IN THE MATTER OF KURT WALDHEIM

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IN THE MATTER OF KURT WALDHEIM

I. BACKGROUND AND SUMMARY

Subsequent to the March 1986, publication of allegations regarding the World War II activities of Kurt Waldheim, the Office of Special Investigations (OSI), Criminal Division, was asked to review the available evidence and material and to prepare a report regarding Mr. Waldheim's service as an officer in the Army of Nazi Germany. OSI has analyzed such available material, most of which is housed in the U.S. National Archives; additional material from Yugoslav archives has also been reviewed. In addition, we have analyzed the memoranda and documents submitted on Mr. Waldheim's behalf; 1/ we have also met with Mr. Waldheim's son and attorneys.

In preparing this report, OSI historians and attorneys have relied upon the primary archival sources of information, Mr. Waldheim's own submissions, and published works on World War II. Press reports have not been considered. Although significant research has been conducted in the archives of this country, and to a lesser degree in Yugoslavia, OSI has not undertaken a full scale investigation as would normally be done

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1/ On April 9, 1986, a "Memorandum" was submitted by Waldheim's son; a revision dated April 12, 1986, was also submitted. On June 11, 1986, and August 1, 1986, two extensive reports, with documentation, were submitted by Waldheim's attorneys. Additional submissions, dated October 31, 1986, November 24, 1986, and December 19, 1986, were also reviewed and considered.

in one of our cases. For example, we have not pursued leads on potential witnesses, nor have we exploited the archives of other countries (with the exception of Yugoslavia).

The purpose of this memorandum is essentially twofold: (1) to set forth the legal standards, precedent, and background by which any analysis of Mr. Waldheim's World War II activities should be undertaken; and (2) to detail and place in proper historical and military context Mr. Waldheim's military service and the activities of the units in which he served in order to determine whether such conduct fits within the immigration law provisions relating to Nazi persecution.

The factual analysis was undertaken by OSI's historical staff, which has earned a worldwide reputation among scholars and prosecutors in this field. As is evident in the report, facts and conclusions are fully documented and supported. Any suppositions or assumptions are identified as such and are based upon known German military procedure and practice. Extreme care has been taken to be overly cautious; we are fully confident of the reliability and accuracy of any assumptions or extrapolations. Indeed, we would have no hesitancy in relying upon them in a court of law.

In previous memoranda, we expressed the view that Mr. Waldheim's activities as an officer in the Army of Nazi Germany while serving in the Balkans between 1942 and 1945 fit within the so-called Holtzman Amendment. Since preparing those memoranda we have reviewed material later submitted on behalf of Mr. Waldheim and have conducted additional research.

Mr. Waldheim's voluminous submissions have been thoroughly reviewed by OSI. Indeed, our in depth analysis of Mr. Waldheim's submissions, which contain numerous erroneous and misleading statements of fact, is a major reason for the length of this report. The seriousness of the allegations, particularly in light of Mr. Waldheim's post-war positions of prominence, call for such a careful and detailed discussion of the issues.

This report supports completely the conclusions reached in OSI's previous reports. Indeed, the facts and evidence which have subsequently come to light strengthen significantly the earlier findings.

In summary, it is our considered opinion that between 1942 and 1945 Lieutenant Kurt Waldheim "assisted, or otherwise participated in the persecution of . . . person[s] because of race, religion, national origin or political opinion." The available evidence demonstrates that, under established legal principles, Lieutenant Waldheim "assisted or otherwise participated" in the following persecutorial activities: the transfer of civilian prisoners to the SS for exploitation as slave labor; the mass deportation of civilians to concentration and death camps; the deportation of Jews from Greek islands and Banja Luka, Yugoslavia, to concentration and death camps; the utilization of anti-Semitic propaganda; the mistreatment and execution of Allied prisoners; and reprisal executions of hostages and other civilians.

II. LEGAL STANDARDS

A. 8 USC §1182(a)(33)

This matter came before the Department in the context of determining whether Mr. Waldheim's wartime conduct fits within the parameters of 8 USC 1182(a)(33), commonly referred to as the Holtzman Amendment. 2/ That provision renders ineligible for entry into the United States (a similar provision makes deportable an alien already in the country) any alien who:

> during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with --
>
> (A) the Nazi government of Germany,
>
> (B) any government in any area occupied by the military forces of the Nazi government of Germany,
>
> (C) any government established with the assistance or cooperation of the Nazi government of Germany, or
>
> (D) any government which was an ally of the Nazi government of Germany, ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.

Much of the publicity surrounding this case has focused upon the question of whether Mr. Waldheim has committed "war crimes."

2/ An additional relevant provision in the immigration laws is §212(a)(27) which bars entry to any aliens who "the Attorney General knows or has reason to believe seek to enter the United States solely, principally or incidentally to engage in activities which would be prejudicial to the public interest or endanger the welfare, safety or security of the United States." 8 USC ¶1182(a)(27).

It must be stressed, however, that enforcement of the above-cited provision of immigration law does not depend on proof of war crimes; the litmus test is assistance or participation in Nazi sponsored persecution.

B. Excludability

If there is reason to conclude that a prima facie case exists for excludability (i.e., involvement in activities within 8 USC §1182(a)(33)), an individual may be placed on the so-called "Watchlist." Immigration and Naturalization Service (INS) Operations Instructions §235.8(c). Furthermore, the burden is on every alien who is not a permanent resident of the United States to establish eligibility to enter the country. Landon v. Plasencia, 459 U.S. 21, 35 (1982). See ¶291 of the INA, 8 USC §1361. 3/

Should an excludable alien manage to enter the United States, he can be removed by means of a deportation hearing, in which the burden rests with the government to prove that the alien is deportable. 4/ Woodby v. INS, 385 U.S. 276, 285-86 (1966).

3/ No hearing is required to put an alien on the INS Watchlist. Should someone on the list attempt entry, an exclusionary hearing is held in which the burden remains with the alien to establish eligibility. Sections 235, 236, and 291 of the INA, 8 USC §§1225, 1226, and 1361.

4/ In deportation cases, the government must prove deportability by clear, convincing, and unequivocal evidence.

In essence, then, the issue to be determined is whether there is a prima facie basis to conclude that Mr. Waldheim's military service fits within the ambit of 8 USC §1182(a)(33); the burden rests with the alien to establish eligibility and to demonstrate that there is no basis for excludability. The very terms of this provision and its legislative history make it clear that the law is broad in its scope, reflecting the unprecedented crimes and horror of the Nazi regime. It also reflects the fact that the Third Reich's systematic policies of persecution, degradation, wanton destruction and genocide required the efforts of countless numbers of Nazi troops, supporters and their collaborators.

The Holtzman Amendment represents explicit codification of a variety of previous measures taken by the United States to deal with Nazi criminals and persecutors. It is most instructive, therefore, to review the relevant steps and policies undertaken by the United States since the end of World War II in bringing to justice, and barring from our shores, those who participated in the Nazi reign of terror.

C. The Nuremberg Trials

After the trial of the major war criminals before the International Military Tribunal in Nuremberg, United States occupying forces in Germany put on trial large numbers of accused Nazi criminals pursuant to Control Council Law No. 10. Based upon the same principles as those underlying the work of the International Tribunal, that law defined "war crimes" and "crimes

against humanity" and identified those who should be held responsible for such acts. Relevant to this inquiry are the following acts which were deemed war crimes:

> murder, ill treatment or deportation to slave labor . . . murder or ill treatment of prisoners of war, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages. . . .

Crimes against humanity were defined as those involving the persecution of individuals on political, racial, or religious grounds. This was predicated upon the Charter of the International Military Tribunal which, in Article 6 (c) defined crimes against humanity as follows:

> . . . murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecution on political, racial or religious grounds. . . . [5/]

As to who should bear responsibility for such crimes, Control Council Law No. 10 stated as follows:

> "A person is declared to have committed a crime if he was
>
> (a) a principal or
>
> (b) was an accessory to the commission of any such crimes or aided or abetted the same or
>
> (c) took a consenting part therein or
>
> (d) was connected with plans or enterprises involving its commission or
>
> (e) was a member of any organization or group connected with the commission of any such crime. . . ."

5/ See 6 F.R.D. 69 at 77-78.

Pursuant to this law, the United States put on trial at Nuremberg a number of general officers in command and staff positions in the Germany Army in the so-called "Southeast Case" (Case 7) and the "High Command Case" (Case 12). The defendants were charged with having committed crimes against humanity and war crimes in the Balkans and elsewhere, including the murder and ill treatment of prisoners of war pursuant to the so-called "Commando Order" (this order will be discussed in this report in the analysis of Mr. Waldheim's wartime service in the Balkans). In addition, the defendants were accused of the following crimes in the occupied territories: execution of hostages and captured guerillas; killing and deportation of civilians; using civilians as slave labor; and annihilation on the basis of race or religion. The relationship of Mr. Waldheim, and the units in which he served, to similar acts will be analyzed later in this memorandum.

In its decision in Case 12 (all but one of the defendants were convicted of war crimes and crimes against humanity) the U.S. Military Tribunal V (consisting of the former Chief Justice of the Supreme Court of Colorado, a Judge of the Court of Appeals of Tennessee and a Judge from Alaska) noted the significant role which the Wehrmacht (Armed Forces) played in the persecution and murder of civilians. The panel also analyzed the extent to which "staff officers," (i.e., those not in "command" positions) were to be held responsible for the commission of crimes:

> In regard to the functions of staff officers in general as derived from various documents and testimony of witnesses, it is established that the duties and functions of such

> officers in the German Army did not differ widely from the duties and functions in other armies of the world. Ideas and general directives must be translated into properly prepared orders if they are to become effective in a military organization. To prepare orders is the function of staff officers. Staff officers are an indispensable link in the chain of their final execution. If the basic idea is criminal under international law, the staff officer who puts that idea into the form of a military order, either himself or through subordinates under him, or takes personal action to see that it is properly distributed to those units where it becomes effective, commits a criminal act under international law. (Emphasis added)

This holding is useful in the analysis of Mr. Waldheim's duties and responsibilities as a Wehrmacht officer in the Balkans. Moreover, this reasoning is consistent with the terms and purport of the Holtzman Amendment, which is directed against those who "ordered, incited, assisted, or otherwise participated" in acts of Nazi-sponsored persecution. (Emphasis added)

United States occupying authorities successfully prosecuted not only high-level Nazi leaders, but hundreds of "lower level" Nazi criminals after the war. For example, in the case of United States v. Altfuldisch, et al., Case No. 000-50-5, a United States military court stated the following with respect to who should bear responsibility for the crimes committed at the Mauthausen concentration camp in Austria:

> The Court finds that the circumstances, conditions, and the very nature of the Concentration Camp Mauthausen, combined with any and all of its subcamps, was of such a criminal nature as to cause every official, governmental, military and civil, and every employee thereof, whether he be a member of the Waffen S.S., Allegemeine S.S., a guard, or civilian, to be culpably and criminally responsible." (Emphasis added)

Thus, the tribunal fully recognized that not just those who "pulled the trigger" or who engaged in "hands-on" acts of persecution or murder were to be held accountable.

D. The Displaced Persons Act

The Displaced Persons Act (DPA), Pub.L. No. 80-774, Ch. 647, 62 Stat. 1009 (1948), was enacted in 1948 to provide refuge in the United States for the victims of the Third Reich. The following categories of individuals were not "of concern" to the International Refugee Organization (IRO) and therefore ineligible, as a matter of law, for a visa under the DPA:

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

Section 2(a) closely parallels the Holtzman Amendment and is therefore most pertinent to the issues at hand.

The IRO published a lengthy and detailed Manual for Eligibility Officers which constituted the guidelines - and, as a number of United States courts have held in recent OSI cases, effectively served as regulations - in determining whether an individual was "of concern" to the IRO, and thus eligible for a visa to the U.S. under the DPA. Relevant to the current inquiry

is the following provision in the manual regarding alleged war criminals:

> "War crimes which have been committed during the war amount to hundreds of thousands, and the United Nation as War Crimes Commission in London has, to date, placed about 32,000 names of persons against whom a prima facie case has been found to exist . . . It would be a flagrant breach of the IRO constitution if these people were to receive assistance, so long as the government which accused them has not cleared them of the charges which have been brought against them."

It is worth noting that the prima facie standard is essentially the same as that for determining excludability.

As to §2(a) of the IRO constitution, dealing with the persecution of civilian populations, the manual notes that the "guiding rules laid down in respect of war criminals apply also . . . [T]heir names are usually included in the United Nations War Crimes Commission's lists."

In addition, the IRO and the Displaced Persons Commission established lists of Nazi and other organizations deemed to have been inimical to the United States; membership in a designated organization rendered one ineligible for a DPA visa.

Sections 2 and 13 of the DPA, as amended, 64 Stat. 219 (1950), prohibited the issuance of visas to aliens who, whether voluntarily or not, assisted the Axis powers in the persecution of civilian populations. Fedorenko v. United States, 449 U.S. 490 (1981) (a guard at a Nazi death camp was ineligible to enter the United States, whether or not his service was voluntary). In enforcing the exclusionary provisions of the DPA, the United States employed inimical lists of proscribed organizations against which American immigration officers evaluated the wartime

activities of visa applicants. If an applicant had served in any organization listed as inimical, he was automatically denied a visa. 6/ Thus, the exclusion of former Nazi collaborators from the United States because of their wartime "status" was a commonplace and legally mandated phenomenon long before OSI's creation. This policy was adopted in recognition of the widespread and pervasive nature of the Nazi policy of persecution and genocide within the Third Reich and in territories it occupied. Our courts have likewise acknowledged this fact in determining the eligibility for immigration and naturalization of OSI's subjects.

E. Immigration Regulations

In addition to the DPA, the United States promulgated numerous regulations dealing with the eligibility of postwar aliens to enter this country. One such regulation dealt with individuals who had been accused of Nazi crimes by Allied forces. 22 CFR §58.53(j), entitled "Classes of aliens whose entry is deemed to be prejudicial to the public interest," adopted as of 1945, stated as follows::

> [t]he entry of an alien who is within one of the following categories shall be deemed to be prejudicial to the interests of the United States for the purposes of §§ 54.41 - 58.63.
>
> . . .[a]ny alien found to be, or charged with being, a war criminal by the appropriate authorities of the United States

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6/ Aliens belonging to other Nazi organizations not named on the inimical list were also barred from admission under the DPA if those organizations assisted Axis enemy forces or participated in persecution. See §§ 2(a), 2(b), and 13 of the DPA as amended.

> or one of its co-belligerents, or an alien who has been guilty of, or who has advocated or acquiesced in activities or conduct contrary to civilization and human decency on behalf of the Axis countries during the present World War. (Emphasis added)

This provision - or one identical to it - remained in effect until December 1954. Although not presently on the books, it does provide insight into our government's views as to who should be eligible for the privilege of entering the United States at a time when Nazi crimes and persecution were at the forefront of the nation's conscience. It is also consistent with the manner in which the DPA was administered, as is evident from the previously cited provisions of the IRO eligibility manual. Those provisions were greatly relied upon by the drafters of 8 USC §1182(a)(33), as reflected in the legislative history and are therefore very relevant to the present inquiry.

It is thus clear that the laws and regulations adopted shortly after the war were broadly, but realistically, interpreted in terms of identifying those who were to be held responsible for acts of Nazi persecution and in determining who was eligible to come to this country. Moreover, there was considerable and legitimate emphasis upon the concept that membership or participation in units or organizations engaged in criminal or persecutorial conduct rendered one culpable and/or ineligible to enter the United States This approach was at the time - and is today - necessary in light of certain historical realities which cannot be ignored, particularly when one attempts to reconstruct and analyze an individual's conduct during the war. First is the tragic but undeniable truth that the

efficiency, enormity, and effectiveness of the Nazi scheme to annihilate their enemies and to wage a self-described brutal and merciless war against anyone who stood in their path made it a virtual certainty that there would be few witnesses who could later recount the crimes. Moreover, although the Allies captured millions of documents which detail the criminal designs and operations of the Nazi forces, countless numbers of incriminating documents were either destroyed or never captured.

In fact, during a critical period of Mr. Waldheim's service in the Balkans orders were issued that sensitive documents be destroyed. 7/ Moreover, another officer in Waldheim's branch gave specific instructions to destroy all reports concerning Allied military missions and commandos. 8/ Among the documents that did not survive the war are undoubtedly a great many of the so-called "Verschlusssachen" or classified documents. Lieutenant Waldheim received the Verschlusssachen of Ic/AO Branch of the High Command of Army Group E - some of that command's most sensitive documents. Moreover, although invited to submit all relevant documents, Mr. Waldheim has withheld certain documents in his personal possession, such as notes he made during the war.

7/ "Security of Classified Documents," High Command of Army Group E, Ic/Ao Branch, 4 January 1944, T311/178/342, National Archives, Washington, D.C. (hereinafter NA). Note: Waldheim's immediate superior, Major Warnstorff, signed for the accuracy of the order.

8/ "AO Activity Report for September 1944," Ic/AO Branch, 6 October 1944, T311/186/0343, NA.

Accordingly, it seems clear that we will never have the benefit of all the relevant documentation. In this context, a January 22, 1945, memorandum to President Roosevelt from the Secretaries of State and War and the Attorney General, is of interest:

> . . . the crimes to be punished have been committed upon such a large scale that the problem of identification, trial and punishment of their perpetrators presents a situation without parallel in the administration of criminal justice. In thousands of cases, it will be impossible to establish the offender's identity or to connect him with the particular act charged. Witnesses will be dead, otherwise incapacitated, or scattered. The gathering of proof will be laborious and costly, and the mechanical problems involved in uncovering and preparing proof of particular offenses is one of appalling dimensions. It is evident that only a negligible minority of the officers will be reached by attempting to try them on the basis of separate prosecutions for their individual offenses. It is not unlikely, in fact, that the Nazis have been counting on just such considerations, together with delay and war weariness, to protect them against punishment if they lost the war.

F. Judicial Precedent

Since its establishment in 1979, OSI has successfully prosecuted persons for having served in units which, while acting on behalf of or in association with the Nazi regime, participated or assisted in the persecution of civilians and prisoners of war. In some cases the courts did not reach the issue of whether the defendants were personally involved in the persecutorial acts committed by their units or organizations. Nevertheless, these Nazi collaborators were found to have assisted in persecution by performing some meaningful service to their units or organizations such as the rounding-up or guarding of civilian prisoners

or acting as interpreters for those doing so. In short, those who by virtue of their organizational affilation helped to make wartime persecution possible have been denaturalized under 8 USC §1451(a) and deported under 8 USC §1251(a). The cases involving such collaborators are commonly called "status" cases.

The following is a summary of several cases brought by OSI against individuals because of their wartime "status" -- i.e., their service in Nazi units which practiced persecution.

(1) Osidach: The defendant was a member of the Ukrainian police in a Nazi-occupied portion of the Soviet Union. He served as an interpreter and assisted in the guarding of civilians who were ultimately transported to a Nazi death camp. He was not shown to have killed or beaten anyone. Osidach was nevertheless denaturalized on grounds that, as a policeman, he participated in the persecution of civilians, and hence had never been lawfully addmitted into the United States under the DPA. United States v. Osidach, 513 F.Supp. 51 (E.D.Pa. 1981).

(2) Dercacz: The defendant was a member of the Ukrainian police in a Nazi-occupied area where Jews were ghettoized and ultimately deported for extermination. Dercacz denied any role in the killing or persecution of Jews. However, he was denaturalized before trial upon the Government's motion for summary judgment made under Fed. R. Civ. P. 56. The district court reasoned that as a member of the Ukrainian police, Dercacz assisted the Nazi authorities in their persecution of the Jews, and was therefore unlawfully admitted to the United States under

Section 2 of the DPA. United States v. Dercacz, 530 F.Supp. 1348 (E.D.N.Y. 1982).

(3) Kowalchuk: The defendant's service as a clerk in the wartime Ukrainian police was held to constitute proof of his ineligibility for a visa under th DPA, and thus also the basis for his denaturalization. United States v. Kowalchuk, 571 F.Supp. 72 (E.D.Pa. 1983), aff'd en banc, 773 F.2d 488, cert. denied, No. 85-897 (filed February 24, 1986).

(4) Juodis; Kisielaitis; Gudauskas; Benkunskas; Katin; and Klimavicius: These cases, which are still pending in various courts (except for Kisielaitis, who fled the country, and Benkunskas and Juodis, who died) are predicated upon membership in a Lithuanian battalion which was engaged in the persecution of Jews and prisoners of war.

(5) Kalejs: This alien, now facing deportation charges in United States Immigration Court, is accused of wartime service in the "Arajs" Command, an auxiliary police unit which rounded up and persecuted Jews in Nazi-occupied Latvia. OSI has alleged that Kalejs' service in the Arajs Command constituted assistance in its persecution of civilians.

(6) Fedorenko: The subject was a perimeter guard at the Nazi death camp of Treblinka; no American court found him to have personally killed or injured any prisoners. Nevertheless, the Supreme Court ruled that he entered the United States unlawfully under Section 2 of the DPA and he was therefore denaturalized; he was subsequently deported to the U.S.S.R. on the same facts. The United States Supreme Court ruled that Fedorenko's service as a

camp guard constituted assistance in the Nazi program of persecution of Jews at Treblinka. United States v. Fedorenko, supra, 449 U.S. at 490, affirming 97 F.2d 946 (5th Cir 1979) (denaturalization case); In re Fedorenko, Interim Decision 2963 (BIA 1984) (deportation case).

(7) Kairys: In this case, the defendant was held to have procured his visa unlawfully under the DPA and hence his naturalization illegally under 8 USC §1451(a) because of his wartime service as an auxiliary guard at a Nazi labor camp. Kairy's status as a guard was found to be sufficient proof of his assistance in the persecution of prisoners. United States v. Kairys, 600 F.Supp. 1254 (N.D.Ill. 1984), aff'd, 782 F.2d 1374 (7th Cir. 1986), cert. denied, ____ U.S. ____, 106 S.Ct. 2258 (1986).

(8) Kulle: The respondent was a guard at the Nazi concentration camp of Gross Rosen. No proof of his personal commission of atrocities or physical cruelty toward prisoners was adduced. Nevertheless, Kulle was ordered deported to West Germany under 8 USC §1251(a)(19), the Holtzman Amendment. Matter of Kulle, File No. A10 857 195 (Imm. Ct. November 20, 1984), aff'd sub. nom., In re Kulle, Interim Decision No. 3002 (BIA 1985), appeal docketed sub. nom., Kulle v. INS, No. 86-1277 (7th Cir. filed February 27, 1986).

(9) Schellong: The defendant was an SS guard at two Nazi concentration camps -- Sachsenburg and Dachau. Most of his guard duties occurred outside of the camps. His service as a guard

was, without more, found to be the basis for both his denaturalization and an order for his deportation. United States v. Schellong, 547 F.Supp. 569 (N.D.Ill. 1982), aff'd, 717 F.2d 329 (7th Cir. 1983), cert. denied, 465 U.S. 1007 (1984) (denaturalization case); In re Schellong, File No. A10 695 922 (BIA filed July 11, 1985), appeal docketed sub. nom. Schellong v. Immigration and Naturalization Service, No. 85-2430 (7th Cir. filed August 19, 1985) (deportation case).

G. The "Watchlist"

In addition to the above-cited litigation, OSI has placed, and is continuing to place, thousands of individuals on the INS "watchlist" and the State Department counterpart for visa screening. Included are individuals whom we have reason to believe served in units which engaged or otherwise participated in persecution. For example, members of various military and paramilitary units are targets for the lookout lists as are individuals who served at concentration and labor camps. In addition, civil administrators in areas where persecution occurred have been barred from entry, in accordance with a position adopted by the United States immediately after the war in administering the DPA.

Also, years ago all known SS officers - approximately 50,000 in number - regardless of rank and position were placed on the "watchlist."

OSI is currently working with the State Department to include on the visa watchlist all individuals whose names have

been collected pursuant OSI's ongoing investigations to uncover Nazi persecutors. This will mean a significant increase in the number of names on the list as well as in the variety of reasons for which they are listed.

III. CHRONOLOGY OF MR. WALDHEIM'S MILITARY SERVICE

Any analysis of the applicability of 8 USC § 1182(a)(33) to Kurt Waldheim must focus upon his service in the Balkans between 1942 and the end of the war. 9/ The following summary of his military career, based exclusively upon documentation housed in the United States National Archives, Mr. Waldheim's own statements and documents submitted on his behalf is presented for purposes of orientation:

1. In the summer of 1936, after completing his secondary schooling, Kurt Waldheim entered the Austrian Army as a volunteer and served as a reserve officer cadet in a cavalry unit until August 31, 1937. In September 1937 he enrolled in the law faculty of the University of Vienna and in the Consular Academy in Vienna in preparation for a diplomatic career. 10/

2. In August 1938, after the Anschluss (annexation of Austria to Germany) Mr. Waldheim was called to duty with the German Army. He attended a cavalry school and was then assigned to the 11th Cavalry Regiment at Stockerau, Austria. After participating in the German occupation of the Sudetenland (in

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9/ Relatively little is know about Waldheim's participation in the German Army's 1941 invasion of the Soviet Union. Moreover, although documentary evidence has been discovered - including one document bearing his signature - showing that Mr. Waldheim was a member of organizations affiliated with the Nazi SA, the so-called Brown Shirts or Storm Troopers, before the war, Waldheim nonetheless denies such membership. Thus, the critical time period, for Holtzman Amendment purposes, is 1942-1945, when he served as an officer in the Balkans.

10/ Waldheim memorandum of 1 August 1986, pp. 18-19.

Czechoslovakia), for which he later received a commemorative medal, he was released from active duty at the end of October 1938. He returned to his studies and received a diploma from the Consular Academy in July 1939. 11/

3. On August 23, 1939, Waldheim was recalled to active duty and was assigned to the 45th Reconnaissance Battalion stationed in Stockerau. Before actually joining the unit, he attended an officer candidate course at the Kramnitz Calvary Academy near Berlin. He joined his unit near Stockerau after it returned from the Polish Campaign. Except for three periods of leave (December 30, 1939 - January 11, 1940, February 13 - March 17, 1940, and August 30 - September 19, 1940), Waldheim remained with this unit for over two years, eventually becoming a platoon leader. During this period, the unit participated, as part of the 45th Infantry Division, in the Western Campaign (May-June 1940), the occupation of France (summer 1940 - spring 1941) and the invasion of the Soviet Union beginning in June 1941. For his service during this period Mr. Waldheim was awarded the Iron Cross II Class, the Assault Badge and the Eastern Medal. He was promoted to the rank of second lieutenant on December 1, 1940. 12/

11/ Id. p. 19; Waldheim Pay Book (Waldheim Document 7a).

12/ Waldheim memorandum of 1 August 1986, pp. 19-20; Waldheim Pay Book; Record of Military Service, p. 2, attachment to Waldheim memorandum of 6 April 1986.

4. In December 1941, Waldheim was wounded in the leg while serving near Orel, Russia. On January 23, 1942, he received the Wounded Badge in Black. Waldheim spent four months recuperating from the wound, mostly at Baden, near Vienna. 13/ He was declared fit for service on March 6, 1942. 14/ His convalescent leave ended April 7, 1942. 15/

5. On March 14, 1942, while still convalescing, Waldheim was transferred to the command of the Twelfth Army in the Balkans. 16/ As of March 22, 1942, Waldheim was assigned to Battle Group Bader, a unit of the Twelfth Army, and attached to the Italian Fifth Mountain (Pusteria) Division as an interpreter in a liaison detachment. At that time, this division was engaged with German forces in the suppression of guerrilla activity in eastern Bosnia in Yugoslavia, then part of the so-called "Independent State of Croatia", 17/ a puppet state set up under

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13/ Waldheim Memorandum of 1 August 1986, p. 21; Waldheim Pay Book.

14/ Waldheim Pay Book.

15/ Renseignements d'Archives "WAST" - Kurt Waldheim, March 21, 1979 (Waldheim Document 45).

16/ Id.

17/ "Activation of the Operations Staff of Battle Group Bader," Battle Group General Bader, 22 March 1942, T501/250/410-415, NA (Waldheim Document 30).

the auspices of the Third Reich. Precisely when and how Waldheim arrived at Pljevlja, Montenegro, where the Pusteria Division was headquartered, is not clear. 18/

6. Effective May 28, 1942, Battle Group Bader was dissolved and some of its personnel, including Lieutenant Waldheim, were placed at the disposal of Battle Group Western Bosnia, a unit of the German Twelfth Army also assigned to the suppression of guerrilla activity. Waldheim was assigned to the staff of the battle group, designated the Operations Staff Western Bosnia. 19/ At the end of May, he and other staff members traveled from Sarajevo to their headquarters at Banja Luka in Western Bosnia. 20/ During the last two days of July the staff moved to Kostajnica on the River Una, about 40 miles northwest of Banja Luka. 21/ On August 14, headquarters was again transferred, this time approximately 20 miles northeast to Novska, north of the

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18/ Waldheim memorandum of 1 August 1986, pp. 21 and 35.

19/ "Operations in Western Bosnia," Commanding General and Commander in Serbia, Ia, 26 May 1942, T315/2268/783-785, NA (Waldheim Document 31); "Army Directory," Twelfth Army Command, 30 June 1942, T312/1465/8053541-8053543, NA (Waldheim Document 28); Waldheim memorandum of 1 August 1986, pp. 21 and 37.

20/ Waldheim memorandum of 1 August 1986, p. 37; cf. Message from Commanding General and Commander in Serbia, Ia, to 714th Infantry Division, May 26, 1942, T501/248/149, NA.

21/ Id. p. 39; cf. "Daily Report for July 30, 1942," Commanding General and Commander in Serbia, Ia, July 30, 1942, T501/351/1186-87, NA.

Sava River. 22/ Battle Group Western Bosnia was dissolved on August 28, 1942. 23/ In recognition of his service in the battle group, Waldheim was awarded a high Croatian military decoration, the Silver Medal of the Crown of King Zvonimir with Oak Leaves, for bravery under fire, on July 22, 1942. 24/

6. Waldheim next joined the staff of the Twelfth Army at Arsakli, near Salonika, in northern Greece. 25/ He soon took study leave lasting from November 19, 1942, until March 31, 1943. While on leave he was promoted to the rank of first lieutenant, effective December 1, 1942. 26/

7. Following the study leave, Waldheim was assigned to the German liaison staff attached to the Italian Ninth Army, stationed at Tirana, Albania. He served on this staff from April to July 1943. 27/

22/ Waldheim memorandum of 1 August 1986, p. 40; cf. "Daily Report for 8/14/42," Commanding General and Commander in Serbia, Ia, 14 August 1942, T501/248/476, NA.

23/ "Daily Report for 8/29/42," Commanding General and Commander in Serbia, Ia, T501/248/594-595, NA.

24/ Waldheim memorandum of 1 August 1986, p. 39; "Award List No. 3 for the Silver Medal of Zvonimir with Oak Leaves," Operations Staff Western Bosnia, 6 August 1942 (Waldheim Document 74).

25/ Waldheim memorandum of 1 August 1986, pp. 6, 21-22 and 40.

26/ Id., p. 22; Waldheim Pay Book.

27/ Waldheim Memorandum of 1 August 1986, pp. 22 and 50-51; Statement of Joachim Macholz, 15 April 1986 (Waldheim Document 39); Sworn Statement of Karl Mang, 4 June 1986 (Waldheim Document 40).

8. From July 19, 1943, until approximately October 4, 1943, Waldheim served as the First Special Missions Staff Officer ("0 1") in the Operations Branch of a new German staff in Athens. This staff was first designated "German General Staff with the Italian Eleventh Army" and later became the staff of the German "Task Force Southern Greece." The staff was organized at Arsakli and moved to Athens at the end of July 1943. 28/

9. From early October 1943, until late April 1945, Waldheim served as the Third Special Missions Staff Officer ("0 3") in the Intelligence and Counterintelligence (Ic/AO) Branch of the High Command of Army Group E, initially located at Arsakli, Greece. During this period, he took leave three times, from November 23 - December 25, 1943, February 25 - April 16, 1944, and from August 15 - September 4, 1944. While on leave in the spring of 1944, he completed his dissertation at the University of Vienna and received his doctorate on April 14. 29/

28/ "War Diary No. 1," German General Staff with the Italian Eleventh Army Command, 19 July - 4 October 1943, T501/330/943-1060, NA (cf. Waldheim Document 86); letter with attachments from German General Staff with the Italian Eleventh Army Command, Ia, to Commander in Chief Southeast, IIa, 29 July 1943, T501/331/125-130, NA (cf. Waldheim Document 87); letter with attachment from German General Staff with Italian Eleventh Army Command, HQ, to Commander in Chief Southeast, Ia/Id, 17 August 1943, T501/331/131-133, NA.

29/ Waldheim memorandum of 1 August 1986, pp. 23-24; "Work Plan as of 1 December 1943," High Command of Army Group E, T311/181/3-9, NA (Waldheim Document 82); "Army Directory," High Command of Army Group E, 1 July, 1 August, 1 September, 1 October, November and December 1944, T311/186/366-377, NA (Waldheim Document 29); Waldheim Pay Book.

On January 1, 1944, Waldheim received the War Merit Cross Second Class with Swords and on April 20, 1945, the War Merit Cross First Class with Swords. 30/

10. In late April 1945, Waldheim, then in Zagreb with the staff of Army Group E, was transferred to an infantry division in the area of Trieste. He claims that conditions prevented him from reaching this unit and that the capitulation of the Third Reich found him near Villach in southern Austria. He was formally discharged from the German Wehrmacht on May 9, 1945. 31/

30/ Waldheim Pay Book.

31/ Walhdeim Memorandum of 1 August 1986, pp. 24-25; Waldheim Pay Book.

IV. LIEUTENANT WALDHEIM'S SERVICE IN THE BALKANS

When Kurt Waldheim arrived in the Balkans in the spring of 1942, he was 23 years old and an officer in the German Wehrmacht. He had already seen almost four years of military service and was a veteran of two of the most important campaigns in military history. He had been promoted, decorated, and wounded. His service had taken him to corners of Europe even more remote from the centers of civilization than anywhere in Bosnia and Macedonia. In short, Lieutenant Waldheim was a very experienced junior officer and it was a mark of the confidence his superiors had in him that he was chosen to extend that experience. For, whatever leadership qualities he might have displayed in the cavalry, he was now given duties and responsibilities more in keeping with his general education and training. These duties required analytical ability, adaptability, tact and insight into alien milieux.

During almost the full three-year period of his service in the Balkans, Lieutenant Waldheim was assigned to various staffs, usually as a special missions staff officer (Ordonnanzoffizier) 32/

32/ For translation, see German Military Dictionary, War Department Technical Manual, TM30-506 (Washington: War Department, 10 May 1944), p. 134.

and sometimes as an interpreter (Dolmetscher). In the German Army, special missions staff officers were essentially aides-de-camp or adjutants. 33/ That is, they were usually junior officers who were attached to the senior staff officers. 34/ Special missions staff officers were expected to be intelligent, well-bred, and adaptable. The position was regarded as a good one for career development. 35/

On higher staffs, the commander and chief of staff each had a personal special missions staff officer, designated "00." The general staff officers who headed the various staff departments also had their own special missions staff officers, designated by a number corresponding to that of the general staff officer. For example, the "01" was attached to the First General Staff Officer, who was invariably the head of both the Operations (Ia) Group and its subordinate Operations Branch, the "02" to the Second General Staff Officer, who was in charge of the Quartermaster (O.Qu., Qu, or Ib) Group depending on the level of command and the "03" to the Third General Staff Officer, who headed the

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33/ Compare the definitions in Webster's New Collegiate Dictionary (Springfield, Mass., G&C Merrion Company, 1979) pp. 15 and 24.

