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# Post-War Reckonings: Political Justice and Transitional Justice in the Theory and Practice of the Main Commission for Investigation of German Crimes in Poland in 1945

## Introduction

This article is more a *tour d'horizon* of the research that still needs to be done on reckonings with war crimes and crimes against humanity committed by Poland's invaders between 1939 and 1945. Emphasis is put on analysing the early months of the Main Commission for Investigation of German Crimes, from spring to winter 1945, as it tried to find its feet.<sup>1</sup> This is an intentionally selected moment of transition – beginning with the appointment of the Main Commission while military operations were still in progress in Poland, and ending with the Decree of November 1945, promulgated some six months into peacetime, which created the legal basis for the Commission's existence. This was a period of chaos and uncertainty as the incoming Soviet-sponsored regime sought general social acceptance, recognition of its legitimacy and consolidation. It was only with the post-1989 collapse of the Soviet bloc that this complex process of transition from Nazi subjugation to communist dictatorship could be closely scrutinized by historians and sociologists without censorship.<sup>2</sup>

- 1 This name for the Commission prevailed until 1949 when, after the establishment of the German Democratic Republic, it was changed to the Main Commission for the Examination of Hitlerite Crimes in Poland (vgl. den Beitrag von Łukasz Jasiński). The name was subsequently changed several more times in the following decades. Further in this article the name of the Commission shall be abbreviated to the Main Commission.
- 2 Inter alia, Jacek Chrobaczyński, *Konteksty przełomu 1944-1945: Społeczeństwo wobec wojennych rozstrzygnięć: Postawy – zachowania – nastroje* (Kraków, 2015); Andrzej

The main empirical bases for this analysis are the archival documents of the Main Commission dated 1945.<sup>3</sup> In line with the thematic-methodological assumptions of this volume, the early months of the Main Commission's existence are examined from the vantage point of *political justice* and *transitional justice*. Therefore, this article seeks to propose an acceptable conceptual apparatus to be employed in assessing the Commission's activities. The first part of this text is devoted to an analysis of the fundamental terms: *political* and *transitional justice*.

The second, and main, part of the text consists of an empirical analysis of the Main Commission's operations. At the end, the question must be posed whether the Main Commission's activities accorded with the concepts of *political justice* or *transitional justice*. The answer is surely contingent on the degree to which the analytical sweep and limitations can be ascertained in regard of direct post-war reckonings with Nazi crimes in Poland. Two aspects have a particular part to play in this analysis. The first is the definition and role of law in the activities of the Main Commission. It should be emphasized that it is not about analysing national acts of retributive justice, but rather about the Main Commission's interpretation and application of the law, both in theory and practice.<sup>4</sup> The main concerns are not only the 'hard' aspects of this reckoning, but also its 'soft' features on the model proposed by Annette Weinke in one of her numerous works on reckonings with the Nazi regime directly after the war in West Germany.<sup>5</sup> To paraphrase her thesis, one

Leon Sowa, *Historia polityczna Polski 1944-1991* (Kraków, 2011), 17-127; Marcin Zarembo, *Wielka Trwoga. Polska 1944-1947* (Kraków, 2012); still compulsory reading: Krystyna Kersten, *The Establishment of Communist Rule in Poland, 1943-1948* (Berkeley, 1991), first edition 1984.

- 3 These are both documents collected in the archive of the Institute of National Remembrance in Warsaw and protocols from source data concerning the Main Commission and its field branches in 1945, prepared in the mid-1990s by Mieczysław Motas (ed), *Główna Komisja Badania Zbrodni Niemieckich w Polsce i jej oddziały terenowe w 1945 roku* (Warsaw, 1995).
- 4 Since the literature on this subject is quite substantial (including several articles in this volume which deal with them quite thoroughly), they shall only be briefly mentioned in this article. See Włodzimierz Borodziej, "Hitleristische Verbrechen": Die Ahndung deutscher Kriegs- und Besatzungsverbrechen in Polen', in Norbert Frei (ed), *Transnationale Vergangenheitspolitik: Der Umgang mit deutschen Kriegsverbrechen in Europa nach dem Zweiten Weltkrieg* (Göttingen, 2006), 399-437.
- 5 More details are given below, but for a basic understanding, certain elements should be mentioned, such as the personal composition of participation in the disensation of the judicial processes, the mental capacity of participants who addressed the topic, the political-historical constellation, and the spirit of the times. See Annette Weinke, "Allierter Angriff auf nationale Souveränität?" Die Strafverfolgung von Kriegs- und NS-Verbrechen in der Bundesrepublik, der DDR und Österreich', in Frei, *Transnationale Vergangenheitspolitik*, 37-93, 47.

may conclude that it was not so much a matter of what has (or has not) been done, as the manner in which it was (or was not) put to rest.<sup>6</sup>

