

THE STATE-WAR-NAVY COORDINATING COMMITTEE

50/1/D WASHINGTON, D. C. 0900

21 June

Col. Gunn, in theater, getting Thtr. Comdrs
Comments. Returning next week. E.L.T.

Page 9 of SCE-2 - Para 8
reference should be to Annex 237/2
instead of 273/2

State approved 28 Aug 1946 with proviso,
Navy approved 2 Sept 1946

27 Sept - Navy comments received
in CM-1N 4997 (26 Sept 46)

Oct 24
Paper being drafted in line
with Navy comments - awaiting
official reply from Rockwell - legal
advisor to Gen. Day.

15 Nov 46 - Col Gunn preparing memo
recommending SCF-2 be withdrawn
in view of ACC Directive # 38
and ^{Control Council} Law # 10.

21 Nov - Col Gunn's memo to Colonel Barrett.

10 Dec - NAVY approved.

13 Dec - STATE approved.

[Faint handwritten notes]

Comments: Replanning next week. E. G. I.
Col. Gunn's to Barrett's Replanning next week. Complete
SI 2486

WASHINGTON, D. C. 0300
THE STATE-NAVY-MARINE COORDINATING COMMITTEE

50

This is an
SCE File

~~SECRET~~

File No. 000.5 - WAR CRIMES

No.	FROM	DATE	TO	SYNOPSIS
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SWNCC 50 Series - Apprehension and Detention fo War Criminals.

- | | | | | |
|---|-------|-----|------------|------------------------------------------------------------------------------------------------------|
| 1 | IPCOG | --- | IPCOG Dist | A report of Working Party, IPCOG, on consideration of the French Memorandum dealing w/War Criminals. |
| 2 | SCE | --- | War Mbr | SCE-9A. Approval slip on 50/10/D. |

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✓ LE * Miss Fite

CE - ~~██████████~~

A-H - ~~Mr. ██████████~~

EUR - Mr. Hickerson



SECRET

THE STATE-WAR-NAVY COORDINATING COMMITTEE
WASHINGTON, D. C.

3 December 1946

MEMORANDUM FOR THE STATE MEMBER, EUROPEAN SUBCOMMITTEE
WAR MEMBER, EUROPEAN SUBCOMMITTEE
NAVY MEMBER, EUROPEAN SUBCOMMITTEE

The following is an extract from a memorandum by the Chief, War Crimes Branch, Civil Affairs Division, to Colonel Damon M. Gunn, Working Party member on SCE-2:

"The present program of War Crimes in operation in Europe and the recent enactment by the Control Council in Germany of Directive 38 and Control Council Law No. 10 make unnecessary the publishing of an amended JCS 1023 paper."

In view of the above, Colonel Gunn has recommended that the European Subcommittee request the State-War-Navy Coordinating Committee to cancel the directive in SWNCC 50/1/D and advise the Joint Chiefs of Staff along the lines set forth by the Chief, War Crimes Branch, Civil Affairs Division.

It is requested that you indicate your comment or concurrence hereon and return to the undersigned, Room 2027 New War Building.

I concur: see memo
LE: see attached

CE: see attached
memo for Gen. Haldring

EUR - see attached

H. W. KARBEL,
Acting Secretary
European Subcommittee

APPROVED: [Signature]
DATE: 12/12/46

SECRET

DEPARTMENT OF STATE
THE LEGAL ADVISER

December 6, 1946

Memorandum to the Acting Secretary of
the European Sub-committee - SWNCC:

This office concurs in the cancellation of the draft directive in SWNCC 50/1/D. If there is no new revised JCS directive on the subject of war criminals this office believes that OMGUS should be advised that it is the policy of the United States Government that the recommendations of the International Military Tribunal at Nuremberg be adopted regarding the punishment of members of an organization or group declared criminal by the tribunal and the amendment of Control Council Law No. 10 to prescribe limitations on the punishment of such persons (including the abolition of the death penalty).

beta
KB+
Le:KBFite:hr

December 9, 1946

MEMORANDUM FOR GENERAL J. H. HILLDRING

Subject: Withdrawal of Pending Revised War
Crimes Directive, SWNCC 50/1/D.