34/ See the definition in Duden-Fremdwörterbuch, Der Grosse Duden, Vol. 5, (Mannheim and Zurich: Bibliographisches Institut, 1966) p. 497.

35/ See the first document cited in footnote 19; "Guidelines for Special Missions Staff Officers," S.S. Armored Infantry Division "Hohenstaufen," 12 October 1943, T354/146/3787247-48, NA; and German Operational Intelligence, (Washington: War Department, Military Intelligence Division, Arpil 1946), pp. 113-116.

Intelligence (Ic) or Intelligence and Counterintelligence (Ic/AO) Branch within the Operations Group. These special missions staff officers had permanently assigned duties within the appropriate staff departments. If there were more special missions staff officers than general staff officers, they were usually designated by higher numbers and were also assigned to specific staff departments. 36/ Special missions staff officers thus occupied responsible and very sensitive positions on the staff, one step below the general staff officers.

The other position which Lieutenant Waldheim occupied was that of interpreter. One of the primary functions of interpreters in the German Army was the interrogation of prisoners and the evaluation of captured documents. 37/ They were basically intelligence officers. Indeed, they were assigned to the Intelligence Branch of the staff, where they might have performed other duties as well. 38/ The war in the Balkans, of course, also required interpreters for communication with German allies and collaborators, and Lieutenant Waldheim, with his knowledge of

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36/ See "Work Plan as of 1 December 1943", High Command of Army Group E, T311/181/3-9, NA (Waldheim Document 82); and Waldheim Memorandum of 1 August 1986, pp. 13-15.

37/ See Handbuch für den Generalstabsdienst im Kriege, Part I (Berlin: Reichsdruckerei, 1939), pp. 24-25 (Waldheim Document 72).

38/ See army directories of the Twelfth Army Command, May-December 1942, T312/465/8053537-66, NA (Waldheim Document 28) and army directories of the High Command of Army Group E, July-December 1944, T311/186/366-77, NA (Waldheim Document 29), see also the document cited in footnote 36.

Italian, was sometimes assigned to such duties either formally as an interpreter or informally as a special missions staff officer. 39/

However, Lieutenant Waldheim's service as the 0 3 on the staff of Army Group E calls for two observations in connection with the position of interpreter. First, Waldheim acted as the supervisor of the interpreters in the Ic/AO (Intelligence and Counteringelligence) Branch during this period of approximately 18 months. 40/ Secondly, after surrendering to the Allies in September 1943, Italy was no longer an ally of Germany; rather, many Italian soldiers joined the local resistance groups in the Balkans and some were later captured. Thus, even while he served as the 0 3 Waldheim could have been heavily involved in interpreting, either directly or as a supervisor. In any case, interpreting, whether during prisoner interrogations or planning sessions with the allies of the Third Reich, was clearly a sensitive staff function.

Mr. Waldheim has emphatically denied ever having had any command authority or serving in actual combat while in the Balkans. 41/ This may be true strictu sensu. But as a special missions staff officer, for example, he would have had any

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39/ Waldheim Memorandum of 1 August 1986, pp. 5-7, 21-22, 36, 47-50, and 53.

40/ See document cited in footnote 36.

41/ See, for example, Waldheim Memorandum of August 1, 1986, p. 12.

authority which his supervisors might have delegated to him. The important point is that at least decision-making authority could in fact be delegated to special missions staff officers. 42/ Equally important is the fact that military staff work by its very nature entails such functions as making recommendations, preparing drafts and conveying orders. All of those duties can be performed well behind the lines. In any case, participation or assistance in acts of persecution by a special missions staff officer clearly does not require "command authority" as Waldheim has tried to argue. That is made clear by the previously cited holding of a United States military tribunal in the "High Command Case". To repeat this important finding:

> In regard to the functions of staff officers in general as derived from various documents and the testimony of witnesses, it is established that the duties and functions of such officers in the German Army did not differ widely from the duties and functions in other armies of the world. Ideas and general directives must be translated into properly prepared orders if they are to become effective in a military organization. To prepare orders is the function of staff officers. Staff officers are an indispensable link in the chain of their final execution. If the basic idea is criminal under international law, the staff officer who puts that idea into the form of a military order, either himself or through subordinates under him, or takes personal action to see that it is properly distributed to those units where it becomes effective, commits a criminal act under international law. 43/

42/ "Guidelines for Special Missions Staff Officer," S.S. Armored Infantry Division "Hohenstaufen," 12 October 1943, T354/146/3787247-48, NA.

43/ Trials of War Criminals before the Nurenberg Military Tribunals under Control Council Law No. 10, XI (Washington:

(footnote continued)

Thus, as a matter of law and policy, United States authorities have held that, contrary to Mr. Waldheim's contentions, responsibility for war crimes and acts of persecution (which are encompassed in war crimes and crimes against humanity) is by no means contingent upon possession of command authority or even participation in combat or other operations.

Mr. Waldheim has publicly stated that during World War II he merely did his duty. 44/ It is the purpose of the following sections to describe precisely what those duties were. In this connection it is important to remember two points. First, Mr. Waldheim has recognized the savage nature of the war in the Balkans and concedes that German forces in that region engaged in war crimes and persecution. 45/ With good reason. Trials conducted after the war established beyond any doubt the guilt for war crimes in the Balkans of such German officers as the defendants in the High Command Case, none of whom even served in the region, the defendants in the Southeast Case, who occupied command or staff positions there, and General Alexander Löhr, Waldheim's commander from July 1942 on, who was convicted of war

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(footnote continued)
United States Government Printing Office, 1950), p. 513.

44/ As quoted from a campaign pamphlet in Pflichterfüllung-Ein Bericht über Kurt Waldheim (Vienna: Locker Verlag, [1986]), back cover.

45/ Waldheim Memorandum of 1 August 1986, pp. 45-47 and 55-63.

crimes by a Yugoslav military tribunal and executed in February 1947. 46/

Secondly, Lieutenant Waldheim performed his duties in the service of a heinous power whose ideology he claims to have actively opposed. 47/ Yet, by August 1940, his performance in the Wehrmacht was such that the Nazi Party had no objection to his appointment to the judicial service. 48/ Soon afterwards, he received a commission in the Army. He thereafter continued to be promoted, decorated, and entrusted with positions of increasing responsibility at ever higher levels of command. All the while, Kurt Waldheim was assisting the Nazis prosecute a savage and brutal war against men and women who perceived their duty to be active resistance to the invaders and despoilers of their homelands. 49/

46/ For the High Command and Southeast Cases, see Vol. X-XI of the work cited in footnote 43; for Löhr's conviction and execution see "Research Circular No. 26," United Nations War Crimes Commission (Research Office), September 1947, Record Group 153, Records of the Judge Advocate General, International Affairs Division, War Crimes Office, 1944-1949, 150-23, NA.

47/ Kurt Waldheim, Im Glaspalast der Weltpolitik (Düsseldorf and Vienna: Leon Verlag, 1985), pp. 37-38.

48/ National Socialist German Workers Party, Gau Leadership of the Lower Danube, Personnel Office, Political Evaluation Section, to President of the Superior Provincial Court, 2 August 1940 (Waldheim Document 20).

49/ In contrast, approximately 2,700 Austrians were sentenced to death and executed for political reasons by the Nazi regime; thousands of others were incarcerated and died in concentration camps and Gestapo jails: Radomir Luza, Austra-German Relations in the Anschluss Era, (Princeton and London: Princeton University Press, 1975), p. 352.

A. Operations in Bosnia, Spring-Summer 1942

Immediately upon arrival in the Balkans, Lieutenant Waldheim became involved in a series of anti-guerilla operations in Bosnia, then part of the so-called "Independent State of Croatia." 50/ In order fully to comprehend the nature of these and later operations in which he was involved, it is necessary to understand something of the general practice and ideological basis of anti-guerilla warfare as conducted by the forces of Nazi Germany.

1. German Anti-Guerilla Warfare in Yugoslavia

German occupation policy in Yugoslavia was predicated on the belief that those opposed to Nazi rule represented a "brutal, insidious, and cunning opponent" who should never be negotiated

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50/ On April 3, 1953, in its decision in the case of Andrija Artukovic, the Board of Immigration Appeals found, inter alia, that:

> There appears to be little doubt (1) that the new Croatian State, at least on paper, pursued a genocidal policy in Croatia with regard to Jews and Serbs; (2) that [respondent] helped execute this policy in that, as Minister of the Interior, he had authority and control over the entire system of Public Security and Internal Administration, and (3) that during this time there were massacres of Serbs and, perhaps to a lesser extent, of other minority groups within Croatia. In re Artukovic, BIA Case No. A-7095961.

with and must be utterly destroyed by all available means. 51/ In March 1942, the commander of the Twelfth Army instructed his troops as follows:

> "The more unequivocal and harsh the reprisal measures are from the beginning, the less necessary they will be later. No sentimentalism! It is better if 50 suspected persons are liquidated than if one German soldier goes to ruin." 52/

Accordingly, at the time of Lieutenant Waldheim's assignment to the Balkans German military occupation policy in Yugoslavia called for the routine shooting or hanging of captured insurgents and any persons who were either found in their company or had supported them in any manner whatsoever. 53/ The commander of the Twelfth Army stated that interrogation of captured rebels for intelligence purposes "would only mean a short delay of their death." 54/

Reprisals against Yugoslav civilians were also ordered as routine measures. For example, villages where weapons had been found or which had shown sympathy to insurgents in any manner were to be burned to the ground. 55/ Villages merely found in

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51/ "Combating Insurgents in Serbia and Croatia," Wehrmacht Commander Southeast and Commander in Chief of Twelfth Army, 19 March 1942, with attachment entitled "Treatment of Rebels in Serbia and Croatia," T312/465/8053770-76 and 8053722-26, NA.

52/ Id.

53/ Id.

54/ Id.

55/ Id.

the vicinity of guerrilla operations were subject to destruction and to the deportation of their inhabitants to concentration camps. 56/

The commander of the Twelfth Army also encouraged his troops to take "reprisal measures of a general sort" against the civilian population if efforts to capture actual insurgents failed. 57/ For instance, he urged the shooting of male inhabitants of villages located in areas of guerrilla activity at the ratio of 100 civilians for every German soldier killed and 50 civilians for every German soldier wounded. 58/

The severity of these measures was based on Nazi ideological precepts. In this connection, it is necessary to note, first of all, that this severity was linked to the perceived Communist nature of resistance movements. For example, an order by Field Marshal Keitel, Chief of the High Command of the Wehrmacht, on the "Communist Insurgent Movement in the Occupied Territories" dated September 16, 1941, directed, inter alia, that each incident of insurrection must be assumed to be of Communist origin and that the most severe measures were to be applied immediately.

56/ Id.

57/ Id.

58/ Id.

This order also specified that 50-100 "Communists" were to be executed in reprisal for the death of each German soldier. 59/

Secondly, in the ethnically mixed Balkans, Nazi policy was given the appropriate ethnic twist. The order by the Wehrmacht Commander Southeast referred to above again emphasized the need for ruthlessness and called for the destruction of localities with Communist administrations and the taking of their men as hostages. However, this order specified that 100 Serbs were to be shot for each fallen German. 60/ From other documentation it is clear that the Germans did not take reprisals in areas settled by Volkdeutsche (ethnic Germans). 61/ Thus, the Germans applied both ethnic and political criteria in fighting the resistance in Yugoslavia.

59/ "Communist Insurgent Movement in the Occupied Territories," Chief of the High Command of the Wehrmacht, Wehrmacht Operations Staff/Department National Defense (IV/Quartermaster), 16 September 1941, NOKW-258, NA.

60/ See the document cited in footnote 51.

61/ Telegram from Commanding General and Commander in Serbia, Ia, to Wehrmacht Commander Southeast, 3 June 1942, T501/250/1077, NA.

2. Eastern Bosnia

As has been seen, Lieutenant Waldheim's first assignment in Balkans was to the Twelfth Army Command. At that time this was the chief German command in the Balkans. The commander of the Twelfth Army was simultaneously the Wehrmacht Commander Southeast. In this capacity he was the supreme representative of the Wehrmacht in the Balkans and exercised executive authority in the areas occupied by German troops. The Wehrmacht Commander Southast was directly subordinate to Hitler. 62/ In the spring of 1942 Lieutenant General Walter Kuntze was acting as commander of the Twelfth Army for Field Marshal Wilhelm List. General Löhr took over command in July 1942. 63/

Battle Group Bader was formed in March 1942 to conduct major anti-guerrilla operations in eastern Bosnia. The battle group was an ad hoc formation consisting of German, Italian, and Croatian units. Its commander, Lieutenant General Bader, was the German Commanding General and Commander in Serbia. He was subordinate to the German Wehrmacht Commander Southeast (Twelfth

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62/ See "Directive No. 31," Führer and Supreme Commander of the Wehrmacht, 9 June 1941, in Walther Hubatsch, ed., Hitlers Weisungen für die Kriegsführung 1939-1945, (Frankfurt am Main: Bernard and Graefe Verlag for Wehrwesen, 1962), pp. 122-26; and "Implementation Provisions to Directive No. 31," 15 June 1941, Id., p. 127. On "executive authority" see the document cited in footnote 37, pp. 117-19.

63/ See the army directories for the Twelfth Army Command for May-August 1942, T312/465/8053537-51, NA (Waldheim Document 28). Both List and Kuntze were convicted and sentenced to life imprisonment in the Southeast Case: see the volume cited in footnote 43, p. 1318.

Army) but during the course of its operations the battle group was tactically subordinate to General Roatta, the commander of the Italian Second Army. The battle group had a German "Operations Staff" and four "German Liaison Detachments" (D.V.K.) attached to its subordinate Italian units and Italian superior. The personnel for the staff and liaison detachments was likewise assembled on an ad hoc basis. Waldheim was assigned to D.V.K. 5 with the Italian 5th Mountain (Pusteria) Division as early as March 22, 1942. 64/ However, he was still on convalescent leave at this time and could not have reported until sometime after April 7. 65/

The operations of Battle Group Bader were conducted in conformity with the Nazi policy outlined above. Orders issued to the troops explicitly identified the enemy as being Partisans, who were said to be "Communist insurgents," and Chetniks ("national Serbian insurgents"). Moreover, a distinction was made between them. Any armed insurgent who was captured was to be shot, but this did not apply to Chetniks who did not offer resistance to the Axis troops. They were, in the first instance at least, to be treated as prisoners according to the provisions of the Hague Convention. The civilian population, in principle, was to have been treated correctly; however, there were some rather broad exceptions. Anyone who followed or supported the

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64/ See the document cited in footnote 17.

65/ See Waldheim Pay Book (Waldheim Document 7).

insurgents was to be shot; localities in which munitions were found or which favored the insurgents were to be burned down; civilians suspected of favoring the insurgents were to be interned; the mass deportation of the civilian population from entire areas or individual localities could be carried out with the permission of the Operations Staff; and finally, special efforts were to be made to identify the relatives of insurgents, who were then to be taken prisoner. 66/

It is also important to note that executive authority within the operational area of the battle group, although located in the Independent State of Croatia, was exercised by its German commander and, in conformity with his instructions, the commanders of the German/Italian divisions within their areas of deployment. This meant that for the maintenance of order and security the divisions had, aside from their own troops, the local Croatian Gendarmerie and police detachments and any remaining administrative officials at their disposal until the reestablishment of Croatian civilian authority. The division commanders were authorized to issue decrees in three languages (German, Italian, and Croatian) for the maintenance of law and order. With the exception of persons who could be tried according to Italian law, civilians in the areas of deployment of the Italian divisions who

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66/ "Guidelines for the Operations in Bosnia," Operations Staff Battle Group General Bader, Qu./Ia, 10 April 1942, T501/250/382-93, NA (Waldheim Document 75); "Combat Directive," Ic, attachment 3 to "Operational Order No. 5," 718th Inf. Div., Ia, April 1942, T501/250/371-73, NA.

infringed the decrees issued were to be delivered by the Italian military authorities to the Operations Staff. 67/

Due to inadequate Italian cooperation, the operations of Battle Group Bader were not very successful. 68/ As of May 15, according to incomplete figures, 154 people had been killed (including 10 shot for possession of weapons) and 1,610 had been captured (of whom 10 were shot and 5 hanged). The 488 (presumably civilian) prisoners taken by the Italian Pusteria Division had already been handed over to the Higher SS and Police Leader in Belgrade for deportation to Norway as slave labor. Remaining prisoners were being screened with a view to similar disposal and were in the meantime used as forced laborers on road construction. 69/

Mr. Waldheim admits that D.V.K. 5 consisted of only himself and a signal unit. 70/ In other words, he was himself the

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67/ See documents cited in the preceeding footnote.

68/ See the discussion in Paul N. Hehn, The German Struggle against Yugoslav Guerrillas in World War II (Boulder: East European Quarterly, 1979), pp. 125-27 (Waldheim Document 25).

69/ "After-Action Report on the Supply of the Troops during Operations Rogatica and Foca, Pacification of the Country and Cooperation with the Liaison Office of the Intendancy of the Italian Second Army (as of May 15, 1942)," 20 May 1942, T501/250/935-65, NA; and "Final Report on the Supply Situation during the Mopping-Up Action in Rogatica District," n.d., T501/250/145-47, NA.

70/ Waldheim Memorandum of 1 August 1986, p.35.

liaison officer. Aside from any other involvement in the activities of the Battle Group, there can accordingly be hardly a doubt that Waldheim, as the liaison officer, would have played a role in this transfer of approximately 500 persons to the SS for slave labor. Such an operation would have required communication and coordination between the Pusteria Division and German authorities, precisely the functions which liaison officers are assigned to perform.

a. Mr. Waldheim's Response to Eastern Bosnia Allegations

Waldheim does not address the above facts in his submissions. He ignores the fact that prisoners were taken. Instead, he claims that he was merely with D.V.K.5 having no command functions. 71/ Again, he confuses the standards of assistance or participation in persecution under United States immigration laws (and the Nuremberg precedents) with his concepts of military authority; command authority is obviously not a prerequisite for involvement in persecution.

Mr. Waldheim does admit, however, that he was an "informational conduit" 72/ in this unit. And, as noted above, that unit was involved in the indiscriminate taking of civilian prisoners who were transferred to the SS for deportation to slave labor sites.

71/ Id., pp. 35-36.

72/ Id., p. 36.

Mr. Waldheim also dwells on the "clear military objectives" of the operations of Battle Group Bader and asserts that persecution was not among them. To support this contention he points to orders against the taking of punitive actions against the peaceful population and cites instances of "intervention" by German troops to protect the civilian population from Croatian troops. 73/ Such a line of argumentation ignores the distinction between the objectives of these operations and the manner in which they were clearly carried out; there can be no doubt that the operations entailed significant acts of persecution.

Mr. Waldheim's position also ignores the upshot, very telling in this regard, of one of the cases of German "intervention" upon which he relies. The German troops in eastern Bosnia were certainly aware of the depradations of their Croatian allies. For instance, on April 11, 1942, the shooting of women and children on the Drina was reported. 74/ After receiving reports of Ustasha atrocities one German commander even ordered his troops to open fire in the future rather than look on passively. 75/ On June 6 (after the dissolution of Battle Group

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73/ Id., pp. 44-46.

74/ Notes of telephone conversation, 12 April 1942, T501/250/402, NA.

75/ "Memo on the Visit of The Regimental Commander of the 737th Infantry Regiment Colonel von Saldern to the 718th Infantry Division," 718th Infantry Division, Ia, May 1942, T315/2269/654-55, NA.

Bader) an entire company of Ustasha (Croatian) Militia was arrested at the order of the commander of the 718th Infantry Division. The members of this company were suspected of committing a series of killings and other offenses, including the murder and mutilation of three women, one of whom was pregnant. 76/ When this intervention became known in Berlin, Major General Warlimont of the Wehrmacht Operations Staff 77/ ordered an inquiry and the opinion of the Fuhrer was made known that it was not the task of the German Wehrmacht to take such measures (i.e. intervention) as were in the sphere of competence of the Croatian authorities. 78/ Such was the German "commitment to the protection of the peaceful population" 79/ as claimed by Mr. Waldheim.

3. Western Bosnia

At the end of May 1942, Battle Group Bader was dissolved and a new battle group, Battle Group Western Bosnia, was formed to conduct operations in that area, about 150 miles northwest of the

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76/ "Ustasha Comp. Arrested on 6/6," 718th Inf. Div., Ia, T501/250/1074-75, NA; June 9, 1942, cf. "Daily Report for 6/7/42," Commanding General and Commander in Serbia, Ia, 7 June 1942 (Waldheim Document 78).

77/ Warlimont was convicted and sentenced to life imprisonment in the "High Command Case": see the book cited in footnote 43, p. 696.

78/ "Memo for the Files 6/9/42," T501/250/1076, NA.

79/ Waldheim Memorandum of 1 August 1986, p. 45.

scene of the activities of its predecessor. This time only German and Croatian troops participated. 80/ The German liaison detachments with the Italian divisions were recalled, 81/ and Lieutenant Waldheim, like many members of the Bader operations staff, was assigned to Operations Staff Western Bosnia. 82/ As in the case of Battle Group Bader, the new battle group and its staff were assembled on an ad hoc basis. The commander of the battle group was Brigadier General Stahl, commander of the 714th Infantry Division. It was directly subordinate to Lieutenant General Bader in his capacity as Commanding General and Commander in Serbia. 83/

As a member of Operations Staff Western Bosnia, Lieutenant Waldheim was much closer to the center of activities than he had been in eastern Bosnia. In fact, he claims to have been the 0 2 (deputy to the quartermaster) on the staff. 84/ This claim appears credible in that it is not contradicted by available documents and is accompanied by detailed references to Lieutenant

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80/ "Combat Operations Croatia," Wehrmacht Commander Southeast and Commander in Chief of the Twelfth Army, Ia, 20 May 1942, T501/249/261-64, NA.

81/ Message from Battle Group General Bader, Ia, to Command of the Pusteria Division, 17 May 1942, (Waldheim Document 71); see also the first document cited in footnote 19.

82/ Id.; "Army Directory," Twelfth Army Command, June 30, 1942, T312/465/8053541-43, NA (Waldheim Documetn 28); Waldheim Memorandum of 1 August 1986; pp. 5-6, 21, and 36-42.

83/ See the document cited in footnote 80.

84/ Waldheim memorandum of 1 August 1986, pp. 20-26.

Waldheim's activities at that period consistent with this position. However, Waldheim's assertion that in this position he had only the duties of a supply officer [85/] bears further scrutiny; indeed, it is very problematical. The evidence regarding the Quartermaster Branch leaves no doubt that it was directly involved in acts of persecution.

The Quartermaster Branch of a German Army staff had duties which went well beyond the handling of supplies. The quartermaster was the Second General Staff Officer. His Quartermaster Group (designated Q.Qu., Qu. or Ib, depending upon the level of command) was divided into branches responsible for various matters including, inter alia, the processing of prisoners, rear area security and questions of executive authority and administration in operational areas. Other tasks included supplying troops with munitions and food; health and veterinary care; handling of war booty; field post offices; and traffic regulation. To assist in these tasks, the Quartermaster Group normally had under its direction supply troops and security forces such as the Field Gendarmerie. The 02, the position which Lieutenant Waldheim held, was the quartermaster's chief assistant in performing those duties of the group for which he was directly

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85/ Id., pp. 36-46.

responsible. Specialists, such as the administrative officer or doctor, headed the other branches of the group. 86/

Complete documentation on the organization and activities of the Operations Staff Western Bosnia is lacking. However, the Quartermaster Group of Operations Staff Bader undoubtedly functioned in a similar manner, the major difference being that the former staff was apparently even smaller. The head of the Quartermaster Group of Operations Staff Bader, Major Lehmann, was designated the "Qu.," which was typical for the corps level of command. His 02, First Lieutenant Plume, was also his deputy as head of the group as well as of the Supply Branch. The only other branches in the group were the Administrative Branch (IVa) and the Medical Branch (IVb). Lehmann and Plume were directly and explicitly responsible for all other duties of the group, such as the processing of prisoners, rear area security and questions of executive authority and civil administration. A representative of the Croatian quisling government for civil administration was assigned to them to assist in the latter area. 87/

The head of the Quartermaster Group of Operations Staff Western Bosnia was Captain Plume, who had been promoted from lieutenant since serving in Operation's Staff Bader. He was

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86/ See document cited in footnote 37, pp. 30-31, 36, 42-51, and 112-16 and Versorgung des Feldheeres, H.Dv. 90, Art. I, T283/128, NA.

87/ See document cited in footnote 17.

designated the "Ib," indicating that this was a smaller, division-level staff in conformity with the smaller number of troops involved. 88/ Indeed, Mr. Waldheim admits that the Group had only two officers (himself and Plume) and three "enlisted clerks." 89/ Waldheim acknowledges that he was Plume's 02 and that Plume was his "immediate" superior. 90/ In that position he was certainly Plume's deputy as well, since no one else would have been available. 91/ Accordingly, he would have shared in the responsibilities of the group, as outlined above.

The operations in Western Bosnia were carried out in conformity with the letter and spirit of Nazi policy. German commanders received information from the Operations Staff detailing the settlement patterns of the local Volksdeutsche, (ethnic Germans), Croatians, Moslems and Serbs (the latter estimated to comprise 55% of the population) and identifying the enemy as the Communist-led Partisans, while noting that local Serbian nationalist Chetniks were now "loyal" and had joined in the fight against the Partisans. 92/ Orders were issued calling

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88/ 'Special Instructions for "Western Bosnia",' Commanding General and Commander in Serbia, O.Qu./Qu.1, 2 June 1942, T501/249/1238-43, NA (Waldheim Document 72).

89/ Waldheim memorandum of 19 December 1986, p. 7.

90/ Waldheim memorandum of 1 August 1986, p. 29.

91/ See statement of Friedrich Wiebe, Gottingen, 17 July 1986 (Waldheim Document 96).

92/ "Enemy Intelligence Summary No. 1", Operations Staff Western Bosnia, Ic Branch, 4 June 1942, T501/249/1223-30, NA.

for shooting all captured combatants and active sympathizers and taking prisoner all male adults in areas supporting the Partisans. 93/ General Stahl's authority to carry out such measures was buttressed by the fact that he exercised executive authority in the operational area under the same conditions as had General Bader in eastern Bosnia; a plenipotentiary of the Croatian government, Minister Turina, was likewise attached to Operations Staff Western Bosnia. 94/

a. The Kozara Operation

As will be discussed more fully below, Lieutenant Waldheim, while serving with the Quartermaster Group participated and assisted in acts of persecution against civilians during a most brutal campaign in the Kozara mountain region. For his service in this campaign he was awarded a high military decoration.

93/ "Guidelines for the Operations in Western Bosnia", Opertions Staff Western Bosnia, Ia, 4 June 1942, T501/249/216-22, NA (Waldheim Document 76); "Operational Plan 2," Battle Group Western Bosnia, Ia, 14 July 1942, T501/250/100-03, NA; "Order for Carrying Out the Mopping Up of Samarica", Battle Group Western Bosnia, Ia, 3 August 1942, T501/250/56-60, NA (Waldheim Document 77); 'Operation "Psunj",' Battle Group Western Bosnia, Ia, 12 August 1942, T501/250/82-85, NA.

94/ "Guidelines for the Operations in Western Bosnia", Operations Staff Western Bosnia, Ia, 4 June 1942, T501/249/216-22, NA (Waldheim Document 76); "Commentary on the Interim Report of Battle Group Western Bosnia of 7/5/42 for the Period from 6/5-7/4/42, Ia No. 260/42 top secret," German Minister in Zagreb, 9 July 1942, T501/250/119-23, NA. On executive authority in western Bosnia, see also the book cited in footnote 68, p. 127.

Battle Group Western Bosnia's major opertaion, commencing in earnest on July 5, 1942, was aimed at the destruction of Partisan forces in the Kozara mountains, just north of Banja Luka. 95/ On-the- spot consultations at Bosanska Dubica on the eve of the operation among General Bader, General Stahl, Ante Pavelic (the Poglavnik or Leader of the puppet State of Croatia), 96/ Marshal Kvaternik, Pavelic's minister of defense, and Siegfried-Kasche, the German minister in Zagreb, testify to the importance attached to it. 97/ An official German war correspondent on the scene contemporaneously described the Kozara operation in candid terms as a struggle against Partisans who were "rotten sub-humans subjected to "final liquidation" without pity or mercy. 98/

95/ "Operational Plan for the Destruction of the Partisans in Kozara," Battle Group Western Bosnia, Ia, 28 June 1942, T501/249/1139-41, NA; see also the book cited in footnote 68, pp. 131-32.

96/ In its decision in the Artukovic case, cited above, the BIA found that:

> [I]t is difficult for us to think of any one man, other than Pavelic, who could have been more responsible for the events occurring in Croatia during this period than was respondent.

97/ Entry in war diary of Commanding General and Commander in Serbia for 29 June 1942, T501/248/210, NA. Pavelic later actually toured the operational area, visiting Kostajnica, where Waldheim and the staff were then located, on August 6: "Daily Report for 8/6/42," Commanding General and Commander in Serbia, Ia, 6 August 1942, T501/248/438-39, NA; and "Daily Report for 8/7/42", Commanding General and Commander in Serbia, Ia, 7 August 1942, T501/248/441-42, NA.

98/ "Battle in Kozara" by war correspondent Kurt Neher, pp. 3 and 4, T315/2258/1471-74, NA.

The main part of the operation concluded on July 18, but mopping-up continued. 99/ By the beginning of August the battle group put enemy losses at 4,310 dead and 10,704 captured. 100/ The dead included an unknown number of persons previously apprehended 101/ (i.e. prisoners) as well as several hundred people shot in reprisal, 102/ while the prisoners included approximately 3,000 women and children. 103/ These figures do not include "refugees," who were routinely rounded up and sent to Croatian concentration camps. 104/

According to an official Yugoslav history of the war, a total of approximately 50,000 men, women, and children were

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99/ See the book cited in footnote 68, p. 133.

100/ "Interim Report No. 2 (Period 7/5-8/4/42)," Battle Group Western Bosnia, Ia, 6 August 1942, T501/250/52-55, NA.

101/ On the shooting of prisoners see "Supplement to Daily Report for 7/19/42," Commanding General and Commander in Serbia, Ia, 20 July 1942, T501/351/1131, NA; "Daily Report for 31 July 1942," Commanding General and Commander in Serbia, Ia, 31 July 1942, T501/351/1195-96, NA; and "Daily Report for 1 August 1942," Commanding General and Commander in Serbia, Ia, 1 August 1942, T501/248/409-410, NA; on the continuation of this practice later in August see "Occasional Orientation on Special Events in the Serb./Croat. Area," Wehrmacht Commander Southeast, Ia, 4 August 1942, NOKW-1986, NA and "Daily Report 8/8/42," Commanding General and Commander in Serbia, Ia, 8 August 1942, T501/248/444, NA.

102/ See the book cited in footnote 68, p. 133.

103/ "Activity Report for the Period 1-31 July 1942," Wehrmacht Commander Southeast (Twelfth Army Command), 31 July 1942, p. 17, T311/175/312-316, NA.

104/ See letter from SA-Obergruppenführer Kasche to Brigadier General Glaise von Horstenau, 10 July 1942, T501/250/115-18, NA; for more on refugees see the discussion on pp. 63-69 below.

killed or sent to the concentration camps. 105/ Indeed, on June 25, 1942, Operations Staff Western Bosnia issued strict orders that anyone attempting to cross the lines from the surrounded area around Kozara and Prosara (just north of Kozara) "was to be apprehended and, after interrogation, sent (escorted) to the Stara Gradiska or Jasenovac concentration camp via the prisoner collection points," 106/ with which the Quartermaster Group was heavily involved. A German order of the day of July 18, 1942, explicitly states the result:

105/ Velimir Terzic, ed., Oslobodilacki rat naroda Jugoslavije 1941-1945, Vol. 1 (Belgrade: Vojni istoriski institut Jugoslovenske narodne armije, 1957), p. 235.

106/ "Procedure with Persons from the Area of Kozara and Prosara Who Attempt to Cross Our Lines," Independent State of Croatia, 3rd Mountain Brigade, Op., 26 June 1942, br. reg. 5/14-1, kut. 112, Fond NDH, VII. Jasenovac and Stara Gradiska were Ustasha concentration camps where Serbs, Jews, Gypsies and Croatian opponents of Pavelic's regime were incarcerated and killed under appalling conditions. It has been estimated that several hundred thousand people died at Jasenovac alone. On Jasenovac and Stara Gradiska see, for example, Yugoslavia, State Commission for Ascertaining the Crimes of the Occupiers and Their Collaborators, Izvestaj jugoslovenske Drzavne komisije za utvrdjivanje zlocina okupatora i njihovih pomagaca Medjunarodnom vojnom sudu u Nürnbergu (Belgrade: Federal People's Republic of Yugoslavia, 1947), p. 35; Nora Levin, The Holocaust (New York: Schocken Books, 1973), pp. 514-15; and Raul Hilberg, The Destruction of the European Jews (New York: Holmes & Meier, 1985), pp. 712 and 717. In 1943 the SD in Zagreb estimated that Max Luburic, the commander of Ustasha concentration camps, had ordered the liquidation of 80,000 people in Stara Gradiska and 120,000 in Jasenovac: "Croatia; Evaluation of Ustasha Leaders," High Command of the Wehrmacht, WFST/Qu.2 (South/Southeast), 6 December 1943, T120/5793/H306076-87, NA.

> The entire population of the surrounded region was moved out, and a thorough mopping-up of the area was thus carried out. 107/

Surviving photographs of the Kozara operation - which have been seen by OSI in Yugoslavia - graphically and chillingly depict the brutality of these operations. They show scenes of multiple hangings and columns of civilians - including women and children - being marched (presumably during deportation to the aforementioned concentration camps) under armed military escort. 108/

After a series of additional operations, Battle Group Western Bosnia reported total enemy losses from the beginning of its activities until its dissolution on August 28, 1942, at 4,723 dead Partisans and 12,207 prisoners and arrestees. 109/

b. Prisoners

In connection with Lieutenant Waldheim's service in western Bosnia (for which he received the highest level of a Croatian military decoration), the treatment of prisoners is of particular significance. On a division level staff such as Operations Staff

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107/ 'Order of the Day of the Staff of the Command of Group "Borowski" of the 18th July of This Year,' Independent State of Croatia, Ministry of the Home Defense Force, Main Staff, 23 July 1942, br. reg. 17/1-46, kut. 54, Fond NDH, Vojnoistorijski institut, Belgrade (hereinafter VII).

108/ Copies of these photographs are appended to this report.

109/ Report by Major Bestal, Banja Luka, 29 August [1942], br. reg. 30/1-9, kut. 13, Fond NDH, VII.

Western Bosnia, the Ib was directly responsible for processing prisoners. 110/ This means that Waldheim, as the 02 and the Ib's chief assistant, would have without doubt been involved in this procedure. Prisoners were initially kept in "prisoner collection points" immediately behind the front. It was the responsibility of each division's Field Gendarmerie detachment, which was subordinate to the Ib, to set up these points. 111/ At the divisional prisoner collection points, the prisoners were searched for weapons and documents, interrogated and, if necessary, fed. A count was made of the prisoners according to unit and rank, and summary lists were prepared. The prisoners were then sent further to the rear under escort as quickly as possible. 112/ These elements of the processing procedure make clear why it was primarily a Ib responsibility. With the exception of interrogation, it involved functions for which the Ib was otherwise responsible: collection of booty, rationing and rear-area security. The searching, guarding and escorting of prisoners are obviously duties for which his subordinate Field Gendermiere was well suited. If they did not directly supervise the processing in the field, the Ib and his 0 2 certainly took care of the necessary paperwork. The summary lists of prisoners,

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110/ See the second document cited in footnote 86, appendix 5.