### Political Justice and Transitional Justice – Outline Definitions

According to the definition proposed by Otto Kirchheimer in the 1960s, *political justice* denotes the use of courts for political purposes in order to extend or consolidate political actions, its function being to control political groups and units by the courts. The purpose of such control is to strengthen one's own position, and weakening that of one's enemy.<sup>7</sup>

*Transitional justice* is a category introduced much later. It includes processes and activities concerning crimes committed by a previous regime before a political breakthrough, or which took place during a civil war. The concept is based on the political breakthroughs in Central and Eastern Europe in the early 1990s, and the end of apartheid in South Africa several years later. Along with these processes, the opinion took root that there is a need to remember crimes committed, to put them at the centre of the narrative, to bring the perpetrators to justice, and to recompense the victims.<sup>8</sup> Although the discussion centres round 20th-century events, the subject literature referring to the category of *transitional justice* also addresses socio-political processes which took place much earlier. Therefore, one of the propositions attempts to define the historical development of this phenomenon, is calling for *transitional justice* to be divided into three waves. The first would be the Nuremberg Trials of 1945-1949, the second, the political breakthroughs in Southern Europe in the 1970s (Portugal, Spain, Greece), and the third, the fall of military dictatorships in Latin America in the 1980s, the political breakthroughs in the countries of Central and Eastern Europe at the end of the 1980s, and later in Latin America, and finally to the end of apartheid in South Africa in the 1990s.<sup>9</sup> Another mode of division was proposed by Ruti

6 Annette Weinke writes "It is less decided by the question of 'what?' than by 'how' in dealing with crimes committed by the state."

7 See Otto Kirchheimer, *Politische Justiz: Verwendung juristischer Verfahrensmöglichkeiten zu politischen Zwecken* (Frankfurt am Main, 1981), 606.

8 Anne K. Krüger, *Transitional Justice*, Version: 1.0, in: *Docupedia-Zeitgeschichte*, [25 January 2013], URL: [http://docupedia.de/zg/Transitional\\_Justice?oldid=125451](http://docupedia.de/zg/Transitional_Justice?oldid=125451). This is an article on the history and development of the notion of *transitional justice*, as well as the field of scientific research into the history and development of *transitional justice*, and research areas devoted to these processes.

9 Carmen González Enríquez, Alexandra Barahona de Brito, and Paloma Aguilar Fernández (eds), *The Politics of Memory: Transitional Justice in Democratizing Societies* (Oxford, 2001). For the newest literature see among others: Nanci Adler (ed),

Teitel, which assumes the development and practical application of international law as its criterion. Here, *transitional justice* also rooted in the immediate post-war period (in ‘*post-war transitional justice*’). This mainly concerns the Nuremberg and Tokyo Tribunals when, for the first time in history, national sovereignty had to give way to punishing crimes against humanity, as reflected in the prosecution of the political elites of the regimes deemed to be criminal. These proceedings set the standards for subsequent years.<sup>10</sup>

A slightly more amenable definition of *transitional justice*, also referred to as *post-conflict justice*, is suggested by Rachel Kerr and Eirin Mobekk when they say: “The terms transitional justice and post-conflict justice are used here interchangeably to denote the range of judicial and non-judicial mechanisms aimed at dealing with a legacy of large-scale abuses of human rights and/or violation of international humanitarian law and they go on to say: Broadly speaking, justice is thought to contribute to the restoration and maintenance of peace in the following ways: by establishing individual accountability, deterring future violations, establishing historical records, promoting reconciliation and healing, giving victims a means of redress, removing perpetrators and supporting capacity-building and the rule of law.” In their definition, Kerr and Mobekk take two more dimensions into account. Being important from the perspective of the first stage of the Main Commission’s activities, they are presented in more detail below. The first dimension concerns the risks and dangers connected with *transitional justice*. Among them, the authors enumerate the risk of destabilisation, recurring trauma and politicisation. The second dimension is the context in which *transitional justice* is meted out. This consists of cultural standards and values, the nature of the conflict, the scale and type of committed crimes, and the need to differentiate between and recognize the particular needs of victims, survivors,

*Understanding the Age of Transitional Justice: Crimes, Courts, Commissions, and Chronicling* (New Brunswick-New Jersey, 2018); Cheryl Lawther, Luke Moffett, and Dov Jacobs (eds), *Research Handbook on Transitional Justice* (Cheltenham, 2017). A reflection on the Polish case is provided by Klaus Bachmann, ‘The Polish Paradox: Transition from and to Democracy’, in Nico Wouters (ed), *Transitional Justice and Memory in Europe (1945-2013)* (Cambridge, 2014), 327-50.

