v. Nicholls* of 1909. Despite the kidnapping of the accused by officials of the punishing State, the Court decided that it does not have any competence to go into the facts.

Attorney-General: I think there is a mistake here. The Court decided that it does have competence.

Judge Halevi: Competence to go into the matter of the arraignment, but not competence to examine the details of the kidnapping.

The President: This is what Dr. Servatius meant to say. Although the Court is not competent to examine the question from the point of view of international law, it is competent to examine it from the point of view of the national law.

THE QUESTION OF JURISDICTION

Dr. Servatius: In *Pettibone v. Nicholls*, Judge McKenna was in the minority. In his Dissenting Opinion he said that it would not be right to send the accused to the State from which he was kidnapped for him to stand trial there, but this Judge did not rely on international law but on the Constitution.

The President: Does not the Constitution of the United States have something to say about international law?

Dr. Servatius: I do not know all the details of that Constitution. I am now turning to the international cases which are really international. Not a single one of them has anything to do with the law relating to the jurisdiction of the Court. When we come to examine these cases we must pay attention to the following points. None of them deals with kidnapping because the State from which the man was kidnapped has always lent its assistance. For instance, if we take the case of *Ex parte Elliot* of 1949, cited by the Prosecution, the English deserter was arrested by British officers with the assistance of the Belgian police. It is just the same in the *Insul* case of 1934, where an American was arrested in Constantinople by the Turkish authorities. But all these cases concerned crimes in which the Court had jurisdiction in accordance with the Constitution. It was just the same in the case of *Chandler* who was charged with the crime of treason, and in the *Lotus* case. The *Chandler* case has been cited here by the Prosecution.

The Attorney-General referred to piracy, slave-trade, etc., which the arm of the law will reach all over the world in accordance with principles of international law. Those who perpetrate such acts are enemies of the human race and every State is under a duty to do its best to see that they will not cause any further harm. According to the Prosecutor, Eichmann's case also should be decided in accordance with these principles. To this I reply that humanity is under no danger from the accused. When Hitler's regime came to an end, he became a peace-loving citizen. It was his bad luck that he was obliged to bow to the authority of that inhuman government, but he overcame himself and rose above the concepts of that Government. He has become absolved from his oath.

Now I will state my position regarding the declaration which the accused made in Argentina regarding his coming to Israel voluntarily. If the accused had really accepted the jurisdiction of this Court voluntarily, then there would be no need at all to go into the question of its jurisdiction. According to the Attorney-General, this decla-

THE QUESTION OF JURISDICTION

ration is quite irrelevant, but it is possible that the Court will attach some importance to it, and therefore I will state my position on it.

At first glance, and *prima facie*, it must be assumed that this declaration was extracted by force. Therefore the burden of proving that this is not so rests on the Prosecution. In the Security Council of the United Nations not a single one of the States having the right to vote expressed the opinion that this declaration was given voluntarily. If the view had been accepted that the declaration was voluntary, the Argentinian complaint would have been given short shrift. Indeed it is difficult to see how it would ever have been accepted on the Agenda.

Another word regarding the Security Council's assent to the accused's trial. The Security Council, in the preamble to its resolution of 23 June 1960, which has already been cited here, expressed the view that Eichmann should be brought to trial. But the object of the kidnapping was to bring him to trial before an Israel Court, and the Security Council did not give its assent to that. In that decision there is another limitation. It is said that the accused should be brought before an appropriate court, and this excludes an Israel Court.

Judge Halevi: It does not say "appropriate Court", but "appropriate justice".

Dr. Servatius: The text is not before me. I assume you are correct, but you are taking the matter out of its context. It says "appropriate justice". The Attorney-General emphasized that here there is no question of conflict and therefore there is nothing to prevent the trial of the accused. According to the recommendation of the Security Council the incident and conflict was liquidated by the Joint Communiqué of 3 August 1960 issued by Argentina and Israel. But the text of this Communiqué contains no retreat from the allegation that the kidnapping of the accused was an infraction of international law. That infraction remains, and the accused is entitled to take advantage of it. There is no dispute between the Federal Republic of Germany and Israel, but intervention is still possible and a dispute can come into being at any stage of the trial. ..