111/ Id., p. 104.

112/ See the document cited in footnote 37, pp. 112-16.

for example, would have been essential for arranging rations, guards and escorts.

Orders issued by General Bader's staff in Belgrade to Battle Group Western Bosnia confirm that the latter's Quartermaster Group was responsible for processing prisoners. An order signed by Colonel of the General Staff Munckel, Bader's quartermaster (O.Qu.), even states, "The Battle Group is to carry out dispatch of prisoners to Croatian concentration camps itself." 113/ Munckel also provided the Quartermaster Group with the necessary Field Gendarmerie to the strength of one officer and twenty men. 114/ Thus, there can be no question that the Quartermaster Group, in which Lieutenant Waldheim served, was directly involved in acts of persecution. Orders issued by General Stahl specified that while Partisans and those assisting them were, as a rule, to be shot after interrogation by frontline troops, important prisoners were to go to the rear; in addition all males in localities which supported the Partisans were to be sent to

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113/ "Guidelines for the Operations in Western Bosnia", Operations Staff Western Bosnia, Ia, 4 June 1942, T501/249/1216-21, NA (Waldheim Document 76); on sending prisoners directly to concentration camps see 'Special Instructions for "Western Bosnia,"' Commanding General and Commander in Serbia, O.Qu./Qu.1, 2 June 1942, T501/249/1238-43, NA (Waldheim Document 72); the quote is from 'Special Instructions for "Western Bosnia,"' Commanding General and Commander in Serbia, O.Qu./Qu.1, 5 June 1942, T501/249/1244-45, NA (Waldheim Document 76); see also the first document cited in footnote 106.

114/ See document cited in footnote 88.

prisoner collection points.[115/] Given Stahl's order, there can be little doubt that most of these prisoners were noncombatants. In this connection, it must also be realized that the prisoners included both individuals captured in the course of actual operations and sent to the prisoner collection points and persons arrested in the rear areas and delivered directly to Croatian jails. The Field Gendarmerie, which was subordinate to the Quartermaster Group, not only was responsible for the prisoner collection points but also itself made many of the latter arrests.[116/]

The fate of individual prisoners varied. As has been noted, several hundred prisoners were subsequently shot after interrogation or as a reprisal measure.[117/] The Battle Group's own Ic Branch conducted many of these interrogations through its

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115/ See the documents cited in footnote 93.

116/ For example, the Field Gendarmerie participated in arrests of Partisan sympathizers in the town of Prijedor on July 26, 1942: list of arrestees, br. reg, 19/2-1, kut. 153d, Fond NDH, VII. Ten more people were arrested by the Field Gendarmerie and the Croatian Gendarmerie on July 27: "Numerical State of the Camp and Livestock in Prijedor," District Authority in Prijedor, 27 July 1942, br. reg. 38/2-1, kut. 16/a, VII. For four people arrested by the "German Command" and delivered to the Croatian police on July 14, 1942, see the arrest warrants in br. reg. 14/4-3, 5, 7 and 9, kut. 164, Fond, NDH, VII. For arrests made on July 11 by the Prefecture Police Authority in Banja Luka on orders of the "German command" see br. reg. 44-47 and 51/7, kut. 161, Fond NDH, VII. On the arrest and release by German military authorities of a Croatian official from Prijedor see the file in br. reg. 10/7-1 to 4, kut. 164, Fond NDH, VII.

117/ See the documents and book cited in footnotes 101 and 102.

interpreter, Lieutenant Lippert, [118] and issued orders to the Croatian police for shooting individual prisoners after interrogations were completed. [119] Prisoners were routinely transferred between Ic Branch and Croatian authorities presumably in

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118/ For the assignment of Lippert as interpreter, see the first document cited in footnote 19; for a report on an interrogation conducted by him on August 16, 1942, see Liaison Officer with Battle Group Western Bosnia to Main Staff of the Croatian Home Defense Force, Banja Luka, 29 August 1942, and attachments, br. reg. 34/3, kut. 65, Fond NDH, VII.

119/ Battle Group Western Bosnia, Ic Branch, to Division Command Banja Luka, 3 August 1942, br. reg. 48/6-1, kut. 164, Fond NDH, VII. For an order by Ic Branch to shoot a group of 49 Partisans see Battle Group Western Bosnia, Ic Branch, to 3rd Gendarmerie Regiment, n.d., br. reg. 16/14-2 and 3, kut. 161, Fond NDH, VII. Ic Branch also ordered the continued detention of prisoners: Battle Group Western Bosnia, Ic Branch to Police Directorate Banja Luka, 12 July 1942, br. reg. 16/1-4, kut. 164, Fond NDH, VII; Battle Group Western Bosnia, Ic Branch, to Police Directorate Banja Luka, 16 July 1942, br. reg. 33/4-1, kut. 164, Fond NDH, VII; Battle Group Western Bosnia, Ic, to Police Directorate Banja Luka, 22 July 1942, br. reg. 30/3-1, kut. 165, Fond NDH; VII; the transfer of prisoners: order of Battle Group Western Bosnia, Ic Branch, 18 July 1942, br. reg. 58/7-1, kut. 161, Fond NDH, VII; 'Transfer of Prisoners to "Black House",' Prefecture Police Authority in Banja Luka, 3 August 1942, br. reg. 27/4-4, kut. 165, Fond NDH, VII; "Surrender of Detainees to German Military Authorities," Prefecture Police Authority Banja Luka, 3 August 1942, br. reg. 27/4-1 and 28/4-2, kut. 165, Fond NDH, VII; Battle Group Western Bosnia, Ic Branch to Dr. Gromes [Director of the Police in Banja Luka], 9 August 1942, br. reg. 43/6-3, kut. 164, Fond NDH, VII; Battle Group Western Bosnia, Ic Branch, to Administration of the Black House Prison, 26 August 1942, br. reg. 41/4-1, kut. 162, Fond NDH, VII; and the release of prisoners: Battle Group Western Bosnia, Ic Branch to Division Command Banja Luka, 13 July 1942, with attachment, br. reg. 21/4-2 and 4, kut. 164, Fond NDH, VII; list of detainees dated 31 July 1942, br. reg. 45/2-5 and 6, kut. 163, Fond NDH, VII; Battle Group Western Bosnia, Ic Branch, to Dr. Ivo Gromes, 6 August 1942, br. reg. 12/1, kut. 8, Fond NDH, VII.

connection with such interrogations. 120/ Given the responsibilities of the Quartermaster Group and its subordinate Field Gendarmerie, it seems highly likely that the latter was involved in effecting these transfers, perhaps in cooperation with Croatian police. The Field Gendarmerie certainly participated in the execution of prisoners along with Croatian personnel. 121/ The Germans also handed over prisoners to Croatian authorities for summary trial. 122/ The Field Gendarmerie quite likely played a role here as well.

120/ See, for example, the file on Milan Momic, who was arrested by the Croatian Gendarmerie on July 9, 1942, and sent to Ic Branch on the same day, in br. reg. 27/3-3 to 8, kut. 154, Fond NDH, VII; see also Battle Group Western Bosnia, Ic Branch, to Police Directorate Banja Luka, 9 July 1942, br. reg., Fond NDH, VII; Prefecture Police Authority in Banja Luka to Ustasha Inspection Service, Office I, 9 July 1942, br. reg. 56/9-5, kut. 160, Fond NDH, VII; 4th Mountain Infantry Regiment to Opertions Staff Western Bosnia, 11 July 1942, br. reg. 56/9-11, kut. 160, Fond NDH, VII; Battle Group Western Bosnia, Ic Branch to Police Directorate Banja Luka, 17 July 1942, br. reg. 14/4-2, kut. 164, Fond NDH, VII; Prefecture Police Authority in Banja Luka to Commander of Black House Police Prison, 20 July 1942, br. reg. 218-2, kut. 161, Fond NDH, VII; Prefecture Police Authority in Banja Luka to German Command, Ic Branch, 20 July 1942, br. reg. 58/4-4, kut. 164, Fond NDH, VII; and Perfecture Police Authority in Banja Luka to German Command, Ic Branch, 21 July 1942, br. reg. 58/4-2, kut. 164, Fond NDH, VII.

121/ See the list of ten Partisans "Shot - 27 July 1942" in Prijedor, br. reg. 19/2-1, kut. 153d, Fond NDH, VII. Seven more Partisans were shot in Prijedor on August 6 after being condemned to death by German military authorities: "Report on the Situation for the Time Period form 8/1 to 8/15," Prefecture Police Authority in Banja Luka, 20 August 1942, br. reg. 9/7-3, kut. 164, Fond NDH, VII.

122/ See the correspondence on five prisoners: Battle Group Western Bosnia, Ic Branch, to Circuit Summary Court in Banja Luka, 8 August 1942, br. reg. 39/6-1, kut. 164; Fond NDH, VII;

(footnote continued)

In addition to deportation to Croatian concentration camps, thousands of male prisoners were sent to the German-run concentration camp at Zemun, outside Belgrade, 123/ where 100 prisoners a day died during August 1942. 124/ Finally,

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(footnote continued)
Prefecture Police Authority in Banja Luka to State Prosecutor of Circuit Summary Court, 8 August 1942, br. reg. 39/6-4, kut. 164, Fond NDH, VII; and Prefecture Police Authority in Banja Luka to Battle Group Western Bosnia, Ic Branch, 10 August 1942, br. reg. 39/6-3, kut. 164, Fond NDH, VII. See also the files on Stanko Milic in br. reg. 26/7-1 to 5, kut. 164, Fond NDH, VII, and Juro Grgic in br. reg. 15/82-1 to 2, kut. 172, Fond NDH, VII. For three more prisoners, including two teenage girls, who were delivered to the Croatian police by Battle Group Western Bosnia and incarcerated in the jail of the district court see Prefecture Police Authority in Banja Luka to Ustasha Inspection Service, Office I, 21 July 1942, br. reg. 56/9-33, kut. 160, Fond NDH, VII.

123/ 2,374 by July 14, 1942: daily report of Croatian Main Staff, br. reg. 14/1-3, kut. 12, Fond NDH, VII. On the continued routine dispatch of prisoners to Zemun see the list of prisoners dated 31 July 1942 in br. reg. 45/2-5 and 6, kut. 163, Fond NDH, VII; "Daily Report for 8/2/42", Commanding General and Commander in Serbia, Ia, 2 August 1942, T501/248/418-19, NA; "Daily Report for 8/6/42," Commanding General and Commander in Serbia, Ia, 6 August 1942, T501/248/438-39, NA; "Daily Report for 8/7/42," Commanding General and Commander in Serbia, Ia, 7 August 1942, T501/248/441-42, NA. "Daily Report for 8/12/42", Commanding General and Commander in Serbia, Ia, 12 August 1942, T501/248/468, NA; Director of the Police (Dr. Ivo Gromes) to the Commandant of the Black House Prison, 10 August 1942, br. reg. 56/4, kut. 165, Fond NDH, VII; Battle Group Western Bosnia, Ic Branch, to Croatian Police Presidium, c/o Dr. Ivo Gromes, 16 August 1942, br. reg. 27/7-1, kut. 164, Fond NDH, VII; Prefecture Police Authority in Banja Luka to Command of the Black House Police Prison, 17 August 1942, br. reg. 27/4-1, kut. 164, Fond NDH, VII; and Prefecture Police Authority in Banja Luka to Command of Black House Prison, 18 [August] 1942, br. reg. 3/7-1, 164, Fond NDH, VII.

124/ See entry in war diary of Commanding General and Commander in Serbia for 25 August 1942, T501/248/393, NA. On August 14, 1942, the Commanding General and Commander in Serbia reported to the German General in Zagreb that this camp housed, among others,
(footnote continued)

approximately 4,400 male prisoners were turned over to the Higher SS and Police Leader in Belgrade for subsequent deportation, at the expense of the Croatian government, to Norway and the Reich where they would be utilized as slave labor. 125/ On at least one occasion, July 10, 1942, the Higher SS and Police Leader sent a police reserve company from Belgrade to Banja Luka (where Lieutenant Waldheim was stationed) for purpose of collecting prisoners for Norway from camps in Bosanska Gradiska and Prijedor. Upon arrival at Banja Luka the company commander was to have reported to Operations Staff Western Bosnia. 126/ In all probability, he would have dealt with Lieutenant Waldheim's branch, especially since the company was to be economically subordinate to the Battle Group Western Bosnia, 127/ i.e.: supplied by the battle group. In any case, the Field Gendarmerie

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(footnote continued)
of the high mortality and lack of food, he urgently requested that the Croatian government take these persons away: telegram from Commanding General and Commander in Serbia, Ia, to German General in Zagreb, 14 August 1942, T501/248/473, NA. The Croatian government agreed to this but at the same time asked for stepped-up deportation of Serbs to Germany as labor: entry in war diary of Commanding General and Commander in Serbia for 20 August 1942, T501/248/390, NA.

125/ See the document cited in footnote 103 and the entry in the war diary of the Commanding General and General in Serbia for 10 July 1942, T501/351/1014, NA.

126/ Id., and "Prisoner Removal to Belgrade-Zemun," Commanding General and Commander in Serbia, Ia, 10 July 1942, T501/351/1081, NA.

127/ Id. A copy of this telegram was sent to the quartermaster (O.Qu.) in Belgrade, further indicating that this was a matter of concern to that staff section.

may well have taken part in the removal of prisoners from the operational area.

The precise figures on the number of prisoners cited above indicate that their whereabouts was closely tracked. This was eminently a task for the Quartermaster Group, which was after all responsible for the them. Indeed, at least one surviving message from the Ic (Intelligence) Branch to the Quartermaster Group confirms the conclusion not only that the Quartermaster Group was regularly informed of prisoner transfers, but that it formed part of the chain of command for effecting them. 128/ The role of the Field Gendarmerie has already been discussed. 129/ There can be no doubt that the Quartermaster Group in which Lieutenant Waldheim served as the 0 2 (deputy) was involved in the procedures leading to the execution or deportation of prisoners to concentration camps or slave labor aborad. As noted earlier, under Control Council Law No. 10 and the Nuremberg Tribunal's Charter, the deportation of civilians "to slave labor or for any other purpose" is both a war crime against humanity, and the "murder or ill-treatment of prisoners of war" is a war crime.

128/ See Prefecture Police Authority in Banja Luka to Commandant of the Black House Police Prison, 6 August 1942, with attached message from Battle Group Western Bosnia, Ic Branch, to Ib Group, n.d., br. reg. 54/4-2, kut. 165, Fond NDH, VII. This message concerns eight prisoners from the Kozara area who provided valuable information and were to be given the option of going to Germany for forced labor!

129/ See pp. 54-62 above.

c. Refugees

Also of interest regarding Lieutenant Waldheim's service with the Quartermaster Group are the activities of Dr. Oskar Turina, the "General Plenipotentiary of the Government of the Independent State of Croatia." According to a decree by Pavelic of June 25, 1942, Turnia's sphere of competence included indicating to the military authorities where military intervention was required, determining the treatment of the population in connection with the carrying out of "pacification" and all questions of food supply for the region. All civil, state, and local government institutions were unconditionally subordinate to his orders. 130/ Details of this subordination were, according to an order by Stahl (who exercised executive authority in the operational area) to be worked out through Operations Staff Western Bosnia. 131/ Given the normal responsibilities of the quartermaster for civil administration and rear-area security and the obvious overlap of functions, Turina in all probability dealt with Waldheim's Quartermaster Group. German-Croatian liaison had, in fact, been carried out in this fashion in eastern

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130/ Command of the II Home Defense Corps Area to General Plenipotentiary of the Government of the Independent State of Croatia, 30 September 1942, br. reg. 26/45c, kut. 85, Fond NDH, VII. Turina was in Banja Luka as early as June 16: Chief of Main Staff to Command of Kostajnica Division, 16 June 1942, br. reg. 16/1-14, kut. 11, Fond NDH, VII.

131/ "Guidelines for the Operations in Western Bosnia," Operations Staff Western Bosnia, Ia, 4 June 1942, T501/249/1216-22, NA (Waldheim Document 76).

Bosnia. 132/

Turina naturally received reports on developments in the area from local Croatian authorities, 133/ including intelligence on Partisan units which was shared with the Germans. 134/ The Kozara operation was preceded by a general purge of Serbs and Communists, 135/ and the police in Banja Luka thereafter provided Turina with lists of hostages and arrestees and sought instructions from him on their further handling. 136/ Turina was also kept informed, on a daily basis, of the

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132/ See the document cited in footnote 17.

133/ See for example "Report on Affairs in the Area of the Okucani Gendarmerie Post," Command of the 3rd Gendarmerie Regiment, 3 September 1942, br. reg. 15/2-1, kut. 52, Fond NDH, VII.

134/ See, for example, "List of Leading Partisans of the Mladen Stojanovic Detachment from Kozara and Other Detachments," Prefecture Police Authority in Banja Luka, 27 July 1942, br. reg. 11/5-1, kut. 164, Fond NDH, VII.

135/ On May 29, 1942, the guards from Jasenovac rounded up and took away all the Serbs - "mostly older people, women and children" - in the area of Bosanska Dubica near the camp: District Authority in Bosanska Dubica to Prefecture Police Authority in Nova Gradiska, 2 June 1942, br. reg? Fond NDH, VIII. A week later the prefect in Banja Luka agreed to the proposal of the II Home Defense Corps that all persons then in detention on suspicion of Communism be sent to Jasenovac: Prefect to Prefecture Police Authority in Banja Luka, 5 June 1942, with attachments, br. reg. 14?, Fond NDH, VII.

136/ See "List of Arrestees (from 22-23 June 1942)", br. reg. 1/13-2, kut. 163, Fond NDH, VII; this list contains the names of 57 men and 35 women. Also "Register of Hostages Who Are Kept under Armed Guard in the Supply Depot", with attachments, Prefecture Police Authority in Banja Luka, 30 July 1942, br. reg. 1/43-1 to 5, kut. 87, Fond NDH, VII; a copy of this document also went to Battle Group Western Bonsia.

population of a camp at the brickyard in Prijedor. 137/ During this period many arrestees were sent by Croatian authorities in Banja Luka to concentration camps such as Jasenovac. 138/

One of Turina's functions was to deal with the "refugees" created by the operations of Battle Group Western Bosnia. In this connection, it must be borne in mind that according to the battle group's estimate, Serbs comprised 55% of the population in Western Bosnia, 139/ and that the Serbs were considered the enemy by the Germans' Ustasha allies. For example, a Croatian Gendarmerie report from this period declares.

> The members of the Orthodox faith, the so-called Serbs, can never reconcile themselves with the present situation. They are all sworn enemies of Croatia and the present new order

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137/ See "Numerical State of Camp and Livestock in Prijedor," District Authority in Prijedor, 27 July 1942, br. reg. 38/2-1, kut. 161a, VII; "State of Camp and Livestock in Prijedor," District Authority in Prijedor, 28 July 1942, br. reg. 38/2-2 kut. 161a, VII; and "State of Camp at Brickyard and of Livestock in Prijedor," District Authority in Prijedor, 29 July 1942, br. reg. 38/2-3, kut. 161a, VII. This was presumably the same camp from which prisoners were handed over to the SS and sent as slave labor to Norway: see the second document cited in footnote 126.

138/ For the names of persons whom it was proposed to send to camps see, for example, "Milan Anicic and Others -- Proposal for Confinement in a Camp," Prefecture Police Authority in Banja Luka, 6 July 1942, br. reg. 3/43-1, kut. 161, Fond NDH, VII; and the file, including photograph, on Ivan Rolich in br. reg. 16/6-1 and 2, kut. 168, Fond NDH, VII. For the names of persons actually sent to Jasenovac and Stara Gradiska see, for example, Prefecture Police Authority in Banja Luka to Command of Jasenovac Concentration Camp, 14 July 1942, br. reg. 37/3-2, kut. 164, Fond NDH, VII; Prefecture Police Authority in Banja Luka to Command of Stara Gradiska Camp, 23 July 1942, br. reg. 36/3-1, kut. 164, Fond NDH, VII; and "Transfer of Ivan Herman and Others to Stara Gradiska", Prefecture Police Authority in Banja Luka, 11 August 1942, br. reg. 35/5-1, kut. 164, Fond NDH, VII.

139/ See the document cited in footnote 92.

> which is being created in Europe under the leadership of Germany and Italy. 140/

Large numbers of "refugees" were sent to the concentration camp in Stare Gradiska. By July 7, for example, it was being reported that the number of refugees exceeded 5,000 - mostly women and children - who were being sent to the concentration camp. 141/ At the camp, Partisans and their sympathizers were to be segregated and transfers arranged to other camps or work places. "Recruitment" of refugees for labor in the Reich (forced labor) was also begun at Stara Gradiska and other camps. 142/ By July 21, the Croatian office of the German Plenipotentiary for Labor Deployment (Gauleiter Fritz Sauckel) 143/ had "recruited" 7,190 Serbian men, women, and children at Stara Gradiska and another camp at Sisak. 144/ In reality, these recruits had the choice of going to Germany as virtual slave labor 145/ or taking

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140/ "Intelligence Report for the First Half of August 1942," Command of the Second Gendarmerie Regiment, 15 August 1942, br. reg. 4/2-13, kut. 147, Fond NDH, VII.

141/ "Daily Report Number 188 (according to data received by 9 hours on 7/7/42)," Ministry of the Home Defense Force, Main Staff, br. reg. 6/1-3, kut. 12, Fond NDH, VII.

142/ See the document cited in footnote 104.

143/ Sauckel was convicted and sentenced to death by the International Military Tribunal.

144/ "Procurement of Orthodox Refugees", Commissioner for the Four-Year Plan, General Plenipotentiary for Labor Deployment, Croatian Office, 20 July 1942, with attachments, T120/5797/H309981-87, NA.

145/ The International Military Tribunal had the following to

(Footnote Continued)

their chances with the Ustasha, who were known for their brutality and ruthlessness.

Many refugees may not have been so lucky as to have the choice of becoming slave laborers. Suspected Partisans were shot. 146/ As reported to Minister Turina by the police in Banja Luka, many "suspect refugees" - including women and young children - were incarcerated in the "Black House" prison, the same prison where prisoners of interest to the Ic Branch of Operations Staff Western Bosnia were kept, 147/ i.e. Partisans or their sympathizers. They may have eventually suffered the same fate - execution or deportation to a concentration camp. The predominance of women and children among the "refugees" is not surprising given the policy of the battle group towards males over 14 or 15 years of age, and their fate was obviously also harsh.

The likelihood that Lieutenant Waldheim's Quartermaster Group cooperated with Turina, in at least a liaison and possibly even a supervisory function, is confirmed by the obviously close

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(Footnote Continued)
say about those shipped to German for slave labor: ". . . workers destined for the Reich were sent under guard to Germany, often packed in trains without adequate heat, food, clothing or sanitary facilities . . . the treatemnt of the laborers in Germany in many cases was brutal and degrading." 6 FRD at 125.

146/ For a report on 125 Partisans found among refugees and shot, see "Daily Report 7/19/42," Commanding General and Commander in Serbia, Ia, T501/351/1129-30, NA.

147/ Prefecture Police Authority in Banja Luka to Office of the General Plenipotentiary of the Croatian Government, 6 August 1942, br. reg. 54/5-2, kut. 164, Fond NDH, VII.

watch which the Field Gendarmarie kept on the Croatian civilian administration. In one case, the Field Gendarmerie demanded the replacement of a local official for incompetence, which excluded the "[p]ossibility of a successful and joint effort." 148/ (emphasis added). The regional authority in Prijedor reported that the Field Gendarmerie had taken the Croatian Gendarmerie under its control and patrolled together with them and the communal police and that the German authorities interrogated everyone in jail, releasing them or sending them to Banja Luka. 149/ Furthermore, Turina dealt with a German "Section for Civil Affairs" in Banja Luka, 150/ which more than likely was part of the Quartermaster Group, since, as noted above, the group had responsibilities for civil administration.

148/ 2nd Platoon, 1st Company, Field Gendarmerie Battalion 501 to District Authority in Prijedor, 28 July 1942, with attachment, br. reg. 55/6-1, kut. 164, Fond NDH, VII; and Prefect of Sana and Luka to General Plenipotentiary of the State Government, 7 August 1942, br. reg. 8/45a-1, kut. 87, Fond NDH, VII.

149/ Prefecture Police Authority in Banja Luka to Prefecture Police Authority in Nova Gradiska, 17 July 1942, br. reg. 27/4-1, kut. 196, Fond NDH, VII. Members of the Field Gendarmerie who had served with Battle Group Bader were later recommended for Croatian decorations for their services "in suppressing the insurgent movements and in building the internal administration": Deputy Military Attaché to Prefecture attached to the Poglavnik, Decorations Office, 22 October 1942, br. reg. 1/1-5, kut. 85d, Fond NDH, VII.

150/ General Plenipotentiary of the Government of the Independent State of Croatia in Banja Luka to Section for Civil Affairs in Banja Luka, 10 August 1942, br. reg. 8/45a-1, kut. 87, Fond NDH, VII.

d. The Jews of Banja Luka

The fate of the Jews of Banja Luka also raises questions regarding Lieutenant Waldheim's service during the Kozara operation. At the time of Lieutenant Waldheim's service there, the Jewish community of Banja Luka consisted of both local Jews and approximately sixty refugees from the Third Reich, many of whom were originally from Vienna. 151/ The refugees were under constant police supervision. Nevertheless, the Banja Luka police wanted to rid themselves of the refugee Jews "in the interest of public order and security" and at the beginning of April 1942 requested that they be sent to a concentration camp. 152/ A month later the request was repeated, with reference made to the "conditions which prevail in these parts due to Chetnik-Communist action." 153/ Apparently, a decision on these requests was not made by the Ustasha Inspection Service in Zagreb until May 21 and the actual arrests and deportations did not commence until mid-

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151/ "Jewish Emigrants in Banja Luka -- Data", Prefecture Police Authority in Banja Luka, 9 May 1942, br. reg. 10/3-2, kut. 162, Fond NDH, VII.

152/ Prefecture Police Authority in Banja Luka to Prefect, 8 April 1942, br. reg. 38/2, kut. 161a, Fond NDH, VII.

153/ See the document cited in footnote 151.

June. 154/ Fifty-five Jewish men and women, presumably the refugees, arrested on the night of June 23-24 in Banja Luka and sent to Stara Gradiska. 155/

It must be noted that by this time General Stahl and his staff had already been installed in Banja Luka with executive power over the entire area and that Lieutenant Waldheim had arrived in Banja Luka with the staff at the end of May.

After the refugees had been disposed of, the local Jews became the focus of attention. The command of the Croatian II Home Defense Corps, whose area of operation included Banja Luka, was not pleased about the large number of Jews still in the area, many not even wearing "markings" 156/ and accused them of joining and supporting the Partisans. Its report for the first half of June 1942 emphasized that the Germans "in various ways reproach us, and to some extent with complete justice, with not taking radical measures in this regard." The II Corps thought the Jews, like the Gypsies, "should be 100% eliminated from public

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154/ See "Mendel Ritter: Proposal for Confinement in a Camp," Prefecture Police Authority Banja Luka, 16 June 1942, br. reg. 11/2-1, kut. 163, Fond NDH, VII. Ritter's name is on the list of refugee Jews in the document cited in footnote 151.

155/ "Arrestees sent from Banja Luka to Camp V Stara Gradiska," Protection Police for the City of Banja Luka and the Prefecture of Sana and Luka, Camp V Stara Gradiska, 26 June 1942, br. reg. 8/71-1 and 2 kut. 168, Fond, NDH, VII.

156/ Among the persecutory measures directed against Jews in the Independent State of Croatia was the requirement to wear on the left breast a round, yellow metal tag with a black "Z" (for "Zidov," meaning "Jew"): "Order on Changing Jewish Last Names

(Footnote Continued)

life." 157/

Action was soon taken to remedy the situation in Banja Luka. On July 3, Minister Turina ordered the police to take all necessary steps to ensure that all Jews in Banja Luka had visible markings. 158/ On July 23, the police in Banja Luka received from Zagreb 1,000 copies of the form required for sending individuals to concentration camps. 159/ Finally, on the night of July 27-28, a major roundup of the Jews in Banja Luka took place 160/ Lieutenant Waldheim was still stationed in Banja Luka at that time. The paperwork evidently slowed the operation, for on July 31, Zagreb asked the Banja Luka police to send all the Jews to Jasenovac concentration camp and to complete the forms

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(Footnote Continued)
and Marking Jews and Jewish Businesses, 4 June 1941, in Zakoni, zakonske odredbe, naredbe itd., Vol. II (Zagreb: Knjizara St. Kugli, n.d.), pp. 54-59.

157/ "Intelligence Report for the Period from 1 to 16 July 1942," Command of II Home Defense Corps, 20 July 1942, br. reg. 51/3-1 to 7, kut. 71, Fond NDH, VII.

158/ Protection Police for the City of Banja Luka and the Prefecture of Sana and Luka to Prefecture Police Authority, 3 August 1942, br. reg. 20/3-1, kut. 164, Fond NDH, VII.

159/ Ustasha Inspection Service, Office I, to Prefecture Police Authority in Banja Luka, 23 July 1942, br. reg. 36/2, kut. 161a, Fond NDH, VII.

160/ See "Intelligence Report for the Period from 16 to 31 July 1942," Command of II Home Defense Corps, 5 August 1942, br. reg. 40/3-1 to 6, kut. 71, Fond NDH, VII; the "Proposals for Confinement in a Camp" dated 28 July 1942 in br. reg. 7/3-18 to 24, kut. 164, Fond NDH, VII; and one dated 29 July 1942, br. reg. 7/3-25, kut. 164, Fond NDH, VII.

later. 161/ Although Turina had authority to send Jewish refugees to Jasenovac, 162/ the police informed Zagreb that on July 31 "all the Banja Luka Jews, 160 of them," had been sent to the Stara Gradiska concentration camp. 163/ In fact, individual arrests were continuing. 164/ On August 12, the Croatian Gendarmerie command in Banja Luka reported that there were no more Jews in its area, since they had all been sent to camps. 165/

It is not clear whether German personnel participated in the roundup on the night of July 27-28; however, we do know that on August 7, thirteen more Jews, who had been turned over to the Croatian police by German authorities, were deported to a camp. 166/ In view of the Quartermaster Group's responsibilities regarding prisoners and the Field Gendarmerie, it seems most

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161/ Ustasha Inspection Service, Office I, to Prefecture Police Authority in Banja Luka, 31 July 1942, br. reg. 45/5-1, kut. 164, Fond NDH, VII.

162/ See the document cited in footnote 104.

163/ Prefecture Police Authority in Banja Luka to Ustasha Inspection Service, Office I, 31 July 1942, br. reg. 56i/9-32, kut. 160, Fond NDH, VII.

164/ See the file of seven arrest warrants dated 30 and 31 July 1942 in br. reg. 46/5-2, 3 to 5 and 7 to 10, kut. 164, Fond NDH, VII; these people were sent to Stara Gradiska on August 9, 1942.

165/ "Report on Internal Situation from 25 July 1942 to 10 August 1942," Gendarmerie Squadron Command Banja Luka of 3rd Gendarmerie Regiment, 12 August 1942, br. reg. 9/7-1 and 4, kut. 164, Fond NDH, VII.

166/ Protection Police for the City of Banja Luka and the Prefecture of Sana and Luka in Banja Luka to Commandant of Black House Police Prison, 7 August 1942, br. reg. 44/6-1, kut. 168, Fond NDH, VII.

likely that it played a role in at least these actions. Even in connection with the initial arrests, it must be remembered that Stahl was still exercising executive power and that Lieutenant Waldheim, and the rest of the staff, were still in Banja Luka when these arrests took place. It is certainly inconceivable - given the size of Banja Luka [167/] and his responsibilities - that Lieutenant Waldheim was unaware of the action taken against the Jews. In his submissions, however, Mr. Waldheim makes no mention of this crime. Indeed, he has insisted throughout that he was unaware of Jewish deportations in the Balkans.

In sum, the Quartermaster Group of Operations Staff Western Bosnia was far from being the benign outfit portrayed by Mr. Waldheim. During the operations in western Bosnia, German and subordinate Croatian authorities were sending Serbs, Jews, and suspected Communists to gruesome concentration camps and to slave labor facilities. The available documentation points to the conclusion that these actions were carried out with the assistance of this small Quartermaster Group in which Lieutenant Waldheim served as the 0 2.

The significance of Waldheim's participation in the Kozara campaign in particular is evidenced by his having been awarded a

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167/ In 1930 the city of Banja Luka had a population of around 16,000: Dusan Lukac, Banja Luka i okolica u ratu i revoluciji (Banja Luka: Savez udruzenja boraca NOR-a opstine Banja Luka, 1968), p. 15.

high decoration by the Nazi Puppet State of Croatia: the Silver Medal of the Crown of King Zvonimir with Oak Leaves, the highest order of this decoration. 168/ This honor was bestowed for "valorous condut in fights against rebels in Western Bosnia in spring and summer 1942." 169/ This medal, especially with the Oak Leaves designation, was not commonly awarded to Germans during the Kozara campaign. When it was granted, it was for distinguished service under enemy fire. 170/ Clearly, Lieutenant Waldheim was decorated for his participation in the Kozara operation, since he received the medal on July 22, just after the main part of the campaign was concluded and before any other operations were under way. 171/

e. Waldheim's Responses to the Kozara Allegations

Mr. Waldheim's responses to these allegations have been inconsistent with each other and with the documentation. He initially publicly admitted to having served in the Kozara

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168/ "Award List No. 3 for the Silver Medal of Zvonimir with Oak Leaves", Operations Staff Western Bosnia, 6 August 1942 (Waldheim Document 74); and list of recipients of the Silver Medal of the Crown of King Zvonimir with Oak Leaves, signed by the Minister of the Croatian Home Defense Force, 9 September 1942 (Waldheim Document 27).

169/ Id.

170/ Für Tapferkeit und Verdienst (Munich: Schild-Verlag, n.d.), p. 51.

171/ See footnote 152 above.

area. 172/ However, in the April 6, 1986, memorandum submitted to the Department, he unequivocally stated that he had no connection whatsoever with Kozara, claiming that his evidence established that he was hundreds of miles from the site of the operations:

> Witnesses in Plevlje Montenegro have meanwhile confirmed that I was in that town, more than 200 km south of Banja Luka and the 'Kozara area,' as interpreter and liaison officer to the Italian Mountain Infantry Division 'Pusteria' for three months, approximately from April 1942 onwards. 173/

In his June 11, 1986, memorandum Mr. Waldheim again claimed that he served in Pljevlje, again as a liaison officer and interpreter attached to the Italian Army. He argued that, because no Italian troops participated in the Kozara campaign, his services as an Italian interpreter were not needed; hence, he could not have been a participant in that campaign. 174/ The June explanation of his April recollection of Kozara was that he was confused with another mountain range by the same name. 175/ His conclusion, expressed in strangely tentative terms: "It is almost certain, therefore, that Dr. Waldheim was in no way involved in the Kozara

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172/ See Waldheim memorandum of 11 June 1986, p. 24, for prior statements.

173/ Waldheim memorandum of 6 April 1986, p. 2.

174/ Waldheim memorandum of 11 June 1986, pp. 21-23.

