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06 September 2012**

*The Avalon Project*  *at Yale Law  
School*

***Nuremberg Trials Final Report Appendix C :  
Directive on the Identification and Apprehension of  
Persons Suspected of War Crimes or Other Offenses  
and Trial of Certain Offenders***

COPY No. 26  
J.C.S. 1023/10  
8 July 1945  
Pages 61-77, incl. [original copy]

**JOINT CHIEFS OF STAFF**

**Directive on the Identification and Apprehension of Persons  
Suspected of War Crimes or Other Offenses and Trial of Certain  
Offenders**

**References: a. J. C. S. Info Memo 146  
b. J. C. S. 1067 series  
c. J. C. S. 1023 series  
d. C. C. S. 703 series**

**REPORT BY THE JOINT LOGISTICS COMMITTEE**

**The Problem**

1. To submit recommendations, from the military point of view, on the draft directive (Enclosure "B") on the Identification and Apprehension of Persons Suspected of War Crimes or Other Offenses and Trial of Certain Offenders, prepared by the Working Party of the Informal Policy Committee on Germany (IPCOG).

**Facts Bearing on the Problem**

2. Enclosure "B," a report by the Working Party of IPCOG, is the result of a

directive proposed by the U. S. Advisers, European Advisory Commission, circulated as SWNCC 50/D, **Enclosure "C"** which was referred to the Joint Logistics Committee for recommendation from the Military point of view. The Working Party of IPCOG; has supplanted the Subcommittee for Europe of the State War-Navy Coordinating Committee (SWNCC) in this matter.

### **Conclusion**

3. There are no military objections to the revised draft entitled, "Directive on the Identification and Apprehension of Persons Suspected of War Crimes or Other Offenses and Trial of Certain Offenders" (**Enclosure "B"**).

### **Recommendation**

4. That the memorandum in **Enclosure "A"** be forwarded to the State-War-Navy Coordinating Committee.

### **Enclosure "A"**

#### **DRAFT MEMORANDUM TO THE STATE-WAR-NAVY COORDINATING COMMITTEE**

The Joint Chiefs of Staff have examined the enclosed report (**Enclosure "B"**) by the Working Party of the Informal Policy Committee on Germany and perceive no objections to this report from a military standpoint.

### **Enclosure "B"**

#### **INFORMAL POLICY COMMITTEE ON GERMANY**

#### **DIRECTIVE ON THE IDENTIFICATION AND APPREHENSION OF PERSONS SUSPECTED OF WAR CRIMES OR OTHER OFFENSES AND TRIAL OF CERTAIN OFFENDERS**

**REPORT BY THE WORKING PARTY OF THE INFORMAL POLICY COMMITTEE ON  
GERMANY**

References: a. J. C. S. Memo 146  
b. SWNCC 50/D

### **The Problem**

1. To consider draft directive on "Apprehension and Detention of War Criminals" (SWNCC 50/D) (\*) prepared by the Planning Committee, U. S. Advisers, European Advisory Commission, and to make recommendations to the Informal Policy Committee on Germany (IPCOG).

### Facts Bearing on the Problem

2. The draft directive referred to in **paragraph 1** was transmitted by Ambassador Winant to the Department of State and by that Department to the State-War-Navy Coordinating Committee (SWNCC). It was referred to SWNCC Subcommittee for Europe for report and has been further referred to the working party for IPCOG. The working party has representation from the State, Treasury, War and Navy Departments, and Foreign Economic Administration (FEA).

3. Annex 10 to the **Moscow Declaration** (J. C. S. Memo 146) provides that those German officers and men and members of the Nazi Party who have been responsible for or who have taken consenting part in atrocities, massacres and executions in the occupied countries and Italy will be sent back to the countries in which their crimes were committed to be judged and punished according to the laws of the countries concerned. That declaration is without prejudice to the case against major criminals whose offenses have no particular geographical localization. These will be punished by joint decision of the governments of the Allies.

4. This report has been prepared in collaboration with the Joint Logistics Committee, a committee of the Joint Chiefs of Staff.

### Discussion

5. It is considered necessary to endeavor to obtain quadrupartite agreement in the European Advisory Commission (EAC) concerning policies to be pursued in Germany with respect to the identification, apprehension and trial of persons suspected of war crimes and similar offenses.

### Conclusion

6. The enclosure to SWNCC 50/D, modified to conform to present U.S. Policy in this regard (**Annex to Appendix "A"**) is an adequate expression of U.S. Policy to furnish guidance to Ambassador Winant for negotiation in the EAC. However, as quadrapaltite control of Germany may be established before such Policy is agreed in the EAC and approved by the member governments, a copy of the directive at the **Annex to Appendix "A"** should be transmitted to the Commander in Chief, U.S. Forces of Occupation in Germany, as an interim directive pending such approval.

