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THE WEHRMACHT BUREAU ON WAR CRIMES*

ALFRED-MAURICE DE ZAYAS

ABSTRACT. *On September 4, 1939, a special bureau was established within the legal department of the Wehrmacht with the task of 'ascertaining violations of international law committed by enemy military and civilian persons against members of the German armed forces, and investigating whatever accusations foreign countries should make against the Wehrmacht'. The purpose of this article is to provide a brief overview of the material collected by the Germans during the war, to test the credibility of the German investigations, review case-studies and inquire into the integrity of the judges carrying out the investigations. The Wehrmacht bureau functioned from the very beginning until the final days of war. It investigated some 10,000 war crimes, of which the files for perhaps some 4,000 have survived. Half the files contain investigations of war crimes in the Soviet Union; the other volumes refer to war crimes allegedly committed by American, British, French, Polish, Yugoslav and other Allied nationals. After a careful review of the bureau's records and methods of operation, the conclusion is warranted that the investigations were carried out in a methodically correct manner and that many of the reports present prima facie cases that deserve further investigation. There remains the fundamental question of the judges' integrity, how it was possible for them to carry out investigations into Allied war crimes, when the German government, the SS, the Einsatzgruppen and the Wehrmacht were engaging in various degrees of official criminality. In search of an answer, the author reviews the testimony of numerous witnesses at the Nuremberg trials, including SS judge Georg Konrad Morgen, who had the commander of Buchenwald arrested on corruption charges, but was prevented from completing investigations into concentration camp killings. Hitler's order no. 1 concerning secrecy appears to have been largely observed, thus frustrating investigation attempts and keeping knowledge of the Holocaust relatively limited.*

The armed forces of every modern state have legal experts, sometimes called judge advocates, whose primary responsibility is to administer military justice, maintain discipline, and monitor the observance of the laws and customs of war.

The German armed forces in the First and Second World Wars were no exception. This article focuses on the limited activities of the specialized bureaus set up to monitor compliance with *inter alia* the 1907 Hague regulations on land warfare, the 1907 Hague convention no. 10 on maritime warfare, the Geneva conventions of 1864 and 1929 for the amelioration of the condition of the wounded in armies in the field, and the Geneva convention of 1929 relative to the treatment of prisoners of war.

The competent German bureau during the First World War was the *Militäruntersuchungsstelle für Verletzungen des Kriegsrechts* (hereinafter

* This article is based on the book by Alfred de Zayas, *The Wehrmacht war crimes bureau 1939–45* (Lincoln, Nebraska, 1990 edn).

‘Untersuchungsstelle’), established on 19 October 1914 in the Prussian ministry of war ‘to determine violations of the laws and customs of war which enemy military and civilian persons have committed against the Prussian troops and to investigate whatever accusations of this nature are made by the enemy against members of the Prussian army’.¹ Deputy chief of the Untersuchungsstelle was Johannes Goldsche, a prominent Berlin lawyer. At the end of the war Goldsche reported to the German parliament that his office had prepared some 5,000 dossiers on Allied war crimes, consisting of depositions of witnesses and supporting documentation.² On the basis of this material, and faced by Allied accusations of German war crimes, the German government proposed that an international commission be established to examine mutual allegations of violations of the laws of war. The International Committee of the Red Cross at its tenth international conference in Geneva in 1921 resolved that a special commission be established to investigate the violations of the Geneva conventions during the war by all belligerents,³ but no investigation was carried out because the Allied powers rejected the proposal. Instead, pursuant to articles 228 and 229 of the treaty of Versailles, the Allies demanded the extradition and punishment of some 900 German politicians and soldiers. The number was subsequently reduced to 45 and, following difficult negotiations with the Allies, the German government succeeded in modifying the prosecution requirement by allowing the accused Germans to be tried by the German supreme court at Leipzig. The prosecution relied on documentation delivered by the Allies, compiled by their respective war crimes commissions. The defence, in turn, was able to use part of the documentation prepared by the Untersuchungsstelle, whose 5,000 dossiers were subsequently made available to a subcommittee of the German parliament, which, after seven years of methodical evaluation, published its findings in five volumes titled ‘*International law during the World War*’.⁴

After the Nazi attack on Poland on 1 September 1939 and the consequent outbreak of the Second World War, the Polish, French, British and later the American armed forces established war crimes offices to compile evidence on German war crimes. Not surprisingly, the Germans also set up a bureau, and Johannes Goldsche, who had been deputy chief of the Untersuchungsstelle now became chief of the new bureau, which this time was formed within the legal department of the High Command of the Wehrmacht under Dr Rudolf Lehmann. By decree of 4 September 1939, signed by General (later Field Marshal) Wilhelm Keitel, and published in the *Heeresverordnungsblatt*, *Luftwaffen-verordnungsblatt* and *Marineverordnungsblatt*, the Wehrmacht Untersuchungsstelle für Verletzungen des Völkerrechts (hereinafter the ‘bureau’) was assigned the task ‘to ascertain violations of international law committed by enemy military and civilian persons against members of the

¹ Johannes Bell (ed.), *Völkerrecht im Weltkrieg* (Berlin 1927), II, pp. 185–6.

² Geheimes Staatsarchiv Preussischer Kulturbesitz (Berlin), I.H.A. Rep. 84a, no. 11763, pp. 18–23.

³ International Committee of the Red Cross, Tenth International Conference, Geneva, 1921, *Dixième Conférence Internationale de la Croix Rouge, tenue à Genève du 30 mars au 7 avril 1921*, pp. 213–14.

⁴ Bell, *Völkerrecht*, vols. I–V.

German armed forces, and at the same time to investigate whatever accusations foreign countries should make against the Wehrmacht'.⁵ The bureau was not competent to investigate violations of the laws of war perpetrated by Himmler's *Schutzstaffel* (SS). Goldsche's immediate superior, Dr Maximilian Wagner, chief of the international law section, had also worked in the Untersuchungsstelle during the First World War and henceforth also contributed to the work of the bureau until his death in 1943.