175/ Id., p. 24.

operation." 176/

In his memorandum of August 1, 1986, the explanation changed dramatically, with Mr. Waldheim now conceding that he had indeed served at Banja Luka, and not at Pljevlje, during the crucial time period:

> In May 1942 . . . Waldheim [was] transferred to newly formed Kampfgruppe West Bosnia. At that time, Dr. Waldhiem preceded [sic] to the former headquarters of Kampfgruppe General Bader in Sarajevo, Croatia, and then on to headquarters . . . in Banja Luka, Croatia." 177/

Mr. Waldheim concedes that his initial denial of assignment to the headquarters staff in Banja Luka was a "substantial factual error." 178/ He blames the mistake primarily on the erroneous translation and interpretation of historical documents, a "mistaken" witness affidavit he had obtained and the difficulties of reconstructing 40 year-old events. 179/ He then proceeds to recreate in great detail what he now claims were his duty assignments during the period of the Kozara operation. He bases this new explanation primarily on his son's review of "long-forgotten family records and momentos in Vienna. . . ," including "contemporaneous notes" made by Waldheim himself. 180/

176/ Id., p. 23.

177/ Waldheim memorandum of 1 August 1986, pp. 5-6.

178/ Id., p. 36.

179/ Id., pp. 36-41.

180/ Id., p. 37.

Despite the invitation to produce all relevant documentation in support of his position, Mr. Waldheim did not provide any of these family "records" which purportedly formed the basis for his latest version of the history of events during the Kozara campaign. By his own admission, his initial recollections and representations to the Justice Department - as well as the supporting recollections of his mostly unidentified "witnesses" - were completely in error, a coincidence for which he has no explanation.

Thus, Mr. Waldheim has himself given us ample reason to question the reliability of his most recent accounts of his involvement in the Kozara operation. The latest claim is that he was merely a "supply officer" with the most minimal and innocuous duties. However, as detailed in the previous section of this memorandum, all of the available documentation undercuts that position. To the contrary, the reliable evidence compels the conclusion that Lieutenant Waldheim's Quartermaster Group was involved in much more serious matters involving prisoners and deportees.

Having finally admitted that he served in western Bosnia, Waldheim represents that his duties with the Quartermaster Group were extremely limited, having nothing whatsoever to do with prisoners, deportees, or anything else which might fit within the Holtzman Amendment. But Mr. Waldheim goes even further. As was argued vis-a-vis eastern Bosnia, Mr. Waldheim repeatedly emphasizes his claim that the Kozara operation had purely military objectives, and categorically denies that the campaign

was persecutory in nature. 181/ However, the documentary evidence is overwhelming on this point. Indeed, the evidence discussed above supports exactly the opposite position to that taken by Mr. Waldheim. To reiterate: the evidence shows that persecution, specifically the murder and physical removal of all Serbs (national origin), Jews (religion), and suspected "Communists" (political opinion), was one of the principal objectives of the operations of Battle Group Western Bosnia. Actions such as the shooting of unarmed Partisan sympathizers, sending women and children to concentration camps and deporting Jews to concentration camps can only be considered persecution under any standard. These acts were undertaken by the Battle Group itself or by Croatian authorities subordinate to it. To claim that the Kozara and related operations had purely military objectives is to deny the undeniable and to attempt to rewrite history.

Accordingly, Mr. Waldheim's assertion (completely undocumented) that during the Kozara operation "[n]o actions were undertaken on the basis of any person's race, religion, national origin or political beliefs" 182/ is in no way supported by the facts; indeed, only a contrary finding can be justified.

Beyond such categorical denials, Mr. Waldheim did not address any of these issues until his most recent submission

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181/ Id., pp. 44-46.

182/ Waldheim memorandum of 24 November 1986, p. 6.

(since he had earlier insisted that he was nowhere near the Kozara operation). In his December 1986 submission, he produced a statement recently given by Ernst Wiesinger, a former clerk in Lieutenant Waldheim's Quartermaster Group of Operations Staff Western Bosnia; the statement was taken expressly to allow Mr. Waldheim "to rebut the allegations brought forth against him recently with regard to his conduct during World War II." 183/

Mr. Waldheim relies upon Wiesinger to back up his "repeated statements" that he had no involvement in the handling and treatment of prisoners. 184/ However, Wiesinger's description of the Quartermaster Group to support this contention is seriously flawed in at least two important respects, in spite of the great show he makes of recalling details.

First, Wiesinger argues that the duties of the Quartermaster Group were "unusually curtailed." He claims that this supposed curtailment was due to the fact that Captain Plume (the Ib officer and Lieutenant Waldheim's immediate superior) was not a general staff officer and that Plume was not held in high esteem by his colleagues. 185/ Operations Staff Western Bosnia was indeed an unusual staff in that it was put together on an ad hoc basis for a specific task over a limited period of time. The

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183/ Statement of Ernst Wiesinger, 10 December 1986, p. 2 of translation.

184/ Waldheim memorandum of 19 December 1986, p. 8.

185/ Statement of Ernst Wiesinger, 10 December 1986, p. 2 of translation.

important point in this regard, however, is that Major of the General Staff Gehm, who was the director of the staff and head of Ia (Operations) Group was the only member of the staff who was actually a member of the General Staff Corps. 186/ Plume's status within Operations Staff Western Bosnia, therefore, was by no means exceptional. Moreover, regardless of what Wiesinger or others might have thought of him, Plume's superiors obviously had enough confidence in him to place him in charge of the Quartermaster Group with a promotion from first lieutenant to captain after he had served as the deputy to the quartermaster in eastern Bosnia.

Secondly, Wiesinger maintains that the handling of prisoners was a Ia ("operations") function in combat areas. 187/ There is not a shred of documentary support for this assertion. On the contrary, the documents - including many submitted by Waldheim himself - demonstrate the role of the Quartermaster Group in such matters, as detailed supra. 188/

186/ See staff list of Battle Group Western Bosnia, T315/2258/1475, NA (Waldheim Document 26). Division-level staffs had no separate chief of staff; the Ia performed this function: see the document cited in footnote 37, pp. 50-51.

187/ Statement of Ernst Wiesinger, 10 December 1986, p. 2 of translation.

188/ See the documents cited in footnotes 17, 86 and 113.

It should further be noted that Wiesinger repeatedly uses the designation "IVa" for his staff department. 189/ However, as discussed above, the proper designation for Captain Plume's and Lieutenant Waldheim's Quartermaster Group was "Ib"; the IVa was the administrative officer (Intendant), an official subordinate to the quartermaster. 190/ This confusion on Wiesinger's part raises the possibility that he did not work directly for Captain Plume and Waldheim as he suggests; at the least, it casts doubt on the accuracy of his recollections. In any case, Wiesinger's anxiety to try to dissociate himself from the handling of prisoners is understandable since to do otherwise would be to implicate himself.

Moreover, his emphasis on the small size of the department speaks of an expanded rather than a curtailed responsibility for each member. 191/ And it must be remembered that Lieutenant Waldheim was Captain Plume's principal deputy, the only other officer in the group.

Having submitted this inaccurate and obviously self-serving affidavit, Mr. Waldheim then proceeds to misinterpret it. Wiesinger does not say that there was anything unusual in the transportation and railway officers reporting directly to the

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189/ Statement of Ernst Wiesinger, 10 December 1986, pp. 1 and 2 of translation.

190/ See the document cited in footnote 37, pp. 31 and 43.

191/ Statement of Ernst Wiesinger, 10 December 1986, p. 2 of translation.

Ia. 192/ This was standard procedure on higher staffs but division-levels staffs normally did not have such officers, 193/ Mr. Waldheim's statement that "such functions traditionally reported to the supply or quartermaster officer" is incorrect. 194/ Division-level staffs did, however, have a division supply officer who was in charge of supply vehicle columns and reported to the Ib. 195/ Such a column was in fact assigned to the Quartermaster Group, as Mr. Waldheim seems to admit. 196/ In any case, the issue is not control of the means of transport by which prisoners may have been conveyed, but control of the prisoners themselves and of processing them through a pipeline which took them from their homes in the Kozara mountains to Ustasha and SS concentration camps. To be sure, this task would of necessity have involved, among other things, the making of transportation arrangements and the Quartermaster Group did have vehicles available to it (presuming that prisoners were not marched). The irrelevancy of Mr. Waldheim's statement

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192/ Id.

193/ See the document cited in footnote 37, pp. 26 and 42-51.

194/ Waldheim memorandum of 19 December 1986, p. 7.

195/ See the document cited in footnote 37, pp. 50-51.

196/ Waldheim memorandum of 1 August 1986, p. 39; see also the document cited in footnote 88 for a truck column reporting to Plume "for further utilization." German troops sometimes delivered prisoners from the field to Croatian authorities by truck: see Gendarmerie Post Bosanski Novi to District Authority, 30 July 1942, br. reg. 33/24-1, kut. 202, VII.

on the subordination of staff transport officers merely highlights the fact that he recognizes that the handling of prisoners was a quartermaster function (as is established by uncontroverted documentation); accordingly he seeks to imply that the Quartermaster Group of Operations Staff Western Bosnia formed an exception to this rule. As has been seen, this implication bears no more scrutiny that Wiesinger's direct denial.

Mr. Waldheim makes the barebone assertion that the Quartermaster Group was involved only with supply functions. In fact, in the October 31 memorandum he describes himself as a mere "supply orderly." 197/ Any involvement with prisoners was flatly denied, as was any role relating to transportation (which could implicate the group in the transfer and handling of prisoners). The December memorandum concludes that: "[I]t would appear, therefore, that Dr. Waldheim did not have any involvement in handling, treatment or transportation of any prisoners during the Kozara campaign." 198/

Aside from the facts that it is a rather strange denial ("it would appear"), that no documentary proof is submitted to support the claim, and that all the documentation which is available supports a contrary conclusion, Mr. Waldheim's earlier submission (August) casts serious doubt upon his most recent claim. In his August 1, 1986, memorandum Mr. Waldheim admits for the first time

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197/ Waldheim memorandum of 31 October 1986, p. 2.

198/ Waldheim memorandum of 19 December 1986, p. 8.

that he served in Banja Luka in the Quartermaster (Ib) Group. It is important to note that as of August 1986, there had been no public disclosure of the critical documentation from the United States National Archives which details the quartermaster's role in processing prisoners; service with the Quartermaster certainly sounded innocuous. In his August memorandum Waldheim relies upon (but does not produce) his own "contemporaneous notes" to prove he was in fact in the Quartermaster Group. In that memo he cites a June 1942, order from the Quartermaster Group of the Commanding General and Commander in Serbia which discusses a truck column set to arrive in Banja Luka. Mr. Waldheim describes this order as specifying that the "column is to report to the Ib in Banja Luka, Captain Plume, Dr. Waldheim's immediate superior." 199/ (Emphasis added). Mr. Waldheim then admits that these notations "accurately reflect his activities, and the activities surrounding him." 200/ Thus, at a time when he felt safe in doing so, Mr. Waldheim admitted to involvement with transports.

However, after the documented duties dealing with prisoners of the Quartermaster Group became public (The Washington Post ran stories in October), Mr. Waldheim changed his story, claiming that the group dealt only with supply matters and had no transport functions.

199/ Waldheim memorandum of 1 August 1986, p. 39.

200/ Id.

There is another significant point which should be made about Mr. Waldheim's claims regarding the Quartermaster Group. As discussed earlier in his memorandum, one of the most important documents dealing with the group is an order for the Quartermaster Group expressly instructing it to handle the deportation of prisoners to concentration camps. 201/ That order was signed by Colonel Munckel, the Senior Quartermaster (O.Qu.) on the staff of the Commanding General and Commander in Serbia. In his August 1986, memorandum, to establish his service with the Quartermaster Group, Mr. Waldheim had stated that on August 12, 1942 (while he was stationed in Kostajnica) he personally received a visit from Colonel Munckel himself. 202/ Thus, Mr. Waldheim has conceded having worked with the officer who instructed the Quartermaster Group to engage in the very activities which Mr. Waldheim adamantly denies even knowing about. Although Mr. Waldheim is clearly eager to distance himself from the Kozara prisoner deportations, he has failed to do so.

Originally, Mr. Waldheim argued that the award of the Zvonimir medal could not be relied upon to prove that he served in the Kozara operation. 203/ Having now conceded that he was wrong, he uses the same arguments regarding the decoration to

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201/ See the document cited in footnote 88.

202/ Waldheim memorandum of 1 August 1986, p. 40.

203/ Waldheim memorandum of 11 June 1986, pp. 24-26.

contest the value of his now admitted role in that campaign. He asserts that because approximately 900 soldiers received the medal in the space of one-half year, and because a physician and paymaster in Battle Group Western Bosnia received the same medal, his award was the result of "random and extensive distribution." 204/

However, Mr. Waldheim's analysis overlooks several important facts. Many of these Croatian medals were given to Croatians, not Germans. Given the thousands of German soldiers who participated in the Kozara operation, the number of German recipients of the medal was relatively small. Indeed, in July 1942, many more German decorations were given to members of one German unit contributing to Battle Group Western Bosnia than were Croatian medals. 205/ Moreover, it was General Stahl, not any Croatian authority, who apparently recommended Lieutenant Waldheim for this medal. 206/ As far as is known, Lieutenant Waldheim was one of only three officers who received the Zvonimir medal for service on Operations Staff Western Bosnia. 207/ All three received the medal on July 22, the same day that General Stahl

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204/ Waldheim memorandum of 1 August 1968, pp. 43-44.

205/ See "Activity Report for July 1942," 714th Infantry Division, T315/2258/739-48, NA.

206/ See the first document cited in footnote 168.

207/ See "List of Decorations Received" attached to letter from Croatian Office for Decorations to German Military Attaché, 1 December 1942, Archive of Croatia, Zagreb (?).

received the highest Croatian order. 208/ Lieutenant Waldheim was thus among a very exclusive group.

Moreover, the oak leaf cluster attached to Waldheim's medal was given out only in rare circumstances, reserved for those showing "bravery under fire." 209/ This was the highest class of this medal, a fact which Mr. Waldheim fails to mention or address. 210/ Finally, the receipt of this decoration was at the time significant enough for Lieutenant Waldheim to have recorded it in his personal notes. 211/ Given these facts above, it is difficult to accept the inferences of Mr. Waldheim's assertion that he was an "obvious non-combatant." 212/ Moreover, whether he took part in combat (in the sense of firing a weapon) is irrelevant to the present discussion.

The documented facts show that Lieutenant Waldheim was a medal recipient for valor under fire while serving on the staff of a battle group engaged in brutal and persecutory anti-Partisan

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208/ Stahl received the Military Order of the Iron Trefoil, First Class from Pavelic personally. This order had been awarded only once before, to Marshal Kvaternik: See "Daily Report 7/23/42," Commanding General and Commmander in Serbia, Ia, 23 July 1942, T501/351/1158, NA. For the importance of this decoration see the book cited in footnote 170, p. 50.

209/ See the book cited in footnote 170.

210/ See Waldheim memorandum of 1 August 1986, pp. 43-44.

211/ Id., p. 39.

212/ Wiesinger even refers to the staff's being in "a combat area." Wiesinger statement of 10 December 1986, p. 2 of translation.

and anti-civilian actions, actions in which the small office in which he served as deputy participated directly. There is only Mr. Waldheim's word to the contrary.

B. Operation Black, Spring 1943

By the time First Lieutenant Waldheim returned to the Balkans (after leave) in April 1943, General Löhr had been re-designated "Commander in Chief Southeast" and the Twelfth Army had become Army Group E. 213/

By this time, as well, orders from Hitler had reinforced the severity of German policy in anti-guerrilla warfare. In October 1942, Hitler emphasized to his top field commanders:

> Only where the fight against this partisan nuisance was begun and executed with ruthless brutality were results achieved which eased the situation on the fighting front.
>
> In all Eastern territories the war against the partisans is therefore a struggle for the absolute annihilation of one or the other side. 214/ (Emphasis in original.)

Ten days later, General Löhr echoed these views in orders to his own troops:

> Only when every insurgent knows that he will in no case get away with his life is it to be expected that the occupation troops will master any insurgent movement.
>
> This is an all-or-nothing struggle. There is no intermediate solution. Such conceptions as "the heroism of

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213/ See "Directive No. 47 for the Command and Defense of the Southeastern Area," The Führer, 28 December 1942, in the book cited in footnote 62, pp. 209-16.

214/ Supplementary order by the Führer, 18 October 1942, 503-PS, NA.

> a freedom-loving people" etc. are out of place. Most valuable German blood is at stake. [215] (Emphasis in original.)

In December 1942, Hitler took this policy to its logical conclusion, giving the soldiers carte blanche in their actions:

> No disciplinary action can be taken against a German engaged in anti-band warfare, nor can he be called to account before a court martial for his conduct in fighting the bands and their helpers. [216] (Emphasis in the original.)

In justification of this order the following reasoning was employed:

> In the guerrilla warfare the enemy employs fanatical fighters trained in the Communist ideology who will not shrink from any act of violence. This is now, more than ever, a matter of life and death. This struggle has nothing to do any more with soldierly chivalry or the regulations of the Geneva Convention.
>
> If this war against the bands in the East and in the Balkans is not waged with the most brutal methods, the available forces will in the near future no longer be sufficient to overcome this plague.
>
> For this reason the troops are justified and obliged in this combat to resort to all measures - even against women and children - without leniency, as long as they are successful. [217] (Emphasis added.)

These orders once again demonstrate the Nazi ideological underpinnings of German anti-guerrilla warfare and the political and racial motivations behind the brutality of its conduct.

215/ "Supplement of Wehrmacht Commander Southeast," Wehrmacht Commander in the Southeast, simultaneously entrusted with the command of the Twelfth Army, Ia, 28 October 1942, T311/197/83-84, NA.

216/ "Anti-Guerrilla Warfare," Chief of the High Command of the Wehrmacht, 16 December 1942, NOKW-2961, NA.

217/ Id.

Operation Black was an effort by the Germans in May-June 1943, to eliminate all insurgents in the Yugoslav regions of Montenegro and eastern Herzegovina. The commander of the operation was General Lüters, the Commander of the German Troops in Croatia, a recently formed command which was directly subordinate to General Löhr. Lüters had several German and Croatian units at his disposal for this operation, and Italian cooperation was to be sought through Army Group E from the Italian command in Montenegro. In all, over 100,000 German and Italian troops were involved. 218/ Among the German units involved was the "Prinz Eugen" Division of the SS, a unit notorious for its brutality. 219/

The conduct of Operation Black was along the familiar pattern, with various political and ethnic distinctions being made. All armed insurgents encountered in combat were to be

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218/ On Operation Black see 'Operational Order for Operation "Black,"' Commander in Chief of Army Group E, Ia, 4 May 1943, T501/250/289-94, NA; 'Operational Order for Case "Black,"' with attachments, Commander of German Troops in Croatia, Ia, 6 May 1943, T501/250/274-83, NA; "Enemy Situation Report Southeast No. 63," High Command of the Army, General Staff of the Army, Foreign Armies West (IV) Branch -- Southeast, 20 June 1943, T78/332/6290244-46, NA; and Jozo Tomasevich, War and Revolution in Yugoslavia 1941-1945: The Chetniks, (Stanford: Stanford University Press, 1975), pp. 251-56.

219/ See George H. Stein, The Waffen SS: Hitler's Elite Guard at War, 1939-1945, (Ithaca: Cornell University Press, 1966), pp. 273-74; and the official Yugoslav report cited in footnote 106, pp. 22-23.

destroyed. 220/ "Communist" prisoners were to be sent to the concentration camp at Zemun. 221/ Chetniks, on the other hand, were to be treated as prisoners of war and housed separately. 222/ The troops were to proceed "without consideration and with brutal severity" against the hostile population. Special care was to be taken, however, to treat especially well Moslems who had not shown themselves to be hostile . 223/

During Operation Black, approximately 12,000 "Communists" were killed and 1,500 captured, while approximately 3,000 Chetniks were captured. 224/ Several hundred "Communist"

220/ 'Operational Order for Case "Black,"' with attachments, Commander of German Troops in Croatia, Ia, 6 May 1943, T501/250/274-83, NA; and "Special Instructions for Supply to the Operational Order of High Comm. AG E," O.Qu. Command Center Belgrade of the Commander in Chief Southeast (High Command of Army Group E), O.Qu./Qu.1, 7 May 1943, T501/250/285-88, NA.

221/ Id.

222/ See the documents cited in footnote 220 and "Supplement to Special Instructions to the Operational Order of AG E of 7 May 1943," Q.Qu. Command Center Belgrade of the Commander in Chief Southeast (High Command of Army Group E) O.Qu./Qu.1 11 May 1943, T501/250/284, NA.

223/ See the first document cited in footnote 220.

224/ "Enemy Situation Report Southeast No. 63," High Command of the Army, General Staff of the Army, Foreign Armies West (IV) Branch -- Southeast, 20 June 1943, T78/332/629044-46, NA.

prisoners were shot. 225/ Large numbers of civilians and captured wounded Partisans were among the dead. 226/

Mr. Waldheim claims to have been an interpreter and liaison officer with a 15 man German liaison office working with Italian forces in Tirana, Albania. 227/ This claim is credible as it is backed up by statements of two witnesses 228/ and two photographs. 229/ Joachim Macholz, the head of this office, stated that it was a liaison staff of the German Army Group Southeast (i.e., Army Group E) with the Italian Ninth Army Command and Montenegro Command. 230/ In other words, this was the channel through which cooperation with the Italians during Operation Black would have been worked out. Lieutenant Waldheim's involvement in this respect of Operation Black is evidenced by the two photographs which show him at the airfield in Podgorica, Montenegro, on May 22, 1943, in the company of Lüters, Macholz,

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225/ "Report of the First Mountain Division on Deployment in Montenegro," 10 July 1943, T78/332/6289986-99, NA.

226/ Report on the Crimes of Austria and the Austrians against Yugoslavia and Her Poeple, (Belgrade: Yugoslav War Crimes Commission, 1947), pp. 31-35.

227/ Waldheim memorandum of 1 August 1986, pp. 7, 22 and 50-51.

228/ See statement of Joachim Macholz, 15 April 1986 (Waldheim Document 39); statement of Karl Mang, 4 June 1986 (Waldheim Document 40).

229/ See two photographs of Waldheim, Roncaglia, Macholz and Phleps at the airfield in Podgorica (Waldheim Documents 37 and 42d).

230/ Statement of Joachim Macholz, 15 April 1986 (Waldheim Document 39).

Major General of the Waffen SS Phleps, the commander of the "Prinz Eugen" Division, and General Roncaglia, the local Italian commander. 231/ When the first of these photographs was made public (on the front page of The New York Times, on March 4, 1986), Mr. Waldheim admitted to having been at the meeting, although he insisted that he had acted as interpreter for these officers on this occasion. 232/ The meeting was a high-level planning session for the continued conduct of Operation Black. 233/ Mr. Waldheim implies that his participation at this meeting was exceptional, stating that he only occasionaly left Tirana to act as an interpreter. 234/ However, available documentation, including one document submitted by Mr. Waldheim, indicates that the Macholz staff had a permanent presence in Podgorica. 235/ Lieutenant Waldheim's participation in Operation Black may well have gone beyond this one documented meeting.

In any case, as an interpreter and liaison officer at this high level of the command structure throughout the period of

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231/ See the photographs cited in footnote 229.

232/ Waldheim memorandum of 1 August 1986, p. 48.

233/ See Otto Kumm, "Vorwärts Prinz Eugen!" -- Geschichte der 7. SS-Freiwilligen-Division "Prinz Eugen" (Osnabrück: Munin-Verlag GmbH, 1978), p. 76.

234/ Waldheim memorandum 1 August 1986, pp. 48 and 51.

235/ See dispatch from German military attaché in Rome, 14 July 1943 (Waldheim Document 41); and "Operational Plan for the Tightening of the Encirclement Ring," Commander of the German Troops in Croatia, Ia, 25 May 1943, T315/1244/289-92, NA.

Operation Black, Mr. Waldheim cannot be disassociated from this operation, during the course of which so many atrocities were committed, against combatants and non-combatants alike. He clearly participated and assisted in the operation.

1. Mr. Waldheim's Response to Operation Black Allegations

Mr. Waldheim's response to disclosures concerning his involvement in Operation Black focuses primarily on the aforementioned photographs. He concedes that he was an interpreter at the meeting depicted and a liaison officer to the Italian army during this period. He also concedes that atrocities were committed in the course of this campaign. 236/ However, he argues, on the one hand, that as an interpreter and liaison officer, he was not a "principal" and therefore not culpable 237/ and denies, on the other, that the meeting was a planning session for Operation Black. 238/

This response is not persuasive. First, under the statute "assisting in persecution" no more requires that one have been a "principal" in the military sense that Waldheim means it than it requires the "command authority" that he is so preoccupied with denying. An interpreter and liaison officer for the senior officers in charge of a military operation assists in those

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236/ Waldheim memorandum of 1 August 1986, pp. 47-48.

237/ Id.

238/ Id., p. 49.

military activities; the role of interpreter is critical to the planning and effectuation of military actions involving two armies speaking different languages. 239/ As an interpreter on the liaison staff, Lieutenant Waldheim must have been privy to the information discussed at these high level meetings - the information he transmitted between the Italian and German officers. In this case, the officers were the commanders of units which were engaged in an operation accompanied by numerous acts of persecution. Meetings between Waffen SS and Italian Army generals, as portrayed in the photographs, were not social occasions. In fact, the diary of General Phleps reflects that Operation Black was the subject of discussion between himself and General Roncaglia on the day in question at the airstrip site pictured. 240/

Second, the fact that photographs of only one high level meeting have surfaced should not be taken to mean that only one such meeting occurred. Obviously, a full-time liaison officer and interpreter was carried at headquarters staff precisely because communication between the German and Italian forces was necessary on a continuous basis. Mr. Waldheim himself admits to providing interpreting services at several meetings between

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239/ United States v. Osidach, 513 F.Supp. 51 (E.D.Pa. 1981) (holding that someone who served as a police interpreter for Nazi occupying forces assisted in persecution).

240/ See the discussion on pp. 97-98 below.

German and Italian staffs.[241/] Since Operation Black was the only significant joint German-Italian military operation at the time in that region, his participation in discussions at the airstrip involving Operation Black may not have been a unique event.

Third, Mr. Waldheim refers to the personal diary of SS General Phleps, commander of the "Prinz Eugen" Division. The diary itself has not been produced, except for three pages.[242/] Mr. Waldheim states that the diary entry for the May 1943 meeting at the airport and the notations on the backs of the photographs fail to mention him or Operation Black. Obviously, however, Lieutenant Waldheim was present at the meeting as interpreter and liaison officer, as he admits. The absence of reference to him on three pages in Phleps's personal diary is certainly not determinative; that General Phleps found it unnecessary to identify the interpreter on the liaison staff at a particular meeting certainly does not determine whether that officer assisted in the persecutions carried out by Phleps and Axis forces in the region. Again, Mr. Waldheim confuses being a principal in an operational sense with the legal standards for ascertaining assistance in persecution.

241/ Waldheim memorandum of 11 June 1986, p. 27.

242/ Other than the claim of Phleps's son (Phleps is deceased) that this is the diary entry for the correct time period, there is no evidence of its authenticity; see statement of Reinhard Phelps, 4 June 1986 (Waldheim Document 42). The following

(Footnote Continued)

Mr. Waldheim's repeated reference to the participants in the May 22, 1943, meeting is also seriously misleading. While he concedes the presence of Phleps, Roncaglia, and Macholz, he fails to mention that those officers were gathered to meet with General Lüters, who had overall command of Operation Black. The notations on the photographs clearly reflect Lüters participation. Contrary to Mr. Waldheim's assertions, the Italian and German leadership was obviously meeting precisely because of their need to coordinate the largest military taking place at that time and locale - Operation Black. 243/

Mr. Waldheim misleads again when he suggests that the substance of Phleps's diary entry for that meeting reflects topics of conversation other than Operation Black. To the contrary, his diary entry does talk about military activities relating to Operation Black. Although he does not use that code name, his diary discusses military planning and maneuvers in the hills and towns in which Operation Black was taking place; he also discusses the actions of Italian forces (the "Black Shirts") involved in the operation. Finally, he observes that the Chetniks were assembling in the area. The disarming of all Chetniks was one of the primary objectives of Operation

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(Footnote Continued)
discussion is premised on an assumption of authenticity, although this could not be determiend without more extensive forensic or historical analysis.

243/ Another commander of the "Prinz Eugen" Division has written that part of the argument during the May 22 meeting was over who
(Footnote Continued)

Black. 244/ The "Prinz Eugen" Division was assigned to this region as part of the Axis force participating in Operation Black. In short, General Phleps's diary reflects the fact that Opertion Black was indeed the topic of conversation in the May 22, 1943, meeting with General Lüters. As an interpreter for and liaison to the Italian army Lieutenant Waldheim's role in the operation was far from minimal; his involvement was essential to the coordination of the operation.

C. Athens, Summer-Fall 1943

As stated previously, Lieutenant Waldheim served from July 19, 1943, until approximately October 4, 1943, as the First Special Missions Staff Officer (0 1) in the Operations (Ia) Group of the German General Staff with the Italian Eleventh Army, and later of Task Force Southern Greece, in Athens. During this period the German command structure in the Balkans underwent a major change. In August, a new army group, Army Group F, was created with headquarters at Belgrade. Its commander, Field Marshal Maximilian Freiherr von Weichs, 245/ also became the new Commander in Chief Southeast. At the same time, another new command, that of the "Military Commander Southeast," was also set

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(Footnote Continued)
should have command of Operation Black: see the book cited in footnote 233, p. 76.

244/ See the material cited in footnote 218.

245/ Weichs was indicted in the Southeast Case but the proceedings against him were dropped due to ill health: see the volume cited in footnote 43, pp. 764 and 1234.

up in Belgrade. This command took over the German occupation administration in the Balkans, exercising executive authority in German operational areas. Subordinate to this command was the "Military Commander Greece." These changes meant that General Löhr, who remained in command of Army Group E, now only had command of combat units and that his area of command was limited to the Greeks mainland and islands. 246/

The staff in Athens was not merely a liaison office, but a fully functional, albeit small, general staff, such as was normally attached to a German field army. The staff was activated in connection with an order by Hitler of July 26, 1943, according to which the German Commander in Chief Southeast was to take command of the Italian Eleventh Army in Greece on the following day. At the same time, German units in the area of this army were tactically subordinated to the Eleventh Army. 247/ This staff thus worked parallel with the Italian staff of the Eleventh Army, with special responsibility for the German units in the area; it formed part of the normal chain of command between those units and the Commander in Chief Southeast and Army Group E. The chief of staff was Colonel, later Brigadier General, Heinz von Gyldenfeldt, who was directly subordinate to

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246/ See "Special Instruction No. 3 to Directive No. 48," High Command of the Wehrmacht, 7 August 1943, in the book cited in footnote 62, pp. 224-27.

247/ "Directive 48 on the Exercise of Command and the Defense of the Southeastern Area," The Führer, 26 July 1943, in the book cited in footnote 62, pp. 218-23.

the commander of the Italian Eleventh Army, General Vecchiarelli. The staff was formed in Salonika on July 19 and moved to Athens on July 17, 1943. After the capitulation of Italy on September 8, 1943, the German staff was separated from the Italian Eleventh Army and became the staff of the newly created German Task Force Southern Greece, under the command of Lieutenant General Helmuth Felmy. 248/ Both the Task Force command and its staff were abolished on October 4. 249/

The 0 1 on a German army staff worked directly under the First General Staff Officer, or "Ia", who was in charge of the entire Operations Group, as well as of the Operations (Ia) Branch within that group. The Ia was the most important officer on the staff after the chief of staff. As head of the Operations Branch, he was responsible for matters directly relating to the conduct of all operations, briefing the chief of staff and attending the latter's operational briefings of the commander. When quick decisions were necessary in the absence of both the commander and chief of staff, the Ia was authorized to act on his own. 250/ The 0 1 was the chief assistant to the Ia in the latter's capacity of the Operations Branch.

248/ Felmy was convicted in the Southeast Case and sentenced to fifteen years imprisonment: see the volume cited in footnote 43, p. 1319.

249/ For the activities of the Athens staff see "War Diary No. 1," German General Staff with the Italian Eleventh Army Command, T501/330/943-1060, NA (cf. Waldheim Document 86).

250/ See the document cited in footnote 37, pp. 19 and 33.

Larger staffs might have had an operations branch consisting of a half dozen or more officers with individual responsibilities for such matters as operational orders, organizational questions, training, war diary, daily reports, situation maps, and strength reports. Typically, the Fourth General Staff Officer or "Id," who was responsible for training, acted as the deputy to the head of the operations branch. 251/ However, the German general staff in Athens was a small one and the Operations Branch had an establishment of only three officers: Ia, O 1, and O 4. The O 4 slot was not filled until August 18, 1943, at the earliest. 252/ Lieutenant Waldheim was thus the chief, and for at least a month the only, assistant to the Ia. The only duty he is known with certainty to have performed is keeping the war diary through August 21, 1943, after which it was taken over by a newly arrived officer. 253/ Given the small size of the staff and his eventual release from keeping the war diary, Waldheim must have also assisted the Ia in other matters, such as drafting operational orders.

Even if Lieutenant Waldheim's duties had been for a time limited to keeping the war diary, he was at the very least fully

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251/ See the document cited in footnote 36.

252/ German General Staff with the Italian Eleventh Army Command, HQ, to Commander in Chief Southeast (High Command of Army Group E), Ia/Id, with attachment, 17 August 1943, T501/331/131-33, NA.

253/ See the cover of the document cited in footnote 249, frame 943 (Waldheim Document 86).

aware of the application of anti-guerrilla warfare policy by Army Group E. For example, the war diary's entry made by Lieutenant Waldheim for August 8, 1943, noted that the newly arrived First Mountain Division was being informed of an order by Hitler that all insurgents captured in battle be shot and that suspected sympathizers be deported to Germany for slave labor. 254/ This criminal order was thus transmitted to the First Mountain Division by Waldheim's Ia Branch. Such reprisals were in fact routinely carried out by German troops subordinate to Lieutenant Waldheim's staff; the shootings and other measures were reported to Waldheim's Operations Branch, as confirmed by surviving documents. For example, in late August 1943, two Greek villages were reported burned and three persons shot in reprisal for two attacks on German soldiers in Argos on the Pelopennesus. 255/ Reprisal measures were also carried out by units subordinate to Lieutenant Waldheim's staff in northwestern Greece. 256/

The mass deportation of civilians was also a common topic of discussion in the Operations Branch. A copy of a report from the

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254/ Id., frame 961; see also the related correspondence discussed on pp. 106-07 below.

255/ "Daily Report for 8/24/43," Italian Eleventh Army Command, German General Staff, Ia, 24 August 1943, T501/331/234-35, NA; and "Daily Report," LXVIII Army Corps, Ia, 25 August 1943, T314/1540/65, NA.

256/ "Daily Report for 8/11/43," German General Staff with the Italian Eleventh Army Command, Ia, 11 August 1943, T501/331/290, NA.

First Mountain Division containing proposals for the deportation of the entire male population of a certain area was actually signed by Lieutenant Waldheim. 257/ From Waldheim's hands, this proposal made its way to General von Gyldenfeldt, who in an undated commentary noted that the question of such seizures of the male population had been clarified by a recent order from Löhr. 258/ This order recommended this type of deportation as a security measure. The Operations Branch was even involved in making recommendations on deportation policy to Army Group E and may have played a role in deciding on deportations on a case-by-case basis. 259/

In addition, after the capitulation of Italy in early September 1943, the Operations Branch was involved in the execution of orders relating to the mass deportation of Italian servicemen to the Reich for use as forced labor. 260/ In fact,

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257/ "Monthly Situation Evaluation," 1st Mountain Division, Ia, 15 August 1943, T311/179/1409-11, NA.

