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978-1-107-02593-6 - Allen Dulles, the OSS, and Nazi War Criminals: The Dynamic of Selective Prosecution

Kerstin Von Lingen

Excerpt

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## Introduction

“Conspiracy” generally means the secretly arranged agreement between two parties to the detriment of a third.<sup>1</sup> This definition certainly applies to the negotiations held in Switzerland starting in March 1945 between Allen Dulles from the U.S. intelligence service in Europe and Karl Wolff, the highest-ranking SS and police leader in Italy, on a separate surrender of the German Army Group C in northern Italy. These negotiations, known under the code name *Operation Sunrise*, were conducted and an agreement reached between the German Wehrmacht and the Western Allies to the exclusion of their Soviet ally. The agreement gave the Anglo-American troops military, political, and strategic advantages in the region around Trieste, and enabled them to bypass the feared German Alpine Fortress and to advance directly into southern Germany without any major troop losses. Therefore, *Operation Sunrise* was a decisive factor in the strategy of the Western Allies to establish their dominance over Central Europe and thereby shape the political postwar order.

In Anglo-American legal systems, conspiracy is also a common instrument of criminal law that was developed precisely for the purpose of punishing people in leadership positions. The offense of conspiracy was generally unknown in European jurisprudence until the International Military Tribunal at Nuremberg in 1945. However, such legal reasoning proved in court to be a highly effective means for punishing state-legitimized

<sup>1</sup> “Conspiracy is the agreement of two or more persons effect any unlawful purpose, whether as their ultimate aim or only as a means to it. This definition presents three points for notice: 1. the act of agreement, 2. the persons agreeing, 3. the purpose agreed upon.” Definition in G. Godfrey Phillips, *Outlines of Criminal Law*, Cambridge 1947, 335.

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violence and had a lasting influence on the development of binding legal norms. Up to this day, grave breaches of international law are prosecuted as the criminal offense of conspiracy or common plan,<sup>2</sup> more specifically as the doctrine of joint criminal enterprise, which was expanded in 1995 and used, for example, at the International Criminal Tribunal for the former Yugoslavia in The Hague or at the Ad Hoc Tribunal in Rwanda. In essence, all of these terms embrace the idea of U.S. legal scholar Murray C. Bernay, whose aim was to clarify, together with a group of experts at the Allied Quebec Conference in September 1944, legal grounds on which it would be possible to prosecute crimes that had occurred in many different places concurrently and with an enormous number of victims. Murray defined the crime to the effect that the defendants pursued a common, tacitly accepted plan to annihilate the victims, “to commit murder, terrorism, and the destruction of the peaceful populations in violation of the laws of War.”<sup>3</sup> On this basis, proof of participation in the planning of certain crimes was sufficient to convict perpetrators who had never bloodied their own hands.

All the same, when Karl Wolff, Heinrich Himmler’s long-time chief of staff and – in the minds of many – the “second man in the SS,” arrived in Nuremberg, it was only to give witness testimony at the trials. He was the special beneficiary of a “conspiracy of silence,” who testified several times after 1945 as a witness in the main war criminal trials in Nuremberg and other Allied courts, but was never charged himself. Therefore, the aim of this study is to explain the conspicuous clemency for Wolff and his staff in the Allied war criminals program after 1945. *Operation Sunrise* was the first in a bundle of measures that sought to reward German negotiation partners for their actions, because the early surrender in northern Italy benefited the Western powers on the eve of the Cold War as they attempted to push back, specifically to the Yugoslavian border, the Soviet sphere of influence in Central Europe.

Several times, Wolff was himself under investigation because of statements he made in the subsequent trials before U.S. tribunals in Nuremberg

<sup>2</sup> Michael Bryant, “Dachau Trials – Die rechtlichen und historischen Grundlagen der U.S.-amerikanischen Kriegsverbrecherprozesse, 1942–1947,” in H. Radtke, D. Rössner, T. Schiller, W. Form, eds., *Historische Dimensionen von Kriegsverbrecherprozessen nach dem Zweiten Weltkrieg*, Baden-Baden 2007, 111–122. On page 120, Bryant refers to the definition of the Deputy Judge Advocate General from March 1946 in establishing the connection between “conspiracy” and “common plan”: “The legal characteristics of common design are in all material respects the same as conspiracy, as the latter is recognized in U.S. municipal criminal law, except that a previously conceived plan is not an essential element.”