In the course of the war the bureau investigated an estimated 10,000 cases or complexes, of which perhaps some 4,000 have survived. The original records can be consulted at the Bundesarchiv-Militärarchiv in Freiburg i.Br. Their use is unrestricted. However, the American microfilm rolls at the National Archives in Washington are restricted, which among other things means that they cannot be copied. After being captured in April/May 1945 by the U.S. Army records collecting team in Torgau and Langensalza, where the bureau's offices had been located after their evacuation from Berlin in 1943 because of air bombardment, the bureau's records were taken to Washington, where they were kept classified and out of reach of researchers. Thus, the records were not available to the defence at the Nuremberg trials, nor to scholars and journalists until the Bundesarchiv released the files in the early 1970s, organized into 226 volumes of some 100 to 500 pages each.⁶

Any scholar confronted with these records would first try to determine the extent to which they are reliable. Surely the Nazi government was not the same as the German government during the First World War. Nazi propaganda was so discredited that any German allegation about Allied war crimes would have to be taken *cum grano salis*. Besides, in the light of the corrupted court system of the Third Reich, extensively documented in the Nuremberg trials, particularly in the 'Justice trial' before the American Military Tribunal,⁷ a serious question as to the credibility of the judicial findings of the War Crimes Bureau was inescapable. Did the German judges let ideology influence their depositions on reported Allied war crimes? Did they receive any instructions or guidelines from the Propaganda ministry? Did they falsify documents? Certainly the Nazis did not hesitate to fabricate incidents with which to defame their opponents. In this connection, one may

⁵ Heeresverordnungsblatt 1939, Teil C, Blatt 26, 14 September 1939, p. 310.

⁶ I first learned of the records in 1974, when I was doing research for my book *Nemesis at Potsdam, the expulsion of the Germans from the East* (Lincoln, Nebraska, 4th revised edn, 1990.) My concern at the time was the flight and expulsion of the German civilian population from areas east of the Oder-Neisse 1944 to 1948. The disorderly nature of the flight was linked to the fear of German civilians that Soviet soldiers would rape and kill them as in October 1944 when the Red army totally destroyed the village of Nemmersdorf in East Prussia. This area was retaken by a Wehrmacht counteroffensive one week later and the corpses were found. Had such a massacre occurred in an area occupied by the American army, our army lawyers would have investigated the killings as a matter of course. Thus I assumed that German military lawyers must have investigated the events at Nemmersdorf. In search of their investigations I learned of the existence of the Wehrmacht bureau on war crimes, and found the 226 volumes of German investigations of Allied war crimes going back to the very beginning of the war.

⁷ United States of America v. Josef Alstötter et al., in Herscht Lauterpacht, ed., *Annual Digest and Reports of Public International Law Cases* (London, 1947), case 126, pp. 278 ff.

recall the notorious 'Gleiwitz incident'. In order to put the blame for the outbreak of the war on Poland, Himmler's SS simulated a Polish takeover of the German radio station at Gleiwitz, Upper Silesia, on the eve of the German attack on Poland. This fabricated incident followed real and fictitious reports of abuses and killings allegedly committed by the Polish population and militia against the resident ethnic German minority (*Volksdeutsche*). Indeed, Goebbels' exaggerations about alleged Polish crimes against the *Volksdeutsche* necessarily raised doubts about the truth of all German press reports and official protests.

Thus, the credibility of the records of the Wehrmacht bureau on war crimes had to be tested. And in order to do so, it was necessary first of all to know who were its members. As the head of the legal department of the Wehrmacht, Dr Rudolf Lehmann, testified in Nuremberg, 'only experienced judges were entrusted with the task of ascertaining the facts by taking the sworn deposition of witnesses. The material was systematically ordered and made available to the Foreign Office for the purpose of safeguarding our interests.'⁸ Johannes Goldsche, the old Berlin lawyer, proceeded to select a staff of non-political experts. They were doctors Heinemann, Huvendick, Schöne, Hofmann and Dorf Müller. All but Hofmann and Dorf Müller had died before I started my research, but I was able to interview the two survivors and to locate the personnel files of the other members at the Bundesarchiv-Kornelimünster and at the Wehrmacht-Auskunftstelle in Berlin, and further to obtain valuable information and photographs from their relatives. It became clear that none of them was a Nazi activist or fanatic like Roland Freisler, the president of the People's Court. On the contrary, it became apparent that the bureau members had been working in an environment where many opponents of national socialism had come together. Among them Helmuth James Graf von Moltke,⁹ chief of a section of Wehrmacht intelligence and a close collaborator of Johannes Goldsche, was the co-founder of the Kreisauer Kreis, one of the most courageous anti-Hitler groups. He was executed in Berlin on 23 January 1945. Karl Sack, the head of the legal department of the Army (*Heeresrechtsabteilung*), was involved in the conspiracy to assassinate Hitler on 20 July 1944 and was executed on 9 April 1945 at the Flossenbürg concentration camp.¹⁰ So too, Rudolf Schleicher, chief of the legal department of the air force (1934-9), who was executed in April 1945. Moreover, nothing in the files *a priori* gave reason to doubt the integrity of the bureau members.

A careful study of the records followed – not only of the 226 volumes, but also of the relevant files of other German offices with which the bureau had regular contacts. These were, *inter alia*, the Amt Ausland-Abwehr, the Wehrmachtführungsstab, the Army Medical Office (*Heeres sanitätsinspekteur*),

⁸ Trial of Wilhelm von Leeb (OKW Trial, case 12), NSB, Proceedings of 16 July 1948, p. 7726.

⁹ Ger van Roon, "Graf Moltke als Völkerrechtler im OKW" in *Vierteljahrshefte für Zeitgeschichte*, xviii (1970), pp. 12-61; Freya von Moltke and G. van Roon, Helmuth James Graf von Moltke, Dokumente (Berlin, 1986).