258/ "Commentary of the Chief of The German General Staff on the Situation Evaluation of the First Mountain Division," n.d., T311/179/1407-08, NA. For Löhr's order, see pp. 161-62 below.

259/ Task Force Southern Greece, Ia, to Army Group E, Ia, 30 September 1943, T501/330/1067-68, NA.

260/ After the Italian surrender approximately 400,000 Italian POWs were put to work in the Reich: Edward L. Homze, Foreign Labor in Nazi Germany, (Princeton: Princeton University Press, 1967), pp. 201-202; for guidelines on the treatment of Italian soldiers see "Basic Policy Concerning the Treatment of Soldiers of the Italian Armed Forces and Militia," High Command of the Wehrmacht, Wehrmacht Operations Staff/Quartermaster 2(S), 15 September 1943, NOKW-916, NA.

this was the main mission of the newly created and short-lived Task Force Southern Greece. 261/ One available document proves conclusively that Lieutenant Waldheim participated in that process: on September 22, he made a progress report on the deportation to Army Group E. 262/ Waldheim's detachment completed the liquidation of the Italian Eleventh Army by September 30, with some 5,029 officers (including at least 18 Generals) and 103,000 men having been disarmed and deported. 263/

Task Force Southern Greece was also in receipt of orders from Army Group E relating to the shooting of Italian officers who sought to join the fight against Nazi Germany. 264/ It is not clear whether Waldheim's command applied this order, although it clearly was applied in other parts of Greece. 265/

261/ See the interrogation of Heinz von Gyldenfeldt, 12 Janaury 1948, in M1019/23/626-38, NA.

262/ "Telephone Conversation First Lieutenant Frey - First Lieutenant Waldheim," Task Force Southern Greece, Ia Branch -- O 1, 22 September 1943, T501/330/1108, NA (Waldheim Document 91); this report notes that 27,000 more Italian officers and men had been assembled for deportation, while 4,600 men were to be kept behind in Athens for use as labor. Waldheim's information would have been significant because, among other things, it informed his superiors how many more trains were necessary to complete the deportations.

263/ Task Force Southern Greece, Ia, to High Command of Army Group E, Chief of the General Staff, 1 October 1943, T501/330/1065-66, NA. The report states that with these actions the Italian 11th Army had been liquidated.

264/ High Command of Army Group E, Ia, to Task Force Southern Greece, 13 September 1943, T501/330/1121, NA.

265/ See Gert Fricke, 'Das Unternehmen des XXII. Gebirgsarmee

(Footnote Continued)

1. Mr. Waldheim's Response to Athens Allegations

In discussing his activities in Athens, Mr. Waldheim has again resorted to distortion of the historical record. He asserts that "this German General Staff [in Athens] was a liaison staff; it had no subordinate troops." 266/ This is simply not true. The designation, organization and activities of this organization make clear that it was a regular command staff and not merely a liaison staff. 267/ The German General Staff with the Italian Eleventh Army Command formed part of the normal channel for issuing and receiving orders and reports between higher and lower German commands just as if the Eleventh Army were a German rather than an Italian unit. That General Vecchiarelli had an Italian as well as a German staff may have been unusual, but, as Mr. Waldheim recognizes, 268/ the times were unusual. Mr. Waldheim implies that the staff was too small to be a command staff. 269/ If this staff was unusually small, this may be explained by the scarcity of available personnel and the relatively small number of German troops subordinate to the

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(Footnote Continued)
Corps gegen die Inseln Kefalonia und Korfu im Rahmen des Falles "Ache" (September 1943);' Militärgeschichtliche Mitteilungen, 1967, No. 1, pp. 31-53 (Waldheim Document 92).

266/ Waldheim memorandum of 1 August 1986, p. 53.

267/ See the entries for 19-29 July 1943 in the document cited in footnote 249, frames 946-50 (Waldheim Document 86).

268/ See Waldheim memorandum of 1 August 1986, pp. 52-53.

269/ Id., p. 53.

Eleventh Army. Moreover, Mr. Waldheim's argument completely ignores the fact, which he seeks to obscure, 270/ that after the Italian capitulation on September 8, 1943, the Athens staff became the General Staff of the German Task Force Southern Greece. 271/ That is to say, it became part of a purely German command structure and could not possibly have been a liaison staff.

As a corollary to this argument, Mr. Waldheim asserts that his own entry in the war diary, (discussed above), recording the passing of an order to the German division specifying brutal measures against guerrillas, "is not initiating or implementing action, but instead, merely the recording by the German liaison staff of an order being given to the German unit operating under another command." 272/ If the facts discussed immediately above are not sufficient to undercut completely this assertion, available documentation relating to this order, also cited above, 273/ unequivocally shows that Lieutenant Waldheim's small office (Ia Branch) transmitted the order to the troops. Since the order is explicitly referred to as a "Führer Order," it could

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270/ Id., p. 23.

271/ See the entry for 9 September 1943 in the document cited in footnote 249, frames 1015-17 (Waldheim Document 86).

272/ Waldheim memorandum of 1 August 1986, p. 55.

273/ See pp. 101-02 above.

not have been, in any sense, an Italian order. 274/ Moreover, when the unit in question (the German First Mountain Division) ran into difficulties with its Italian corps commander - who evidently opposed the shooting and deporting of prisoners - in implementing this order, it immediately turned Waldheim's staff with a request to solve the problem; 275/ and the First Mountain Division issued appropriate orders to its troops on August 9. 276/ This is precisely the sort of staff activity which, as discussed earlier, United States Military Tribunal V found so criminal.

In view of Ia Branch's and Mr. Waldheim's admitted involvement with this order - bearing in mind that Lieutenant Waldheim was at the time one of only two officers in the Branch 277/ - his barebone assertion that he "had no role in the formulation, drafting, or issuance of this order" 278/ is open to very serious question. Mr. Waldheim's effort - albeit unsuccessful - to

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274/ See the entry cited in footnote 254 and German General Staff with Italian Eleventh Army Command, Ia, to 1st Mountain Division, 8 August 1943, T315/65/741, NA.

275/ 1st Mountain Division, Ia, to German General Staff with the Italian Eleventh Army Command, 7 August 1943, T315/65/745, NA.

276/ 1st Mountain Division, Ia, to Italian XXVI Army Corps, 9 August 1943, T315/65/742, NA.

277/ See p. 101 above and the document cited in footnote 252.

278/ Waldheim memorandum of 1 August 1986, p. 55.

dissociate himself from the order in question is clearly based upon his recognition of its criminal nature. 279/

We now turn to what is an ever more egregious attempt to revise historical truth: Mr. Waldheim's treatment of the surrender of Italian troops in Greece. As earlier discussed, 280/ Waldheim's command turned over 100,000 Italians into prisoners of war and deported them to the Reich as slave labor after they had voluntarily surrendered their arms.

Mr. Waldheim admits to having taken part in negotiations for the Italian surrender, serving as an interpreter; 281/ moreover, his participation in the deportations themselves is documented. 282/ Having had to admit such clearcut involvement in these activities, Mr. Waldheim resorts to outright distortions of history to justify his role in the handling of Italian soldiers. The October 31, 1986, memorandum contains the following statement:

> With regard to the evacuation of Italian troops from Athens, it has been clearly established that Dr. Waldheim's role involved the routing of information for the repatriation of Italian troops in Greece to their homeland, and, thereby, to liberty. 283/ (Emphasis added.)

279/ Id., referring to "any impropriety that may have arisen out of the order . . ."

280/ See pp. 103-04 above.

281/ Waldheim memorandum of 1 August 1986, p. 53.

282/ See the document cited in footnote 262.

283/ Waldheim memorandum of 31 October 1986, p. 4.

In the August 1986, submission the following explanation is offered:

> Instead of being the perpetrator of a sinister plot against his former Italian comrades, Dr. Waldheim was actually participating in what can be characterized as military chivalry; the ultimate objective of this joint Italian-German plan was to repatriate Italian forces in Greece to their homeland. 284/ (Emphasis added.)

Mr. Waldheim can, of course, characterize these events as he pleases. The facts, however, demonstrate that what he calls "chivalry" was in reality base treachery.

D. Army Group E, Fall 1943 - Spring 1945

After leaving Athens, Lieutenant Waldheim was assigned to the staff of the High Command of Army Group E in Arsakli as the 0 3 in the Intelligence and Counterintelligence (Ic/AO) Branch. At this time, the area of command of Army Group E basically coincided with the prewar territory of Greece plus the Dodecanese Islands. The Dodecanese were Italian and had been occupied by British troops after the Italian capitulation; German forces retook the islands in the fall of 1943. The Commander in Chief of Army Group E, General Alexander Löhr, was directly subordinate to the Commander in Chief Southeast and Commander in Chief of Army Group F, Field Marshal Maximilian Freiherr von Weichs. 285/

284/ Waldheim memorandum of 1 August 1986, p. 54.

285/ See the documents cited in footnote 246.

In May 1944, Army Group E had approximately 157,000 German and 96,000 foreign personnel under its command. 286/

As a member of this high-level staff, Lieutenant Waldheim had much broader scope for the application of his skills than previously. His activities were no longer confined to the day-to-day details of military operations and administration. The activities of the Ic/AO Branch soon brought him a range of duties and a level of contacts that bespeak the confidence and trust placed in him by his superiors.

1. Ic/AO Branch

The Ic/AO Branch of the High Command of Army Group E had a staff of eight to twelve officers. From August 1943, its chief, the Ic, was Major (later Lieutenant Colonel) of the General Staff Herbert Warnstorff, 287/ who was also head of the intelligence section of the Branch. His deputy was Major (later Lieutenant Colonel) Hammer, who was at the same time the "AO" or head of the counterintelligence section. Aside from strictly military intelligence functions, Warnstorff's duties as chief of the branch included preparing drafts for operational orders;

286/ "Total Strength of the Army in the Area of the High Command of Army Group E as of 23 May 1944," T311/186/570, NA.

287/ See Warnstorff personnel file, Record Group 242, Roll 890, NA; see also "Activity Report of IIa Branch from July 1 to December 31, 1943" (Waldheim Document 85).

political affairs; cooperation with the SD, 288/ Security Police and Field Gendarmerie; and directing the activities of the counterintelligence section. As the AO, Hammer was immediately responsible for these last-named activities. Aside from acting as Warnstorff's permanent deputy, Hammer's duties comprised directing the whole counterintelligence service, including Abwehr (Counterintelligence) troops and a GFP (Geheime Feldpolizei - Secret Field Police) group, within the area of the army group; political indoctrination; mail censorship; and propaganda. In the areas of responsibility managed by Hammer, Ic/AO Branch was directly subordinate to the Chief of the General Staff of Army Group E, bypassing the chief of the Operations Group who was Warnstorff's direct superior. 289/ In this connection, it should

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288/ The "SD" (Sicherheitsdienst or Security Service) was the intelligence arm of the SS. During the war the term "SD" was also commonly applied to members of the Security Police, the most important component of which was the Gestapo (Geheime Staatspolizei or Secret State Police). The Security Police and the SD were both parts of the Reich Security Main Office, which, inter alia, had responsibility for the implementation of the "Final Solution" of the Jewish question -- the extermination of the European Jews. On the local level, such as in Greece, the SD and Security Police were subordinate to the same "Commander of the Security Police and the SD" (Befehlshaber der Sicherheitspolizei und des SD).

The International Military Tribunal at Nuremberg adjudged both the SD and Gestapo to be criminal organizations which participated in war crimes and crimes against humanity. The Nuremberg Trial, 6 F.R.D. 69, 136-40 (I.M.T. 1946).

289/ See the document cited in footnote 35.

be noted that Warnstorff was also the deputy chief of the Operations Group. 290/

Lieutenant Waldheim was the 0 3 or Third Special Missions Staff Officer in the Ic section and as such was head of an office responsible for virtually all Ic (intelligence) section affairs except air force and aerial intelligence. With the assistance of one or two other officers, who were subordinate to him and were classified as interpreters, he performed those duties of the section relating to the classified documents log; the enemy situation; Ic morning, evening and activity reports; developments in the Balkan countries; special tasks; evaluation of radio monitoring; prisoner interrogation; and personnel matters for the whole branch, including the subordinate Abwehr troops. 291/ Several noncommissioned officers assisted Lieutenant Waldheim and his subordinate officers. 292/ Lieutenant Waldheim was

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290/ Id.

291/ Id.

292/ See the statement of Robert Voigt, 4 May 1948, in file F. No. 25572, Archive of Yugoslavia, Belgrade (hereinafter AJ).

accordingly Warnstorff's chief assistant within the Ic section. 293/ No other officer in the section had a higher rank. 294/

Lieutenant Waldheim was obviously in a very responsible and sensitive position. He personally kept the classified documents log, which involved registering incoming secret papers with brief statements of their contents. 295/ Careful security precautions were taken with the documents and many were later intentionally destroyed. 296/ Lieutenant Waldheim was presumably present at the IC/AO Branch staff meetings which were presided over by Warnstorff and attended by all officers of the branch and others who worked closely with it, such as Abwehr officers. 297/

293/ See also the book cited in footnote 35, p. 59; and David Kahn, Hitler's Spies: German Military Intelligence in World War II, (New York: Macmillan Publishing Co., Inc., 1978), p. 403. Waldheim himself cites this book on the duties and titles of army intelligence officers: Waldheim memorandum of 1 August 1986, p. 14, n.5.

294/ See the document cited in footnote 36 and the army directories cited on footnote 29.

295/ See the document cited in footnote 36; "Work Plan of the High Command of Army Group E," High Command of Army Group E, IIa, 15 February 1944, T311/181/27-28, NA; and statement of Herbert Warnstorff, 29 May 1986 (Waldheim Document 53).

296/ See pp. 14-15 above and the documents cited in footnotes 7 and 8.

297/ See statement of Markus Hartner, 3 January 1948, file F. No. 25572, AJ. This statement is supported by surviving information on a Ic conference organized by Ic/AO Branch. This conference was held in the Ic building at Arsakli and was attended by outside participants, presumably the Ics of field units among others. Presentations were made by members of the branch, such as Warnstorff and Hammer, and by Abwehr, Secret Field Police and propaganda officers. Waldheim did not attend

(Footnote Continued)

Lieutenant Waldheim prepared his reports on the enemy situation on the basis of incoming reports. 298/ These incoming reports included those from Ics of subordinate units, 299/ prisoner interrogation reports, 300/ intercepts of enemy radio communications, 301/ and Abwehr 302/ and GFP reports. 303/ He also received, 304/ reviewed, and possibly prepared 305/ papers on the political situation in Greece and neighboring countries.

298/ See statement of Helmut Poliza, 29 May 1986 (Waldheim Document 54).

299/ See, for example, the periodic reports appended to "Activity Report for the period July 1 through September 15, 1944," Commandant Eastern Aegeon, Ic, 22 September 1944, T501/260/443 ff, NA.

300/ See statement of Helmut Poliza, 29 May 1986 (Waldheim Document 54).

301/ See, for example, Commander of Signal Reconnaissance 4 to High Command of Army Group E, Ic, 18 January 1944, T311/179/883-84, NA.

302/ See statement of Herbert Warnstorff, 29 May 1986 (Walheim Document 53).

303/ See, for example, Secret Field Police Group 621 to High Command of Army Group E, Ic/AO Branch, 6 June 1944, with attachment, T311/179/747-48, NA. For a report which provides an excellent summary of the sources of information at Waldheim's disposal, see "Activity Report for the Month of August 1944," Ic/AO Branch, 1 September 1944, T311/186/337-38, NA.

304/ See, for example, Military Commander Greece to Commander in Chief of Army Group E, Military Commander Southeast and Commander in Chief of Army Group F, with attachment, 8 January 1944, T311/179/1256-62, NA; and "Memorandum of Italian Fascist Officers to Mussolini" with attachment, Abwehr Troop 376, 10 December 1943, T501/260/436-40, NA.

305/ See "Memo to the File," Ic/AO Branch, 3 September 1944, T311/180/56, NA, bearing Waldheim's signature. Copies of this memo went to Löhr, the chief of staff and the Ia.

He communicated especially urgent information directly to the chief of staff [306/] and passed on resulting orders to field commanders. [307/]

Lieutenant Waldheim even attended briefings for the chief of staff. At these briefings a wide range of topics was discussed, including the situations on the Eastern and Western Fronts, forced labor for the Greek population, supplies, relations between Army Group E and the Higher SS and Police leader in Greece, and details of the movements of highranking officers. At these meetings, Waldheim himself made presentations on the situations in France, Italy, the Mediterranean, and the Far East. [308/] Moreover, the appearance in Wacht im Südosten (Army Group E's official newspaper) of a photograph of Lieutenant Waldheim standing next to General Löhr shows that his personal contacts went even beyond the chief of staff. [309/]

Mr. Waldheim seems also to have formed a close relationship with his immediate superior, Colonel Warnstorff, who made it possible for him to visit his family in Vienna during the last

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306/ See, for example, "Memo to file on Telephone Conversations on 8 June 1944," T311/175/1991-92, NA.

307/ See, for example, "Memo to the File and Telephone Conversations (October 17, 1943, 0-2400h)," Operations Group, T311/175/755-56, NA.

308/ See the file memos on the chief of staff briefings on 8 January, 9 May, 16 May, 16 June, 4 August and 9 August 1944 in, respectively, T311/175/964, 987, 988, 993, 975 and 977-78, NA.

309/ Wacht im Südosten, 3 December 1944, p. 1.

weeks of the war when leave was prohibited, and who later organized a farewell party for him when he left the staff. 310/

Thus, it is clear that Lieutenant Waldheim had such access to a wide range of information and personalities as was granted to very few officers of even higher rank. His service in Ic/AO Branch seems to have been the very exemplar of the dictum for staff officers of the famous Chief of the Great General Staff Fieldmarshal Count Schlieffen: "Accomplish much, stand out little, be more than you seem. . . ." 311/

In discussing his duties in Ic/AO Branch, Mr. Waldheim makes several general assertions in an effort to dissociate himself from some of the branch's acitivites. First, he again emphasizes that he had no command authority. 312/ As has been previously discussed, this argument is basically irrelevant. 313/ In this instance, Mr. Waldheim completely ignores the role of Ic/AO Branch (and therefore possibly himself) in proposing, preparing and issuing orders. German Army orders typically bear the designation of the staff department in which they originated and to whose sphere of competence they applied, e.g. Ia, Qu., etc. Available documents show that Lieutenant Waldheim's Ic/AO Branch

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310/ See statement of Herbert Warnstorff, 29 May 1986 (Waldheim Docment 53).

311/ See the document cited in footnote 37, p. 2.

312/ Waldheim memorandum of 1 August 1986, p. 12.

313/ See pp. 31-33 above.

issued many Army Group E orders, 314/ and Mr. Waldheim has admitted this. 315/ In discussing one such order, Mr. Waldheim does not deny that it originated in Ic/AO Branch; he merely seeks to belittle his own involvement with it. 316/

Mr. Waldheim also maintains that he was concerned exclusively with military intelligence and therefore had no duties and performed no functions with regard to political matters, which he claims were within the province of the AO. 317/ Whatever may have been the duties of the Abwehr in reporting political intelligence to Berlin, 318/ the normative document cited above makes clear that on the Army Group E level, political affairs, as opposed to simply political intelligence, were the responsibility of Colonel Warnstorff, 319/ Waldheim's immediate

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314/ See, for example, the orders from Army Group E, Ic/AO, to subordinate commands on 6 and 7 September 1944 in, respectively, T311/181/1115 and 1114, NA; the latter order bears Waldheim's signature and thus may have been drafted by him personally. These orders direct countermeasures against expected action by the Allies and Greek resistance.

315/ Waldheim memorandum of 1 August 1986, p. 60.

316/ See Waldheim memorandum of 19 December 1986, pp. 1-3, discussing the orders cited in footnote 314; see also the discussion on p. 135 below.

317/ Waldheim memorandum of 1 August 1986, p. 16.

318/ On Abwehr intelligence reporting and the role of the AO, see the document cited in footnote 37, pp. 22-25. For Waldheim's distortion of a simple independent reporting channel into an exclusive AO/Abwehr responsibility for political affairs, see Waldheim memorandum of 1 August 1986, pp. 9 and 15-16.

319/ See the document cited in footnote 36.

superior. The documentation makes clear that it was Warnstorff who dealt with such matters as negotiations with local political figures. 320/ In fact, Lieutenant Waldheim himself handled papers on questions such as the Greek quisling regime's complaints about German reprisals, 321/ activities of Italian Fascist officers in Greece after the capitulation, 322/ and the formation of a new Bulgarian government. 323/ Lieutenant Waldheim plainly was in a position to have assisted Warnstorff in political affairs. His office was responsible for keeping track of the situation in the various Balkan countries and was available for "special tasks", 324/ which seems to have meant anything Warnstorff wanted to have done. 325/

Mr. Waldheim likewise seeks to put the onus for cooperation with the SD on the AO, claiming that Abwehr officers functioned

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320/ See, for example, the memo by Warnstorff, dated 30 October 1944, on discussions with Chetnik and Albanian nationalist leaders in T311/186/778-79, NA; and the entry in the war diary of Army Group E of 19 October 1944 in T311/183/132, NA; see also the memorandum by Waldheim, dated 8 July 1944, summarizing negotiations with General Zervas, the leader of a Greek anti-Communist resistance group, during the first half of 1944 in T311/180/63, NA.

321/ See the first document cited in footnote 304.

322/ See the second document cited in footnote 304.

323/ See the document cited in footnote 305.

324/ See the document cited in footnote 36.

325/ See the statements of Herbert Warnstorff, 29 May 1986 (Waldheim Document 53) and Helmut Poliza, 29 May 1986 (Waldheim Document 54).

as the Army's contact with the SD. 326/ This contention is simply incorrect. The critical document, cited above, identifying the organization and duties of Ic/AO Branch clearly shows that cooperation with the SD was the responsibility of the Ic (Warnstorff) and not the AO (Hammer). 327/ Hammer, of course, in his capacity as the deputy Ic may also have been involved in such cooperation. 328/ In any case, one available document proves Warnstorff's personal role in relations between Army Group E and the SD. 329/ It may be true that Captain Fuhrmann, the head of Abwehr Detachment 311, 330/ may for a time have acted as liaison with the SD. 331/ This does not prove that he did not report to Warnstorff, who was also responsible for Abwehr troops. 332/ In fact, Markus Hartner, a former non-commissioned officer in Ic/AO Branch, stated, in an affidavit given shortly after the war, that Fuhrmann attended the Ic/AO Branch staff meetings (which Waldheim

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326/ Waldheim memorandum of 1 August 1986, p. 15.

327/ See the document cited in footnote 36.

328/ Id.

329/ High Command of Army Group E, Ic/AO, to Higher SS and Police Leader Greece, 7 September 1944, T311/181/1072, NA; this document bears Warnstroff's signature.

330/ See entry in the war diary of High Command of Army Group E, Ia, for 21 December 1944, T311/183/95-96, NA.

331/ See "Decision on Ascertaining the Crimes of the Occupiers and Their Collaborators," F. No. 25572, 18 December 1947, p. 6, AJ.

332/ See the document cited in footnote 36.

also presumably attended).[333/] Whatever the role of individual *Abwehr* officers may have been, Warnstorff, the Ic, was without question responsible for cooperation with the SD. This opens the very distinct possibility that Waldheim, his chief assistant, may also have been involved.

Warnstorff, in a statement submitted on Waldheim's behalf, flatly denies that there was any cooperation between the Ic (*i.e.* himself) and the SD.[334/] This statement calls for several observations. First of all, Warnstorff was at the time described by the chief of staff of Army Group E as a "National Socialist [i.e. Nazi] in word and deed," a characterization which speaks for itself.[335/] Secondly, from his statement it is clear that Warnstorff was personally close to Lieutenant Waldheim, and he would surely be loath to incriminate him. Finally, to do so would be to incriminate himself, since as Waldheim's superior he is even more implicated. In view of these considerations, and especially in light of the documentary proof of Ic-SD involvement, Warnstorff's self-serving statement on this matter can be given little weight.

Mr. Waldheim also attempts to cast doubt on the significance of having kept the classified documents log; once again he

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333/ See the first document cited in footnote 297.

334/ Statement of Herbert Warnstorff, 29 May 1986 (Waldheim Document 53).

335/ See the first document cited in footnote 287.

summons the AO, Hammer, to the rescue. Statements submitted on his behalf imply that not all documents addressed to the Ic/AO Branch went to Lieutenant Waldheim. Rather, it is argued, they went to the AO, who in turn passed on only information such as he saw fit. 336/ While the AO may have had his own log, 337/ surviving documents indicate that it was Lieutenant Waldheim who had superior access to material addressed to the Ic/AO Branch. For example, a message from Commander in Chief Southwest (High Command of Army Group F), Ic/AO Branch, to High Command of Army Group E, Ic/AO Branch (dated 6 January 1944) bears Waldheim's, not Hammer's, initial. 338/

Mr. Waldheim has sought to lend additional significance to his claims regarding political matters, the SD and incoming documents by arguing that the AO section of the Ic/AO Branch was separate and independent from the Ic section where he worked. The only evidence which he adduces for this contention are statements by Warnstorff and Helmut Poliza, one of the interpreters who worked under Waldheim. 339/

336/ See the statements of Herbert Warnstorff, 29 May 1986 (Waldheim Document 53); Helmut Poliza, 29 May 1986 (Waldheim Document 54); and Emil Hans Haller, 25 July 1986 (Waldheim Document 79).

337/ See the document cited in footnote 37, p. 36.

338/ Commander in Chief Southeast (High Command of Army Group F), Ic/AO, to Army Group E, Ic/AO, 6 Janaury 1944, T311/179/958, NA.

339/ See their statements cited in footnote 336.

Warnstorff's credibility has already been discussed. Poliza's statement calls for much the same comments: the chief of staff described Poliza as a "good National Socialist"; 340/ Poliza worked together with Lieutenant Waldheim for well over a year and he filled in for him in his absence. The German General Staff handbook does indicate that the AO, who is said to be subordinate to the Ic at army group or field army level, had separate channels of communication with higher Abwehr authorities. 341/ There is no indication of separate channels to higher regular commands, and at lower command levels (i.e. corps and division) there was no separate AO, only an Ic, who was also responsible for Abwehr matters. Indeed, it would seem ludicrous for Warnstorff, the Ic of an army group, not to have access to all reports from the field. Even beyond the question of Abwehr reporting, it must again be recalled that Warnstorff was the head of the entire branch, the AO section of which had more than just Abwehr responsibilities, and that he even had explicit disciplinary and command authority over Abwehr troops. 342/ The regular situation reports prepred by Ic/AO Branch contained both intelligence and counterintelligence sections as well as a separate

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340/ See Poliza personnel file, Record Group 242, Roll 660, NA.

341/ See the document in footnote 37, p. 23.

342/ See the document cited in footnote 36.

section on the political situation. 343/ Any attempt to erect an impenetrable barrier between the Ic and the AO sections of the Branch is purely contrived and artificial.

2. The "Jewish Question"

The so-called "Final Solution" of the "Jewish Question" was applied in the area of Army Group E, just as it had been in western Bosnia. With the exception of the Salonika area, the Germans had to wait to apply this genocidal "solution" in Greece until after the capitulation of Italy and the establishment of their own direct control. 344/ It was characteristic of Nazi policy that even as the Jews were being annihilated, anti-Semitic propaganda was used to mobilize support in occupied countries as well as to undermine Allied solidarity. 345/ Ic/Ao Branch of Army Group E participated in both the Nazi propaganda and extermination efforts.

a. Deportation of Greek Jews, June-July 1944

During the spring and summer of 1943 and again in the spring and summer of 1944, Jews living in the area of Army Group E were deported to the Nazi extermination center at Auschwitz in Poland.

343/ See, for example, "Ic Situation Report -- August/September 1944," High Command of Army Group E, Ic/AO Branch, 17 September 1944, T311/181/663-71, NA. This report appears to bear Waldheim's initial.

344/ See the book by Hilberg cited in footnote 106, pp. 692ff.

345/ On Nazi propaganda, see Robert Edwin Herzstein, The War That Hitler Won (New York: G.D. Putnam's Sons, 1978).

These deportations were carried out by the SD in cooperation with military authorities, including the Secret Field Police and Field Gendarmerie. 346/ In this connection it must be realized that military commanders in Greece considered the Jews to be a threat because of their hostile attitude and that Army Group E thus also had an interest in their removal from the scene 347/ and in the meantime kept close track of the measures taken against them by the SD. 348/ Developments affecting the Jews were regularly reported through Ic channels. 349/

At the time of the deportations of the Jews from Salonika from March to August 1943, Lieutenant Waldheim was not assigned to the Ic/AO Branch and was only briefly in the Salonika area. 350/ Likewise, when the Jews of the mainland were deported in March 1944, Waldheim was absent on leave. 351/ However, available documents prove that Ic/AO Branch was directly involved

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346/ See the book by Hilberg cited in footnote 106, pp. 692ff. Crimes against the Jews were cited in Count Four of the indictment in the Southeast Case: see the volume cited in footnote 43, p. 775.

347/ See the document cited in footnote 257, which speaks of a Jewish committee in Ioannina as the organizing center for an uprising.

348/ See Corp Headquarters, XXII Mountain Corps, Ic, to High Command of Army Group E, 8 November 1943, T314/1458/59, NA.

349/ See, for example, the documents cited in footnotes 348, 354 and 367.

350/ See pp. 25-26 above.

351/ See p. 26 above.

in the deportation of Jews from the islands of Greece in mid 1944, at a time when Waldheim was on duty in that small department. 352/

1. Corfu

Ic/AO Branch of Army Group E participated in the deportation of the Jews living on the Greek island of Corfu by providing critical intelligene and organizational support. On April 21, 1944, Lieutenant Waldheim's Ic/AO Branch provided intelligence data to Corps Group Ioannina to the effect that at least 1,600 Jews resided on Corfu, and the branch ordered that they be registered. 353/ On April 28, 1944, the Intelligence Branch of Corps Group Ioannina wrote to the Ic/AO Branch that the SD and Secret Field Police were preparing to deport approximately 2,000 Corfu Jews. 354/ Corps Group Ioannina indicated that the deportation of these Jews would occasion a "significant easing of

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352/ During this period the Jews of several islands were affected by deportation orders. Direct evidence on the role of Ic/AO Branch, however, has come to light only with regard to Corfu and Rhodes, and the following discussion will therefore focus on these two islands.

353/ "Foreigners on Corfu," High Command of Army Group E, Ic/AO, 21 April 1944, T314/1458/55, NA (Waldheim Document 80). Army Group E was also apprehensive about British citizens living on Corfu and at this time intended to turn them over to the SD for transfer for the Reich. Ic/AO Branch was involved in making these arrangements as well: see the document just cited and High Command of Army Group E, Ic/AO, to Corps Group Ioannina, 13 April 1944, T314/1458/80, NA.

354/ "Report on the Island of Corfu and the Occasion of an Official Trip by the Ic on April 23-24, 1944", Corps Group Ioannina, Ic, 28 April 1944, NOKW-1985, NA (Waldheim Document 81).

the food supply situation", and asked Waldheim's branch to "effect implementation measuers with the SD for the purpose of settling the Jewish Question". 355/ On June 17, 1944, the commander of the German Security Police and SD for Greece, Branch Office Ioannina, reported to the Ic Branch of Corps Group Ioannina that "in the course of the Jewish action on Corfu, a total of 1,795 persons were arrested and deported". 356/

The involvement of Army Group E and Lieutenant Waldheim's Ic/AO Branch cannot be doubted. The intelligence and order from Waldheim's unit was essential to carrying out the deportation operation. Further, General Löhr, commander of Army Group E, agreed to furnish transportation to accelerate the evacuation procedure. 357/ He had to base such decisions on allocation of resources on his appraisal of the general situation; a vital element in such appraisals was the enemy intelligence data provided by Ic/AO Branch. The April 28, 1944, report of Corps Group Ioannina to Waldheim's Ic/AO unit reported that Secret Field Police was physically involved in the deportation procedures. The Secret Field Police was, in turn, subordinated to Ic/AO Branch, as confirmed by the December 1, 1943, staff chart

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355/ Id.

356/ "Jewish Action on Corfu," Commander of the Security Police and SD Greece, Field Office Ioannina, IVB, 17 June 1944, T314/1458/69, NA.

357/ See entry in the war diary of Army Group E, Ia, for 12 May 1944, T311/177/45-47, NA.

of Army Group E. 358/ In sum, Waldheim's intelligence unit provided vital support for the entire operation.

Lieutenant Waldheim's own responsibility for the Corfu deportations, within the meaning of Section 212(a)(33) of the INA, is clearly established. As the special missions staff officer in charge of enemy intelligence, Waldheim would have had full knowledge of the deportation operation and, very possibly, direct involvement in its planning and/or effectuation. His general involvement in Ic/AO operations would, at the least, have assisted in the persecution of Corfu's Jews.

2. Rhodes

The most significant document relating to the deportation of the Jews of Rhodes is an activity report dated September 22, 1944, prepared by Ic Branch of the staff of the German military "Commandant East Aegean", who was responsible for the Dodecanese islands. The report covers activities between July 1 and September 15, 1944. Part I is entitled "Enemy Activities"; Part II is entitled "Counterintelligence." Paragraph 8 of Part II reads as follows:

> Deportation of Jews: End of July 1944, deportation of Jews not having Turkish citizenship from entire command territory at instruction of High Command of Army Group E, Ic/AO. Implementation in hands of SD Greece, which detailed special detachment to command territory for this purpose. Documents

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358/ See the document cited in footnote 36; see also the interrogations of Roman Loos, 13 January 1947, M1019/43/920-25, NA, and August Winter and Bogislav von Bonin, 19 November 1946, M1019/80/77-83, NA.

> are being retained, because they are still needed. 359/ (Emphasis added.)

In other words, Lieutenant Waldheim's branch at least transmitted the order that all non-Turkish Jews be deported. The action was to be implemented by the SD, liaison with which was a responsibility of his branch.

Other documents reveal that army units under the command of Army Group E assisted both in the roundup and possibly the murder of the Jews residing on the island of Rhodes. According to the affidavit of an artilleryman named Erwin Lenz (assigned to Assault Division Rhodes) taken by American authorities for the Nuremberg trials, two SS officers arrived on Rhodes in June 1944, and engaged in lengthy discussions with the commander of the East Aegean region (and commander of Assault Division Rhodes), Major General Kleemann. 360/ Shortly thereafter, as Lenz reports, placards appeared under Kleeman's signature throughout the island, ordering the Jews of Rhodes to concentrate on the north coast of the island. 361/ That Kleemann issued such orders and that military units were to make certain that they were obeyed is confirmed by Kleeman's order dated July 13, 1944, and an order of Kleemann's Operations (Ia) Branch of the same day. 362/

359/ See the document cited in footnote 299, frame 511.

360/ Statement of Erwin Lenz, 10 May 1947, NOKW-1715, NA.

361/ Id.

362/ "Decree No. 30" signed by Kleeman and "Obligation to

(Footnote Continued)

Lenz reported that, after the appearance of the placards signed by Kleemann, he saw approximately 1,200 Jews - men, women, and children - gathered in the town of Rodi (Rodhos), where they were guarded by German soldiers, some of whom told him that the Jews were not expected to live long. 363/ Lenz reported that the Wehrmacht guards not only prevented Greek and Turkish civilians from giving the Jews food and water, but also kicked and beat any Jews who dared to turn away from the fortress wall that they were facing. 364/ Later that day, Lenz saw the Jews being loaded on old barges that were "unsuited for a long sea voyage"; German sailors informed him "that a long trip was indeed not intended, but the matter would be solved already after a few sea miles". 365/ He later heard from two sailors who had sailed with the barges that the latter had been scuttled a short distance off the coast and the Jews "left to their fate", which meant that the passengers had all drowned. 366/

(Footnote Continued)
Register on Rhodes," Commandant East Aegean, Ia, 13 July 1944, NOKW-1802, NA. To counter the dissatisfaction that participation in this action was causing among the troops, Kleeman later issued orders to his subordinate commanders to "take necessary measures to remove any doubts about the treatment of the Jewish Question": order of Assault Division Rhodes, Commander, 16 July 1944, NOKW-1801, NA.