The President: Are you arguing that the Joint Communiqué of Israel and Argentina does not mean that Argentina has acquiesced in the accused's remaining in Israel's hands?

Dr. Servatius: I understand the situation to be this, that as a result of diplomatic contacts between the two States, obstacles created by

the incident have been removed without going into the question of the legal aspect of the situation. As far as the Federal Republic of Germany is concerned, let me add that the accused has a claim for protection by his State, a claim arising out of the inactivity of his Government. He can still bring a complaint before the Administrative Court, and indeed he will do.

Judge Halevi: Is he a German citizen?

Dr. Servatius: Yes, indeed, he is a German citizen.

Judge Halevi: Not an Austrian citizen?

Dr. Servatius: No, he is not an Austrian citizen. When his father acquired Austrian nationality he was already an adult or at least above the requisite age.

Accordingly, it seems to me that the possibility of dispute has not been finally liquidated. The cardinal feature of all the question of jurisdiction is and remains the question whether the accused was kidnapped from Argentina on the orders of the Government of Israel. The Prime Minister of this country stated at the time in the Knesset that the kidnapping was carried out by members of the Security Services of the State...

Attorney-General: I am sorry to interrupt Counsel for the Defence. The Prime Minister announced in the Knesset that the Security Service of this country had located him, and no more than that.

Dr. Servatius: I only know what happened from the record of the Security Council of the United Nations. I may be wrong on some matter of detail, but the general question of principle remains. If subsequently in the Security Council it was pointed out that the kidnappers were volunteers, there is no contradiction. Even volunteers can take upon themselves tasks conferred by the State. The witnesses can clear this matter up. That is why I am asking the Court to hear these witnesses.

The President: It is still not clear to me you attach such importance to the distinction between whether he was kidnapped on the orders of the Government or by private initiative.

Dr. Servatius: If the State itself orders the commission of an act which itself is contrary to international law, it cannot afterwards rely on that act. That is my point of view.

The President: And if we assume that he was kidnapped by private initiative, would you then say that the Israel Court is competent? I want to know what you think.

Dr. Servatius: To my way of thinking, the position is the same in

THE QUESTION OF JURISDICTION

both cases. But if the State itself gives the order, then the legal question is easier.

With that I conclude my remarks.

President: The Court will give its decision on the Preliminary Objections of the Defence next Monday at 9 a.m. and the Court is recessed until then.

The Court recessed at 10:50.

THE COURT'S DECISION

17.4.61 — Morning

The President: I open the Sixth Session of the Court. The Court delivers the following Decision:

Decision No. 3

After the reading of the indictment, Dr. Servatius, Counsel for the Defence, presented two preliminary objections :

- a) the first regarding the disqualification of the judges to sit in this case;
- b) the second regarding the lack of jurisdiction of this Court to hear the charges set forth in the indictment.

We will deal with these objections in order, and will give our reasons in so far as concerns the first objection. Regarding the second objection, we will, at this stage, only give our decision without reasons for the time being.

On the question of disqualification, Dr. Servatius stated that the accused was apprehensive lest the judges should be unable to hear this case without bias. This apprehension is expressed not against any one of the judges in particular, but against all three of them, on the grounds that they are members of the Jewish people and citizens of the State of Israel. Counsel for the Defence argues that there is room for apprehension lest the memory of the Holocaust, in which millions of their brethren were annihilated, that same Holocaust which constitutes the background for the crimes alleged against the accused in the indictment, will throw the judges off their balanced attitude of mind and prejudice their ability to do justice. He went on to ask each one of the judges to search his own heart, lest his personal sufferings, or those of his kin, in the period of the Holocaust do not make it impossible for him to try the accused in this case.