### Recommendation

7. It is recommended that:

a. After the Joint Chiefs of Staff views have been obtained, IPCOG approve

this report, in the event the views of the Joint Chiefs of Staff are not contrary.

b. On approval of the report by IPCOG the memoranda at **Appendices "A"** and **"B"** be dispatched.

### **Appendix "A" to Enclosure "B"**

**DRAFT**

#### **MEMORANDUM TO THE SECRETARY OF STATE**

The Informal Policy Committee on Germany has considered the draft directive on "**Apprehension and Detention of War Criminals**" submitted by Ambassador Winant. There is attached a revised draft entitled "**Draft Directive on the Identification and Apprehension of Persons Suspected of War Crimes and Other Offenses and Trial of Certain of Them**" approved by the Informal Policy Committee on Germany to which the Joint Chiefs of Staff find no objections from a military viewpoint. It is considered to be an adequate statement of United States policy for negotiation in the European Advisory Commission.

The Joint Chiefs of Staff have been requested to transmit a copy of the revised draft to the Commander in Chief, United States Forces of Occupation in Germany, as an interim directive pending its approval and issuance by the governments represented in the European Advisory Commission.

### **Annex to Appendix "A" to Enclosure "B"**

**DRAFT**

#### **DIRECTIVE ON THE IDENTIFICATION AND APREHENSION OF PERSONS SUSPECTED OF WAR CRIMES OR OTHER OFFENSES AND TRIAL OF CERTAIN OFFENDERS**

1. This directive is issued to you as Commander in Chief of the U. S. (U. K.), (U. S. S. R.) (French) forces of occupation. As a member of the Control Council you will urge the adoption by the other occupying powers of the principles and policies set forth in this directive and, pending Control Council agreement, you will follow them in your zone.

2. The crimes covered by this directive are:

a. Atrocities and offenses against persons or property constituting violation of international law, including the laws, rules and customs of land and naval warfare.

b. Initiation of invasions of other countries and of wars of aggression in violation of international laws and treaties.

c. Other atrocities and offenses, including atrocities and persecutions on racial, religious or political grounds, committed since 30 January 1933.

3. The term "criminal" as used herein includes all persons, without regard to their nationality or capacity in which they acted, who have committed any of the crimes referred to in **paragraph 2** above, including all persons who (1) have been accessories to the commission of such crimes, (2) have taken a consenting part therein, (3) have been connected with plans or enterprises involving their commission, or (4) have been members of organizations or groups connected with the commission of such crimes. With reference to **paragraph 2b**, the term "criminal" is intended to refer to persons who have held high political, civil or military (including General Staff) positions in Germany or in one of its allies, co-belligerents or satellites or in the financial, industrial or economic life of any of these countries.

4. The Control Council should coordinate policies with respect to the matters covered by this directive.

5. Subject to the coordination of such matters by the Control Council and to its general policies:

a. In addition to the persons and classes of persons referred to in paragraph 8 of the Directive to the Commander in Chief of U. S. Forces of Occupation Regarding the Military Government of Germany (J. C. S. 1067/6) or in other instructions, you will take all practicable measures to identify, investigate, apprehend and detain all persons whom you suspect to be criminals as defined in **paragraph 3** above and all persons whom the Control Council, any one of the United Nations, or Italy notifies to you as being charged as criminals.

b. You will take under your control pending decision by the Control Council or higher authority as to its eventual disposition, property, real and personal found in your zone and owned or controlled by the persons referred to in subparagraph a above.

c. You will report to the Control Council the names of suspected criminals, their places of detention, the charges against them, the results of investigations and the nature of the evidence, the names and locations of witnesses, and the nature of locations of the property so coming under your control,

d. You will take such measures as you deem necessary to insure that witnesses to the crimes covered by this directive will be available when required.

e. You may require the Germans to give you such assistance as you deem necessary.

6. Subject to the coordination of such matters by the Control Council and to its agreed policies:

a. You will promptly comply with a request by any one of the United Nations or Italy for the delivery to it of any person who is stated in such request to be charged with a crime to which this directive is applicable, subject to the following exceptions:

(1) Persons who have held high political, civil or military position in Germany or in one of its allies, co-belligerents, or satellites will not be delivered to any one of the United Nations or Italy, pending consultation with the Control Council to ascertain whether it is desired to try such persons before an international military tribunal. Suspected criminals desired for trial before international military tribunals or persons desired as witnesses at trials before such tribunals will not be turned over to the nation requesting them so long as their presence is desired in connection with such trials.

(2) Persons requested by two or more of the United Nations or one or more of the United Nations and Italy for trial for a crime will not be delivered pending determination by the Control Council of their disposition.