363/ Statement of Erwin Lenz, 10 May 1947, NOKW-1715, NA.

364/ Id.

365/ Id.

366/ Id.

The integral role played by Army Group E and Lieutenant Waldheim's Ic/AO Branch in particular cannot be doubted. The action commenced with the transmittal of the deportation order by Waldheim's branch. Although the SD was apparently responsible for overseeing the enforcement of the order, General Kleemann actually carried it out with the participation of numerous Army soldiers. On August 11, 1944, the 1944, the Intelligence (Ic) branch of the staff of Commandant East Aegean reported to Lieutenant Waldheim's Ic/AO Branch that the local population had mixed reactions to the "evacuation" of the Jews. 367/ This report evidences two significant facts: first, the removal of the Jews from Rhodes had, in fact, been accomplished; second, Waldheim's Ic/AO Branch was so integral to the operation that it needed to be kept apprised of its progress.

Given Lieutenant Waldheim's job description (as detailed supra) and position as the 0 3, it is inconceivable that he would not have seen the August 11, 1944, report. This is significant because Mr. Waldheim has repeatedly insisted not only that he and his unit had no responsibility for deportations, atrocities, and other crimes, but that they did not even know of them.

Obviously, Ic/AO Branch must have known about and participated in the deportations of Jews from Greece. One of its duties was to follow developments in the Balkan countries, and it had control over the Secret Field Police (GFP), which carried out

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367/ See the document cited in footnote 299, frames 476-85.

roundups along with the SD. 368/ Moreover, since the branch controlled the GFP and was responsible for cooperation with the SD, it helped to arrange at least some of the deportations. The report of April 28, 1944, from the Ic of Corps Group Ioannina shows that deportations were reported through Ic channels and that requests were made to the branch to make arrangements with the SD. 369/ Ic reports from Rhodes likewise discuss the deportation of Jews from that island in late July 1944, and one even refers to this taking place "at the direction of Army Group E, Ic/AO." 370/

Finally, it must be remembered that the primary task of the branch was to monitor the enemy situation. Decisions by the branch on the deployment of the GFP and by the command of Army Group E on such matters as providing transport and guards for deportations could only have been made on the basis of the total picture of the situation, including the enemy situation. 371/ By

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368/ See pp. 111-12; for the participation of the Secret Field Police in deportations in March 1944, see the book by Hilberg cited in footnote 106, p. 704.

369/ See the document cited in footnote 354.

370/ See the document cited in footnote 299, frame 511.

371/ For the significance of the Ic's work see the document cited in footnote 37, pp. 19-20.

its very nature, Ic/AO Branch was thus a part of the machinery of deportation.

3. Waldheim's Response to Allegations Regarding Deportations

Waldheim of course recognizes that "Jewish deportations from Greece took place, and that they were heinous violations of human rights". 372/ In attempting to refute allegations of his own involvement, he dwells on the Salonika and mainland deportations, citing his physical absence from the scene as decisive proof. 373/ However, these particular deportations are essentially irrelevant to our discussion of this issue. It should be noted that Mr. Waldheim admits to being in Salonika in July 1943 - before the last transport took place - but says nothing about his duties at this time. 374/ Similarly, Mr. Waldheim admits to being on the staff of Army Group E in late 1943 and early 1944 - while preparations for the mainland deportations were under way. 375/ Although he is silent about his duties in late 1943, 376/ documents show that he was already the 0 3. 377/

372/ Waldheim memorandum of 1 August 1986, p. 63.

373/ Id., pp. 56-60.

374/ Id., pp. 7. 22 and 50.

375/ Id., pp. 8 and 23.

376/ Id.

377/ See the document cited in footnote 36 and Commander of

(Footnote Continued)

In light of the known involvement of the Ic/AO Branch in the preparations for deportations, Mr. Waldheim's involvement cannot be ruled out, as he claims.

In his submissions to the Department, Mr. Waldheim has not addressed the documentary evidence that the Ic/AO Branch participated in the Rhodes deportations, although this evidence has been well publicized by his accusers. As to Corfu, Mr. Waldheim does not deny that Ic/AO Branch, the Ic section, or even himself was involved. Mr. Waldheim simply states "there is no evidence, documentary or otherwise, that Dr. Waldheim or any other member of his Ic (Intelligence) section had any participation in, or even knowledge of, those deportations." 378/ In seeking to dismiss the documentary evidence that Ic/AO Branch - including its Ic section - did in fact participate in the Corfu deportations, Mr. Waldheim relies on the faulty theory of a sharp separation between the Ic and AO sections 379/ and the erroneous attribution of responsibility for political matters (in which he includes the "Jewish Question") to the AO. 380/ The implication is that the AO was solely responsible for Jewish affairs,

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(Footnote Continued)
Signal Reconnaissance 4 to High Command of Army Group E, Ic, 22 October 1943, T311/179/1103, NA; the latter document bears Waldheim's initial in the 0 3's box on the registry stamp.

378/ Waldheim memorandum of 1 August 1986, p. 62.

379/ Id., pp. 61-62; see the refutation of this argument on pp. 117-22 above.

380/ See Waldheim memorandum of 1 August 1986, p. 61-62; see the discussion on this point on pp. 117-18.

although neither Mr. Waldheim nor Warnstorff 381/ dare to admit even this degree of involvement by their branch directly.

In making this contention, Mr. Waldheim refers to the message of April 21, 1944, from Ic/AO Branch to Corps Group Ioannina, cited above, 382/ and attaches decisive significance to Hammer's signature on it. 383/ There is nothing unusual about Hammer, Warnstorff's deputy as chief of Ic/AO Branch, signing such a message, a message which Mr. Waldheim admits is "an April 21, 1944, order to Korpsgruppe Joannina from Ic/AO Branch of Heeresgruppe E." 384/ In fact, Hammer signed this order on behalf of the chief of staff, and he signed it "as authorized and as deputy". 385/ Hammer, of course, was Warnstorff's deputy, not the deputy of the chief of staff. The obvious inference is that Warnstorff was authorized to sign such an order as chief of Ic/AO Branch, the originating department, and that Hammer signed as Warnstorff's deputy.

Similarly, in discussing the April 28, 1944, report from the Ic of Corps Group Ioannina to Ic/AO Branch, which deals in part with preparations for the deportation of the Jews, Mr. Waldheim

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381/ See statement of Herbert Warnstorff of 29 May 1986 (Waldheim Document 53).

382/ See the first document cited in footnote 353.

383/ See Waldheim memorandum of 1 August 1986, pp. 60-61.

384/ Id., p. 60.

385/ See the first document cited in footnote 353.

asserts that "this report would have no bearing on the duties of the Ic (Intelligence) section of Ic/AO Branch". 386/ Aside from the groundless nature of the view that documents addressed to Ic/AO Branch - among which were reports from Ic's in the field - went first to the AO, 387/ this report actually contains sections on the "Political Situation" and "Organized Band Activity," items of obvious Ic relevance even from a strictly military intelligence point of view. Mr. Waldheim's unsupported conclusion that all the topics dealt with in the report "clearly fall within the scope of duties of the Abwehr, or AO section" 388/ is simply untenable.

In reviewing the Army Group E documents on Jewish deportations, Mr. Waldheim further attaches significance to the fact that neither he nor any other member of the Ic (as opposed to the AO section) "was ever the individual originating such a document, or designated as the recipient of such a document". 389/ This observation overlooks several facts: (1) documents were regularly addressed to Ic/AO Branch as a whole and not a specific individual; (2) by no means have all documents originating in or received by Ic/AO Branch survived; (3) the surviving copies of reports to Ic/AO Branch on the "Jewish

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386/ Waldheim memorandum of 1 August 1986, p. 61.

387/ See pp. 120-21 above.

388/ Waldheim memorandum of 1 August 1986, p. 61.

389/ Id., p. 62.

Question" come from the files of the subordinate commands and therefore do not bear the initials of receiving officers normally found on Ic/AO Branch's copies. 390/ Mr. Waldheim is also silent on the question of any role in transmitting (as opposed to "originating" or "receiving") such documents.

He also finds it "interesting to note that neither Dr. Waldheim's name or initials, nor those of other Ic officers appear on documents addressed to, or received from the SD the GFP, or the SS." 391/ This is completely false. Warnstorff's signature on a message to the Higher SS and Police leader in Greece regarding the SD has been noted. 392/ Moreover, Lieutenant Waldeim's initial does appear, in fact, on a report from the GFP as well as from one of the Abwehr units he is so insistent on dissociating himself from. 393/

In summary, Mr. Waldheim's attempt to refute the evidence of Ic/AO Branch's, and therefore his own, knowledge and participation in the deportation of Jews from the Greek islands is entirely unconvincing.

390/ See the documents cited in footnotes 299 and 354; see also Corps Headquarters of XXII (Mountain) Army Corps, Ic, to High Command of Army Group E, with attachment, 18 May 1944, T314/1458/70 and 73-74, NA.

391/ Waldheim memorandum of 1 August 1986, p. 62.

392/ See the document cited in footnote 329.

393/ See the first document cited in footnote 303 and the second document cited in footnote 304 respectively.

b. Anti-Semitic Propaganda

Subordinate to Ic/AO Branch was Propaganda Company 690. Hammer, the AO, was immediately responsible for its supervision. 394/ One of its principal duties was publishing the army group's newspaper Wacht im Südosten ("Watch in the Southeast"). 395/ However, it also conducted propaganda activities in Greece following guidelines laid down by Ic/AO Branch. 396/ The commander of the propaganda company took part in Ic/AO staff conferences. 397/ In September 1944, Army Group E began to withdraw from Greece due to the rapid advance of Soviet forces to the north through Bulgaria. In October, a special Combat Propaganda Platoon was formed to direct combat propaganda for Army Group E in Yugoslavia. This platoon was subordinate to the propaganda company and also reported to Ic/AO Branch. Other combat propaganda units were set up with subordinate commands. These units published newspapers for German troops and produced propaganda in the languages of the various armies fighting

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394/ See the document cited in footnote 36.

395/ See "Newspapers Issued to the Wehrmacht in the Southeastern Area as of June 1943," T311/178/359, NA; and "Paper Allocation of the Soldiers Newspaper Wacht im Südosten," High Command of Army Group E, Ic/AO, 23 December 1943, T311/178/343, NA.

396/ See, for example, "Guidance for Deserter Propaganda," High Command of Army Group E, Ic/AO, 13 August 1943, T311/178/352-53, NA; "Suggestions for Propaganda in Greece," High Command of Army Group E, Ic/AO, 3 September 1943, T311/178/349-51, NA; and "Guidelines for Propaganda in Greece," High Command of Army Group E, Ic/AO, 18 November 1943, T311/178/344-45, NA.

397/ See the first document cited in footnote 297.

against the army group (Russian, Bulgarian, Serbo-Croatian) for dissemination via radio and leaflet. 398/

The only available samples of propaganda produced by the propaganda units of Army Group E date from late 1944. These consist of two batches of leaflets produced in various languages by a sub-unit of the Combat Propaganda Platoon attached to the XXXIV Army Corps. These leaflets were forwarded to Ic/AO Branch, and Lieutenant Waldheim's initial on the registry stamp in the 0 3 "received" box suggests that he played a role in advance-reviewing propaganda aimed at enemy troops and perhaps in establishing guidelines therefore. It should be remembered that his office was responsible for intelligence relating to the various Balkan countries and he was the center of the branch's language expertise. 399/

The first group of leaflets was addressed to "High Command Army Group E, Ic/AO" on November 28, 1944. It consisted of samples of five leaflets, with the original German versions, which had already been produced in 80,000 copies. The covering letter stated the intention to produce more. 400/

398/ "Short Report on Combat Propaganda Activity," Combat Propaganda Platoon with the High Command of Army Group E, 28 October 1944, T311/186/639, NA.

399/ See pp. 111-12 above.

400/ "Leaflet Propaganda," Corps Headquarters of XXXIV Army Corps, Ic, 28 November 1944, T311/186/382, NA.

The second batch was addressed to "High Command Army Group E, Ic," not "Ic/AO," on December 17, 1944. 401/ It consisted of the original German versions of a large number of leaflets in various stages of preparation and the final translated versions of some. An attached list, which bears Lieutenant Waldheim's initial, indicates which leaflets were in printing, which were in translation and which were still being written. Each of the leaflets was intended to be translated into only one language; that is, the leaflets were specifically directed to individual national groups: Russians, Bulgarians, Serbs (Chetniks and Partisans separately) and Croats. 402/ Some of the Russian leaflets sought to play on anti-Semitic (as well as anti-Georgian) feelings among Soviet troops. One leaflet which was being printed in 100,000 copies spoke repeatedly of the struggle against "Yid Bolshevism", 403/ The others were still in translation (and presumably could have been stopped if Ic/AO Branch had so desired). One of these leaflets included the following declaration:

> The Jews prepared this war.
>
> Jews hung it around our necks.

401/ Combat Propaganda Platoon with Propaganda Unit Leader 690 to High Command of Army Group E, Ic, 17 December 1944, T311/186/544, NA.

402/ See "Leaflets as of 12/17/44," Combat Propaganda Platoon, T311/186/383-84, NA.

403/ Leaflet Mr. 7 with attachments T311/186/403-05, NA.

Jews do not want it to end. (Emphasis in original.) The leaflet then exhorted recipients to "smite the Jews" and desert. 404/ Others also employed anti-Semitic themes. 405/

These leaflets clearly advocated persecutorial action and Lieutenant Waldheim had some involvement with them. Moreover, these are merely the only samples which we know to have survived; propaganda activities were also carried out during the entire year and a half Lieutenant Waldheim served in Ic/AO Branch. This was a period during which, as Mr. Waldheim himself recognizes, 406/ the Jews of Greece were subjected to vicious persecution, culminating in their deportation to the killing center at Auschwitz.

1. Mr. Waldheim's Response to the Propaganda Allegations

In dealing with allegations of his involvement with anti-semitic propaganda, Mr Waldheim does not directly deny any such involvement, but rather seeks on the one hand to belittle the significance of the anti-Semitic leaflets and, on the other hand, to dissociate himself from these particular propaganda products.

404/ Leaflet Mr. 2, T311/186/410, NA.

405/ See leaflets Mr. 8 and Mr. 11, T311/186/414 and 415, NA.

406/ See Waldheim memorandum of 1 August 1986, pp. 55-56 and 59-63.

Mr. Waldheim does not contest that the leaflets in question are "anti-semitic and persecutory". He simply observes that they were only four of sixty-five and "do not represent the sole, or even dominate theme of the package" and that "[a]ccordingly, a cursory review of the document package probably would not have recognized its anti-semitic content". 407/ In any case, he notes the accompanying letters (he actually mentions only one, although both were available to him) do not request or direct approval or any other action. 408/ These letters and the attached leaflets, in fact, constitute reports to Ic/AO Branch on the activities of one of its own propaganda units. Mr. Waldheim ignores the fact that Ic/AO Branch supervised these units and played a role in setting guidelines, some of which obviously called for using anti-Semitic themes in propaganda directed at Soviet troops. These leaflets were designed to be distributed in tens, even hundreds, of thousands of copies; moreover, these were the efforts of only one sub-unit. This was obviously a major propaganda effort. A legitimate, indeed the logical, inference is that the forwarding of these letters and leaflets to Ic/AO Branch was part of a normal process of reporting and review.

Mr. Waldheim also attempts to cast doubt on whether he actually received or handled these particular leaflets. He notes

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407/ Waldheim memorandum of 24 November 1986, p. 2.

408/ Id.

that they were addressed to Ic/AO, not to him or any other individual. 409/ As discussed previously, this was standard procedure. 410/ Significant for receipt of documents are the initials on the registry stamp. Once again, Mr. Waldheim does not specifically deny that the "W" in the 0 3 box is his (he was, of course, the 0 3). Instead, he submits a report by a documents examiner which questions whether the "W" was in fact written by Waldheim. That opinion (which will be discussed below) aside, the fact that there is an initial in the 0 3 box proves that Lieutenant Waldheim's office was directly involved with these propaganda leaflets. Nor does it change the conclusion that Lieutenant Waldheim may have had even more extensive involvement in propaganda matters.

Although we have not questioned the documents examiner retained by Mr. Waldheim (James T. Miller) there appears to be good reason to take his conclusions with many grains of salt. Probably the most significant aspect of his opinion is that although "there are some general similarities between the handwriting of Kurt Waldheim and the "W" in the 0 3 blocks on [the propaganda documents] unexplained differences prevent his being identified as the writer of th initials. It appears likely that they were written by another person or persons". Based upon consultations with a United States government documents expert

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409/ Id., p. 1.

410/ See p. 135 above.

(who has testified in numerous courts regarding Nazi documents), the following important points must be made regarding the conclusions reached by Mr. Miller. First, if he was using copies of documents which are similar in quality to the copies we have in our possession (Miller states that he analyzed copies from United States National Archives microfilms, which is where we obtained our copies), his conclusion must be considered suspect. Moreover, Miller was comparing the unknown "Ws" in the 0 3 box with Waldheim's known handwriting (full words and signature) as opposed to another known "W". Such a comparison has very limited reliability, if any at all. Tellingly, Mr. Waldheim offers no explanation for Mr. Miller's failure to report on comparisons with any of the many other "Ws" which appear on documents which Lieutenant Waldheim handled.

Thus, even without further study and examination of Mr. Miller's report, it appears that his conclusion is flawed on its face.

Finally, it is worth reiterating that Mr. Waldheim's submissions to the Department do not contain any direct denial of his having initialed or otherwise handled the propaganda documents.

3. Treatment and Disposition of Allied Prisoners of War

On October 18, 1942, Hitler ordered in writing that all armed or unarmed enemy commandos, whether uniformed or not, and whether in battle or in flight, were to be "slaughtered to the last man", even if they "should apparently be prepared to give

themselves up". 411/ Hitler further ordered that commandos captured by German military authorities be turned over to the SD, 412/ presumably for execution. He specified that "[i]f it should become necessary, for reasons of interrogation, to spare one or two men temporarily, then they are to be shot immediately after interrogation". 413/ This order is known as the "Commando Order." 414/

This order was applied in the area of Army Group E. 415/ In this connection, it should be recalled that Warnstorff, the head of Ic/AO Branch of Army Group E, was responsible for cooperation with the SD and Lieutenant Waldheim, as the O 3, was the senior officer responsible for prisoner interrogation. 416/ It appears that on at least two occasions Ic/AO Branch and Lieutenant Waldheim personally participated in the disposition of captured Allied commandos.

411/ Order by the Führer, 18 October 1942, 498-PS, NA (Waldheim Document 46).

412/ Id.

413/ Supplementary order by Führer, 18 October 1942, 503-PS, NA.

414/ The Commando Order is cited in Count Two of the indictment in the High Command Case and in Count Three of the indictment in the Southeast Case: see the work cite in footnote 43, Vol. X, pp. 31-32 and Vol. XI, pp. 773-74 respectively.

415/ See entry in the war diary of the High Command of Army Group E for 16 March 1944, T311/176/724, NA.

416/ See pp. 111-12 above.

The first occasion concerned British and Greek prisoners taken in April 1944 on the island of Alimnia off the Turkish coast in the Dodecanese. On April 24, Lieutenant Waldheim received and initialed a report from the Intelligence Branch of Assault Division Rhodes, which contained information derived from the interrogation of three Greek sailors who were among those prisoners. 417/ Only two days earlier, Ic/AO Branch of Army Group F had instructed Army Group E to prepare documentation on Allied outposts in Turkish waters based on interrogation of the Alimnia prisoners and to retain live witnesses to attest to the report. 418/ In this instruction, Army Group F specifically stated that "this matter would from now on exclusively be a Ic task." 419/ On April 26, Lieutenant Waldheim's Ic/AO Branch reported back to Army Group F that further interrogation of the Alimnia commandos would be fruitless and requested a decision as to whether the prisoners should be handed over to the SD. 420/ The report also designated a Greek sailor named Lisgaris and a British radioman as potential witnesses. 421/

417/ Assault Division Rhodes, Ic, to High Command of Army Group E, Ic/AO, 20 April 1944, T311/285/1115-15, NA.

418/ Commander in Chief Southeast (High Command of Army Group F), Ic/AO, to Army Goup E, 18 April 1944, T311/285/1131, NA.

419/ Id.

420/ High Command of Army Group E, Ic/AO, to Commander in Chief Southeast (High Command of Army Group F), Ic/AO, 26 April 1944, T311/285/1182 (Waldheim Document 47).

421/ Id.

Two items in the latter document appear to confirm Lieutenant Waldheim's personal participation in this matter. First, the registry stamp reveals that this cable, as other messages relating to this matter, went to the 03 in Ic/AO Branch of Army Group F, a fact which tends to show that the cable was originated by the 03 in Army Group E's Ic/AO Branch. Second, the Greek sailor who was thought to be a potential witness (Lisgaris) was one of those on whom information was passed to the 03 of Ic/AO Branch of Army Group E, i.e. Waldheim, in the report of Assault Division Rhodes dated April 20, 1944. Since Lieutenant Waldheim had responsibility for prisoner interrogation and had received the report on Lisgaris' earlier testimony, and since the matter was handled by the 0 3 of IC/AO Branch of Army Group F, one must conclude that Lieutenant Waldheim himself handled or supervised this matter at the Army Group E level.

The available documentation leaves no doubt as to the fate of the prisoners entrusted to the custody of Army Group E's Ic/AO Branch. On April 27, 1944, Ic/AO Branch of Army Group F responded to the cable of its counterpart in Army Group E with instructions that the Greek sailor and the British radioman be held under "closest guard" and that the remaining prisoners be "turned over to the SD" for interrogation and "special treatment [i.e., execution] in accordance with the Fuhrer Order [i.e., the

Commando Order]". 422/ Finally, on June 6, 1944, Ic Branch of the Wehrmacht Operations Staff informed Ic/AO Branch of the Commander in Chief Southeast (Army Group F) that since the reports on Allied outposts in Turkish waters were sufficient to present to the Turkish authorities without the support of witness testimony, the Greek sailor Lisgaris and the British radio operator were "no longer needed", and would be "released for special treatment in accordance with the Führer Order". 423/ Significantly, the registry stamp of Army Group F indicates that the document went exclusively to the 0 3 in Ic/AO Branch in that army group. 424/ The expression "special treatment" was a standard Nazi euphemism for killing.

Lieutenant Waldheim's office dealt with British commando matters within another context in July 1944. In April 1944, an order issued jointly by Ia and Ic/AO Branches ordered subordinate units to send prisoners for interrogation at the High Command of Army Group E (presumably Ic/AO Branch) in all cases of doubt about their membership in commando units. The decision about their treatment according to the Führer's order would then be

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422/ Commander in Chief Southeast (High Command of Army Group F), Ic/AO, to Army Group E, Ic/AO, 27 April 1944, T311/285/1181 and 1188 and NOKW-227, NA (Waldheim Document 48).

423/ High Command of the Wehrmacht, Wehrmacht Operations Staff, Ic, to Commander in Chief Southeast, Ic, 4 June 1944, T311/285/1187 and NOKW-227, NA (Waldheim Document 50).

424/ Id.

made by Army Group E. 425/ A report by Ic/AO Branch, Army Group E, initialed "W" and dated July 18, 1944, illustrates the procedure. Three British commandos, including one American citizen who was a medic, were captured after a battle on the island of Calino, also in the Dodecanese, on the night of July 1-2, 1944, 426/ Ic/AO Branch reported on July 18 that the Britons, who had been wounded, were flown to Athens on July 5 and that one had died there in the hospital while the other, after interrogation, would be "handed over to the SD in accordance with the Fuhrer Order". 427/ The American medic, however, was interrogated by Army Group E at Salonika on July 17 and was then sent to a POW camp in Germany since, contrary to the report of the German commander on Calino, he was now adjudged to be a non-combatant. 428/ Ic/AO Branch's evaluation was thus vital in deciding the fate of this and perhaps other, unfortunate prisoners.

As noted earlier, Hitler's order of October 18, 1942, required the elimination of captured commandos either directly by the Wehrmacht or indirectly by transfer to the SD for special

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425/ See entry in the war diary of the High Command of Army Group E for 13 April 1944, T311/176/829-30, NA.

426/ "English Commando Operation against the Island of Calino on the Night of 7/1-2/44," High Command of Army Group E, Ic/AO, 18 July 1944, NOKW-1719, NA.

427/ Id.

428/ Id.

treatment. 429/ On two known occasions, described above, commandos were interrogated and ultimately sent to the SD for execution with the knowledge and participation, if not at the recommendation, of Ic/AO Branch of Army Group E. 430/ Ic/AO Branch was responsible for liaison with the SD. 431/ Moreover, since the 0 3 of Ic/AO Branch, Lieutenant Waldheim, had responsibility for prisoner interrogations 432/ and since, judging by the available documentation pertaining to the interrogation and disposition of the Alimnia commandos, this affair was in fact handled by the 0 3s of Army Groups E and F, 433/ it is difficult to escape the conclusion that either Waldheim himself, or Lieutenant Poliza, an English interpreter supervised by Waldheim, personally handled the matter at least within the branch. 434/ Since, in addition to any other considerations, Waldheim apparently initialed the report on the Calino commandos, there can be little doubt that the 0 3, who handled the Alimnia commandos, also handled the Calino commandos at the Army Group E level. All but one of the commandos known to have been handled

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429/ See pp. 143-44 above.

430/ See pp. 145-48 above.

431/ See p. 110 above.

432/ See p. 112 above.

433/ See pp. 145-47 above.

434/ See the document cited in footnote 36 and the statement by Helmut Poliza, 29 May 1986 (Waldheim Document 54).

by Ic/AO Branch were turned over to the SD for execution. The documents leave little doubt that Lieutenant Waldheim, in the normal course of his duties, participated in this process.

a. Waldheim's Response to Allegations Regardind Allied POWS

Mr. Waldheim has flatly and consistently denied any involvement in the handling of prisoners generally, and of captured commandos in particular. 435/

The dubious nature of Mr. Waldheim's unequivocal disclaimer of involvement with prisoners has already been shown in connection with his service as 0 2 (Quartermaster) in western Bosnia. 436/ His involvement with prisoners during his service as 0 3 on the staff of Army Group E is even better documented. Lieutenant Waldheim's responsibility as 0 3 for "prisoner interrogation" has previously been discussed. 437/ This responsibility may have even gone beyond the actual interrogation process. For example, on October 17, 1943, less than two weeks after arriving at Army Group E headquarters, Lieutenant Waldheim directly informed Brigadier General Winter, the Chief of Staff, by telephone of a Luftwaffe report on the taking of British prisoners on the island of Levitha in the Dodecanese. Ten

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435/ See Waldheim memoranda of 6 April 1986, pp. 5-6; 1 August 1986, p. 63; 31 October 1986, p.7; and 19 December 1986, p.8.

436/ See pp. 46-49 and 54-62 above.

437/ See pp. 112 and 145-48 above.

minutes later, after consulting with General Löhr, Winter instructed Waldheim to request the Luftwaffe to pick up the prisoners. 438/ Lieutenant Waldheim was specifically identified as the officer with whom General Winter was in contact. The available documentation does not make clear whether these prisoners were brought to Salonika for interrogation, but it does make clear Lieutenant Waldheim's direct and personal involvement - at the very highest of levels - with a particular group of prisoners. It also shows him acting as liaison with another command (in this case the Luffwaffe) regarding prisoner interrogation. So much for the categorical denial of "any involvement in the handling of prisoners."

In seeking to dissociate himself from captured Allied commandos in particular, Mr. Waldheim asserts that he had "no responsibility for the conduct of prisoner interrogations". 439/ He has even claimed that, to the best of his knowledge, no prisoner interrogations were carried out at Army Group E headquarters, since military practice called for such interrogation to be conducted at the corps and division levels. 440/ To back up these assertions he cites a General Staff handbook and the statement he has obtained from his former subordinate

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438/ See the document cited in footnote 307.

439/ Waldheim memorandum of 1 August 1986, p. 64.

440/ Waldheim memorandum of 6 April 1986, p. 6.

Poliza. 441/ However, the handbook explicitly assigns primary responsibility for prisoner interrogation to the army level of command. 442/ Since Army Group E had no subordinate field armies, but only corps, it is reasonable to assume that in this case the army group, in the shape of its Ic/AO Branch and O 3, assumed this primary responsibility. That Poliza should want to distance himself from the personal conduct of interrogations is understandable since, aside from any other consideration, he was himself an English interpreter. 443/ In fact, prisoner interrogation and the shortage of appropriate interpreters was a matter of general concern in Ic/AO Branch, 444/ and available documents clearly demonstrate the branch's involvement with specific groups of prisoners, aside from the commandos discussed above. For example, on May 6, 1944, four British soldiers were captured near Ioannina. That same day, the Ic of the XXII Mountain Corps turned these prisoners over to the Field Gendarmerie for escort to "Army Group E, Ic Branch in

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441/ Waldheim memorandum of 1 August 1986, p. 64.

442/ See document cited in footnote 37, pp. 24-25.

443/ See the document cited in footnote 340.

444/ See "Results of Discussions during Visits to Ics," T311/189/357-77, NA.

Salonika". 445/ The XXII Mountain Corps Ic also sent the prisoners' papers and noted in an accompanying report that the prisoners had refused to make any statement beyond giving personal data. This report discussed in detail the further information which should be obtained from them. 446/

Even more directly confirming Lieutenant Waldheim's personal involvement with interrogations is the case of certain prisoners taken in July 1944. In its evening report for July 15, which bears Waldheim's signature, Ic/AO Branch noted that the XXII Mountain Corps had captured seven Britons. 447/ The branch's activity report for July 1944, apparantly initialed by Waldheim, subsequently indicated that during that month it had interrogated captured members of the "Anglo-American Military Mission in Greece". 448/ These were quite possibly the same prisoners reported on July 15. In this connection it should be noted that Army Group E was under instructions to accord the same treatment as either resistance fighters (i.e. deportation as slave

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445/ Corps Headquarters of XXII (Mountain) Army Corps, Ic, to Field Gendarmerie Troop 422, 6 May 1944, RH24-22/22, Bundesarchiv-Militärarchiv, Freiburg, FRG.

446/ Corps Headquarters of XXII (Mountain) Army Corps, Ic, to High Comand of Army Group E, 6 May 1944, T314/673/726-27, NA.

447/ "Ic Evening Report of High Command of Army Group E for 15 July 1944," High Commad of Army Group E, Ic/AO, 15 July 1944, T311/181/153-54, NA.

448/ "Activity Report for the Month of July 1944," Army Group E, Ic/AO, 1 August 1944, T311/186/341-42, NA.

labor) 449/ or commandos (i.e. "special treatment" by the SD) 450/ to members of Allied military missions. 451/ Be this as it may, Mr. Waldheim's denial of any connection between either himself or Ic/AO Branch and the conduct of prisoner interrogations is clearly contradicted by the evidence.

This is not to say that Lieutenant Waldheim necessarily directly participated in, as opposed to supervising, the conduct of prisoner interrogations. However, he may well in fact have so participated. His principal foreign language was Italian, and hundreds of Italians fighting with the Greek resistance were captured by Army Group E. 452/ Moreover, Ic/AO Branch was so concerned about the shortage of Greek interpreters that it organized a special course in modern Greek for German military personnel who had studied ancient Greek. 453/ Waldheim had himself studied ancient Greek at the gymnasium. 454/

In any case, direct participation in the conduct of the interrogations by either Lieutenant Waldheim or Ic/AO Branch is not the only issue raised by the treatment of captured commandos

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449/ See pp. 162-63 below.

450/ See p. 144-45 above.

451/ See the document cited in footnote 444.

452/ See, for example, the document cited in footnote 447.

453/ See the dpcument cited in footnote 444.

454/ See Waldheim's graduation certificate from the Real-und Obergymnasium in Klosterneuburg, 27 June 1936, (Waldheim Document 66).

although such participation by at least the branch is indicated with one of the Calino commandos. 455/ The issue is rather the evaluation of the interrogation reports to determine whether and when individual commandos were to be handed over to the SD for special treatment. The documents cited above demonstrate that Ic/AO Branch, and Lieutenant Waldheim personally, played precisely this role in the cases of the Alimnia and Calino commandos. 456/ It should also be remembered that Ic Branch of Operations Staff Western Bosnia played a similar role by having captured Partisans executed after interrogation. 457/

In fact, Waldheim admits that it was his responsibility "to report information from interrogations conducted by others, but only to the extent that the interrogation resulted in the obtaining of military information." 458/ Indeed, many reports have been found in the United States National Archives in which Lieutenant Waldheim reports to his superiors information obtained from prisoners through interrogation. 459/ However, he claims that even a "cursory examination" of five selected documents on the Alimnia commandos "reveals that there is absolutely no

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455/ See pp. 148-49 above.

456/ See pp. 146-49 above.

457/ See pp. 58-59 above.

458/ Waldheim memorandum of 1 August 1986, pp. 64-65.

459/ See, for example T311/183/569; T311/183/594; T311/183/578; T311/186/1035; T311/186/0909; T311/185/0144; T311/183/759; T311/183/614 and T311/183/594.

indication that any of the documents originated with, were directed to, were received by, or were acted upon" himself, specifically noting that none bear his signature or initial. 460/ Such an argument can only be viewed as disingenuous. Aside from ignoring the clear indications of Ic and O 3 involvement contained in these very documents, Mr. Waldheim fails to mention other readily available documents, especially the interrogation reports of April 20 and July 18, 1944, apparently initialed by him. 461/ These two documents alone refute his statement that "there is nothing in those documents to contradict [his] continuing assertion that he was never involved in these matters." 462/

The reason for the apparent unavailability of additional similar documentation is clear: in September 1944, the AO of Army Group E, who was responsible for security, ordered that all materials relating to commandos and Allied military missions be destroyed. 463/ The two documents just cited are preserved in the records of Army Group F. 464/

460/ Waldheim memorandum of 1 August 1986, p. 64.

461/ See the documents cited in footnotes 417 and 426 respectively.

462/ Waldheim memorandum of 1 August 1986, p. 64.

463/ See the document cited in footnote 8.

464/ See the documents cited in footnotes 417 and 426 respectively.

Mr. Waldheim also again seeks to foist culpability on the AO, supposing that since the latter was responsible (he claims) for dealing with the SD, any liaison with the SD regarding the delivery of prisoners would have been performed by the AO section as opposed to the Ic. 465/ However, as has been discussed previously, the Ic, Warnstorff, not the AO, was responsible for liaison with the SD. 466/ Moreover it is important to reiterate that liaison with the SD is far from being the only matter connected with the delivery of commandos for special treatment, although Lieutenant Waldheim certainly could have served as liaison, a function he performed with the Luffwaffe in the case of the Levitha prisoners. 467/

Mr. Waldheim also puts forth a backup line of defense regarding his involvement with captured Allied prisoners or commandos (an involvement which he steadfastly denies but which is established by the documentation). In essence, he argues that even if he had, in fact, been involved in such activities it would not constitute persecution under the Holtzman Amendment (although he concedes that treatment of commandos might have been a war crime):

> "Even if Dr. Waldheim had been involved in the delivery of captured Allied commandos to the SD, such activity would not constitute persecution. The initial part of the commando order is a lengthy recitation of the military activities of

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465/ Waldheim memorandum of 1 August 1986, p. 65.