<sup>3</sup> Quoted in Bradley F. Smith, *The Road to Nuremberg*, London 1981, 95.

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when his connivance was revealed concerning the murder of Jews in Eastern Europe and the medical experiments on concentration camp prisoners. In the end, however, he was never tried for war crimes before a U.S. court. Wolff was given a lenient sentence in the denazification process in the British Zone and released from Allied imprisonment in 1949 with the status of “less incriminated.” It wasn’t until 1962 that public pressure from abroad became great enough to prompt an investigation that eventually led to a trial in Munich in 1964 on Wolff’s involvement in the organization of the deportation of Jews to Treblinka. Although the former SS general was convicted in this trial, he was released in 1969 following numerous interventions by the United States and lived inconspicuously throughout the 1970s. Shortly before his death in 1984, Wolff was involved as a dubious expert in the scandal involving the fake Hitler diaries purchased by the magazine *Stern*. In his obituaries, one finds only conjecture about the reasons Wolff was so conspicuously spared and the interests that continued to guarantee the effectiveness of this protective shield even decades after the war had ended. Based on the sources available, this study examines this conjecture and explains why it failed to have any repercussions for decades.

Three topics in history – World War II in Italy, the Nuremberg Trials, and intelligence agencies – are interwoven into the fabric of this depiction of SS Obergruppenführer and General of the *Waffen-SS* Karl Wolff and his relationship to Allen W. Dulles, who in 1945 headed the Bern office of the U.S. Office of Strategic Services (OSS), European Section, and served later as CIA chief. Given that the two central figures, Wolff and Dulles, knew each other from the surrender negotiations that took place in Switzerland, the search for the causes of Wolff’s postwar protection has to begin in the analysis of *Operation Sunrise*.

A comprehensive, source-based analysis of the negotiations on surrender only became possible after 1998 when the U.S. government released the CIA files for the period under study. A further stroke of luck was the discovery in the late 1990s of the private reference files belonging to William Donovan, the OSS founder.<sup>4</sup> Consequently, it has become possible to search for empirical evidence of the special agreements in a broad source base. On the basis of these files, it is also possible to examine how

<sup>4</sup> Donovan had transferred his reference files from Nuremberg in the archive of his law office, where they were not found until the late 1990s and donated to the Cornell Law School at Ithaca, New York. They are now available as the Donovan Collection, Cornell Law School (hence: DCN).

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responsible institutions and persons among the Western Allies assessed the rapid surrender through negotiation and what political expectations were linked to this. The OSS files made available in the CIA collection offer insight into the special negotiations regarding incriminated German functionaries, which included not only scientists but particularly personnel from the ranks of the SS and the Sicherheitsdienst (SD), the Nazi secret service.

The private papers and reference files of Allen Dulles, William Donovan, and Lyman Lemnitzer enable us to draw conclusions about the intensity of efforts to protect Karl Wolff. In turn, these conclusions can be corroborated by examining official files from the German Federal Archives in Koblenz and Freiburg, as well as the Bavarian State Archives Nuremberg, the collection at the Institut für Zeitgeschichte in Munich, and the private papers of several German participants (Karl Wolff, Heinrich von Vietinghoff-Scheel, Victor von Schweinitz, Rudolf Rahn, Albert Kesselring, and Hans Röttiger). As the correspondence found in the papers of Dulles and Lemnitzer shows, the primary efforts were made by Allen Dulles, his close colleague in Bern Gero von Schulze-Gaevernitz, and the military negotiators U.S. Army General Lyman Lemnitzer and British General Terence Airey. The sources also indicate the kind of motives prompting the solicited *Sunrise* circle to act.