To these arguments we reply: The present trial is concerned with the responsibility of the accused for the actions enumerated in the indictment. In elucidating this question we will have no difficulty in maintaining the guarantees of which every accused person is as-

sured according to our criminal procedure—that every man is presumed to be innocent and that his case is tried on the basis of the evidence brought before the Court. Those who sit in judgment are professional judges, accustomed to weighing evidence; they are carrying out their task in full view of the public; learned and experienced lawyers are conducting the accused's defence.

As for the accused's apprehensions regarding the background to this trial, we can do no better than to repeat what is valid for every judicial system worthy of its name; that, when a judge sits on the bench, he does not cease to be flesh and blood with human emotions and urges. But he is bidden by the law to overcome those emotions and urges. If this were not so, no judge would ever be qualified to sit in judgment in a criminal case evoking strong disgust, such as a case of treason or murder, or other heinous offence. It is true that the memory of the Holocaust shocks every Jew to the core. But, now that this case has been brought before us, we are in duty bound to overcome these emotions too, whilst sitting in judgment. This duty we shall discharge.

After considering the arguments of learned Counsel for the Defence, the Court, and each one of its members, regards itself as qualified to try this case.

Dr. Servatius' objections to the jurisdiction of this Court fall into two parts:

- 1) those relating to the circumstances in which the accused was brought here from abroad;
- 2) those regarding the validity of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, under which the accused has been indicted.

Regarding these objections, each party produced full argument, both orally and in writing. We wish to express our appreciation to Counsel for the Defence and to the Attorney-General, for the high standard of their arguments and for the manner in which they presented them. Our jurisdiction to try this case derives from the Law already mentioned, and we do not think that, in international law either, there are sufficient grounds to sustain the objections advanced by the Defence as regards the application of the law whether as to time or as to place.

We also dismiss the arguments of the Defence in the matter of Act of State, in so far as these arguments relate to the question of jurisdiction.

THE COURT'S DECISION

With regard to the argument relating to the manner in which the accused was brought to Israel, since we have found that this Court has jurisdiction to try the accused, it does not matter, according to the law, in what manner he was brought within the jurisdiction of this Court, nor does it matter whether he was arrested abroad by emissaries of the authorities of the State of Israel or not.

Consequently there is no need for us to hear the evidence of the witnesses Tohar and Shimoni, who have been summoned on application of the Defence.

Detailed reasons for this decision, in so far as concerns the jurisdiction of the Court, will be given in the judgment of the Court.

THE ARRAIGNMENT

To the Accused: You heard the indictment on the first day of the trial?

The Accused: Yes.

The President: Are you guilty, or not guilty, on the first count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the second count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the third count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the fourth count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the fifth count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the sixth count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the seventh count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the eighth count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the ninth count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the tenth count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the eleventh count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the twelfth count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the thirteenth count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the fourteenth count?

The Accused: In the sense of the indictment, not guilty.

The President: Are you guilty, or not guilty, on the fifteenth count?

The Accused: In the sense of the indictment, not guilty.

APPENDIX ONE

NAZIS AND NAZI COLLABORATORS (PUNISHMENT) LAW, 5710-1950*

1. (a) A person who has committed one of the following offences:
- (1) done, during the period of the Nazi regime, in an enemy country, an act constituting a crime against the Jewish people;
 - (2) done, during the period of the Nazi regime, in an enemy country, an act constituting a crime against humanity;
 - (3) done, during the period of the Second World War, in an enemy country,, an act constituting a war crime,
- is liable to the death penalty.