- 10 See Ruti Teitel, ‘Transitional Justice Genealogy’, *Harvard Human Rights Journal*, 16 (2003), 69-94. For the role of the Nuremberg Trials in the context of international law see also Richard Overy, ‘The Nuremberg Trials: International Law in the Making’, in Philippe Sands (ed), *From Nuremberg to the Hague: The Future of International Criminal Justice* (Cambridge, 2003), 1-29; Enrico Heitzer, Günter Morsch, Robert Traba, and Katarzyna Woniak (eds), *Im Schatten von Nürnberg: Transnationale Abhandlung von NS-Verbrechen* (Berlin, 2018).

and perpetrators, further peace agreements, finance and infrastructure, political will, and, finally, weaving them into an international context.<sup>11</sup>

Can the activities of the Main Commission be interpreted within a framework so defined? Looking at the problem in its broader historical context in terms of time and place, should the first stage of the Main Commission's operations be characterized as symptomatic of *political* or *transitional justice*?

### Breakthrough and the Practice of Justice: The Beginnings of the Main Commission

First, a short word of explanation might be in order. Preparations for punishing World War II crimes, both on the Polish side and internationally, were already in progress before the end of the war.<sup>12</sup> In the international context, a key step was the Moscow Declarations of 30 October 1943, also known as the Declaration of the Four Nations.<sup>13</sup> This laid the groundwork for the United Nations Organisation *per se*, and its subsidiary branches, to deal with German war crimes on which authority the International Military Tribunal at Nuremberg was founded. In Poland, a key document for retributive justice was the "Sierpniówka": "the Decree of the Polish Committee of National Liberation of 31 August 1944 on punishment for fascist-Nazi criminals responsible for killing and abusing civilians and POWs and for the traitors of the Polish Nation (further referred to as the *August Decree*).<sup>14</sup>

From an institutional perspective, the prosecution of Nazi war crimes was written into the process of Poland's liberation from German occupation. The first formalized initiative in this respect was the Polish-Soviet Extraordinary Commission for Investigation of Crimes in the Area of the Concentration

11 Rachel Kerr and Eirin Mobekk, *Peace and Justice: Seeking Accountability after War* (Cambridge, 2007), 3-4, 8-14.

12 It was done both by the London government, e.g. the London Declaration on the Prosecution of War Crimes (1942), the Decree on Legal Prosecution of War Crimes of March 30, 1943, and the PKWN. A War Crimes Office operated in London as from autumn 1943.

13 Original: United Nations Documents 1941-1946, *Oxford University Press for the Royal Institute Of International Affairs (1946)*. The Polish version of the Moscow Declaration is already included, *inter alia* in the collection of legal acts of the Main Commission concerning war crimes. See IPN GK 184/1.

14 A key document on World War II retributions, but which also legalizes civil war waged against political opponents of the new regime. Broader references to the following document by Andrzej Paczkowski and Joanna Lubecka in this volume. Literature: Piotr Kładoczny, *Prawo jako narzędzie represji w Polsce Ludowej (1944-1956): Prawna analiza kategorii przestępstw przeciwko państwu* (Warsaw, 2004), 176-86; Adam Lityński, *O prawie i sądach początków Polski Ludowej* (Białystok, 1999), 63-72.

Camp at Majdanek, which operated in the camp's area, albeit only for a week, from 18 to 25 August 1944. The commission officially completed its mission in October 1944.<sup>15</sup> It laid the groundwork for the first judicial proceedings in this new field of criminology in Poland – the trial of the Majdanek staff before the Special Criminal Court in Lublin. This took place between 27 November and 2 December 1944, half a year before the war ended.

The Commission for Investigation of German Crimes in Warsaw was set up in October 1944 after Polish and Soviet troops seized Warsaw's east bank district of Praga, which was separated from the main part of the city, still occupied by the Germans, by the river Vistula. The immediate situation was not without effect on this Commission's operations over this period. The primary goal of the Warsaw Commission was to collect evidence and testimonies on German crimes committed against the population of Praga. This was done under the gunfire of ongoing military operations. The organizational meeting of the Commission took place on 12 December with the next one envisaged for 18 January, which did not take place due to the recapture of west bank Warsaw from the Germans. The work of the Commission was influenced at that time by the prevailing conditions: the lack of funds, communication impediments, mines which had been laid throughout the city, chaos connected with the unstoppable influx of people, and looting. In addition, a monumental challenge, after all of Warsaw had been liberated, was the burial of thousands of corpses in order to avoid an epidemic.<sup>16</sup>

On 29 March 1945 the Commission for the Investigation of German Crimes in Oświęcim (i.e. Auschwitz) was set up under the chairmanship of the then Minister of Justice Edmund Zalewski (further referred to as the Auschwitz Commission). Its task, besides examining crimes committed at Auschwitz itself, was also to organize the Main Commission for Investigation of German Crimes in Poland. The structure, composition, and work mechanisms of the Main Commission were actually adumbrated by the methodologies developed by the Auschwitz Commission.<sup>17</sup> The legal framework for the activities of the Main Commission was installed more than half

15 Contemporaneous publications on this subject: Borys Gorbatow, *Obóz w Majdanku* (Moskwa, 1944); *Majdanek: rozprawa przed Specjalnym Sądem Karnym w Lublinie* (Kraków, 1945); Konstanty Simonow, *Obóz zagłady* (Moscow, 1944).