To analyze the context and background of the “secret deal” between Dulles and Wolff, it is imperative to pay attention to the personal connections vital to the success of the “deal,” beside the exclusive access that intelligence services had to various Allied institutions implementing the war criminal policy. Evidence found in the files shows that the protection of SS General Karl Wolff was not the independent initiative of an OSS member but corresponded to the U.S. government’s interests in achieving a separate surrender in northern Italy and thereby securing certain geo-strategic advantages in the race for the dominance of Central Europe, particularly the port of Trieste. From a military standpoint, such a surrender offered the Western Allies the chance to bypass the feared German Alpine Fortress and reach Berlin without huge casualties and faster than the Red Army. Washington was willing to make concessions to achieve a quick partial surrender on the European southern front, even if it refused to dictate a firm framework for such negotiations. In this context, it is insignificant that *Operation Sunrise* did not become effective until 2 May: The partial surrender had been planned and negotiated since March 1945, a fact that reveals great Anglo-American commitment to its success.

*Operation Sunrise* illustrates the interaction among the military and political interests of the United States and Great Britain at the end of the

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war and marks a turning point in the Allied relations to the Soviet Union, namely from partners to future enemies.<sup>5</sup> The dimensions of the Wolff case – negotiations on surrender despite the Casablanca agreements, secret immunity in Nuremberg for Wolff stemming from protection by intelligence circles, and political advantages for the Western Allies – can be attributed to the context of the Cold War. The tensions between the Western Allies and the Soviets were obvious. By the turn of the year in 1944–1945, the potential threat represented by the Soviet Union to the Western Allies was considerable. For quite some time, the major concern in Washington and London had no longer been the ability to defeat Hitler but the ability to dominate the postwar order in Europe. Considering that the Red Army always placed a communist government in charge as it marched through eastern European countries (also a violation of the Allied agreement) the surrender negotiations in Italy can be understood as a reaction among the Western Allies to protect their own interests by containing the Soviet sphere of influence.<sup>6</sup> Contingency plans, including the support of German military units, were drawn up at the Allied headquarters in Italy,<sup>7</sup> “to assist any possible operations by AFHQ Forces in Austria against Yugoslavs.”<sup>8</sup> Had conflict broken out with Stalin, approximately 500,000 German soldiers from the Army Group C would have been sent marching against the “Bolsheviks,” motivated to unite with their former enemies under the banner of ideologically congruent war aims.

During the *Operation Sunrise* negotiations, Wolff was informed that the Anglo-American allies wanted a quick German surrender in Italy to curb the westward advance of Soviet troops, and that his offer to use certain select German troops as support had not been turned down. Troop units from Army Group C were deliberately allowed to keep their weapons in the

<sup>5</sup> The standard work still remains Elena Agarossi and Bradley F. Smith, *Operation Sunrise: The Secret Surrender*, New York 1979, 74.

<sup>6</sup> Georg Kreis, “Das Kriegsende in Norditalien 1945,” *Schweizer Monatshefte* 65 (1985): 507–521, here 515.

<sup>7</sup> Alistair Horne, *Macmillan: 1894–1956, The Official Biography*, vol. I, London 1988, 256. Horne emphasizes that the British military leadership feared, following years of positive propaganda depicting the British and Yugoslavs as brothers in arms against the Nazis, that it would probably be difficult to communicate to British soldiers the need to fight against Tito. For this reason, a solution had to be found in preparation for the contingency of armed conflict around Trieste. See also TNA/PRO, FO 1020/42, AFHQ (Alexander) to Combined Chiefs of Staff, 11 May 1945.

<sup>8</sup> NARA, RG 331, E 24 A, box 2, folder 31, SHAEF (G-3), Outgoing message, 17 May 1945. The fighting units under General Eberle (150,000 men, including 45,000 fully armed Cossacks) had requested to be turned over to the 12th U.S. Army. They were given the status of “disarmed enemy forces,” but remained ready for the possibility of eventual deployment.

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Italian border region of Istria to push back the Yugoslavian partisans who had conquered Trieste at the end of April 1945 behind the so-called Morgan Line – and with them the danger of ideological confraternity with the communist resistance fighters of northern Italy. Thus, on June 12, 1945, the region was declared the “Free Territory of Trieste” under UN protection, and then ceded to Italy ten years later.

In a 1954 speech, Churchill unleashed the last major controversy of his political career in parliament and in the daily newspapers when he acknowledged in passing that the idea to rely on the support of German troops to achieve local war aims against the Soviet Union had been considered at the time and circulated under the codename of *Operation Unthinkable*.<sup>9</sup> The possibility of such a last-minute treasonous breach of the alliance fueled by East-West antagonism had been discussed in research but considered hypothetical.<sup>10</sup> When the Cabinet files from the final days of the war were released as a routine measure in 1998 by the National Archive (PRO) in London, public debate was again rekindled.<sup>11</sup> With the help of German sources, it is now possible to confirm that *Operation Unthinkable* was not just a British military war-game scenario, but that the defeated German commanders had indeed kept their troops under arms with the expressed permission of the Western Allies.