¹⁰ Hermann Bösch, *Heeresrichter Karl Sack im Widerstand* (Munich, 1967); Peter Hoffmann, *The history of the German resistance 1933-1945* (London, 1977).

and the Auswärtiges Amt. Nowhere was there evidence of any doctoring of documents or of fabrication. There were no guidelines from the Propaganda ministry, no interference from Hitler, Himmler, Goebbels, Heydrich, Kaltenbrunner. The members of the bureau were essentially left alone to carry out their assignment, which they did without fanfare. It is interesting to note that there are no comments in the internal correspondence that would indicate adherence to Nazi ideology, no anti-semitic observations, no jaded remarks. What becomes obvious from the study of the unfortunately incomplete internal correspondence is that bureau members had a subjective conviction that the Allies, in the first place the Soviets, were grossly violating international law. In a 1942 internal memorandum by Goldsche one reads: 'Our enemies in the world war earnestly endeavoured to collect our alleged wartime misdeeds, classify them, and make an indictment out of them so as to brand the Germans as outlaws for all time and thus to disqualify them in the arena of world politics. Because of their inexhaustible propaganda methods, their concerted pressure, and the weakened stance of postwar German governments, they were largely successful. There is no doubt that upon the conclusion of peace after this war, this disgrace ought to be wiped out. One of the means to this end, which the Wehrmacht should provide for, is the preparation of a catalogue of war crimes and crimes against humanity perpetrated by our enemies on land, sea and in the air.'¹¹

For American and British readers, this is like taking a cold shower, getting the tables turned on us, being forced to see the other side. *Audiat et altera pars*. On the other hand, nothing could compare with the systematic extermination of six million Jews by the Nazis. And the question inevitably arises how these Germans of the bureau could dare write about Allied war crimes in 1942, when the SS-mobile killing squads (*Einsatzgruppen*) under Ohlendorf and others had been shooting thousands upon thousands of Jews, when in Auschwitz, Treblinka, Sobibor, Belzec, Lublin-Maidanek and Chelmno millions were being gassed? This question will be discussed below.

Regardless of our ultimate judgement on the morality and integrity of the members of the bureau, we still have to examine their *modus operandi* and to evaluate their results, if we want to know whether the Allies committed serious violations of the laws and customs of war.

First we should look at their methods of obtaining evidence. They received material from many sources: dispatches, reports, expert opinions, military records, captured enemy documents, interrogations of prisoners of war, sworn deposition of witnesses. From parallel institutions such as Ausland-Abwehr, particularly from Graf Moltke, they received perhaps ten per cent of their documentation, but the bulk of the bureau's records consisted of the sworn testimony of tens of thousands of witnesses whose depositions had been taken directly by members of the bureau, by local courts at the bureau's request, or by the some 2,000 army, navy and airforce judges in the field.¹²

¹¹ Bundesarchiv-Militärarchiv, RW 2 v. 34, p. 2.

¹² A. de Zayas, *The Wehrmacht war crimes bureau*, ch. 4.

At the outset in September–October 1939, bureau members themselves travelled to Poland to take the depositions of victims and witnesses of crimes committed against the civilian population of Bromberg, Hohensalza, Pless, Stopnica, etc. But they also deputized other judge advocates to carry out investigations. In all, 44 military and civilian judges were involved in the investigations into war crimes during the Polish campaign.

Another routine source of information was hospital interrogations. Bureau members Dorfmueller, Heinemann, Hofmann, Huvendick and Schöne frequently travelled to hospitals throughout Germany, whenever the military units or the hospitals reported that injured soldiers claimed to have been victims or witnesses of abuses by the enemy.

The military judges in the field did not have to wait for a request from the bureau in Berlin (later in Torgau/Langensalza) in order to take depositions, but did so whenever they believed necessary. The original of the deposition was sent to the bureau and copies were usually sent to other recipients, including the liaison officers of the German Foreign Office.

Every division in the German army had a section for military intelligence, known as the Ic section. It collected dispatches, reports, witness testimony, captured enemy records, diaries, photographs, etc. and sent them along the normal chain of command from Division Ic to Corps Ic, to Army Ic, to Army Group Ic, to High Command of the Army Ic, to the Fremde Heere West (foreign armies west) or Fremde Heere Ost (foreign armies east), which in turn sent the material to the bureau, if appropriate.

Newspaper reports were never used for documentation, but frequently they alerted the bureau to the necessity of seeking out witnesses of a particular event, so as to clarify the matter and determine whether their sworn testimony should be obtained. For instance, the shooting at German shipwrecked crews in Narvik in April 1940 had been initially reported in the press, and only subsequently did the bureau arrange to have the sworn depositions of some fifteen survivors taken.¹³

Still another source of information was the routine interrogation of former German prisoners of war who returned to Germany after being exchanged through the good offices of the International Committee of the Red Cross. One of the commonly asked questions was, for instance, whether they or other German POWs had been assigned work that was directly connected with the enemy conduct of war. Sometimes the answer was yes, as when German POWs were used for the transport of ammunition or for removal of mines, in contravention of articles 31 and 32 of the Geneva convention of 1929 relative to the treatment of prisoners of war.¹⁴

Witness testimony was not always accurate. Hearsay was rejected out of hand and no testimony was collected from persons who could not give first-hand accounts. Some witnesses also had misconceptions as to what constituted

¹³ *Ibid.* pp. 42f.

¹⁴ BA – MA, RW 2 v. 129, *passim*. See also ICRC, Report of its Activities during the Second World War (Geneva, 1948), I, pp. 333 et seq.

violations of the laws and customs of war. Many German parachutists, for instance, complained of purported Allied violations of the laws of war in Crete 1941, stating that they had been shot at while still in the air and 'defenceless'. They had to be told that shooting at parachuting soldiers is a legitimate act of war. Moreover, many of the parachutists were not at all 'defenceless', but were already shooting at the ground forces during their descent. Bureau members also discarded reports of attacks on Red Cross installations if these were not properly identified as such. Although a report was filed on the sinking of the hospital ship 'Stuttgart' on 9 September 1943 at Gdingen, no protest was lodged against the Anglo-Americans because the hospital ship was anchored in the port and camouflaged with sackcloth, so that it did not enjoy the protection of Hague convention no. 10.¹⁵ Moreover, there were too many other legitimate military objectives in the area.