The Control Council should take all practicable measures to insure the availability of such persons to the several United Nations concerned or Italy, in such priority as the Control Council shall determine. If in any case the Control Council fails to make such determination within a reasonable period of time, you will make your own determination based on all the circumstances including the relative seriousness of the respective charges against such person and will deliver the requested person to the United Nations or Italy accordingly.

b. Compliance with any request for the delivery of a person shall not be delayed on the ground that other requests for the same person are anticipated.

c. Delivery of a person to requesting nation shall be subject to the condition that if such person is not brought to trial, tried and convicted within six months from the date he is so delivered, he will be returned to you upon request for trial by any of the other United Nations or Italy.

d. In exceptional cases in which you have a doubt as to whether you should deliver a person demanded under subparagraph a above, you should refer the matter for decision to the Control Council with your recommendations.

The Control Council should determine promptly any dispute as to the disposition of any person detained within Germany in accordance with this directive.

7. Appropriate military courts may conduct trials of suspected criminals in your custody. In general these courts should be separate from the courts trying current offenses against your occupation, and, to the greatest practicable extent, should adopt fair, simple and expeditious procedures designed to accomplish substantial Justice without technicality. You should proceed with such trials and the execution of sentences except in the following cases:

a. Trials should be deferred of suspected criminals who have held high political, civil or military positions in Germany or in one of its allies, cobelligerents, or satellites, pending consultation with the Control Council to ascertain whether it is desired to try such persons before an international military tribunal.

b. Where charges are pending and the trial has not commenced in your zone against a person also known to you to be wanted elsewhere for trial, the trial in your zone should be deferred for a reasonable period of time, pending consultation with the Control Council as to the disposition of such person for trial,

c. Execution of death sentences should be deferred when you have reason to believe that the testimony of those convicted would be of value in the trial of other criminals in any area whether within or without your zone.

## **Appendix "B" to Enclosure "B"**

### **DRAFT**

#### **MEMORANDUM TO THE JOINT CHIEFS OF STAFF**

The Informal Policy Committee on Germany has approved the revised United States draft directive entitled "Draft Directive on the Identification and Apprehension of Persons Suspected of War Crimes and Other Offenses and Trial of Certain of Them" to be transmitted to Ambassador Winant for negotiation in the European Advisory Commission.

It is requested that the Joint Chiefs of Staff transmit a copy of the revised draft directive to the Commander in Chief, United States Forces of Occupation in Germany, as an interim directive pending its approval and issuance by the governments represented on the European Advisory Commission.

## **Enclosure "C"**

**21 OCTOBER 1944**

### **Draft Directive to the US (UK) (USSR) Commander in Chief**

#### **APPREHENSION AND DETENTION OF WAR CRIMINALS**

1. This directive is issued to you as Commander in Chief of the US (UK) (USSR) forces of occupation. Identical directives are being issued simultaneously to the Commanders in Chief of the forces of occupation of the other two Allies. The three Allied Commanders in Chief, acting Jointly, constitute the Supreme Authority.
2. Reference is made to the "Unconditional Surrender of Germany" (J.C.S. Memo 257) and to the pertinent provisions of the General Orders (J.C.S. Memo 291), including those attached as **Annex "A"**. You will enforce and implement in your zone of occupation and sphere of responsibility the surrender terms and general orders as they relate to the apprehension and detention of war criminals, in accordance with the policies and instructions hereinafter set forth.
  3. a. As used in this directive, the term "war crimes" includes all offenses against persons or property, whether or not committed under the orders or sanction of governments or commanders, which are violations of the laws and customs of war committed in connection with military operations or occupation, and which outrage common justice or involve moral turpitude.
  - b. As used in this directive, the term "war criminals" includes all persons, without regard to their nationality or the capacity in which they acted, who have committed war crimes. The term specifically includes persons who have taken a consenting part in war crimes, as, for examples, a superior officer who has failed to take action to prevent a war crime when he had knowledge of its contemplated commission and was in a position to prevent it.
4. For the purposes of this directive, the following dates are established:
  - a. The war in the Far East began 7 July 1937; and
  - b. The war in Europe began 1 September 1939, except the war between Germany and Czechoslovakia, which began at an earlier date.
5. Throughout Germany, the Supreme Authority will coordinate and supervise the execution of policies with respect to the identification, investigation, apprehension, detention and disposition of suspected war



criminals.

6. The Supreme Authority will determine the disposition of all persons detained within Germany as suspected war criminals or as witnesses in connection with the commission of war crimes. When any such person is wanted by a single United Nation in connection with an alleged war crime committed against it or its nationals, the Supreme Authority is authorized to direct the delivery of such person to such United Nation, reserving the right to recall such person for trial on further charges of war crimes or for the purpose of testifying at such a trial. -When any such person is wanted by two or more United Nations for either of the above purposes, the Supreme Authority will take all practicable measures to insure the availability of such person to the several United Nations involved, in such priority as the Supreme Authority shall determine.