(b) 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) imposing measures intended to prevent births among Jews;
- (5) forcibly transferring Jewish children to another national or religious group;
- (6) destroying or desecrating Jewish religious or cultural assets or values;
- (7) inciting to hatred of Jews;

"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;

"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;

* passed by the Knesset on 18 Av 5710 (1 August 1950) and published in Sefer Ha-Hukkim No. 57 of 26 Av 5710 (9 August 1950), p. 281; the Bill and an Explanatory Note were published in Hatza'ot Hock No. 36 of 11 Adar 5710 (28 February 1950), p. 119.

APPENDIX ONE

killing of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; and devastation not justified by military necessity.

2. If a person, during the period of the Nazi regime, committed in an enemy country an act by which, had he committed it in Israel territory, he would have become guilty of an offence under one of the following sections of the Criminal Code, and he committed the act against a persecuted person as a persecuted person, he shall be guilty of an offence under this law and be liable to the same punishment to which he would have been liable had he committed the act in Israel territory:

- (a) section 152 (rape, sexual and unnatural offences);
- (b) section 153 (rape by deception);
- (c) section 157 (indecent act with force, etc.);
- (d) section 188 (child stealing);
- (e) section 212 (manslaughter);
- (f) section 214 (murder);
- (g) section 222 (attempt to murder);
- (h) section 235 (acts intended to cause grievous harm or prevent arrests);
- (i) section 236 (preventing escape from wreck);
- (j) section 238 (grievous harm);
- (k) section 240 (maliciously administering poison with intent to harm);
- (l) section 256 (abducting in order to murder);
- (m) section 258 (abducting in order to subject person to grievous hurt);
- (n) section 288 (robbery and attempted robbery);
- (o) section 293 (demanding property with menaces with intent to steal).

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

(b) In this section, "enemy 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;
- (2) any other body of persons which existed in an enemy country and the object of which was to carry out or assist in carrying out actions of an enemy administration directed against persecuted persons.

4. (a) A person who, during the period of the Nazi regime, in an enemy country and while exercising some function in a place of confinement on behalf of an enemy administration or of the person in charge of that place of

NAZIS PUNISHMENT LAW, 5710-1950

confinement, committed in that place of confinement an act against a persecuted person by which, had he committed it in Israel territory, he would have become guilty of an offence under one of the following sections of the Criminal Code, shall be guilty of an offence under this Law and be liable to the same punishment to which he would have been liable had he committed the act in Israel territory:

- (1) section 100 (c) (threatening violence);
- (2) section 162 (procuring defilement of females by threats, fraud or administering drugs);
- (3) section 241 (wounding and similar acts);
- (4) section 242 (failure to supply necessities);
- (5) section 249 (common assault);
- (6) section 250 (assault causing actual bodily harm);
- (7) section 261 (unlawful compulsory labour);
- (8) section 270 (theft).

(b) "Place of confinement", in this section, means any place in an enemy country which, by order of an enemy administration, was assigned to persecuted persons, and includes any part of such a place.

5. A person who, during the period of the Nazi regime, in an enemy country, was instrumental in delivering up a persecuted person to an enemy administration, is liable to imprisonment for a term not exceeding ten years.

6. A person who, during the period of the Nazi regime, in an enemy country, received or demanded a benefit —

(a) from a persecuted person under threat of delivering up him or another persecuted person to an enemy administration; or

(8) from a person who had given shelter to a persecuted person, under threat of delivering up him or the persecuted person sheltered by him to an enemy administration;

is liable to imprisonment for a period not exceeding seven years.

7. The provisions of the First Part of the Criminal Code shall, save as this Law otherwise provides, apply to offences under this Law.

8. Sections 16, 17, 18 and 19 of the Criminal Code shall not apply to offences under this Law.

9. (a) A person who has committed an offence under this Law may be tried in Israel even if he has already been tried abroad, whether before an international tribunal or a tribunal of a foreign State, for the same offence.

(b) If a person is convicted in Israel of an offence under this Law after being convicted of the same act abroad, the Israel court shall, in determining the punishment, take into consideration the sentence which he has served abroad.