Because the administration of the oath cannot offer a guarantee of the truth of the testimony, German military judges made an effort to question more than one witness for every case. For instance, when investigating the massacre of some 170 German POWs in Broniki on 31 June 1941, four judges interrogated a total of twelve survivors and witnesses. Their testimony presented a complete picture of the events; there were only minor differences with respect to the estimated number of victims.¹⁶

Sometimes it was possible to carry out on-the-spot verification, as when medical orderly Herbert Dietzel claimed to be a survivor of a massacre of POWs at Malyje-Wiski in the Soviet Union. Since the Germans temporarily reoccupied the area, Dietzel was able to accompany Judge Heinrich Arnold to the place where the shootings had taken place.¹⁷

On occasion, follow-up verification by the bureau was necessary. Although there are numerous examples of German field hospitals being overrun by the enemy and all wounded soldiers being killed, the bureau did not accept any such report unless it was well corroborated. In one case Corporal Hugo Donkels claimed to be a survivor of a raid on the field hospital at Roslawl (Soviet Union) in December 1941, where Soviet soldiers were said to have killed 120 wounded German soldiers, two doctors and several nurses. After nearly one year of correspondence with the Army Medical Office and with personnel in several division hospitals, it could still not be established that the Roslawl incident had occurred, although it appeared possible that Donkels, who had been very seriously wounded and could have confused the locality, might have been a survivor of the raid at another nearby field hospital at Ugodsky Savod. Since the case remained uncertain, it was not incorporated into the bureau's separate compilation of Soviet war crimes.¹⁸

With regard to reports of mutilations, the Army Medical Office issued strict guidelines on how to evaluate such injuries. The bureau's files contain several hundred reports of mutilations, invariably sworn depositions of the doctors who had examined the wounds. In the more serious cases, experts in forensic

¹⁵ A. de Zayas, *The Wehrmacht war crimes bureau*, p. 50.

¹⁷ *Ibid.* pp. 53ff.

¹⁶ *Ibid.* p. 52.

¹⁸ *Ibid.* p. 63.

medicine were called in, as, for instance, in the investigations into the killings in Lvov, Feodosia, Katyn, Vinnitsa and Vitebsk.

The material collected and evaluated by the bureau was, of course, intended for various uses. Official German publications presenting the German side of a given question were issued by the German foreign office (*Auswärtiges Amt*) in the form of 'white books' or 'white papers'. Some of these publications dealt with historical and diplomatic topics, while others addressed the issue of war crimes. In the course of the war the *Auswärtiges Amt* issued 13 white books on war crimes allegedly committed by the Allies, and relied in part on the bureau's documentation. Had the *Auswärtiges Amt* restricted itself to the bureau's materials, their white books might have been more effective, but Ribbentrop's *Auswärtiges Amt* was closer to the Propaganda ministry than to the legal department of the Wehrmacht and did not hesitate to use material of dubious origin, such as newspaper reports, and also managed to discredit otherwise solid evidence by the use of intemperate and arrogant language. The white books, notably two devoted to war crimes in Poland, are illustrated with genuine photographs from the bureau's files, but photographs often too gruesome for publication.

Another use of the bureau's documentation was for lodging official protests through the so-called Protecting Power, that is, a neutral state that assumed the representation of the interests of one belligerent *vis-à-vis* another. During the Second World War, Switzerland served as Protecting Power *vis-à-vis* Germany on one side and Great Britain, the United States and France on the other. Bulgaria was to represent German interests *vis-à-vis* the Soviet Union, while Sweden was to represent Soviet interests *vis-à-vis* Germany, but whereas Switzerland was successful in its task, neither Bulgaria nor Sweden could do much in view of the kind of 'total war' waged between Hitler and Stalin.

Typical German protests based on the bureau's documentation concerned Anglo-American air warfare, bombardment of churches, hospitals, Red Cross installations, trains and ambulances. Such protests were routinely transmitted by Bern to London and Washington, investigated by the British and American forces, and routinely answered. It is important to note that the British and the Americans invariably took the German protests seriously and endeavoured to get at the truth, which, of course, in the context of war operations with a constantly moving front was not always easy. German protests and Allied responses continued being transmitted by Bern until the very last weeks of the war.

Sometimes the bureau was not the initiator but rather the recipient of reports transmitted by the Protecting Power, as when in March 1945 General Eisenhower addressed a statement to the German High Command expressing regret over the deaths of some 140 German POWs who suffocated while being transferred in sealed box cars from one POW camp to another in France.¹⁹

Perhaps the most important use of the bureau's documentation was for the

¹⁹ Bundesarchiv-Bern, 2021 (c), Classeur 66. The inquiry exposed gross negligence on the part of several American soldiers, and court-martial proceedings were recommended.

preparation of war crimes trials, to be conducted during and after the war. Indeed, German military courts carried out hundreds of trials against Polish, French, Yugoslav and Soviet prisoners of war and civilians on charges of violating the laws and customs of war, e.g. against civilians because of franc-tireur activities, against POWs for ill-treatment or killing of German POWs, for misuse of the German flag or uniforms. War crimes trials were also planned against British and American POWs, particularly against pilots, but no such trials were ever conducted, because the Germans feared that the British and Americans would retaliate and in turn try German POWs, notably submarine crews.