7. Within your zone and sphere, you will take all practicable measures to accomplish the identification, investigation, apprehension and detention of all persons whom you, acting on your own initiative, consider to be war criminals, and of all persons whom the Supreme Authority notifies to you as suspected war criminals, whether by name, position, category or any other form of description.

8. Within your zone, you are authorized to hold the German authorities responsible for the identification, investigation, apprehension and delivery into your control, of all persons covered by the provisions of **paragraph 7** of this directive.

9. Within your zone, you will require the German authorities to furnish you all information and documents, and to procure, detain and protect all witnesses, required for the identification, investigation or trial of persons charged with war crimes.

10. Within your zone, you will impound or sequester, and hold subject to the disposition of the Supreme Authority, all property, movable or immovable, owned by, or under the control of, all persons charged with war crimes. You will report to the Supreme Authority the location and general nature of such property.

11. You will report to the Supreme Authority the names of all persons apprehended and detained in custody within your zone as suspected war criminals or as witnesses in connection with the commission of war crimes. You will include in your report a statement of the alleged war crimes and of the general nature of the evidence relating to the charges.

12. Notwithstanding any of the foregoing provisions of this directive, you are authorized to try immediately by tribunals established under your authority the following:

- a. Violations of the laws and customs of war which involve the security or the successful carrying out of military operations or occupation under your direction; and
- b. All violations of the orders and enactments promulgated by your military government.

## **Appendix "A" to Enclosure "C"**

### **GENERAL ORDER NO. 2**

#### **POLITICAL**

(Extract from pages 14 and 15 of J.C.S. Info Memo 291)

#### **ARTICLE No. 7: WAR CRIMINALS**

13 a. Adolf Hitler and his Chief associates, and all persons suspected of having committed, ordered or abetted war crimes or analogous offenses, whom the Allied Representatives may designate either by name or by the rank, office or employment which they held in the German armed forces, the German Government, or other German organizations or agencies at the time of the alleged crime, will forthwith be apprehended and surrendered into the hands of the Allied Representatives by the German authorities.

b. The same shall apply in the case of any national of any of the United Nations who is alleged to have committed offenses against his national law and whose name or designation appears on lists to be communicated to the German authorities.

14. The primary responsibility for arresting and surrendering and for preventing the flight, escape or concealment of the persons mentioned in paragraphs "a" and "b" above will rest with the German authorities, without prejudice, however, to the right of the Allied Representatives themselves to take such steps in this regard as they may judge necessary. The German authorities will comply with any instructions given by the Allied Representatives for these purposes, and will take all measures and afford all information and facilities calculated to lead to the arrest and surrender of those concerned.

15 a. The German authorities will furnish any information and documents, and will secure the attendance of any witnesses required for the trial of those concerned, and will in general give all other aid and assistance for this purpose. b. The German authorities will comply with any directions given in regard the property of those concerned, such as its seizure, custody or surrender.

\* \* \* \* \*

## Appendix "B" to Enclosure "C"

### MEMORANDUM FROM THE ASSISTANT MILITARY ADVISOR TO AMBASSADOR WINANT

"The attached paper (Enclosure) is a proposed policy agreement among the U.S, U.K. and Soviet Governments on a subject considered applicable to all of Germany after surrender. It has been prepared in London by the Planning Committee, U. S. Advisers, European Advisory Commission, and has been approved by Ambassador Winant's political, military, naval, and military air advisers.

The draft directive is based on the following assumptions:

- a. That some form of tripartite control machinery for Germany will be established immediately upon surrender.
- b. That such control machinery will be responsible for carrying out matters applicable to all of Germany in accordance with tripartite policy agreements concluded by the U.S., U.K., and Soviet Governments.

The U.S. and British delegations on the European Advisory Commission are drafting proposed tripartite policy agreements on approximately thirty subjects. In view of the fact that such policy agreements would be furnished to the three Allied Commanders in Chief by their respective Governments in the form of directives, the U. S. and British delegations are drafting their papers in that form.

The Soviet delegation has not yet indicated that they are preparing such directives.

The attached draft directive has been transmitted by Ambassador Winant to the State Department for comment by the appropriate government agencies.

Ambassador Winant contemplates ultimately submitting the U.S. views on this subject to the European Advisory Commission."

**Source:**  
**Taylor, Telford**  
**Final report to the Secretary of the Army on the Nuernberg**  
**War Crimes Trials under Control Council law No. 10**  
**Washington, DC : Government Printing Office, 1949**

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