APPENDIX ONE

10. If a persecuted person has done or omitted to do any act, such act or omission constituting an offence under this Law, the court shall release him from criminal responsibility—

(a) if he did or omitted to do the act in order to save himself from the danger of immediate death threatening him and the Court is satisfied that he did his best to avert the consequences of the act or omission; or

(b) if he did or omitted to do the act with the intent to avert consequences more serious than those which resulted from the act or omission, and actually averted them;

these provisions shall not, however, apply to an act or omission constituting an offence under section 1 or 2 (f).

11. 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) that the offence was committed with intent to avert, and was calculated to avert, consequences more serious than those which resulted from the offence;

in the case, however, 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.

12. (a) The rules of prescription laid down in the Fifth Chapter of the Ottoman Code of Criminal Procedure¹ shall not apply to offences under the Law.

(b) No person shall be prosecuted for an offence under this Law, except an offence under section 1 or 2(f), if twenty years have passed since the time of the offence.

13. The provisions of the General Amnesty Ordinance, 5709-1949,² shall not apply to offences under this Law.

14. A prosecution for an offence under this Law may only be instituted by the Attorney-General or his representative.

15. (a) In an action for an offence under this Law, the Court may deviate from the rules of evidence if it is satisfied that this will promote the ascertainment of the truth and the just handling of the case.

(b) Whenever the court decides to deviate, under subsection (a), from

¹ For text, see Young, *Corps de Droit Ottoman*, vol. VII (1906), p. 226.

² *Laws of the State of Israel*, vol. 2 (5709-1948/49), p. 115.

NAZIS PUNISHMENT LAW, 5710-1950

the rules of evidence, it shall place on record the reasons which prompted its decision.

16. In this Law:

"the period of the Nazi regime" means the period which began on 3 Shevat 5693 (30 January 1933) and ended on 25 Iyar 5705 (8 May 1945);

"the period of the Second World War" means the period which began on 17 Elul 5699 (1 September 1949) and ended on 5 Elul 5705 (14 August 1945);

"the Allied Powers" means the states which signed the Declaration of the United Nations of 1 January 1942, or acceded to it during the period of the Second World War;

"Axis state" means a state which during the whole or part of the period of the Second World War was at war with the Allied Powers; the period which began on the day of the beginning of the state of war between a particular Axis State and the first, in time, of the Allied Powers and ended on the day of the cessation of hostilities between that State and the last, in time, of the Allied Powers, shall be considered as the period of the war between that State and the Allied Powers;

"enemy country" means:

(a) Germany during the period of the Nazi regime;

(b) any other Axis state during the period of the war between it and the Allied Powers;

(c) any territory which, during the whole or part of the period of the Nazi regime, was *de facto* under German rule, for the time during which it was *de facto* under German rule as aforesaid;

(d) any territory which was *de facto* under the rule of any other Axis state during the whole or part of the period of the war between it and the Allied Powers, for the time during which that territory was *de facto* under the rule of that Axis state as aforesaid;

"enemy administration" means the administration which existed in an enemy country;

"persecuted person" means a person belonging to a national, racial, religious or political group which was persecuted by an enemy administration;

"the Criminal Code" means the Criminal Code Ordinance, 1936.¹

17. The Minister of Justice is charged with the implementation of this Law.

AVID BEN GURION
Prime Minister

PINCHAS ROSEN
Minister of Justice

YOSEF SPRINZAK
Chairman of the Knesset
Acting President of the State

APPENDIX TWO

NOTE REGARDING EVIDENCE

Section 15 of the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950, empowers the Court to deviate from the rules of evidence if it is satisfied that this will promote the ascertainment of the truth and the just handling of the case. The Court has given two decisions of principle for the application of this section in the *Eichmann* case, and a series of concrete decisions relating to individual witnesses.