What is most remarkable about these wartime trials against Allied citizens is that they did not automatically lead to conviction or to severe sentences. In fact, about half of them ended in acquittal because of insufficient evidence or mistaken identity. Yet, some cases involving the lynching of German air crews by French civilians and/or militiamen ended with the death sentence, while others with terms of imprisonment. An interesting case concerned the French lieutenant Jules Levesse, accused of not evacuating German POWs from the combat zone to the rear, thereby exposing them to German artillery fire, as a consequence of which several were wounded and two died. On 27 October 1940 the German military court of the 269th Division convicted Levesse for violation of article 7 of the 1929 Geneva convention and condemned him to death. Marshal Philippe Petain thereupon appealed to Field Marshal Keitel to reduce the sentence. Keitel submitted the case to Hitler, who took his time to make up his mind, but finally changed the sentence on 24 May 1941 from death to imprisonment. Levesse survived the war and was repatriated to France on 16 May 1945.²⁰

After studying the files of the Wehrmacht bureau, testing them for internal consistency, observing the uses they were put to, comparing them with non-German investigations in American, British and Swiss archives, and interviewing over 300 persons whose names appear in the sworn depositions – witnesses, judges or medical experts – I concluded that the bureau did function in a trustworthy manner, that its investigations were authentic and its documentation reliable. Although there is no guarantee that the depositions are correct in every detail, and although the files contain only the German view of the events, it is nevertheless apparent that the bureau was not a propaganda arm of the Nazi regime but a military investigative agency much like those that exist in the legal offices of the armed forces of many other countries.

It is not possible here and now to give even a summary account of the content of the investigations, but I will endeavour to highlight some of the cases that I attempted to examine more closely by interviewing witnesses and survivors of the events.

1. Polish cases concern the killing of some 5,000 members of the ethnic

²⁰ A. de Zayas, *The Wehrmacht war crimes bureau*, pp. 97ff.

German minority in Bromberg, Thorn, Pomerellen, etc., in the first days of the German invasion. So-called death marches of German civilians are documented, as are the instances of ill-treatment and killing of German prisoners of war.

2. British cases entail extensive investigations concerning the shooting of shipwrecked German sailors in Narvik on 13 April 1940. I interviewed several German survivors, including the Captain of the German destroyer *Erich Giese*, Commander (later Admiral) Karl Smidt, consulted the German logs and the logs of the British destroyers. Shortly before and during the German invasion of Crete there were many reports of shooting of German shipwrecked crews, for instance of the caique *Osia Paraskevi*. The log of the British submarine *Rorqual* is particularly revealing.²¹ I also consulted at the Public Record Office in London the British investigations into the sinking, on 18 November 1944, of the German hospital ship *Tübingen* in the Adriatic, near Pola. This case occasioned many diplomatic notes back and forth via the Protecting Power, and an official apology by the British. Perhaps the Royal Air Force headquarters in the Mediterranean was correct when it telegraphed the Air Ministry in London on 19 November 1944 that 'the incident was the result of a curious mixture of bad luck and stupidity'.²² It appears that through a chain of errors on the part of the British pilots and a misunderstanding in the wireless transmission, the order was in fact given to attack the hospital ship.

3. American cases concern mostly air warfare, but also the shooting of German shipwrecked and killing of German POWs in Italy and during the Battle of the Bulge. The American investigations at the Office of the Judge Advocate General provide many examples not found in the records of the Wehrmacht bureau.

4. French cases concern lynching of German air crews, ill-treatment and killing of German POWs during the campaign in 1940, and the 'execution' of 80 German POWs near Annecy on 2 September 1944, when the Forces Françaises de l'Intérieur were demanding from the Reich official recognition as combatants. The International Committee of the Red Cross tried unsuccessfully to mediate so as to prevent the needless killings.²³

5. Soviet cases. Approximately half of the bureau's files concern crimes in the Soviet Union. Perhaps the most surprising conclusion that may be drawn from the study of these records is that the widespread killing of German POWs did not intensify as the war wore on, or as a consequence of Nazi barbarities in the Eastern front. Massacres of German POWs were reported in the very first days of the German invasion and the ensuing investigations invariably confirmed the reports. There appears to have been a systematic practice of interrogating prisoners and then shooting them. Sometimes they were killed before interrogation, a situation which resulted in vigorous protests by Soviet

²¹ Public Record Office, ADM 199/1151, HMS Rorqual, Report of Proceedings, p. 164.

²² Public Record Office, AIR 8/827-03071.

²³ International Committee of the Red Cross, Report of Activities, I, pp. 522-3. See also Kurt Böhme, *Die deutschen Kriegsgefangenen in französischer Hand* (Munich, 1971), in Maschke, *Zur Geschichte der deutschen Kriegsgefangenen*. XIII, p. 155, n. 292.

intelligence and the issuance of new instructions, as documented in many captured Soviet documents, including orders and diaries.

Among the many massacres are those at Broniki, Feodosia and Grischino. The bureau also investigated crimes committed against non-Germans, for instance the liquidation of Polish and Ukrainian political prisoners by the Soviet secret police, the NKVD, immediately before the arrival of the Wehrmacht. Such massacres, each involving thousands of persons, occurred in Lvov, Dobromil, Dubno, Luck, Vitebsk, etc. The Germans also discovered mass graves in Vinnitsa, where some 10,000 Ukrainians had been liquidated in 1938.