466/ See pp. 110 and 118-20 above.

467/ See pp. 150-51 above.

> the Allied commandos against German forces. The purpose of the Commando Order was to respond to the military threat posed by the commandos. Therefore, it is clear that the Commando Order had a military motive and a military objective rather than a persecutory motive or objective. 468/

Waldheim's attempted defense and justificaton of the Commando Order is identical to the one originally advanced by the defendants in the High Command Case, where the legitimacy of the Commando Order was squarely at issue. The Court had little difficulty in assessing the order and ruled that the Commando Order was "criminal on its face". 469/ It is, to say the least, disturbing that Mr. Waldheim, a lawyer, long-time diplomat and self-proclaimed champion of human rights, would seek to justify such an order.

In any case, Mr. Waldheim asserts that his participation in the elimination of captured British commandos and prisoners of war, even if proven, possibly constituted a war crime but cannot be a basis for his exclusion under 8 USC §1182(a)(33). The assertion that war crimes may not also constitute acts of persecution simply will not wash. At the Nuremberg Trial, 6 F.R.D. 69, 130-31 (I.M.T. 1946), the International Military Tribunal (of which the United States was a member) recognized that war crimes - icluding the "murder or ill-treatment of prisoners of war" and the "killing of hostages" - were also often

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468/ Waldheim memorandum of 1 August 1986, p. 65.

469/ See the volume cited in footnote 43, p. 527.

"crimes against humanity" (i.e., crimes of persecution). Moreover, in its successful prosecution of Adolf Eichmann, the government of Israel charged that his role in the persecution and extermination of Jews, Gypsies, and Slavs was not only a crime against humanity but also a war crime. 470/ Finally, in its own prosecutions, OSI has established that acts of persecution and war crimes are often one and the same. In Matter of Kulle, Interim Decision 3002 (BIA 1985) (7th Cir. filed February 24, 1985) appeal docketed, No. 86-1277, the respondent, a former concentration camp guard at Gross-Rosen, was found to have participated in the persecution of prisoners, including prisoners of war. Some of those POWs were captured Soviet soldiers who were brought to Gross-Rosen and executed, an atrocity predicated on the national (i.e., Russian) origin of the victims. Similarly, in Matter of Maikovskis, File N. A BIA August 14, 1984, 8-195466) aff'd 773 F.2d, 435, (2nd Cir. 1985), the respondent's participation in the reprisal burning of a Russian-populated village - i.e., a war crime - was held to constitute participation in persecution under 8 USC §1182(a)(33). Thus, participation or assistance in the handing over of Allied commandos for execution was not only a possible war crime but also an act of persecution.

470/ D. Lasok, "The Eichmann Trial," 11 INF'L & COMP. L. QUARTERLY 355, 356 (1962).

4. Anti-Guerrilla Warfare

During the period of Lieutenant Waldheim's service as O 3, Army Group E continued, of course, to conduct anti-guerrilla warfare, first in Greece and later in Yugoslavia. Until late 1944 almost all of the army group's actual combat operations were in fact directed against the various indigenous resistance forces (Communist and non-Communist). These resistance forces would therefore have been a primary focus of Waldheim's work as an intelligence staff officer.

Nazi policy in anti-guerrilla warfare has already been discussed and will be discussed further below. At this point, however, it is necessary to emphasize the importance of the role which Ic/AO Branch played in the execution of this policy. On the one hand, the enemy intelligence provided by the branch was essential to the High Command of Army Group E in planning and carrying out anti-guerrilla operations with all their attendant atrocities. On the other hand, the branch also formed a vital link in the system of command and control through which reprisals were instituted in response to guerrilla activity. That is, the reporting of guerrilla activity (an intelligence function) and the reporting of retaliatory measures (an operations function) were both essential to permit commanders at the Army Group E level and higher to monitor the execution of the orders on

reprisals. 471/ Ic/AO Branch was thus an integral part of the Nazi machinery of repression in Greece, and later Yugoslavia.

a. Greece, Fall 1943 - Fall 1944

The spirit, if not the letter, of Nazi anti-guerrilla warfare policy in Greece during this period was the same as that already encountered in Yugoslavia. 472/ On August 10, 1943, General Löhr, who was at that time still Commander in Chief Southeast, issued an "Order on Treatment of Prisoners and Deserters in Guerrilla Warfare and Evacuation Measures." This order superseded his order of October 28, 1942, discussed above, 473/ and directed that pursuant to a Führer order on the importation of labor, all captured "bandits" were to be deported to the Reich. Exceptions (i.e., prisoners could still be shot) were possible "only if the combat situation does not permit a deportation." Löhr also noted that the seizure of individual "bandits" for intelligence purposes for the Abwehr, SD and GFP was still necessary. Deserters were not to be counted as prisoners and were therefore no longer to be shot.

Reprisal measures were "to be executed as heretofore with most severe means, if an inimical attitude is discernible in the population." In territories occupied by "bandits" the arrest of

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471/ On the importance of the intelligence function, see the document cited in footnote 37, pp. 19-21.

472/ See pp. 35-38 and 88-89 above.

473/ See p. 88 above.

hostages from all strata of the population was recommended as a successful means of intimidation:

> Furthermore, it may also be necessary to seize the entire male population, insofar as it does not have to be shot or hanged on account of participation in or support of the bandits and insofar as it is capable of work, and bring it to the prisoner collecting points for further transport to the Reich.
>
> Surprise attacks on German soldiers, damage to German property, must be retaliated against in every case with shooting or hanging of hostages, destruction of the surrounding localities, etc. [Emphasis added.]

Reprisal measures were to be ordered by division or independent regimental commanders to prevent excesses by subordinates and "an incorrect, unjust treatment of the population". Finally, in areas especially important for the conduct of operations, the male inhabitants between the ages of 15 and 60 were to be evacuated and used as labor either locally or in the Reich. 474/

The severity of reprisal measures was to some degree lessened by a further order issued on December 22, 1943 by General Löhr as deputy for the new Commander in Chief Southeast. This order began by noting that the Führer had ordered unified counteraction "against the Communist danger in the Southeast" and went on to explain that for political reasons the usual reprisal

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474/ "Order on Treament of Prisoners and Defectors in Band Warfare, Reprisal and Evacuation Measures," Commander in Chief Southeast, simultaneously entrusted with the command of Army Group E, 10 August 1943, NOKW-155, NA. This order was cited in Count Four of the indictment in the Southeast Case: see the volume cited in footnote 43, p. 775.

measures could no longer be used. The basic principle was now to be to catch the actual perpetrators of attacks and acts of sabotage and to resort to reprisal measures only when they could be expected to prevent future attacks. The order emphasized, however, that the previous regulations were still valid for the conduct of the troops in battle. The order set out in detail the procedure for applying reprisal measures: reprisals could be taken only when the perpetrators had not been caught within 48 hours in cases of sabotage against militarily important installations or non-combat, politically motivated attacks against German or collaborationist personnel causing death or injury. The scale of the reprisal was to be determined in each individual case. The reprisals measures themselves consisted of shootings or hangings, destruction of dwellings, and fines or arrest. Only German commanders at division level or above had authority to order reprisal for attacks against combat troops. This was to be done in agreement with the German military administrative authorities, who were also responsible for ordering reprisals for all other types of attacks. The SD and Abwehr were to participate in the selection of reprisal victims and hostages as appropriate. Victims were not to be chosen blindly but rather from among persons who could be considered to have cooperated overtly or covertly with the perpetrators of particular attacks. If no such persons were available, victims were to be chosen from among those who could be considered co-responsible, especially Communists. The taking of hostages against whom reprisals could later be taken was again re-

commended. 475/

An attachment to this order specifically recommended the sending of individual agents into villages to discover "the unreliable elements." Special actions could then be carried out to arrest the inhabitants and "eliminate the guilty." 476/

As O 3 Waldheim was certainly aware that reprisals continued to be carried out in areas under the control of Army Group E. In fact, one of the most important documents on Nazi atrocities in Greece passed through his hands. On January 8, 1944, the Military Commander in Greece sent a report to Army Groups E and F in which he chastised the combat commanders for the random and politically counterproductive brutality of reprisals in southern Greece. Attached to the report was a letter of the chief of the Nazi collaborationist Greek government which stated that Wehrmacht units had massacred, largely in reprisals, over 1,200 persons, including women and at least 42 children under 15 years of age. The top secret report was received by Ic/AO Branch of Army Group E and specifically by the O 3 - that is, Lieutenant Waldheim, whose "W" initial is on the registry

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475/ "Reprisal Measures," Commander in Chief Southeast (High Command of Army Group F), 22 December 1943, T501/267/33-36, NA.

476/ "Attachment to: C in C Southeast (High Command, AG F) Ia/F. No. 296/43 secret of 22 December 1943," T501/267/32, NA.

stamp. 477/ Reprisal measures in Greece were reported through Ia channels as late as August 1944. 478/

Moreover, the role of the SD and Abwehr in the selection of reprisal victims and hostages raises the possibility that, as in the deportation of Jews, Ic/AO Branch and Waldheim personally may have been involved in organizing these measures. In fact, in May 1944 Ic/AO Branch specifically recommended that influential Maltese on Corfu be taken hostage to guarantee good behavior toward the German garrison in connection with a proposal to deport military-aged Maltese to the Reich as slave labor. 479/

477/ See the first document cited in footnote 304. At least one of the incidents described in this document, the massacre at Kalavritha, is cited in Count Two of the indictment in the Southeast Case: see the volume cited in footnote 43, p. 771. Counts One and Two in the Southeast Case contain numerous examples of atrocities committed by troops of the XXII Mountain Corps and LXVIII Army Corps, both of which were subordinate to Army Group E: Id., pp. 765-72. Hubert Lanz and Helmuth Felmy, the former commanders of these units, were convicted in this case and sentenced to twelve and fifteen years imprisonment respectively: Id., p. 1319.

478/ See, for example, "Daily Report of High Command of Army Group E to Commander in Chief Southeast (High Comman of Army Group F) for 8/14/44)," High Command of Army Group E, Ia/0 1, 14 August 1944, NOKW-935, NA; this particular reprisal, on Crete, was reported just three days after Ic/AO Branch, in a report signed by Waldheim, noted guerrilla activity in the area: "Ic Evening Report of High Command of Army Group E for 8/11/44," High Command of Army Group E, Ic/AO, 11 August 1944, NOKW-935, NA. This incident illustrates the vital role of Ic/AO Branch in the integrated German command structure as discussed on pp. 160-61 above.

479/ High Command of Army Group E, Ic/AO, to Corps Group Ioannina, 1 May 1944, T-314/1458/57, NA.

The establishment of a network of agents in the villages is also clearly an intelligence function and may have been organized by the Ics of field units or the Abwehr. In either case, such an operation, leading to the "elimination" of suspected guerrilla sympathizers, would undoubtedly have been supervised by Ic/AO Branch.

Lieutenant Waldheim also knew that large numbers of resistance fighters were being captured, 480/ and he presumably used reports on their interrogations to prepare his daily reports. 481/ The available documents contain no direct evidence regarding immediate involvement of Ic/AO Branch with these prisoners, although it must be assumed that it played some role in connection with their interrogation, a roll which may have been similar to that in the case of commandos. However, the fact that the branch complained of a lack of Greek interpreters is at least indirect evidence that it conducted its own interrogation of Greek prisoners in Salonika. 482/ In addition, Abwehr troops and the GFP, who were under the direction of Ic/AO Branch, seized individual resistance fighters for intelligence purposes, and Löhr's August 1943 order is unclear as to whether such prisoners

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480/ See, for example, the document cited in footnote 447.

481/ See pp. 113 and 155 above on the use of prisoner interrogation reports.

482/ See the document cited in footnote 444.

were still to be shot or deported for labor. 483/ Ic/AO Branch was thus in all likelihood involved in the process by which prisoners were either shot or sent to the Reich as slave labor.

1. Mr. Waldheim's Response to Allegations Concerning Greece

In his submissions to the Department, Waldheim has not directly addressed the issues raised by Army Group E's conduct of guerrilla warfare in Greece. Indeed, he can hardly deny being an integral part of the central operational command staff of a military organization which routinely shot prisoners, took murderous reprisals against civilians - including women and children - and put whole segments of the population to forced labor. He has not denied knowledge of these activities but he would presumably seek to distance himself as O 3 from them by employing his "AO" and "prisoner" defenses, both of which have already been shown to have no merit whatsoever. 484/

b. Yugoslavia, Fall 1944

In early September 1944, as Army Group E was preparing to withdraw from Greece, the area was declared a "combat zone." This entailed the abolition of the German military administrative structure in Greece and the transfer of executive authority to the combat commands, i.e., Army Group E and its subordinate units. In addition to this change in command structure, Army

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483/ See the document cited in footnote 474.

484/ See pp. 117-22 and 150-57 above.

Group E also shifted from anti-guerrilla warfare in an occupied country to conducting essentially rear-guard actions during a phased withdrawal through hostile territory. In the course of this withdrawal, the scene of the army group's operations quickly moved from Greece to Yugoslavia, where the staff arrived in mid-October. 485/

All of these factors would have necessitated a change in the guidelines on reprisals, in which the German military administration in Greece had hitherto played a considerable role. By October 1944, the highest level of authority from which authorization for reprisals could have been obtained by field units -- at least in Macedonia -- was the High Command of Army Group E, where Waldheim served as the 0 3. 486/ According to testimony gathered by the Yugoslav State Commission on Ascertaining the Crimes of the Occupiers and Their Collaborators, Lieutenant Waldheim was an active participant in the formulation and implementation of these new guidelines.

485/ On the change in command structure, see High Command of Army Group E, Ia/Id, to Military Commander Greece and Higher SS and Police Leader Greece, 6 September 1944, T311/181/1089-90, NA. Waldheim says that the move was made on October 13-14, himself and other officers flying to Yugoslavia on the first day; see Waldheim memorandum of 6 April 1986, p. 9 and memorandum of 1 August 1986, pp. 10, 24 and 70. According to the war diary of Army Group E, the main flight was on October 14: see entry for October 14, T311/183/68, NA.

486/ See the first document cited in footnote 485.

In a statement on December 17, 1947, Johann Mayer, a former clerk in the IIa (Officer Personnel Branch) of the staff of Army Group E) 487/ said in part:

> Lt. Waldheim's job was to propose to his superior, Lt. Col. Warnstorff, all actions by Ic Branch and to work up all the written reports for that purpose. These reports had to do with the question of hostages, retaliation measures, and behavior with regard to war prisoners and the civilian population. I am aware of the fact that at the time when we, or when Army Group E came from Greece into Yugoslavia--I mean, a short time before that, a general regulation was issued according to which all retaliation measures, hostage questions, etc., were not from then on, as in the past, to depend on decisions of the field commanders and other troop commanders, but on Army Group E, that is, on its Ic staff specialists. . . .
>
> I am aware of the fact that during the course of our withdrawal from Greece an order was issued according to which it was ruled that in the retaliation measures would be relaxed, and that in that way victims would no longer be shot in a ratio of 100:1 but in a ratio of 10:1, and that houses would likewise be burned in such cases. . .
>
> As a rule, the following actions preceded the issuance of an order: proposals would be worked up by Lt. Waldheim and submitted to his superior, Lt. Col. Warnstorff; in case the latter agreed, he forwarded them for approval to the Chief of the General Staff, General Richberg, on whose decision the validation of such orders depended. In trivial cases, where no matter or principle was involved, Lt. Col. Warnstorff himself could make the decision. 488/

Mayer's statement found confirmation in the December 18, 1947, statement of Major Klaus Mellinghoff. Mellinghoff was Löhr's personal special missions staff officer after the move

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487/ See the statement of Hans Haller, 15 April 1986 (Waldheim Document 6) and the document cited in footnote 331, p. 5.

488/ Id.

from Greece to Yugoslavia and was therefore in a position to be well informed. In pertinent part, Mellinghoff stated:

> I am aware, moreover, of the fact that Hitler's initiative and his wishes for ruthless retaliation measures against the civilian population were forwarded through the competent headquarters in the German High Command down to the troops themselves. Consequently I consider that the misdeeds done by individual troop units in Macedonia and Bosnia were performed on the basis of such directives. It is possible that in Army Group E they acted in conformity with the terms of the highest orders. This is also valid for the sphere of activity of Ic Branch.

Like Mayer, Mellinghoff specifically identified "Lieutenant Waldheim" as Warnstorff's special mission staff officer and assistant in the branch. 489/

In his testimony, Mayer mentioned two specific reprisals carried out by Army Group E in Yugoslavia, explicitly stating that the Ic section and Waldheim personally took part in the implementation of reprisal orders and worked closely with the SD for this purpose:

> I am aware that on one occasion in Sarajevo certain civilians were killed; it was a question of German soldiers who had deserted and formed an anti-fascist organization, and orders for shooting them were issued by Section Ic, on the basis of information from the Gestapo . . . This order was sent by the chief of the general staff and the commander of the Army Group. This was in November/December 1944.
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> I am aware of the fact that at the time of our withdrawal from Strumica the 22nd Grenadier Division was operating under General Friebe, and that this division carried out various reprisals against the civilian population there. We well knew that divisions which were the last of our troops to withdraw--in the tail, so to

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489/ Id., pp. 5 and 6; for confirmation of Mellinghoff's identity see his file from the German Office for the Notification of the Next of Kin of the Fallen of the Former German Wehrmacht (WASt), Berlin.

speak--carried out retaliation measures as a means of intimidation. All these retaliation measures had to come as the result of an agreement with the staff of the Army Group. . . .

Ic Branch worked hand in hand with the SD (Security Police) and for this cooperation Captain Fuhrmann was detailed from our Ic Branch with the Gestapo. Fuhrmann was the executive authority for all the reprisals that were ordered by the Army Group; that is, he was the person who organized the Einsatzkommandos [task forces].

It was known in Army Group E that during the retreat various reprisals and retaliation measures were carried out. . . . It was generally known that these reprisals and retaliation measures were carried out in the area of eastern Bosnia. During the whole time of the retreat I never saw a single war prisoner, except one Bulgarian soldier in Prishtina. Otherwise nothing was heard of prisoners.

Consequently I will state that the cases I mentioned in Macedonia and in Bosnia were carried out under direct orders of Ic Branch, that is, from its competent officers, Waldheim and Warnsdorf [sic], with the approval of the Chief of the General Staff. 490/

The Yugoslav commission accordingly had before it testimony that Lieutenant Waldheim and his branch participated in the formulation and implementation of reprisal orders.

On the basis of its own detailed analysis, the commission had reached general conclusions regarding the culpability of staff officers which were similar to those of United States Military Tribunal V, already cited. 491/ It accordingly found

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490/ See the document cited in footnote 331, pp. 5-6; Captain Fuhrmann, the commander of a front reconnaissance (Abwehr) detachment (see p. 119 above), in fact had his own battle group; see entries for October 21 and 23, 1944, in the war diary of Army Group E, T311/183/95-96 and 106 respectively.

491/ See the document cited in footnote 331, pp. 1-5; cf. pp. 32-33 above.

the testimony of Mayer and Mellinghoff to be entirely credible. This credibility was reinforced by earlier, apparantly unrelated, testimony of Captain Karl-Heinz Egberts-Hilker, the former commander of the reconnaisance battalion of the 22nd Infantry Division. Hilker was subsequently executed for reprisals in the area of Kochane and Stip in Macedonia at the end of October 1944 which resulted in the death of 114 civilians. 492/ Hilker stated:

> There was an order from the Führer, which I think was published with a signature when we came into Yugoslavia, according to which it was ordered that in case of an attack on our unit by armed civilians, the dwellings these civilians lived in were to be burned, and the entire male population between 10 and 60 years of age was to be killed. I do not know whether it was ordered in this or some other order connected with it that 10 civilians were to be killed for every German soldier [killed]. It stated further in this order that commanders would be brought before a court martial if they did not execute it.

Egberts-Hilker thus made it clear that at least general orders on reprisals were received from above, mentioning the same 10:1 ratio referred to by Mayer. Indeed, Mr. Waldheim concedes that "operational decisions" were being made on the basis of his written reports, 493/ and that his reports on the Kocane-Stip area "may have been misused" and may have "result[ed]" in "misuse." 494/

492/ See Waldheim memorandum of 1 August 1986, p. 68 and the document cited in footnote 331, p. 7.

493/ Waldheim memorandum of 12 April 1986 of p. 2.

494/ Waldheim memorandum of 1 August 1986, pp. 73-74.

The reprisals taken at Sarajevo mentioned by Mayer and in the Kochane-Stip area under the direction of Egberts-Hilker proved to the commission that the reprisal orders, which Waldheim helped to formulate and implement, were in fact carried out. The commission therefore found Lieutenant Waldheim responsible not only for these two reprisals, but for many others as well, namely:

--the crimes of the 297th Division in Macedonia, whose troops burned the villages of Svinishta and Openica in retaliation for an attack on them, and killed a number of people;

--in May 1944 they broke into the village of Popoec and burned it on the pretext that there were supplies for the partisans in it, etc.;

--the crimes of the troops of the 41st Division in Macedonia; in September and October 1944 they shot the civilians in many villages, and partially or completely burned these villages, namely:

--the village of Smolare, where 4 persons were shot;

--the village of Gabrovo, where 24 houses were burned and 2 people shot;

--the village of Petrovo, where 46 buildings, that is, dwellings and their outbuildings, were burned, and 5 people killed;

--the village of Rusinovo, which they completely burned;

--the village of Radoviste, which they partially burned;

--the village of Zleshevo, which they partially burned;

--the village of Zubovo, where 9 people were shot, etc.;

--the crimes of the 22nd Infantry Division in eastern Bosnia at the beginning of 1945. In this area they burned villages and shot civilians living in them, such as:

--the village of Glumin, where they burned most of the houses and shot 11 people;

--the villages of Kozluk and Tabanovichi, where they burned most of the houses and shot 64 people;

--the village of Snagovo, where they killed 8 people;

--the village of Colopak, where they burned 6 houses and killed 12 people;

--the village of Divich, where they shot 7 people;

--the village of Kostirjev, where they shot 6 people, etc.;

--the crimes of the 181st Division in Montenegro;

and many other crimes which were committed by the troops of Army Group E in Yugoslavia, which prove that the cited orders, which were worked out in detail with the cooperation of Ic Branch of the staff of that army group, and specifically with the cooperation of Lt. Waldheim, were actually carried into effect, which increases all the more the responsibility of those who issued them, interpreted them, and transmitted them to subordinate commands. 495/

On December 18, 1947, the State Commission issued a formal "decision" that Waldheim, who was described as an Abwehr officer in the Ic section, was responsible for "killings and massacres - shooting of hostages - intentional destruction and devastation of property by burning of settlements etc." on the basis of Article 3, Section 3 of the Yugoslav Law on Crimes against the People and State in connection with the provisions of Articles 23b, 23c, 23g, 46, and 50 of the Hague Convention of 1907 and the provisions of Article II, Section 16 of Control Council Law No. 10

495/ See the document cited in footnote 331, p. 7.

for Germany of December 20, 1945. 496/ It also found that his arrest was obligatory in conformity with Article 4, Paragraph V of the Yugoslav Law on Crimes against the People and State, as was his extradition to Yugoslav authorities in conformity with the provisions of the Moscow Declaration of October 30, 1943. 497/

The State Commission took this decision after learning Waldheim's whereabouts from the Ministry of Internal Affairs and after consulting the Foreign Ministry. On September 17, 1947, the Ministry of Internal Affairs forwarded to the commission an interrogation report on Mayer along with information on the whereabouts of people mentioned by Mayer, who were referred to as "the leadership of the Abwehr" of Army Group E. The first person discussed was "Lieutenant Waldheim", about whom there was the most detailed (although not completely accurate) information. Note was made of the fact that Waldheim was at large in Austria and was a member of the staff of the Minister of Foreign Affairs, Dr. Gruber. 498/ On December 12, referring to this report on "members of the Abwehr and so-called Ic Branch," the State Commission drew the attention of the Ministry of Foreign Affairs to the data on Waldheim "in view of the activity of . . .

496/ Id., cover.

497/ Id., p. 7.

498/ Ministry of Internal Affairs, Section IX, to State Commission for Ascertaining War Crimes, 17 September 1947, file F. No. 25572, AJ.

Dr. Gruber against our national interests". The commission asked whether it was necessary to draw up a "decision" on Waldheim, on the basis of which he could be registered with the United Nations War Crimes Commission (UNWCC). It also noted that the deadline for registering war criminals expired at the end of the year. 499/ The Ministry of Foreign Affairs evidently thought such a decision was necessary, for the commission finalized its decision on December 18 and forwarded it to the ministry on December 26 with the request that its application be filed with the UNWCC for Waldheim's registration and inclusion on the list of German war criminals. 500/

The State Commission's application, in English, was submitted to the UNWCC on February 19, 1948. This application represented a very brief summary of its own file on Waldheim. Once again describing Waldheim as an Abwehr officer "with the Ic staff", the applicaton contains short extracts from Löhr's order of December 22, 1943, cited above, 501/ including the passage on the participation of the Abwehr in the selection of hostages and

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499/ Head of the Legal Section to Ministry of Foreign Affairs, Section for International Organizations, 12 December 1947, file F. No. 25572, AJ.

500/ Chairman of State Commission to Ministry of Foreign Affairs, Section for International Organizations, 26 December 1947, file No. F. 25572, AJ.

501/ See pp. 162-64 above.

reprisal prisoners. 502/ This emphasized Waldheim's role, at least as reflected in Mayer's testimony cited in the decision. 503/ The only other evidence contained in the application were the following summaries of Mayer's and Mellinghoff's testimony:

> 1. Johann MAYER stated the following: "I joined the Heeresgruppe E on 3rd April, 1944 as a personal [sic] division clerk. The commander was Liet. [sic] Col. Warnstorff and his deputy was Waldheim. He was an Ordnanzoffizier (sic). His duties were those of an intelligence officer. It was up to him to bring up suggestions concerning reprisal actions, treatment of prisoners of war and civilian internees . . . I remember certain persons having been murdered at Sarajevo in November, 1944. They were executed according to the order given by Waldheim in retaliation for desertion from the German army of some other persons. . . ."
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> 2. Klaus MELINSCHOFF [sic] stated that measures of reprisal and retaliation were [sic] applied by the German general staff and high-ranking German officers. The same line of action was taken by the accused. 504/

The application thus has Mayer specifically naming Waldheim in connection with the murders at Sarajevo, whereas his testimony quoted in the decision is not quite as direct. 505/ Similarly, Mellinghoff did not explicitly state such direct personal involvement by Waldheim. 506/ The "Short Statement of Facts" in

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502/ United Nations War Crimes Commission, file No. 7744/Y/G/557, United Nations Archives, New York, (Waldheim Document 64).

503/ See pp. 169-71 above.

504/ See the document cited in footnote 502, p. 3.

505/ See pp. 170-71 above.

506/ See p. 170 above.

the application does, however, accurately reflect the findings of the decision. 507/

Committee I of the UNWCC considered this application at its meeting on February 26, 1948. Four members of the committee were present: two Americans, a Norwegian, and the British chairman. Yugoslav and Greek representatives, not members of the committee, were also present. The committee approved the Yugoslav application and decided to put Waldheim's name on the UNWCC's Seventy-Ninth List of War Criminals, Suspects and Material Witnesses in the "A" category. 508/ This category was for "war criminals", that is, persons appearing on the list "because the Commission believes them to have committed or been responsible for the commission of war crimes, and is satisfied that there is, or will be at the time of trial, sufficient evidence to justify their prosecution". 509/

Evidence that Ic/AO Branch and Lieutenant Waldheim personally were involved in the formulation and implementation of orders on reprisals was thus reviewed and accepted by both the Yugoslav State Commission and the United Nations War Crimes

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507/ See the document cited in footnote 502, p. 1.

508/ "Summary of Minutes of the Meeting of Committee I held on February 26th 1948, at 10.30am," United Nations War Crimes Commission, Record Group 153, Judge Advocate General, International Affairs Division, War Crimes Office, 1944-49, 150-16 (Waldheim Document 64).

509/ United Nations War Crimes Commission, Seventy-Ninth List of War Criminals, Suspects and Material Witnesses (Germans, Italians, Bulgarians and Hungarians), p. ii.

Commission. The State Commission, in its own decision, did not identify any particular instance in which Lieutenant Waldheim had actually passed on an order for an individual reprisal, but this is entirely possible in view of Mayer's testimony and the fact that Lieutenant Waldheim did personally relay messages from the chief of staff to field commanders in other cases. 510/ Mayer's testimony on Waldheim's responsibilities for the treatment of prisoners also indicates that he may have been involved in the execution and deportation of prisoners in Yugoslavia as well as Greece. 511/

1. Mr. Waldheim's Response to Allegations Concerning Yugoslavia

As with Greece, Mr. Waldheim has not directly dealt with the question of his role as 03 in anti-guerrilla warfare in Yugoslavia. His denial of involvement with prisoners and his attempt to shift responsibility (especially for liaison with the SD) on to the AO, made in other contexts, has already been discussed and refuted. 512/ However, nowhere does he directly deny playing some role in reprisals. 513/ He seeks instead to impugn the credibility of Mayer and Mellinghoff within the

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510/ See p. 150-51 above.

511/ See p. 169 above.

512/ See pp. 117-22 and 150-57 above.

513/ See the guarded disclaimer on this point in Waldheim memorandum of 31 October 1986, p. 8: ". . . a lieutenant on the military intelligence staff of an army group command had no involvement whatsoever in reprisal questions. . . ."

context of the Sarajevo murders and to demonstrate his non-involvement with this and the Kocane-Stip devastation.

Mr. Waldheim impugns Mayer's testimony on the somewhat contradictory grounds that he "collaborated" with the Yugoslavs 514/ and that he lied to them. 515/ The statements which Mr. Waldheim submits attacking Mayer are by people who either testify from hearsay 516/ or have a grudge against him. 517/ Moreover, being an "Anti-Facist", something which Waldheim seems to find contemptible, does not seem to have earned Mayer an especially early release. 518/ In any case, the attack on a long-deceased witness' credibility is somewhat misplaced. The question is not whether Mayer should today be considered a credible witness, but whether he was credible to the responsible authorities at the time the allegations were made. Obviously,

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514/ See Waldheim memorandum of 1 August 1986, pp. 76-77; statement by Franz Kaupe, n.d. (Waldheim Document 60); statement of Hans Haller, 15 April 1986 (Waldheim Document 61); and statement of Peter Lehnert, 10 June 1986 (Waldheim Document 62).

515/ See Waldheim memorandum of 1 August 1986, pp. 77-78; "Mayer, Not Meier," Profil (Vienna), 7 April 1986 (Waldheim Document 55); and statement of Rosa Mayer, 4 June 1986 (Waldheim Document 63).

516/ See statement of Franz Kaupe, n.d. (Waldheim Document 60); and statement of Hans Haller, 15 April 1986 (Waldheim Document 61).

517/ Id., and statement of Peter Lehnert, 10 June 1986 (Waldheim Document 62).

518/ See statement of Rosa Mayer, 4 June 1986 (Waldheim Document 63).

the United Nations found sufficient basis in Yugoslavia's and Mayer's claims to warrant giving Waldheim a Category A rating.

It must also be remembered that Mayer's testimony is fully consistent with an analysis of Ic/AO Branch's and Lieutenant Waldheim's responsibilities and with the actual situation at the end of 1944. Army Group E was involved in atrocities in the Balkans (a fact conceded by Waldheim) and its commander was convicted and executed as a war criminal; it is not surprising that other members of his general staff would also have been implicated. If the UNWCC thought that the Yugoslav allegations were totally without merit, it is unlikely that they would have proceeded with a listing of him.

With regard to Sarajevo, for example, that recommendations may have been made and orders drawn up at this time for executions in reprisal for desertions from German forces would not be surprising. The Germans, rapidly withdrawing and facing certain defeat, were experiencing unprecedented disciplnary problems in the Balkans, as evidenced by the desertion of Major von Schenk, General Löhr's personal special missions staff officer. 519/ Of particular relevance to the alleged Sarajevo executions is the German concern with disintegration in the Waffen SS Handschar Division, reported precisely in mid-November

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519/ See statement of Herbert Warnstorff, 29 May 1986 (Waldheim Document 53).

1944. 520/ This division was composed largely of Moslems from Bosnia, of which Sarajevo is the capital, and it could have been presumed that reprisals there would have some effect. Traces of such an order would not necessarily show up in the war diary, let alone the daily intelligence summaries, as Waldheim implies. 521/

Mr. Waldheim further adduces a "rumor" to the effect that Mellinghoff's statement in fact links the killings at Sarajevo to the desertion of non-German members of the Handschar Division as exonerating him, if accurate, because SS retaliatory measures were "invariably" executed by SS personnel. 522/ This argument completely ignores the facts that, as Mr. Waldheim states, Army Group E's staff arrived in the Sarajevo area on November 19, 523/ and that its commander, General Löhr, not the SS, exercised executive authority in that area. 524/

While "unequivocally" denying Mellinghoff's charges within the context of the Sarajevo allegation, Mr. Waldheim seeks to undermine his credibility by claiming that he has been unable to

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520/ "Sympotoms of Disintegration in the Moslem SS Division," Secret Field Police Group 9, 15 November 1944, T311/188/954-55, NA.

521/ See Waldheim memorandum of 1 August 1986, p. 80.

522/ Id., p. 78.

523/ Id., p. 80.

524/ See pp. 167-68 above.

locate Mellinghoff "[d]espite efforts to do so". 525/ As has been described above, we have been able to identify Mellinghoff. 526/ He was General Löhr's personal special missions staff officer after the staff moved to Yugoslavia, and he has been identified as such in a major article written about the Yugoslav Commission file. 527/ He was, in any case, certainly known to other members of the staff, including people from the personnel section with whom Mr. Waldheim has been in contact. 528/ Waldheim's attempt to dismiss Mellinghoff's testimony (perhaps based on the slight misspelling of his name in the UNWCC file 529/ bespeaks its damaging nature.

More generally, Mr. Waldheim believes that his identification as an Abwehr officer "comes close to single-handedly destroying" the credibility of the UNWCC file 530/ and, by

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525/ Waldheim memorandum of 1 August 1986, p. 78; see also Waldheim memorandum of 6 April 1985, p. 10.

526/ See p. 169-70 above.

527/ See Jovan Kesar, Pero Simic and Miroslav Zaric, "The Complete Waldheim File," Duga (Belgrade), 13 June 1986, pp. 58-82.

528/ Waldheim has submitted statements by Hans Haller (Waldheim Documents 23, 61 and 79) and Franz Kaupe (Waldheim Document 60) of the Officer Personnel (IIa) Branch, Helmut Poliza (Waldheim Document 54) and Herbert Warnstorff (Waldheim Document 53) of Ic/AO Branch.

529/ Where it is given as "Melinschoff": see the document cited in footnote 502, p. 3.

530/ Waldheim memorandum of 1 August 1986, p. 79.

implication, the Yugoslav file, on which it is based. 531/ This particular detail of Waldheim's bureaucratic affiliation is by no means critical in view of the fact that he is otherwise correctly identified as a First Lieutenant "with the Ic staff" of Army Group E. 532/ Moreover, while there does seem to have been some (understandable) confusion among the staff of the Yugoslav State Commission as to what exactly an Abwehr officer was, 533/ both Mayer and Mellinghoff correctly identified Waldheim as Warnstorff's assistant and special missions staff officer in the Ic section; Mayer even used the "0 3" designation. Neither Mayer nor Mellinghoff made any reference to Waldheim having been an Abwehr officer. 534/

In focusing on the Sarajevo allegation, which he denies "without equivocation", Mr. Waldheim contends that both his lack of command authority and his physical absence - at least before November 19 - from the area show that he was "incapable" of ordering the killings. 535/ The irrelevance of "command authority" has already been discussed. 536/ Physical location is

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531/ Id., p. 66.