16 Details on the Warsaw Commission: *Sprawozdanie z działalności Komisji dla zbadania Zbrodni Niemieckich w Warszawie* (Motas, 1945); *Główna Komisja*, vol. 29, doc. 29, 117-121, 30; *Sprawozdanie z działalności Oddziału Warszawa-Miasto Głównej Komisji Badania Zbrodni Niemieckich w Polsce za czas od dnia 1 sierpnia do 15 grudnia 1945 r.*, (1945), doc. 30, 121-5.

17 A document on the first session of the Auschwitz Committee: 'Komunikat o posiedzeniu Komisji do zbadania hitlerowskich zbrodni w Oświęcimiu w dniu 29. Marca 1945 r.', (Kraków, 1945), in Motas, *Główna Komisja*, doc. 2, 12-13.

a year later, on the strength of the Decree of the Krajowa Rada Narodowa (State National Council) of 10 November 1945 (Journal of Laws No. 51. Item 293). The Establishment of the Main Commission and the Decree regulating its operations are usually listed back-to-back in the subject literature, despite the fact that these few months meant operating in changeable, chaotic, hazily defined and transitory conditions, and, at least initially, in the context of a nation at war. This period is illustrated briefly in the several paragraphs that follow immediately below.<sup>18</sup> The Main Commission was established at the very centre of what we might call the government-in-formation, i. e. at the Presidium of the National Council of State. In July 1945, it was subordinated to the Ministry of Justice, with the Minister assuming the role of chairman. The Report concerning the operations of the Main Commission for 1945-53 states: "The Main Commission was initially conceived as an organisation of a social nature. Its task was to collect materials concerning the criminal activities of the Nazi regime in Poland for historical research and propaganda purposes. It soon transpired that investigative activities were beyond the capabilities of a social organisation (such as this) and required the introduction of a professional factor, i. e. jurists familiar with investigative methods."<sup>19</sup> This retrospective reflection, however, did not address the nuances involved in their entirety. The need for a Main Commission legitimized by a legislative foundation was signaled from the very moment of its conception.

The regulations of the Commission, adopted at its founding meeting of 17 May 1945, defined its tasks as follows: the collection of materials and research into the criminal activities of the German State Authorities, the NSDAP authorities, as well as any and all other German institutions and representatives of the German population, pertaining to Polish citizens residing both within and outside of Poland, and to any other nationalities who, during this period, were permanent residents or temporary visitors in Polish territories.<sup>20</sup> From the very beginning, this defined the Main Commission's scope of activities as an institution whose mission was to transcend Polish borders. That was reiterated in item C paragraph 1 of its statute, in which emphasis was put on making available publications on the activities of the Main Commission to the broadest possible audience in Poland, and to foreign institutions of a similar nature.<sup>21</sup>

18 See Izabela Borowicz and Maria Pilarska (eds), *Główna Komisja Badania Zbrodni przeciwko Narodowi Polskiemu: Informator* (Warsaw, 1997), 6; Motas, *Główna Komisja*, doc. 7. This brief trend also relates to newer analyses.

19 *Tezy do sprawozdania z działalności GKBZHWP w latach 1945-1953*, IPN GK 162/138, 2.

20 'Regulamin Głównej Komisji Badania Zbrodni Niemieckich w Polsce przy Prezydium Rady Narodowej, 17. 5. 1945', in Motas, *Główna Komisja*, doc. 8, 26-7.

21 Motas, *Główna Komisja* subitem c, item 1, 26.

However, compliance with the law and the inclusion of jurists in its works was to fit into an ideological framework from the very beginning. The Regulations said: "Any and all works connected with research into German crimes in Poland should be conducted with the utmost precision and objectivity, in order to accurately represent the reality. The collection, securing, and processing of evidence shall be subject to the relevant regulations of the Polish Criminal Procedural Law."<sup>22</sup>