Certain individual decision makers thus garnered sufficient leeway to undermine high-level political agreements by bringing about the critically important separate peace in northern Italy in exchange for the protection of alleged war criminals, as is evident in the case of Wolff. It must have been clear to the negotiators that any deal with the Germans went against the Casablanca agreements on the unconditional surrender of the German Reich. Hence, secrecy was the highest priority. Because the negotiations between the U.S. intelligence service and the SS general violated existing Allied agreements, the Western powers, particularly the U.S. government,

<sup>9</sup> Churchill actually said, “Even before the war had ended and while the Germans were surrendering by hundreds of thousands, and our streets were crowded with cheering people, I telegraphed to Lord Montgomery directing him to be careful in collecting the German arms, to stack them so that they could easily be issued again to the German soldiers whom we should have to work with if the Soviet advance continued.” Robert James, *Speeches of Winston Churchill*, London 1974, here the speech “The Unity of the free Nations” held at Woodford, 23 November 1954, vol. VIII, 8604.

<sup>10</sup> See the reactions to Arthur Smith, *Churchill's Secret Army*, London 1978.

<sup>11</sup> David Dilks, “The Bitter Fruit of Victory: Churchill and an Unthinkable Operation, 1945,” in *The Second World War in 20th Century History*, Oslo, 19th International Congress of Historical Sciences, August 11–12, 2000, 27–49 (Bulletin du Comité International d'histoire de la Deuxième guerre mondiale n 30/31–1999/2000).

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had an important reason after 1945 to fear a public trial of Karl Wolff and his subordinate negotiators.

Overlapping responsibilities among the staffs made it possible to influence executive authority and thus war criminal policies. The case study of Wolff enables us to draw conclusions about the politics of the top leadership at the U.S. intelligence service and its ability to influence other Allied authorities in Nuremberg and in the Control Council in Berlin. It also shows how binding mechanisms of criminal persecution could be suspended without attracting too much attention. In London and Washington, various interest groups not only worked against one another within their own departments, as was particularly evident within the OSS, but formed friendship circles with other like-minded groups outside their own areas of competence.<sup>12</sup> Allen Dulles was at the heart of a circle whose scope of influence reached the prosecution authorities at the Nuremberg Palace of Justice, the center of international attention, as well as the War Crimes Group. As a result, this circle could protect Karl Wolff and officers on his staff from criminal prosecution in the postwar years.

Because of the intervention of high-ranking U.S. intelligence officers, members of the U.S. prosecution staff in Nuremberg and the Allied Control Council in Berlin were influenced directly. Because Directive No. 10, issued on December 20, 1945,<sup>13</sup> stipulated that it had become the task of the Control Council to decide on the extradition of high-ranking Nazi functionaries, Dulles's circle also succeeded in getting the British military government to abandon plans to prosecute Karl Wolff in Italy and to refuse the petition of extradition from other countries. The similarity of the positions of the United States and Britain is evident in the actions taken in 1948 by British military governor Brian Robertson following intervention from Washington. Robertson stopped extradition petitions for Wolff from other countries on the grounds that Wolff was to be tried by a German court in the British Zone. The governor then instructed his department to infer to the lawyer defending Wolff in this denazification trial that sufficient incriminating evidence against the SS general had been collected but would not be used if Wolff did not mention the *Sunrise* negotiations in court. The court files reveal just how far the 1948

<sup>12</sup> Kerstin von Lingen, "Der Fall Kesselring: Britische Vergangenheitspolitik und die Kriegsverbrecherlobby," in Henning Radtke, Dieter Rössner, Theo Schiller, and Wolfgang Form, eds., *Historische Dimensionen von Kriegsverbrecherprozessen nach dem Zweiten Weltkrieg*, Baden-Baden 2007, 137–158, here 144f.

<sup>13</sup> Bryant, "Dachau Trials," 116.