The first decision of principle relates to affidavits given to the Nuremberg Tribunal in 1946, and other official documents, made by persons who are no longer alive. In Decision No. 7, given at the 16th Session of the Court on 26 April 1961, the Court dealt with the admissibility as evidence on behalf of the Prosecution of reports and affidavits written by Dieter Wisliceny in Bratislava prison in 1946 prior to his execution as a war criminal. In admitting these documents as evidence the Court pointed out the similarity between section 15 and Article 19 of the London Charter of the International Military Tribunal, according to which: "The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value". In applying section 15, the Court said it would be guided *inter alia*, and in the light of the circumstances of each individual case, by the tests of relevancy and the probative value of the evidence sought to be admitted. It pointed out that the documents referred to contain descriptions of facts concerning the accused and forming the subject of the trial. The documents were written by a man who maintained close contact with the accused in all the actions referred to in the Indictment, and moreover were written close to the time of their occurrence. It would be difficult to find more direct evidence of those events than that of the people who worked in close association with the accused. In reaching a decision on the probative value of the documents the Court would give careful consideration to all factors which might detract from their probative value, but that did not lead to their inadmissibility.

So much for the evidence of persons no longer alive. The second question related to the admissibility of written evidence on behalf of the Prosecution by persons abroad who are liable to arrest and prosecution in Israel under the Nazis and Nazi Collaborators (Punishment) Law. Already at the First Session of the Court the Attorney-General indicated that he would be pre-

pared to support any request by the Defence to admit affidavits by persons who may have things to say of relevance to the accused's defence but who are unable or unwilling to come to Israel, and that he would be prepared to operate the arrangements for judicial assistance existing between Israel and the Federal Republic of Germany in order to enable these witnesses to appear before a German court and be examined in the presence of the representatives of the two parties (see pp. 194 ff. above). The Prosecution now wished to submit existing affidavits made earlier by persons liable to prosecution under the law and to whom the Government refused to allow entry into Israel. The Defence objected to this on the ground that it wished to exercise its right to cross-examine these witnesses, and at the same time raised the question of its own witnesses. The Attorney-General reiterated that in the Government's opinion the existing arrangements for mutual judicial assistance in criminal matters between Israel and the Federal Republic of Germany and other countries on the basis of the law in force and practice in the matter were sufficient, and that there was no need for the Court to depart from them. Each concrete suggestion of the Defence would be examined on its own merits. If a given witness was unwilling or unable to come to Israel, and his evidence was directly relevant, the Attorney-General would agree that he should give his evidence either by affidavit or before a competent Court where he resides. For this purpose the Government would be prepared to operate the existing arrangements regarding mutual judicial assistance.

In Decision No. 11, announced at the 20th Session of the Court on 28 April 1961, the Court decided to accept the Prosecution's request to admit affidavits and other documents, relevant to the case, of the type mentioned. The Court repeated the substance of its Decision No. 7, while pointing out that the present Decision related to witnesses who were still alive, one in Austria and two in the Federal Republic of Germany. On the basis of section 15 of the Law, and following in general what it said in Decision No. 7, the documents were admissible. At the same time the Defence was to be enabled to exercise its fundamental right of examining the witnesses, whether before the Court or in any other way. Section 15 does not deprive the Defence of this right.

The Court went on to point out that the grant or refusal of entry visas into Israel, whether because of the likelihood of criminal charges or because of fear for the personal safety of witnesses or because of their liability to arrest and indictment for offences contrary to the law of Israel, is a matter for the discretion of the Executive, in which the Court will not interfere. In principle, the appearance of a witness before the Court was to be preferred, but a witness who was unwilling or unable to appear might be examined, either by means of interrogatories or orally by the representatives of the parties, or by a combination of both methods, before a Court in his place of residence on the basis of the arrangements for mutual judicial assistance

APPENDIX TWO

existing between Israel and the States in which the witnesses resided. The witnesses could also be examined before the Israel Court.

The Court concluded that this Decision would, *mutatis mutandis*, also apply to witnesses called by the Defence.