It is no secret that there was a yawning gap between declarations of compliance with the law in post-war Poland, as expressed in official documents, and the reality, where those declarations were constantly being disregarded.<sup>23</sup> Bearing this in mind, it is still difficult to regard the law as being opportunistically exploited for the attainment of political goals, at least in the context of the Commission's initial activities. Why? Firstly, it was a period of pure transition in which nothing was concisely defined. The new, Communist, government was still preoccupied with its own legitimization, and the task of focusing its ideology was only to be taken up several years later. The basic task of the Main Commission and its field branches (conceived prior to the November Decree) were at that point activities mainly connected with the collection of documents, i. e. searching out, securing, and processing documents and material evidence to prove the countless crimes committed in Poland during the war. Secondly, which was also typical of the immediate post-war months and years, at this stage, the justice system was not yet fully appropriated by the incoming dictatorship as a political tool, as compared to the situation in subsequent years. Granted, this process had already begun on a number of fronts, including in the legislative realm; however, it had not achieved the momentum observed in the late 1940s. A substantial number of jurists were of the pre-war old school, educated and used to an altogether different political environment, and, therefore, less susceptible to political indoctrination than the up-and-coming subsequent generations.<sup>24</sup>

An example of consciousness in interpreting the law is offered by the first hearings of former prisoners of the Auschwitz camp, which were conducted after the initial visit to the camp by the Auschwitz Commission on 5 April 1945. The report for the Commission's chairman Edmund Zalewski, the Minister of Justice, in the paragraph concerning witness interviews in the Court of Appeal in Kraków (between 6 and 19 April 1945), which were open to the public and the press, underlines the weight of importance and

22 Motas, *Główna Komisja* item 8 of the Regulations, 27.

23 See fn. 14.

24 For reforms in the field of legislation, with particular focus on the justice system, see Andrzej Rzepliński, *Die Justiz in der Volksrepublik Polen* (Frankfurt am Main, 1996), chapter: 'Die Einführung des neuen Justiztypus 1944-1954', 30-62.

key role in examining the crimes committed.<sup>25</sup> However, a subsequent report concerning the same interviews (included in the Auschwitz Commission's annual activity report), signed by the prosecutor, Edward Pęczalski, and the so-called "district judge investigating officer", Jan Sehn, (both members of the Commission), is quite different.<sup>26</sup> The section concerning the interviews that had been conducted was found to contain numerous problems. These included, firstly, the lack of a uniform plan regarding questioning witnesses for both defence and prosecution, or giving any coherent direction to the contingent research, which translated into a lack of material clarity and chronological consistency in the protocols. Secondly, witness interviews were conducted in foreign languages with the assistance of interpreters, but the protocols themselves were never signed off by the witnesses. Prosecutor Pęczalski's and Judge Sehn's application to have the parties interviewed by a legal subcommittee was rejected, and the hearings were continued by the Main Commission. Only later were the materials collected by the Auschwitz Commission and processed by the legal subcommittee in accordance with the procedures envisaged by the Polish Code of Criminal Procedure.

Attention to detail and the probity of the work carried out were also part of the Main Commission's mission. During the meeting of 25 July 1945, the then Minister of Justice, Henryk Świątkowski, described its goals as follows: "German crimes are to be perpetuated in the popular memory so that future generations have access to authentic sources, because we have to remember that the Germans, who even now are trying to erase all vestiges of their criminal activities, will in the future attempt to undermine evidence gathered by the Commission. Therefore, any and all of the Commission's activities should be conducted in accordance with the Criminal Procedure Code, and documents, e.g. research protocols, should be drawn up and signed by the examining judges and prosecutors. Participation of the judiciary as a factor in the Commission's activities is paramount. It is vital that the magnitude of German crimes be known to nations who themselves have not suffered German occupation. Therefore, translations of the publication should be produced as soon as possible, beginning with translations into English and French."<sup>27</sup>

25 'Sprawozdanie przewodniczącego Komisji dla Badania Zbrodni Niemiecko-Hitlerowskich w Oświęcimiu – ministra sprawiedliwości, Edmunda Zalewskiego', in Motas, *Główna Komisja*, doc. 3, 14-20, esp. 16.

26 'Sprawozdanie z działalności Oddziału Krakowskiego Głównej Komisji Badania Zbrodni Niemieckich w Polsce od początku jej istnienia aż po dzień dzisiejszy', (1945), in Motas, *Główna Komisja*, doc. 23, 83-4.

27 'Protokół posiedzenia Głównej Komisji Badania Zbrodni Niemieckich w Polsce', (1945), in Motas, *Główna Komisja*, doc. 13, 37.