The only Soviet wartime crime that has received considerable international attention is, of course, the killing of Polish prisoners of war at the Katyn forest near Smolensk. In the spring of 1943 the Germans discovered the mass graves and exhumed 4,143 bodies. The total number of Polish POWs from whom relatives had received no news since the spring of 1940 was 14,700. But only the mass graves at Katyn were ever found. The War Crimes bureau received its first report of the massacre in August 1941 from Soviet Commissar Merkuloff, who claimed to know with absolute certainty that all Polish officers who had been taken prisoner by the Soviet Army in the course of the Russian-Polish war of 1939 had been executed.²⁴ The bureau was unable to follow up on this information at first because Merkuloff did not know the location of the graves. Another interesting new source of information concerning Katyn is the report, dated 29 May 1943, of one Dr Lang, a medical officer, who described his personal observations at Katyn Forest, including the discovery of other nearby graves containing the bodies of civilians. He concluded that the Katyn Forest had been a frequently used execution ground for the NKVD and estimated that there could be 50,000 bodies in the civilian graves just discovered. A Soviet offensive, however, pushed the Germans out of the area and no further diggings took place.²⁵

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After reviewing the files of the Wehrmacht bureau, after testing their reliability against Allied records, after ascertaining that the bureau was not fabricating accusations against the Allies, but that *prima facie* cases of war crimes existed, there remains the fundamental question raised earlier: How was it possible for German judges to carry out, methodically and systematically, investigations into Allied war crimes, when the German government, the SS, the Einsatzgruppen, the Wehrmacht were engaging in various degrees of official criminality? One simple answer would be that the Germans of that period were totally corrupted by Nazism, that they had lost all sense of proportions, that they were hopeless cynics and immoral people. And yet, this simple answer is not compatible with my experience interviewing more than 150 former military judges and studying the records of the bureau and other related agencies.

²⁴ Bundesarchiv-Militärarchiv, RW 2/v. 149, p. 124.

²⁵ Bundesarchiv-Koblenz, Publikationsstelle Berlin-Dahlem, CLIII/1671.

One possible answer is suggested in a recent article by George Watson, a fellow of St John's College, Cambridge: 'How the Holocaust was hidden'.²⁶ He argues that the number of persons who during the war knew about the Holocaust was extremely limited. Even those persons who were in some way involved in the preparatory stages along the chain: the police who rounded up the Jews in Amsterdam, the railroad people who transported them to the East, the kitchen personnel who provided food for so many people – they knew that the Jews were being banished to labour camps, but did they suspect that the 'evacuees', as they were called, would be murdered? Indeed, many Jews did not know or want to believe that they would be murdered; many really believed that they were being relocated, that, according to the then current Nazi propaganda, the Germans were going to establish some sort of a Jewish state in the East. Thus, if the Jews believed it, why not the German *Beamte*? Professor Eugen Kogon, who was detained in various Nazi concentration camps including Buchenwald 1939–45 confirmed in his famous book *Der SS-Staat* that the Nazi system of terror and secrecy succeeded in keeping knowledge of the Holocaust very limited.²⁷ In this context one may also ask what California families thought when their Japanese-American neighbours were evacuated East in the spring of 1942, following the Japanese attack on Pearl Harbour. Over 110,000 Japanese-Americans were transported to 11 so-called relocation centres in California, Arizona, Idaho, Wyoming, Colorado, Utah and Arkansas.²⁸ No American would have thought for a moment that their Japanese-American neighbours would be gassed. And, of course, they were not. Germans knew that they were living in a virulently anti-Semitic country, they knew that the Jews would be ill-treated and ill-fed, but what normal mind could have imagined the killing by gas of millions of human beings, just because they belonged to a different race or practised another religion? People do not always imagine the worst scenario, especially when the worst is total insanity. Still, some did know. Others could have known, if they had wanted to. Many simply closed their eyes and ears to what was happening.

At least, one would be inclined to believe that the members of the bureau must have known about Auschwitz and Treblinka, that they should have exposed these crimes or done something to stop them. Personally, when I first approached the subject matter, I felt very much so – that the Germans knew. I wanted to believe that they knew. But the written records do not reveal anywhere that they had official or unofficial knowledge of the genocide in progress. Even if one does not adhere to the maxim *quod non est in actis, non est in mundo*, the absence of any trace in writing does have its implications. Thus, reliance on 'oral history' appeared necessary: I interviewed hundreds of Germans, not only former army, navy and air force judges, but also

²⁶ The Sunday Telegraph, 7 January 1990. See also Sarah Gordon, *Hitler, the Germans and the Jewish question* (Princeton, 1984), esp., pp. 140, 183–4.

²⁷ Eugen Kogon, *Der SS-Staat* (Munich, 1974), pp. 394–5.

²⁸ Alan Bosworth, *America's concentration camps* (New York, 1967), p. 120.

generals, admirals, colonels, common soldiers. Invariably, they claimed that, although they were increasingly aware of the regime's criminal methods, they had not suspected the *Endlösung* ('final solution'), nor had they learned of the existence of Auschwitz and Treblinka until the very last weeks of the war, or even after the war. A few persons interviewed admitted that they had heard rumours of shootings of Jews by special SS units as early as 1942, but they considered these rumours exaggerated and based on enemy propaganda. Some of them commenced to have doubts in 1944 and early 1945, but no one could obtain corroborative evidence. One judge, Wilken von Ramdohr, recalled that he had indirectly learned, in 1943, of an incident of shooting of Jews in the Soviet Union in 1942, when as army judge he was responsible for the criminal investigation into the conduct of a Wehrmacht soldier under his jurisdiction. The soldier had been charged by a *Gauleiter* (political leader) with slander and spreading of false rumours, because he had asserted, while on home leave, that he had seen SS members killing Jews. Judge Ramdohr interrogated the soldier, who confirmed his earlier statement. Thereupon Ramdohr wrote to the *Reichssicherheitshauptamt* requesting information about the possibility of such an event having taken place. He received no reply. When he insisted three months later, he was merely told that the soldier should be punished, but received no refutation of the soldier's allegations. Ramdohr did not accept this reply and inquired again. Shortly thereafter Ramdohr himself was transferred and he lost sight of the case. After the war he learned that the soldier had not been prosecuted. As to his perception and evaluation of this early indication of illegal killings in the East, Ramdohr did not interpret it as indicating that a major extermination programme was in progress. He considered it an isolated aberration. Only after the war did he learn the sad truth.