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denazification trial in Hamburg was tantamount to a de facto amnesty or, at the least, a rehabilitation of Wolff on the part of the Allies, despite the four-year sentence that was handed down (and then suspended because of the years already spent in custody).

Archival material found in the Swiss Federal Archives in Bern also highlights the role played by Switzerland in covering up the involvement of its own intelligence service in the separate surrender, later called the “capitulation conspiracy” in the critical leftist Swiss press. Future studies should examine whether the cover-up of Switzerland’s help in arranging the surrender could possibly have been an effort to conceal National Socialist sympathizers in the Swiss bureaucracy and military. It would appear particularly worthwhile for further research to take a closer look at the 1946 affair involving SD officer Klaus Huegel, who was also involved in the *Sunrise* negotiations and operated for years in Zurich and Lucerne with the aim of inquiring into the possibilities of annexing Switzerland to the Reich. The files are located in the Archives of Contemporary History at the Swiss Federal Institute of Technology Zurich and should be part of another study, as this question exceeded the scope of this study because the emphasis here lies on the motives of the Western Allies.

Had the Anglo-American allies put Karl Wolff and his staff officers on trial, the geostrategic interests pursued by the Western powers during the surrender negotiations would have been brought up. Wolff’s defense lawyers would not have neglected the opportunity to reveal publicly that Dulles himself had violated the Allied Casablanca principle only to accept “unconditional surrender” from Germany by conducting the negotiations, during which he also quietly agreed to protect Wolff from prosecution in the immediate postwar months. Furthermore, it would have become impossible to conceal the fact that Stalin had justifiable cause for his concern that the Western Allies might agree to a partial surrender if it meant gaining a geopolitical advantage over the Soviet Union.<sup>14</sup>

The question about the specific circumstances involved in fulfilling the promise of immunity is particularly interesting in light of the lack of such protection for other high-ranking officers. For example, General Field Marshal Albert Kesselring, the Wehrmacht commander-in-chief in Italy, was first sentenced to death for war crimes in 1947 by a British military court, then granted a commutation of sentence to imprisonment, and finally

<sup>14</sup> Agarossi and Smith, *Operation Sunrise*, 101–106; see also Gerald Steinacher, *Südtirol und die Geheimdienste 1943–1945*, Innsbruck 2000, 49ff.; Kreis, “Kriegsende,” 513ff.



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released following a highly publicized campaign in 1952.<sup>15</sup> The differences in treatment, obvious to any attentive contemporary, had to be justified outwardly. If an SS officer was to be granted temporary immunity, this had to be carefully concealed in the postwar years for reasons of internal Allied unity and public opinion. In doing so, the Western Allies, especially the United States, breached their own legal and moral principles to help reestablish “justice” throughout oppressed Europe by the consequent prosecution of crimes.

How this came about is reconstructed in this book. The story is built on a type of circumstantial evidence because not a single written word exists or ever existed that explicitly called for the protection of Karl Wolff. For the first time, however, exact proof can be presented that reveals how a network of intelligence officers, lawyers, and occupational authorities succeeded in protecting Wolff at the International Military Tribunal (IMT trial) at Nuremberg as well as in the subsequent U.S. trials and in front of the denazification court of the British Zone.

## STATE OF RESEARCH

In the research on war criminal trials and their political environment, the key focus is always on *Vergangheitspolitik*, the politics of the past. This term, introduced by Norbert Frei, is used to describe a political process involving the partial punishment, suspension of punishment, and integration of incriminated Nazi functionaries.<sup>16</sup> Contrary to *Vergangenheitsbewältigung*, the process of dealing with the past, *Vergangheitspolitik* refers to the political situation of the postwar period, in which the prosecution of war crimes took a back seat to political considerations in the course of the East-West conflict. Frei’s term, which he derived from developments occurring during the early

<sup>15</sup> Kerstin von Lingen, “Konstruktion von Kriegserinnerung: Der Prozess gegen Generalfeldmarschall Albert Kesselring vor einem britischen Militärgericht in Venedig (1947) und das Bild vom Krieg in Italien,” in *Militär-geschichtliche Zeitschrift* 59, no. 2 (2000): 435–450; Kerstin von Lingen, “. . . wenn wir zum letzten Kampf in Italien antreten.” Die Konstruktion von Kriegserinnerung am Beispiel des Kriegsverbrecherprozesses gegen Albert Kesselring,” in Bruno Thoss and Hans-Erich Volkmann, eds., *Erster Weltkrieg – Zweiter Weltkrieg. Ein Vergleich*, Paderborn 2002, 687–709 (volume of collected essays from papers presented at the international conference sponsored by the Militärgeschichtliche Forschungsamt in March 2001 in Potsdam).