The theme of law understood as a basis for the activities of the Main Commission flits through numerous protocols drawn up in the spring and summer of 1945. The repeated calls to establish a legal basis for the operations of the Main Commission, and thus regulate its activities, are particularly conspicuous. The first monthly report to The Presidium of the State National Council of the Main Commission of 6 June 1945 even in item 2 states: “The Presidium of the Main Commission hereby applies to the Presidium of the State National Council to issue in a timely manner an official statement, which would declare that, on the territory of Poland, the Main Commission constitutes a body prevailing over any and all commissions, committees, and other similar local institutions, established beforehand or alongside it, for the purpose of investigating German crimes in Poland.”<sup>28</sup> The stated reasons are the numerous similar institutions at all local government levels, from the municipal to the provincial, and the accompanying threat of chaos and impossibility of drawing up a hierarchical operating scheme based on general principles deduced from practice as it unfolded. In a marginal note, Mieczysław Motas remarked that in the original document, the State National Council (KRN) took note of the need to “Compose a draft statement”, and the KRN archives also contain a press statement.<sup>29</sup> However, no decree was released at that time. Alfred Fiderkiewicz, the first director of the Main Commission, during an organisational conference at the beginning of July 1945, stated that by that point, “... no decree has been released on the creation of the Main Commission for Investigation of German Crimes in Poland, which consequently, from a legal-formal standpoint, does not exist.”<sup>30</sup> One day later, during a meeting of the Presidium of the Main Commission, Alfred Fiderkiewicz, commenting on the relative lack of activities of the Main Commission, justified this by claiming it was due to a lack of the necessary funds and executive apparatus. The lack of financial resources, its sense of temporariness, the uncertainty in its terms of reference, were characteristic of not just the Main Commission, but also of its field branches.<sup>31</sup> Fiderkiewicz postulated the need for the prompt development of a legal basis regulating the Commission’s activities, and for that purpose he

28 See item ‘Do Prezydium Krajowej Rady Narodowej: Pierwsze sprawozdanie miesięczne Głównej Komisji Badania Zbrodni Niemieckich w Polsce’, (1946), in Motas, *Główna Komisja*, doc. 9, 28.

29 See Motas, *Główna Komisja*, doc. 30, fn. 3.

30 ‘Protokół konferencji organizacyjnej Głównej Komisji Badania Zbrodni Niemieckich w Polsce, odbytej w lokalu prezydium KRN’, (1945), in Motas, *Główna Komisja*, doc. 11, 33–6.

31 See e.g. Łukasz Jasiński, ‘Okręgowa Komisja Badania zbrodni hitlerowskich w Gdańsku w latach 1965–1989’, *Pamięć i Sprawiedliwość*, 1/21 (2013), 247–248.

prepared a draft decree, with its detailed version prepared by Prosecutor Stefan Zygmunt Kurowski in consultation with the KRN Legal Affairs Office.<sup>32</sup>

The documents cited above reinforced the understanding of the law as a standard, the meeting of which had an existential dimension for the Main Commission and its activities. Certainly, it was a means for legitimizing its own actions, but not necessarily a political instrument in the sense of being a weapon in the ideological arsenal of the new administration.<sup>33</sup> Was it only a matter of hypothetical fears, or did the lack of a legal basis necessary for the functioning of the Commission translate into some form of imperfect practice? The activities of the Auschwitz Commission (and later the Kraków field branch of the Main Commission), and its first visit to Auschwitz, may serve as an analytical example.<sup>34</sup> The legal sub-commission only arrived in Auschwitz on 7 May 1945. The first challenge was the actual inspection of the premises. At the time, the main Auschwitz camp was being used as a Soviet military hospital and a staging post for the Soviet military authorities. For the protection of the camp, as well as the one in Brzezinka (which was part of the complex of concentration camps in the Auschwitz area), the 'security of the Auschwitz camp' was envisaged. However, it was too understaffed to control forty square kilometres. As a result, there were numerous thefts of objects of crucial documentary importance. The search for documents within the camp, carried out by members of the Commission, literally led them through basements, latrines and sewers; only after their thorough cleaning, did the findings prove useful in reconstructing the history and operations of the camp. These included plans, lists of prisoners, lists of the prison authorities, and correspondence with the headquarters in Berlin. The volume of materials collected in the course of this work, theoretically, could have been expanded, but this proved impossible in practice. The underlying causes may have been trivial; however, they were symptomatic of the post-war reality characterized by general deficit in every imaginable essential resource, chaos and overlapping competencies: the Commission did not have a vehicle at its disposal to travel about the sprawling camp site. The shipment of documents out of the camp also posed an insuperable problem. Documents packaged for transport were collected by representatives of the Red Army, and objects of evidential-documentary value, e.g. the gallows from the 'Death Block', were not cleared for removal for safekeeping.

32 'Protokół posiedzenia Prezydium Głównej Komisji Badania Zbrodni Niemieckich w Polsce', (1945), in Motas, *Główna Komisja*, doc. 12, 36-7.

33 This changed in subsequent years; see *Tezy do sprawozdania z działalności GKBZHWP*, 7-8.

34 *Sprawozdanie z działalności Oddziału Krakowskiego*, 81-93.