Hitler's order no. 1, the notorious Führerbefehl Nr. 1, seems to have played an important role in effectively limiting the number of persons who knew about the extermination programme. This order, which bureau member Karl Hofmann remembers hung in every office and was taken very seriously, provided that: '(1) no one shall know about secret matters that do not belong to his own range of assignments; (2) no one shall learn more than he needs to fulfil the tasks assigned to him; (3) no one shall receive information earlier than is necessary for the performance of the duties assigned to him; and (4) no one shall transmit to subordinate officers, to any greater extent or any earlier than unavoidable for the achievement of the purpose, orders that are to be kept secret.'²⁹

Walter Laqueur, in his book *The terrible secret*, addresses this very issue of the suppression of information about the extermination programme and observes that while 'only a handful of Germans knew all about the "final solution", very few knew nothing'.³⁰ Laqueur, however, does not convincingly

²⁹ International Military Tribunal, x, pp. 536-7.

³⁰ Walter Laqueur, *The terrible secret* (London, 1980), p. 17; cf. Lawrence Stokes, 'The German people and the destruction of the European Jews', in *Central European History*, vi (1973), pp.

substantiate his contention. He points out that the activities of the Einsatzgruppen were witnessed by an unspecified number of members of the Wehrmacht, without, however, coming to grips with the fact that there were more than twenty million soldiers engaged in 'total war' and that those who did witness an irregular shooting of Jews during the war had no reason to believe that such shootings were routine and much less that there was an official policy of exterminating all Jews. Fragmentary information on a massacre of Jews does not constitute knowledge of the final solution, especially considering that in the context of the war in the Soviet Union, the German soldier's perception of a massacre of Jews was inevitably diluted by the frequent experience of Soviet atrocities as amply documented by the Wehrmacht bureau on war crimes. Laqueur's chapter entitled 'Germany: a wall of silence?' leaves critical questions open which other researchers will no doubt investigate in due course.

It is important to remember that the final solution was in the *geheime Reichssache* (top secret) category, and for very good reason. Hitler knew that the German population would oppose it, as Bishop Galen of Münster and other figures had opposed the euthanasia programme, which eventually had to be stopped. Indeed, many of those who joined the resistance against Hitler and national socialism did so because they obtained knowledge about the exterminations. Such was the case with Helmuth James Count von Moltke, Ulrich von Hassell, Claus Schenk Graf von Stauffenberg and Peter Yorck von Wartenburg and many of the 20th of July conspirators.³¹

The transcripts of the Nuremberg trials give us ample evidence that persons in senior government positions did not know what was going on. For example: Nazi press secretary Hans Fritzsche, one of the three principal accused to be acquitted at Nuremberg, denied on the stand having had any knowledge of the exterminations. On 28 June 1946 he stated: 'The German people were unaware of the mass murders of the Jews, and assertions of them were considered rumours; reports that reached the German people from outside were officially denied again and again.... The Russians, after they recaptured Kharkov, started legal proceedings (16–18 December 1943) during which killing by gas was mentioned for the first time. I ran to Dr Goebbels with this report and asked him about the facts. He stated that he would have the matter investigated... the next day he sent me a notice of denial... he explicitly informed me that the gas vans mentioned in the Russian legal proceedings

167–91. The recent publications edited by Ernst Klee and Willi Dressen, "*Schöne Zeiten*": *Judenmord aus der Sicht der Täter und Gaffer* (Frankfurt, 1988) and "*Gott mit uns*": *Der deutsche Vernichtungskrieg im Osten* (Frankfurt, 1989), fail to reveal any knowledge of the Holocaust by the legal department of the Wehrmacht or by bureau members.

³¹ Peter Hoffmann, *German resistance to Hitler* (Cambridge, Mass., 1988), pp. 131–5; see also 'Motive', chapter in J. Schmäddeke and P. Steinbach (eds.), *Der Widerstand gegen den Nationalsozialismus* (Munich, 1985), pp. 1089–96. I.M.T. xxxiii, p. 424; Ulrich von Hassell, *Vom anderen Deutschland* (Zurich 1947), p. 314.

were pure invention and that there was no actual proof to support it.³² It would have been interesting to see whether the bureau members were ever confronted with the Kharkov allegations, but the records do not give any indication.

SS Judge Georg Konrad Morgen testified at Nuremberg that he learned about the exterminations in 1943, almost by accident, in the course of investigations that he was carrying out into corruption in the SS. He testified that only those who were really involved, and who had been sworn to secrecy, knew, and that most of the Gestapo had no idea what was going on either. For instance, it was the Security Police of Lublin that reported killings of Jews to the Reich Criminal Police Office and sought an indictment against Lublin commander Christian Wirth, apparently unaware that the orders came from the very top.³³ Judge Morgen, who had already had Buchenwald commander Karl Koch arrested because of corruption, attempted to have the murder machinery stopped by arresting, on corruption charges, some of the camp officials at Lublin and Auschwitz, notably the chief of the political section, Ernst Grabner. He also made a report to Reichssicherheitshauptamt chief Ernst Kaltenbrunner and informed his immediate superior SS Gruppenführer Arthur Nebe. This was in July or August 1944. To the question why he did not report the killings to other SS circles, Morgen answered on the stand that he was bound by Hitler's order no. 1 concerning secrecy on state affairs.³⁴ Thus, he could not and did not communicate with the Wehrmacht War Crimes bureau on this matter. As to informing the public about the murders, he observed on the stand: 'I would have needed access to the technical means for doing this, that is, to the press and the radio, which I did not have. If I had blurted that out at every street corner, no one would have believed me, because this system was beyond human imagination. I would have been locked up as insane.'³⁵ What he did do was to ask the SS court at Berlin to investigate Adolf Eichmann, and the SS court in turn submitted Morgen's report to Kaltenbrunner in his capacity as highest SS judge. The SS court was told that an arrest could not be considered because Eichmann was carrying out a secret assignment on Hitler's orders.³⁶ Morgen survived the war to become a prominent attorney in Frankfurt. He also gave testimony at the Auschwitz trial in 1964-5.