<sup>16</sup> Norbert Frei, *Vergangheitspolitik. Die Anfänge der Bundesrepublik und die NS-Vergangenheit*, Munich 1996 (English translation: *Adenauer’s Germany and the Nazi Past: the Politics of Amnesty and Integration*, New York 2002). See also Ulrich Brochhagen, *Nach Nürnberg. Vergangenheitsbewältigung und Westintegration in der Ära Adenauer*, Hamburg 1994.

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years of the Federal Republic of Germany, is also illuminating when applied to the politics of the Allies toward the incriminated Nazi elite.<sup>17</sup> The suitability of the term with regards to Allied behavior in handling war criminals and the determinant factors has already been successfully proven in the monograph on General Field Marshal Albert Kesselring, the key figure in this regard during the political debate on German warfare in Italy in the decade immediately following the war.<sup>18</sup>

More recent studies on the general topic of transitional justice, understood as a pacification measure accompanying the transition into the postwar society, have made it evident that prosecution after military conflicts is only one of many options.<sup>19</sup> Others are political postwar planning, retribution and reparation demands from groups such as victim organizations, and the idea of prevention (meaning reeducation aspects). The War Crimes Policy for Germany comprised all of these components and meant that an exogenous phase – one implemented externally by the Allies in the country – of creating a new state took priority over aspects of reparation.<sup>20</sup> By means of the Wolff case, it becomes clear to see when legal aspects have priority and when political considerations dominate.

There are biographical studies of Allen W. Dulles and Karl Wolff,<sup>21</sup> although the work on Wolff is but a brief delineation.<sup>22</sup> These biographies

<sup>17</sup> Norbert Frei, ed., *Transnationale Vergangenheitspolitik. Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem zweiten Weltkrieg*, Göttingen 2006; since 2000 research has been conducted in the United States on the political components of retribution, see, for example, István Deák, Jan T. Gross, and Tony Judt, eds., *The Politics of Retribution in Europe*, Princeton 2000; Richard Ned Lebow, Wulf Kansteiner, and Claudio Fogu, eds., *The Politics of Memory in Postwar Europe*, Durham 2006; Tony Judt, *Postwar: A History of Europe since 1945*, London 2005.

<sup>18</sup> Kerstin von Lingen, *Kesselrings letzte Schlacht. Kriegsverbrecherprozesse, Vergangenheitspolitik, Wiederbewaffnung. Der Fall Kesselring*, Paderborn 2004 (English translation: *Kesselring's Last Battle: War Crimes Trials and Cold War Politics, 1945–1960*, Lawrence 2009).

<sup>19</sup> Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective*, New York 2004; Jon Elster, ed., *Retribution and Reparation in the Transition to Democracy*, New York 2006; Neil J. Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes. Laus, Rulings and Reports*, 3 vols, Washington, DC 1995.

<sup>20</sup> David Cohen, *Transitional Justice in Divided Germany after 1945*, Berkeley 2006; Hans Günther Hockerts, Claudia Moisel, Tobias Winstel, eds., *Grenzen der Wiedergutmachung. Die Entschädigung für NS-Verfolgte in West- und Osteuropa 1945–2000*, Göttingen 2006.

<sup>21</sup> James Srodes, *Allen Dulles: Master of Spies*, Washington, DC 1999; Peter Grose: *Gentleman Spy. The Life of Allen Dulles*, London 1995; Leonard Mosley, *Dulles: A Biography of Eleanor, Allen and John Foster Dulles and Their Family Network*, New York 1979.

<sup>22</sup> Brendan Simms, “Karl Wolff – Der Schlichter,” in Ronald Smelser and Enrico Syring, eds., *Die SS: Elite unter dem Totenkopf, 30 Lebensläufe*, Paderborn 2000, 441–456. The journalist and writer Jochen von Lang did use the archives for his research on Wolff's