Members of the Commission were also considerably hampered by a permanent lack of freedom of movement within the camp, and a prohibition on taking photographs. When a photographer interrogated by the Soviet military authorities informed them that he worked for the Main Commission for Investigation of German Crimes in Poland, his Soviet interrogators stated that they were not aware of the existence of such a Commission (though at that point the Commission had already been making investigations at the camp for three weeks). Impediments arose virtually from day to day: the camp was becoming derelict, the gallows had been hacked down, the roof of the crematorium was converted into a dance floor, not to mention that the entire area of the camp was subject to sporadic outbreaks of fire and wonton destruction. The Auschwitz Commission was renamed the Kraków field branch of the Main Commission; however, that did not solve any problems. At that time, Auschwitz-Birkenau was being used to house German POWs, which resulted in a total entry ban. In view of this, the Commission attempted to investigate other camps in the region, but the situation there turned out to be only slightly better. The situation in places still under Soviet military control was very similar to that which obtained in Auschwitz. To work in places under the jurisdiction of the Polish authorities required permits issued by the Department of Prisons and Camps, which the Commission neither had, nor could it produce any sort of documentary evidence confirming the importance of its activities.<sup>35</sup>

Another factor in the Kraków Commission's activities was its foresight of the need to gather documents, albeit based on a measure of randomness and luck. The staff of the Kraków branch travelled throughout the region, carried out targeted searches, at times saving important General Government documents from destruction, sometimes literally at the last possible moment. Such was the case with a trading company in Kraków, right before a consignment of documents was to be taken for recycling.<sup>36</sup> But the Commission's staff rose to the occasion ceaselessly lobbying all powers that be, to gather and archive all documentation left by the Germans. These efforts quickly bore fruit: the Kraków Commission was able to almost instantly deliver documentation to the Ministry of Justice, which was used in preparing for the Nuremberg Trials.

Participation in the imposition of the peace settlement process on an international scale in the immediate post-war period is, in fact, one of the more

35 On the post-war history of the Auschwitz camp see Imke Hansen, "Nie wieder Auschwitz!" *Die Entstehung eines Symbols und der Alltag einer Gedenkstätte, 1945-1955* (Göttingen, 2015); Zofia Wóycicka, *Przerwana żałoba: Polskie spory wokół pamięci nazistowskich obozów koncentracyjnych i zagłady 1944-1950* (Warsaw, 2009).

36 *Sprawozdanie z działalności Oddziału Krakowskiego Głównej Komisji*, 87.

significant aspects of the Main Commission's operations. In August 1945, the Main Commission became a part of the United Nations War Crimes Commission, collecting documentation concerning war crimes presented by individual governments. The Polish delegates from the Main Commission were Mieczysław Szerer and Tadeusz Cyprian.<sup>37</sup>

### Summary

How can the abovementioned activities of the Main Commission in 1945 be classified by reference to the categories of *transitional justice* or *political justice*? The latter, in the interpretation proposed by Otto Kirchheimer, seemed hardly to correspond to the aims and *modus operandi* of the Main Commission. By way of exception, it may be viewed in terms of the system's legitimization on an international scale: the activities of the justice system of the new government were recognized by other states, which ultimately strengthened its international legitimization.

The category of *transitional justice* seems far more fitting for determining the operations of the Main Commission. The main idea behind the works of the Commission (see the definition at the beginning) was the opinion that the crimes that had been committed should be remembered. This translated into documenting both its principal activities and its contingent research work. Both were intimately linked with its determination and its practical contribution to bringing perpetrators to justice, and hence at least symbolically to recompense their victims (most of whom died during the war). Of course these activities were somewhat lopsided in that they did not apply to all crimes committed in the course of the Second World War. The Commission only investigated the Nazi sphere of criminal operations. Obviously a blind eye had to be turned to Soviet crimes due to the political system forcibly imposed on Poland by the post-war settlement, and the ever-vigilant forces of censorship that held sway in deference to that settlement until 1989.

The definition of *transitional justice* proposed by Rachel Kerr and Eirin Mobekk offers some measure of specific interpretational potential. It dovetails with much of what the Main Commission sought to achieve in the practical aspects of its operations, though several clearly visible restrictions were in attendance. Without a doubt we can discuss legal and extra-legal activities aimed at preventing future violence, preserving historical documentation, affirming the determination to punish criminals and recompensing victims,

37 See Jasiński, 'Okręgowa Komisja Badania zbrodni hitlerowskich w Gdańsku w latach 1965-1989', 246.

etc. It is difficult, however, to find anything like appeals for peace in the initial documents of the Main Commission. The same applies to the need for conciliation – there is simply no reflection of this need in the documents. Considering the scale of the committed crimes, it was for both its victims and perpetrators – that is the direct witnesses to the events – clearly impossible to think in terms of notions like peace and conciliation immediately after the war.