In 1948 SS-Sturmannführer Alfred Franke-Griecsch reported on a conversation with Himmler and Gruppenführer Maximilian von Herff in April 1943, in which Himmler refused to release any SS officers involved in the extermination and did not allow them to go to the front because he would not expand the circle of those persons with knowledge of the *Endlösung*: 'Secrecy is essential and I ask you to stress this consideration when you explain why I refuse the transfer—These 200 SS leaders must bear the responsibility for all.

³² I.M.T., xvii, p. 181; see also the testimony of Field Marshal Erhard Milch on 11 March 1946, IMT, ix, pp. 72-4.

³³ I.M.T., xxi, p. 533.

³⁴ I.M.T., xx, p. 510.

³⁵ Ibid. p. 511.

³⁶ Ibid. p. 514.

Today we cannot explain this decision to the leadership corps of the SS. They would not understand many things and would only judge the facts.³⁷

If at first sight the very existence of the Wehrmacht bureau on war crimes appeared cynical and schizophrenic, after a closer look, however, things start falling into place. One understands that the quasi unthinkable is indeed thinkable. At first I did not believe that the German judges of the bureau could have remained unaware of Auschwitz. After interviewing so many judges and going through so many documents where some trace of their knowledge should have been reflected – and wasn't – I am persuaded that they probably did not know. Of course this does not exculpate them; one could argue that, because of their position, they should have displayed a greater vigilance: but here hindsight colours our judgement.

Dr Horst Reger, one of the first judges to carry out investigations for the bureau – in Poland in 1939 – assured me that he did not learn of the exterminations until several weeks after the end of the war. In his capacity as personal assistant of the chief of the legal department of the Wehrmacht, Dr Rudolf Lehmann, he could have been privy to more information, and yet he maintains that he wasn't. Of course, he could be lying. But are all German witnesses liars, without exception? And did his boss know? Reger recalled that many years after the war he asked Lehmann whether he had known about the *Endlösung*. Lehmann replied that he had not and referred to a conversation he had had at Nuremberg with Dr Robert Kempner, whom Lehmann knew from the years before the war, when Lehmann was at the ministry of justice and Kempner at the ministry of the interior. Kempner asked Lehmann why he had done nothing to stop the Holocaust. Lehmann answered him: 'Kempner, you know me long enough, and you should believe me when I tell you that the first time I learned of the exterminations was here at Nuremberg after the war.' Kempner did not believe him.

Yet another example of someone who could have known about the exterminations and who claimed that he did not was Generaloberst Alfred Jodl, head of the Wehrmachtführungsstab, who testified in Nuremberg: 'I know just how improbable these explanations sound, but very often the improbable is true and the probable untrue. I can only say, fully conscious of my responsibility, that I never heard, either by hint or by written or spoken word, of an extermination of Jews. On one single occasion I had doubts, and that was when Himmler spoke about the revolt in the Jewish Ghetto. I did not quite believe in this heroic fight; but Himmler immediately supplied photographs showing the concrete dugouts which had been built there, and he said, "Not only the Jews but also Polish Nationalists have taken refuge there and they are offering bitter resistance". And with that he removed my suspicions... I have never had any private information on the extermination of the Jews; and on my word, as sure as I am sitting here, I heard all these things for the first time after the end of the war.'³⁸

Similarly, Grand Admiral Karl Dönitz at first refused to believe rumours

³⁷ Institut für Zeitgeschichte, Z5-1931.

³⁸ I.M.T., xv, pp. 332–3.

that reached him on the subject, because he considered them comparable to the atrocity propaganda he had heard during the First World War, as his adjutant Walter Lüdde-Neurath recalls. At Nuremberg Dönitz testified: 'Neither I nor anyone in the Navy – and this is my conviction – knew anything about the mass extermination of people, which I learned about here from the indictment, or, as far as the concentration camps are concerned, after the capitulation in May 1945.'³⁹ In a personal interview with the admiral on 25 May 1974, Dönitz affirmed that he first learned about the exterminations in concentration camps in May 1945, after he had become Hitler's successor as head of state, and that he immediately took steps to have these atrocities investigated and the guilty prosecuted, but these steps were superseded by the Allied decision to arrest him and his government on 23 May 1945.⁴⁰

Whether one believes Lehmann, Jodl and Dönitz or not, their testimony should not be dismissed out of hand, and, indeed, more and more historians are coming to the recognition that knowledge of the Holocaust was far more limited during the war than hitherto believed. They remind us that the Nazi media made no mention of extermination at any time and that the SS and their aides were sworn to secrecy;⁴¹ that the victims themselves for the most part did not know or guess their fate;⁴² that the few existing written documents are characterized by circumlocution or code-language, referring to the killings as 'deportation', 'evacuation', 'resettlement', or at the worst 'special treatment'. Moreover, if it was possible in the western democracies to keep secret the 'Manhattan' project on the development of the atomic bomb, or the preparations for the second front, which concerned a few thousand people, logically it would have been easier in a totalitarian country with complete control of the media and draconic punishment for breach of secrecy to keep knowledge of the extermination programme limited to those directly involved.

Historians must yet decide what to believe about the German bureau on war crimes, about the reliability of its records, and about the reasons why it never investigated the greatest crime against humanity of this century. Only the discovery of additional files can shed light on the uncertainties that prevail concerning this aspect of the bureau's work.

³⁹ Ibid. XIII, p. 301.

⁴⁰ Walther Lüdde-Neurath, *Regierung Dönitz* (Göttingen 1964), pp. 91ff. Interview on 27 May 1974 with Karl Dönitz at Aumühle, Holstein. Karl Dönitz, *Zehn Jahre und Zwanzig Tage* (Frankfurt, 1967), p. 461.

⁴¹ Helmut Krausnick, 'The persecution of the Jews', in Hans Buchheim, Martin Broszat and Hans Adolf Jacobsen, *Anatomy of the SS state* (New York, 1968), p. 97.

⁴² Raul Hilberg, *The destruction of the European Jews* (Chicago, 1961), pp. 621f, 652f, 662ff.