532/ See the document cited in footnote 502, p. 1.

533/ See undated memorandum to the head of the Legal Section in file F. No. 25572, AJ.

534/ See the document cited in footnote 331.

535/ Waldheim memorandum of 1 August 1986, p. 80.

536/ See pp. 31-33 above.

also irrelevant. Rather, the issue would be whether Lieutenant Waldheim proposed or conveyed an order, the latter of which could easily have been done over long distances with the means of communication at the disposal of the German Army. It should be recalled, Lieutenant Waldheim did in fact perform precisely this type of task for the chief of staff. 537/

In regard to the Kocane-Stip incident, Mr. Waldheim has not made a direct denial in his submissions to the Department. He merely contends that the evidence shows that he played no personal role in that geographic area. 538/ Aside from arguments based on physical location, 539/ Mr. Waldheim places special reliance on Egberts-Hilker's assumption of "the entire responsibility." 540/ That at his own trial after the war Egberts-Hilker should seek to absolve anyone else of culpability is hardly surprising, especially for someone with, as his battalion commander put it, a "[g]ood National Socialist demeanor." 541/ Mr. Waldheim also seeks to portray the incident as a legitimate

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537/ See p. 150-51 above.

538/ See Waldheim memorandum of 6 April 1986, pp. 9-10, and 1 August 1986, pp. 70-71 and 73-74.

539/ See Waldheim memorandum of 6 April 1986, pp. 9-10, and 1 August 1986, pp. 70-71.

540/ Id., p. 69.

541/ See Egberts-Hilker personnel file, Record Group 242, Roll 152, NA.

military operation against "armed partisans" rather than as a war crime, much less an act of persecution directed against civilians. 542/

Such a contention neglects the fact that the victims have consistently been identified as civilians 543/ and that Mr. Waldheim himself has described Egberts-Hilker as "a convicted war criminal". 544/ The ideological, racially, and politically inspired nature of Nazi reprisals has already been discussed. 545/ Moreover, as discussed earlier, Mr. Waldheim now concedes that his reports on Kocane-Stip may have been "misused." What he does not and cannot deny is that such "misuse" was entirely foreseeable and routine.

Fundamentally, however, Mr. Waldheim's effort to contest his personal involvement in these incidents is beside the point. While he possibly could have been personally involved by, for example, conveying the order, 546/ neither Mayer, nor

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542/ See Waldheim memorandum of 1 August 1986, pp. 74-75.

543/ See the document cited in footnote 331, p. 7; and Waldheim memorandum of 6 April 1986, p. 9.

544/ Id., p. 10.

545/ See pp. 35-38 and 88-90.

546/ It should be noted that at around the time of the Kocane-Stip incident, at least, Lieutenant Waldheim may have been personally assisting Löhr and his chief of staff, thus putting him much closer to the center of command: see the distribution list on the Ic reports for October and November 1944 in T311/186/780 ff. and Waldheim Document 65 respectively and the photograph cited in footnote 309.

Mellinghoff, nor Egberts-Hilker alleged to the Yugoslav State Commission that Lieutenant Waldheim personally took part in these incidents. Rather, the evidence before the commission shows that at a bare minimum, Waldheim, as Warnstorff's assistant in the Ic section, participated in the formulation and implementation of orders which led to reprisals of these types. These two incidents, along with many others, are adduced only as examples of the crimes perpetrated pursuant to such orders. Egberts-Hilker himself actually refers to a "general order." 547/ Mr. Waldheim refuses to respond to these general charges, allegedly "for lack of specifics as to what the charges are." 548/ However, the evidence on this point is adequately summarized in the UNWCC file, and more extensive excerpts from the State Commission's decision have appeared in the press. 549/ On this point, as on so many others, Mr. Waldheim's silence is as telling as any of the evidence against him.

547/ As quoted in Waldheim memorandum of 1 August 1986, p. 69; see also his statement quoted on p. 172 above.

548/ Waldheim memorandum of 1 August 1986, p. 80.

549/ See the article cited in footnote 527.

V. ADDITIONAL POINTS RAISED BY MR. WALDHEIM

In his submissions Mr. Waldheim addresses several points which have surfaced in the media.

A. The Purported Israeli Exoneration

Mr. Waldheim takes comfort in news accounts regarding an inquiry by Israeli Justice Ministry officials. He claims, on the basis of these news accounts, that "the Israeli Justice Ministry has apparently determined that he is not culpable of any Jewish persecution". 550/ We have been in contact with M. Dennis Gouldman, who did, in fact, prepare a memorandum last May. Gouldman advised that his report was based upon information available to him at that time. He reviewed essentially what was sent to him by the World Jewish Congress; the Israeli Government has not conducted an independent investigation. Mr. Gouldman concluded in his report that although at the time of his memorandum there might not have been enough evidence to indict Waldheim for crimes under Israeli law, there was a sufficient basis to open an investigation against him for suspicion of being an accomplice to war crimes in Greece and Yugoslavia.

Mr. Gouldman also found that, based upon what he had reviewed, Mr. Waldheim had served in a "central position" within a framework which clearly carried out war crimes and he was a "connecting link" between the commander and the units in the field.

550/ Waldheim memorandum of 19 December 1986, p. 6.

Clearly, these conclusions do nothing to bolster Mr. Waldheim's defense. Indeed, the Israeli determination (based on far less evidence than we now have in hand), if anything, supports a finding of involvement in persecution.

B. Allegations as to Mr. Waldheim Having Been Compromised

In addressing articles which appeared in The Washington Post suggesting that after the war he had been approached and possibly compromised, Mr. Waldheim states that he "never was asked to act on behalf of; agreed to act on behalf of; or did act on behalf of any Soviet intelligence service". 551/ While we have not investigated this issue, I would note, however, that based on OSI's experience in litigation and special projects (Mengele; GAO Report; Barbie, and Verbelen) there is no question that individuals with hidden Nazi pasts were ripe targets for blackmail and compromise.

In this regard it has been suggested that the Yugoslav State Commission charges - which formed the basis for his designation as a class "A" wanted war criminal by the UNWCC - were rather weak. Our independent research, however, has confirmed significant aspects of the allegations. Clearly, the charges were not made out of whole cloth. Moreover, the Yugoslav/U.N. charges were very limited and did not deal with other significant aspects of Waldheim's hidden career in the Balkans. Moreover, it is

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551/ Waldheim memorandum of 24 November 1986, p. 5.

obvious that for years Mr. Waldheim went to great lengths to conceal from the world his service in one of the war's most brutal and atrocity-ridden campaigns. While we probably will never know with certainty if he had been approached or compromised by the Eastern Bloc, all of the ingredients for that possibility are present.

One interesting event is worth noting in this regard. Mr. Waldheim was Austria's Foreign Minister in 1968 when the Soviet Union invaded Czechoslovakia. In that capacity, he instructed the Austrian Ambassador to Prague (Rudolf Kirchschläger, who ironically was Waldheim's predecessor as President of Austria) to remove any Czechs who might have entered the Embassy seeking asylum.

It would appear unlikely that Mr. Waldheim would have been tasked by the Soviets to engage in espionage. The Soviets needed only to have gently reminded him that they knew of his past; that fact certainly could have influenced his attitude and positions taken as U.N. Secretary General. 552/

552/ Of interest in this context are facts disclosed in an Op-Ed piece in The Washington Times of November 3, 1986, written by Juliana Pilon, a senior policy analyst with The Heritage Foundation. In it, Ms. Pilon mentions the 1968 Czechoslovak episode and also discusses Mr. Waldheim's record while serving as U.N. Secretary General; it seems that the Soviets benefitted considerably from some of Mr. Waldheim's actions at the U.N.

VI. CREDIBILITY AND MISREPRESENTATIONS

Mr. Waldheim clearly believes that his credibility is an important factor in this inquiry. In fact, in both his June and August 1986, submissions, Mr. Waldheim stresses the argument that nothing he has stated or written regarding his service in the Wehrmecht in any way impugns his credibility. He argues that he has at all times attempted to be forthright and offers explanations for the changes he has made, particularly regarding the Kozara operation. Mr. Waldhem also argues that since none of the purported misrepresentations or concealments were made in an immigration context, they have no bearing upon the issues now under consideration by the Department.

We agree; credibility is critical. Indeed, it is all the more important in this case because much of what Mr. Waldheim says about his duties in the Balkans, and those of the units in which he served, is at odds with the documentation. In essence, Mr. Waldheim asks that his word, and the word of some of his former colleagues, be accepted. Under such circumstances it is essential that we address the issue of Mr. Waldheim's credibility. Moreover, while statements contained in books or letters to Congress might not technically have a bearing upon this inquiry, any statements contained in Mr. Waldheim's submissions to the Department (which are addressed to the question of whether his conduct fits within the Holtzman Amendment to the Immigration and Nationality Act) are in a much different category.

One of the difficulties in preparing this report has been Mr. Waldheim's initial denial of any involvement in activities or

campaigns involving persecutory activities (and even denials of any service in army units known to have engaged in atrocities), followed by several conflicting concessions as to the location of his service and varying explanations of his service. This pattern of inaccuracies has led us to rely upon and credit the available documentation.

Prior to the airing of the recent allegations, Mr. Waldheim's explanations of his wartime duties were contained in a 1977 autobiography and in a 1980 letter responding to an inquiry from U.S. Congressman Stephen Solarz. In the autobiography, Mr. Waldheim stated that he first entered service on the Russian front and that after being wounded he returned to Vienna for the duration of the war:

> Even so, the knowledge that I was serving in the German army was hard to bear. Deliverance from my bitter situation finally came when our unit moved into active combat on the Eastern front in 1941. I was wounded in the leg and medically discharged.
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> By the time I was repatriated in 1942, it had become impossible to leave the country. The borders had been closed and were being heavily patrolled. Everywhere the most ordinary movement was restricted, and the authorities dealt arbitrarily with anyone who did not conform to the regulations. I was permitted to resume my studies towards a doctorate in law, which I obtained some two years later. The preparation of my disertation, dealing with the federalist principles of the German diplomat Konstantin Frantz, was not made any easier by the fact that the university library had been dispersed because of the bombings. . . As it was, between the police, suspicious of my civilian status, and the bureaucrats, suspicious of my motives, the physical assembly of my source material turned

> out to be more exhausting than the research and writing." 553/ (Emphasis added.)

This version failed to disclose Waldheim's service in occupied France and in the Balkans, the scene of massive deportations and murder of civilians by Nazi forces.

In December 1980, Mr. Waldheim (who was the U.N. Secretary-General) wrote to Congressman Solarz, who sought clarification of Waldheim's army service:

> I myself was wounded on the eastern front and, being incapacitated for further service, resumed my law studies at Vienna University where I graduated in 1944. (Letter, December 19, 1980).

In the course of OSI's inquiry, Mr. Waldheim materially amplified and altered the above-description of his service when confronted with conflicting documentation.

In addition, Mr. Waldheim has offered explanations of historical events which are so completely inconsistent with documented facts as to smack at rank distortion.

Mr. Waldheim has offered the following explanation of why in his autobiography he did not mention his service in the Balkans:

> Dr. Waldheim has repeatedly stated that his injury in the Russian campaign in 1942 [sic] was the key-wartime experience that he felt was worthwhile recounting in a short synopsis of those years and that his other assignments, in specific to the Balkans, but also with a mounted reconnaisance unit on the western front were not only of little importance given his duties, but also given the fact

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553/ Kurt Waldheim, The Challenge of Peace (New York: Rawson, Wade Publishers, Inc., 1977), pp. 24-25.

> that his having been declared unfit for combat duty subsequent to his injury permitted him to spend a large portion of the remaining war-years in Vienna to finish his law degree. For the same reason, Dr. Waldheim's biography at the United Nations did not contain any further details on his military service. 554/

The facts are, however, that after his injury in the Soviet Union, Mr. Waldheim occupied positions of increasing responsibility and sensitivity, for which he was decorated, in regions where notoriously brutal actions were undertaken by the Nazi forces in which he served. Such events can hardly be considered of "little importance" nor are they easily forgotten. It is rather clear that Mr. Waldheim did not disclose his service in the Balkans because he knew precisely what occurred in that campaign and that the revelations could prove to be most damaging. The above-cited "explanation" seems incredible on its face.

In further defense of his failure to mention his service in the Balkans in his book, In the Eye of the Storm, Mr. Waldheim claims that the German version of the book makes reference to his return to duty after the injury. Waldheim claims that this original version referenced "his return to duty, ending on the southeastern front". He then states that through this version "his service in the Balkans was publicly disclosed . . . thereby evincing a total lack of intent to conceal." 555/

554/ Waldheim memorandum of 31 October 1986, p. 9.

555/ Waldheim memorandum of 1 August 1986, pp. 82-83.

We have reviewed the German version; it adds very little to the description (which Waldheim effectively concedes to be misleading) found in the English edition. There is no specific reference to the Balkans, let alone three years of service there. He merely recounted that after the healing of his wound he was recalled for duty and that "shortly before the end of the war I was in the Trieste area." 556/ This does not even approximate a reasonably accurate account of his service in Greece and Yugoslavia. It is difficult to comprehend how this version can demonstrate what Waldheim claims to be his "total lack of intent to conceal." 557/

As to the changes in positions taken in his submissions to the Department and what he concedes to be "erroneous statements," Mr. Waldheim blames "the exigencies attendant upon the necessity of responding to piecemeal allegations . . . while at the same time, being required to devote fulltime and attention to a domestic political campaign." 558/ In light of Mr. Waldheim's pattern of conceding critical facts only after having been confronted with irrefutable proof (and then offering explanations which cannot withstand close historical scrutiny) this seems worthy of little credence.

556/ Kurt Waldheim, Im Glaspalast der Weltpolitik (Düsseldorf and Vienna: Econ Verlog, 1985), p. 42.

557/ Waldheim memorandum of 1 August 1986, p. 83.

558/ Id., pp. 84-85.

There are other instances in which Mr. Waldheim has made troubling and less than credible representations to this Department.

1. Mr. Waldheim continues to refer to himself as having been an "ordinance" [sic] officer. 559/ There is no such expression in English as "ordinance" officer, but an "ordnance" officer deals with munitions. Mr. Waldheim was an "Ordonnanzoffizier" which was a "special missions staff officer." As Mr. Waldheim must certainly know, the difference between a "special missions" officer and an "ordnance" officer is vast. His repeated references to having been an "ordinance" officer 560/ is misleading, possibly disingenuous and cannot be justified.

2. Waldheim has consistently claimed that after the injury sustained in the Soviet Union he was "classified as physically unfit for combat duty." 561/ In fact, a document provided by Mr. Waldheim himself shows that he was declared fit for service on March 6, 1942. 562/

559/ Id., pp. 13 and 56; Waldheim memorandum of 31 October 1986, p. 2; and Waldheim memorandum of 19 December 1986, p. 7.

560/ Waldheim presumably means to obfuscate or say he was an "ordnance" officer.

561/ See, for example, Waldheim memorandum of 1 August 1986, p. 21.

562/ Waldheim Document 45, cited in footnote 15.

Title 8, United States Code, Section 1182(a)(19) excludes from entry into the United States any alien "who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by force, or by willfully misrepresenting a material fact." Mr. Waldheim notes that since they were not made within an immigration context "the statement . . . made to the media or to the public cannot provide a cognizable basis for his exclusion from the United States, even if they are proved to be indisputably false." 563/ However, representations made to the Department are a different matter: these statements and representations have been tendered specifically in an attempt to establish that his wartime conduct does not come within the ambit of an exclusionary provision of our immigration laws. As pointed out throughout this memorandum, Mr. Waldheim's submissions to the Department of Justice contain significant misrepresentations regarding his service as an officer in the Wehrmacht while stationed in the Balkans, the central issue to this inquiry. The clearcut misrepresentations and distortions made by Mr. Waldheim cannot and should not be ignored. It is obvious that he has gone to great lengths to conceal first the fact that he served in the Balkans and then, once discovered, to obfuscate the true nature of his duties; the facts - as set forth in this report through reliable evidence and professional historical analysis - make clear why he did so.

563/ Waldheim memorandum of 1 August 1986, p. 82.

VII. THE APPLICABILITY OF 8 USC 1182(a)(33) AMENDMENT TO WALDHEIM'S WARTIME ACTIVITIES

The issue for resolution in this matter is whether Kurt Waldheim's service as an officer in the Army of Nazi Germany fit within the purview of 8 USC 1182(a)(33). That provision covers any person who, in association with the Nazi governemnt of Germany: "ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion".

As discussed in earlier segments of this memorandum, participation in persecution has been broadly defined by the courts, the legislature and the Justice Department to cover specific acts of the individual as well as meaningful participation in units or organizations which engaged in the proscribed conduct. Indeed, courts have uniformly held that specific acts of personal involvement are not required for the applicability of the Holtzman Amendment. See Matter of Fedorenko, Interim Decision 2963 (BIA 1984). In re Kulle, Interim Decision 3002 (1985); Matter of Schellong, File No. A10 695 922 (Imm. Ct. filed July 1984), aff'd (BIA filed July 11, 1985). These cases were made within the context of deportation decisions, where the government has a heavy burden of proof. The same analysis of "persecution" would apply to "excludability" cases.

See also numerous OSI denaturalization cases dealing with persons found to have engaged in persecution within the meaning of the Displaced Persons Act. Fedorenko v. United States, 449

U.S. 490 (1981); United States v. Kungys, 600 F.Supp. 1254 (N.D.Ill. 1984), aff'd. 782 F.2d 1374 (7th Cir. 1986), cert. denied (_____, 1986); United States v. Kowalchuk, 571 F.Supp. 72 (E.D.Pa. 1983), aff'd en banc, 773 F.22 488 (3rd Cir. 1985); United States v. Osidach, 513 F.Supp. 51 (E.D.Pa. 1981).

Fedorenko, for example, served as a guard around the perimeter of a Nazi death camp. The Supreme Court found that Fedorenko had engaged in persecution - and was thus ineligible for a visa - on the basis of his service alone, notwithstanding the alleged involuntariness of his service and despite the absence of personal involvement in any atrocities. His status as a perimeter guard was sufficient. 564/ The Kairys, Kowalchuk, and Osidach decisions follow Fedorenko in holding that persons may be denaturalized for having assisted in Nazi-directed persecution through their membership in units which, in turn, engaged in persecution. Kairys was a platoon leader at an SS labor camp, Kowalchuk served in the wartime Ukrainian police, and Osidach (like Waldheim) acted as an interpreter, also for the Ukranian police. All three were determined to have entered the United States unlawfully under (among other grounds) Section 2 of

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564/ Although service by Fedorenko at the Treblinka death camp is different than service by Waldheim in Army Group E -- in terms of the nature and scope of persecution and murder -- the fact remains that both were engaged in persecution. No one can doubt that the campaign in the Balkans was brutal and included many war crimes and crimes against humanity. The deportation of Jews from the Dodecanese and from Corfu was the first step towards their extermination.

the Displaced Persons Act, Pub. L. No. 80-774, ch. 647, 62, Stat. 1009 (1948), which prohibited the admission of aliens who assisted the Nazis in persecution. These decisions are instructive on the issue of determining what constitutes assistance in persecution.

As an interpreter and as a staff intelligence, operations, and quartermaster officer, Lieutenant Waldheim would have, inter alia, drafted orders on reprisals, made recommendations based on the interrogation of prisoners, provided intelligence data to military units arresting civilians, and cooperated with the SD in its tasks of deporting and killing prisoners. These responsibilities reveal him to have assisted in the smooth operation of a Nazi military organization which committed numerous and direct acts of persecution against Allied nationals and civilians.

The McMullen Decision

A recent deportation decision of the Ninth Circuit Court of Appeals, McMullen v. INS, 788 F.2d 591 (9th Cir. 1986), is of significance to the issues at hand. The deportee, McMullen, was a former member of the Provisional Irish Republican Army, who claimed that he had never personally participated in an act of terrorism. The Court of Appeals responded to McMullen's claim as follows:

> McMullen's claims that he did not actually participate in the civilian violence, even if true, do not help his cause. We are unmoved by the pleas of a terrorist that he should not be in any way be held responsible for the acts of his fellows; acts that, by his own admission, he aided by training others and assisting in arms shipments, and otherwise abetted and encouraged.
>
> We interpret both the Convention [of the U.N. regarding

> Refugees] and the [Immigration and Nationality] Act to permit deportation of individuals who commit serious, nonpolitical crimes, and we have concluded that this includes terrorist acts against ordinary citizens. We refuse to interpret these documents to apply only to those who actually "pulled the trigger", because we believe that this interpretation is too narrow. In our judgment, the only reasonable interpretation of the exception is that it encompasses those who provide the latter with the physical and logistical support that enable modern terrorist groups to operate.

In McMullen, the alien deportee was found ineligible for asylum under 8 USC 1101(a)(42)(A) ad 1253(h)(2) becaue his status as a Provisional IRS member evidenced his commission of "serious nonpolitical crimes".

As discussed earlier, there can be no legitimate doubt that Waldheim's role as an interpreter, staff intelligence officer, and staff oprations officer for the German Twelfth Army and Army Group E was in no way insignificant to the carrying out of Operations Kozara and Black, the Kocane-Stip massacres, and the deportation of Greek Jews.

A. Mr. Waldheim's Defense That "War Crimes" Are Not Proscribed by Section 212(a)(33)

Mr. Waldheim argues at several points in his Memorandum of August 1, 1986, that, while some of the German Army's excesses in the Balkans may have constituted war crimes, they do not satisfy Section 212(a)(33), which requires persecution on the basis of race, religion, national origin, or political opinion. He makes this argument, for example, in response to the Kocane-Stip

allegations. 565/ This "defense" has no merit, as has been discussed earlier in this memorandum.

An officer who assisted in military reprisals against Yugoslav civilians and prisoners or who aided in transferring British and Greek prisoners to the SD for execution not only participated in a possible war crime, but also in an act of persecution.

It should also be added that Waldheim's assertions of law do not even attempt to defend his possible participation in the 1944 deportation of Jews on Corfu and on the Dodecanese, a clear crime against humanity and act of racial and reglisious persecution. See The Nuremberg Trial, 6 F.R.D. at 129-30.

Finally, the Nazis' policies regarding reprisals against civilians living in areas in which guerrillas were active was indeed dictated by racial considerations. For example, in June 1942, the Army Commander in Serbia reported to the Commander for the Army Southeast that terrorist groups had carried out actions in one of his areas of command. However, he could not carry out reprisals against the civilian population "since in the purely volksdeutsch [ethnic German] area no reprisal prisoners are available". 566/ Obviously, the Nazis would only subject Slavic residents to reprisal actions; German civilians who resided in the same area were spared. This consituted clearcut

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565/ Waldheim memorandum of 1 August 1986, pp. 90-91.

566/ See the document cited in footnote 61.

persecution on the basis of race. Hence, it is incorrect to assert that war crimes committed in Yugoslavia could not constitute grounds for exclusion under Section 212(a)(33).

VIII. CONCLUSION

After a complete review of the available evidentiary materials, Mr. Waldheim's submissions and applying established legal principles, we have no doubt that during World War II, while serving as a Wehrmacht officer in the Balkans, Kurt Waldheim assisted or otherwise participated in persecution because of race, religion, national origin or political opinion. Moreover, Mr. Waldheim has failed to rebut the case against him or otherwise demonstrate that he did not engage in activities which fit within the purview of 8 U.S.C. §1182(a)(33). Indeed, if Mr. Waldheim were in this country, OSI would seek approval to institute deportation proceedings on the basis of such activities; we are confident that we would be successful in any such litigation.

Respectfully submitted,

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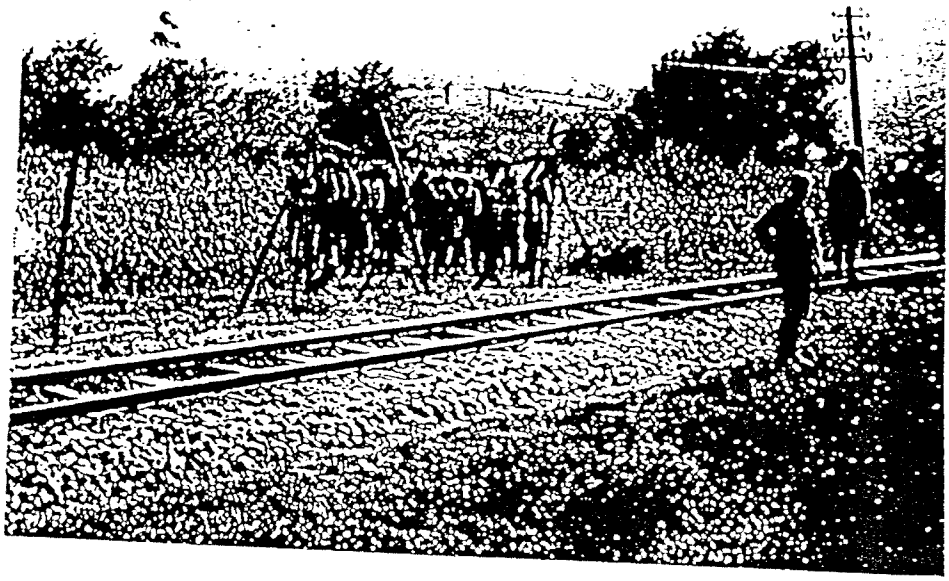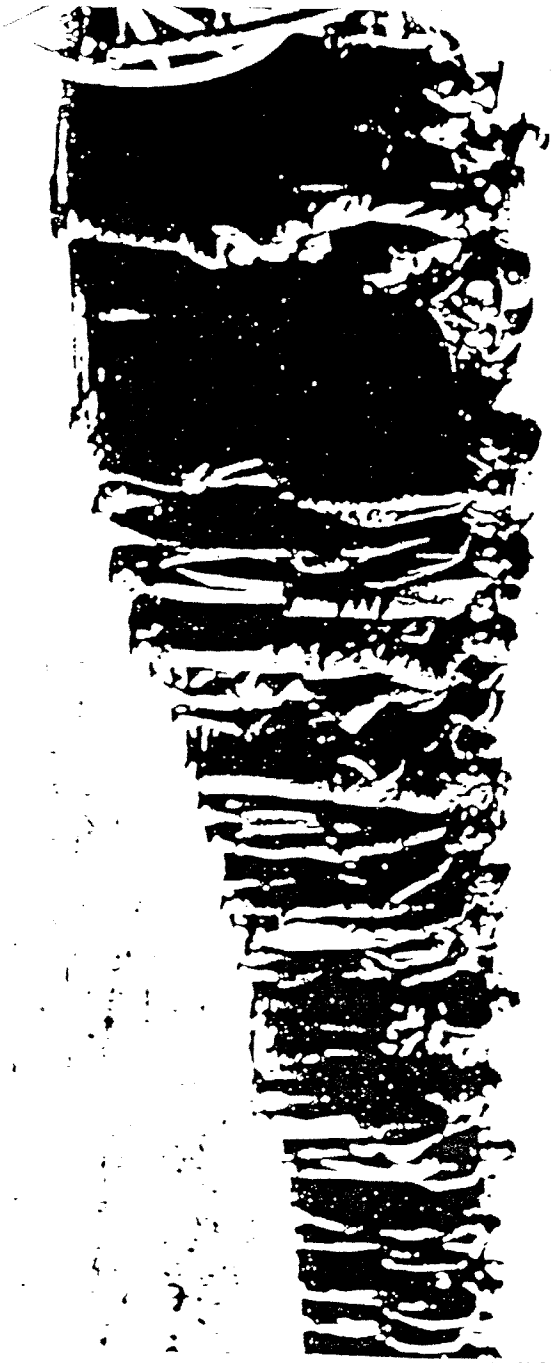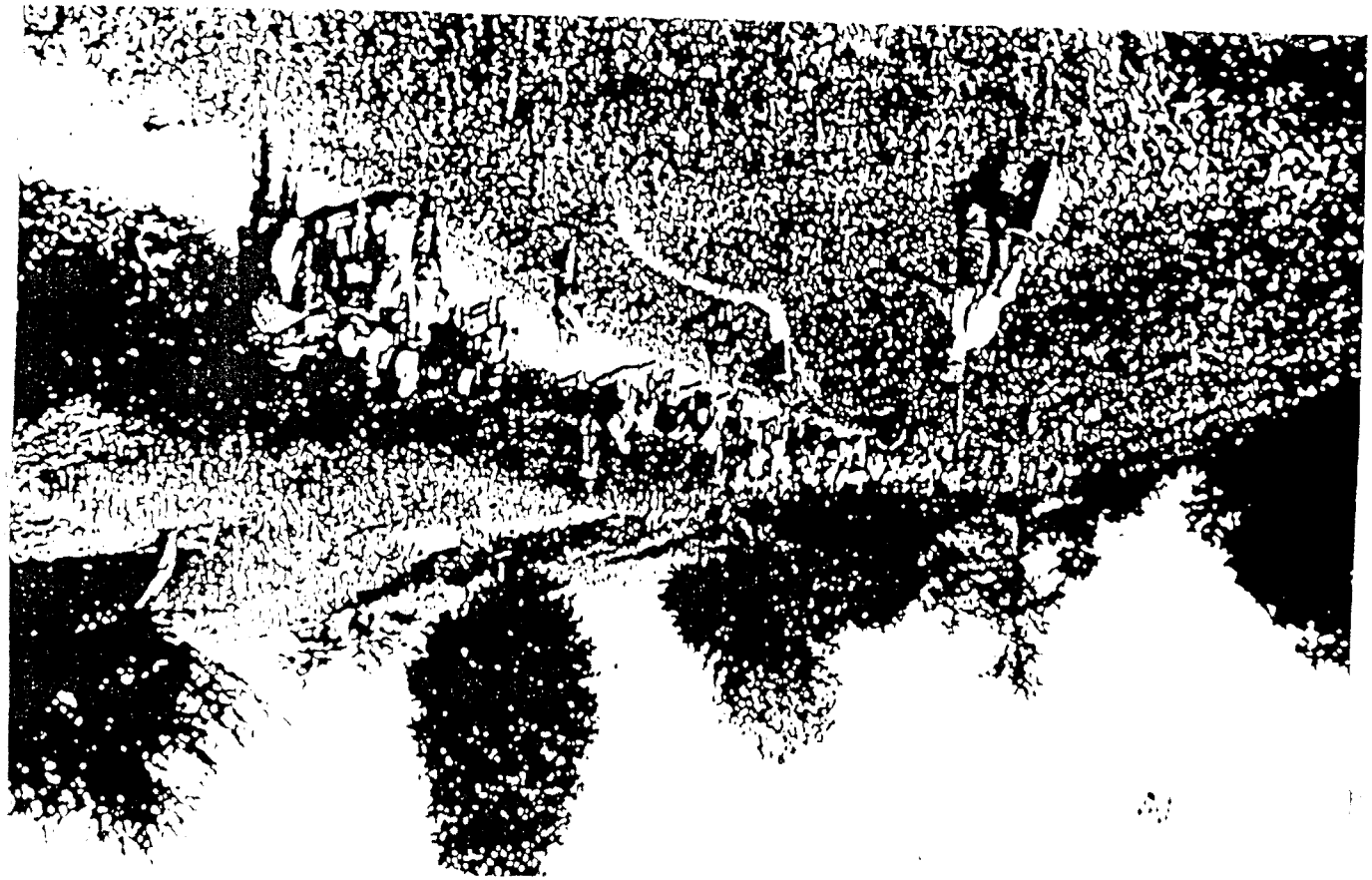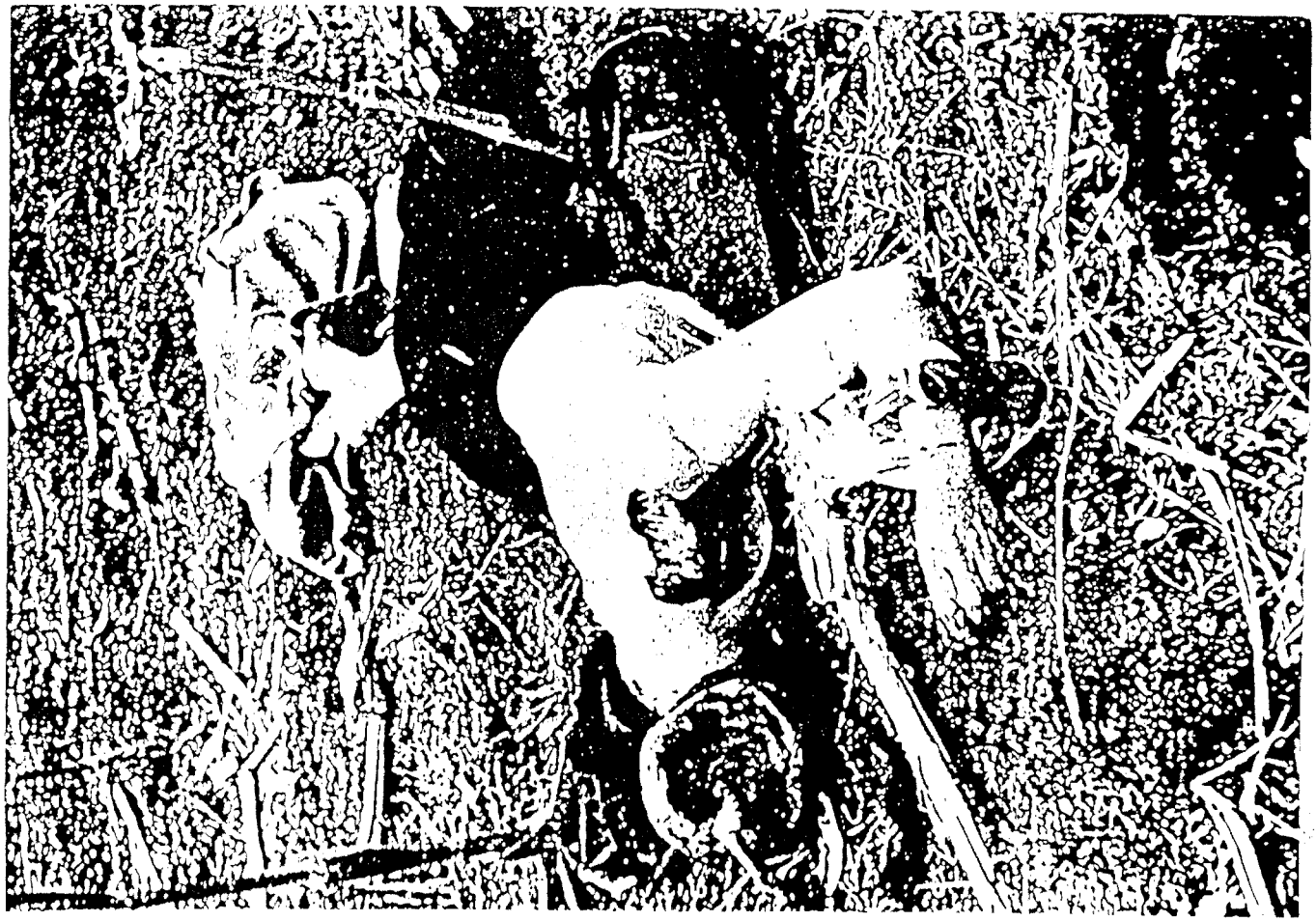
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