The risks in the *transitional justice* process, as enumerated by Kerr and Mobekk, were related to the Main Commission only on a small scale, or were so evident for the historical moment, that it is difficult to treat them as posing specific hazards. The political situation in Poland in 1945 was, in and of itself, unstable. This was the backdrop to the Commission's activities which essentially related to clearly defined perpetrators and the will to bring them to justice – a desire universally shared in society as such, regardless of individual political persuasion.<sup>38</sup> On the other hand, the Commission, because of its designated role and position in the power structure of the new regime, was unavoidably politicised. In the final analysis, it must be remembered that all of this was happening in the context of a profoundly traumatized society that needed decades to recover, assuming it ever could fully recover from the experience.<sup>39</sup> Victims of the war, former camp prisoners, were constantly confronted with their past.<sup>40</sup> The first director of the Commission, Alfred Fiderkiewicz, had been a prisoner in Auschwitz. During interviews conducted by Prosecutor Sehn, Fiderkiewicz mentioned how, still in his camp uniform, he assumed his duties as the mayor of Kraków immediately after the war.<sup>41</sup>

The examples analysed above prove beyond a shadow of a doubt the key role played by the context in which the process of Polish *transitional justice* unfolded after 1945. The nature and type of the crimes committed, as well as their scale, clearly marked out the path the Main Commission was to follow from the start. The sheer enormity of this sinister legacy translated into its arduous documentary-research activities. The source of its conception was political will. The achievement of its defined goals was obstructed – at least at the beginning – by disruption and disorder in infrastructure and finances,

38 The reckoning with the political opponents of the new regime was a completely different kettle of fish.

39 Deliberations on post-war trauma, see Zaremba, *Wielka Trwoga*, 87-137.

40 E.g. female prisoners of the Auschwitz camp starring in the film by Wanda Jakubowska *Ostatni etap*, see Monika Talarczyk-Gubała, *Wanda Jakubowska: Od nowa* (Warsaw, 2015).

41 *Protokół przesłuchania A. Fiderkiewicza z 31. 7. 1945 przez śledczego Jana Sehna*, 1-46, AAN 472/II-1, 43-4.

the symptomatic problems of the time. The scale, nature and motivation behind the operations of the Main Commission was also significantly influenced by the international context in which it operated in – primarily, its task to produce documentary evidence for the Nuremberg Trials, and to support the work of the Polish delegate to the United Nations War Crimes Commission.<sup>42</sup>

The international context, along with the escalating hostility between the Soviet and western power blocs, also dominated the work of the Commission as from the late 1940s. While dealing with the Second World War crimes issue, it smoothly transitioned into the Cold War era which imposed readjusted priorities. On a national scale, at the end of the 1940s, it was subjected to intensifying Stalinization, and for a time its operations were practically suspended. The Main Commission, renamed the Commission for the Prosecution of Crimes against the Polish Nation, still exists. Since the creation of the Institute of National Remembrance, it has constituted one of its departments, and enjoys the status of being the oldest existing institution of its kind in Poland.

So far, its story is still dominated by more or less jubilant narrations and characteristics of a strong informational nature – with a barrage of dates and numbers, which, while proving the incredible efficiency of the Commission over the decades, are still very much overwhelming for the reader.<sup>43</sup> Simply referencing the numbers, dates and statistics may paradoxically be a significant impediment in the analysis the of history of the Commission. In the context of its story and, by extension, stories about Polish reckonings with war crimes, it is worth transcending the purely statistical narrative to attempt its deconstruction. It is to view the Commission's history as full of twists and turns rather than a linear narration based only on names, publications, quantities of collected documents, and initiated or conducted proceedings. Without questioning the weight of individual chapters, but, instead, by analysing them in parallel, a more diverse story may emerge. The task of looking

42 The international context was to affect the activities of the Main Commission continuously, and from the 1960s it was to be intertwined with the activities of the Zentrale Stelle in Ludwigsburg. In the late 1960s, the Committee also actively supported initiatives for no statutes of limitation for genocide and crime s committed by the National Socialist regime in Poland between 1939 and 1945.

43 There are rarely new publications on the topic. A recently published short overview is available in Łukasz Jasiński's, 'Główna Komisja Badania Zbrodni Niemieckich/Hitlerowskich w Polsce: narzędzie rozliczeń i propagandy', in Andrzej Paczkowski (ed), *Rozliczanie totalitarnej przeszłości: instytucje i ulice* (Warszawa, 2017), 49-70. Erst vor kurzem erschien eine umfangreiche Studie von demselben Autor: Jasiński, Łukasz, *Sprawiedliwość i polityka: Działalność Głównej Komisji Badania Zbrodni Niemieckich/Hitlerowskich w Polsce 1945-1989* (Gdańsk/Warszawa, 2018).

through the piles of documents, focusing on efforts to collect them, and identifying the faces, and the individual stories behind them, still stands before us. Transitioning from the focus on the question of “what?” – which, in the case of the Main Commission, seems to be very well researched – to the question of “how?” – i. e. examining the challenges specific for the time and place, and hence narrating a chapter, but not necessarily an entire story. The fascinating post-war period of the Main Commission may become a new beginning for such an attempt.