I refer to your memorandum of December 6, 1946 concerning action by the Department of State on the War Department's paper to the SWNCC Secretariat recommending withdrawal of the pending revised War Crimes Directive in SWNCC 50/1/D.

We discussed the War Department's proposal with Mr. Riddleberger before his departure for New York on December 6, and he felt that the Division should take no final position until he had conferred with General Clay. Mr. Riddleberger telephoned from New York this morning to inform us that he had considered the question with General Clay and that both of them concurred in the War Department's recommendation for withdrawal. I understand that this is also the view of Mr. Fahy.

If the new draft directive in SWNCC 50/1/D is cancelled, the further prosecution of war criminals in the United States zone would apparently be governed by Control Council Law No. 10 on war crimes, Control Council Directive No. 38 on denazification, and such directives or ordinances as have been or may be issued by OMGUS to give effect to these quadripartite measures. CE therefore believes, and Mr. Fahy is thought to share this view, that in the event no new JCS directive is adopted problems for which provision is not already made under the existing program for prosecution of war crimes might well be dealt with by quadripartite action or by OMGUS directives based to such extent as may be necessary upon policy positions established in Washington.

With particular reference to the three points raised in the last part of your memorandum, the Department could treat each of these separately (subsequent to the withdrawal of the new draft war crimes directive) and where necessary inform OMGUS accordingly. GA agrees that such a procedure might be followed in regard to the question of reparation labor service for war criminals rather than to press for its settlement in a revised JCS war crimes directive.

If

-2-

If you see no objection to these considerations, it would appear unnecessary to take up the War Department's recommendation officially in the GA Secretariat.

David Harris

David Harris
Acting Chief
Division of Central
European Affairs.

THE STATE-WAR-NAVY COORDINATING COMMITTEE
WASHINGTON, D. C.

3 December 1946

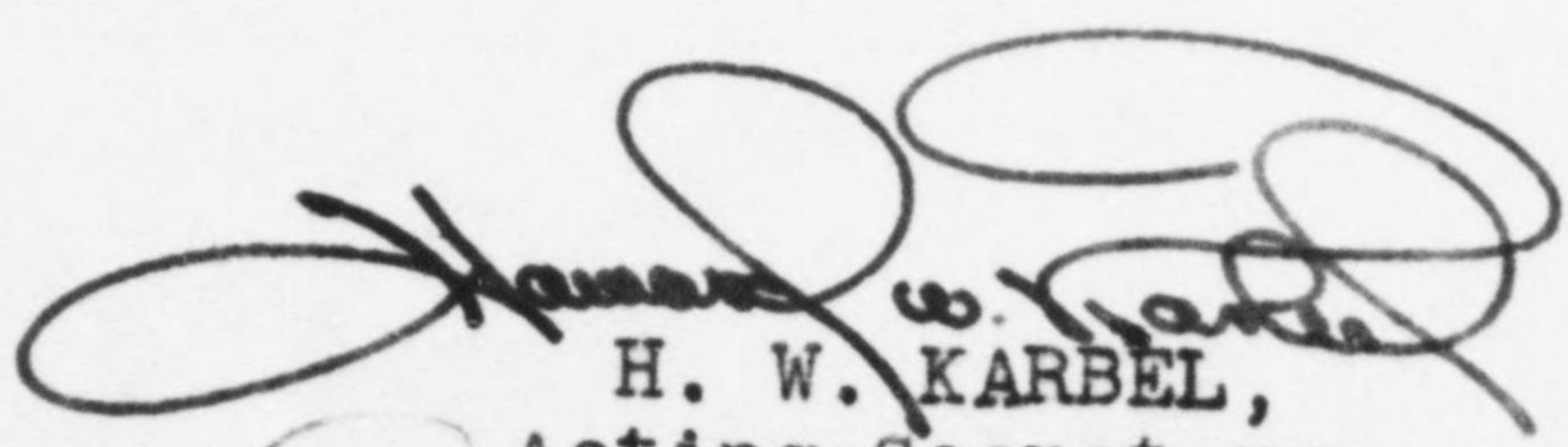
MEMORANDUM FOR THE STATE MEMBER, EUROPEAN SUBCOMMITTEE
WAR MEMBER, EUROPEAN SUBCOMMITTEE
NAVY MEMBER, EUROPEAN SUBCOMMITTEE

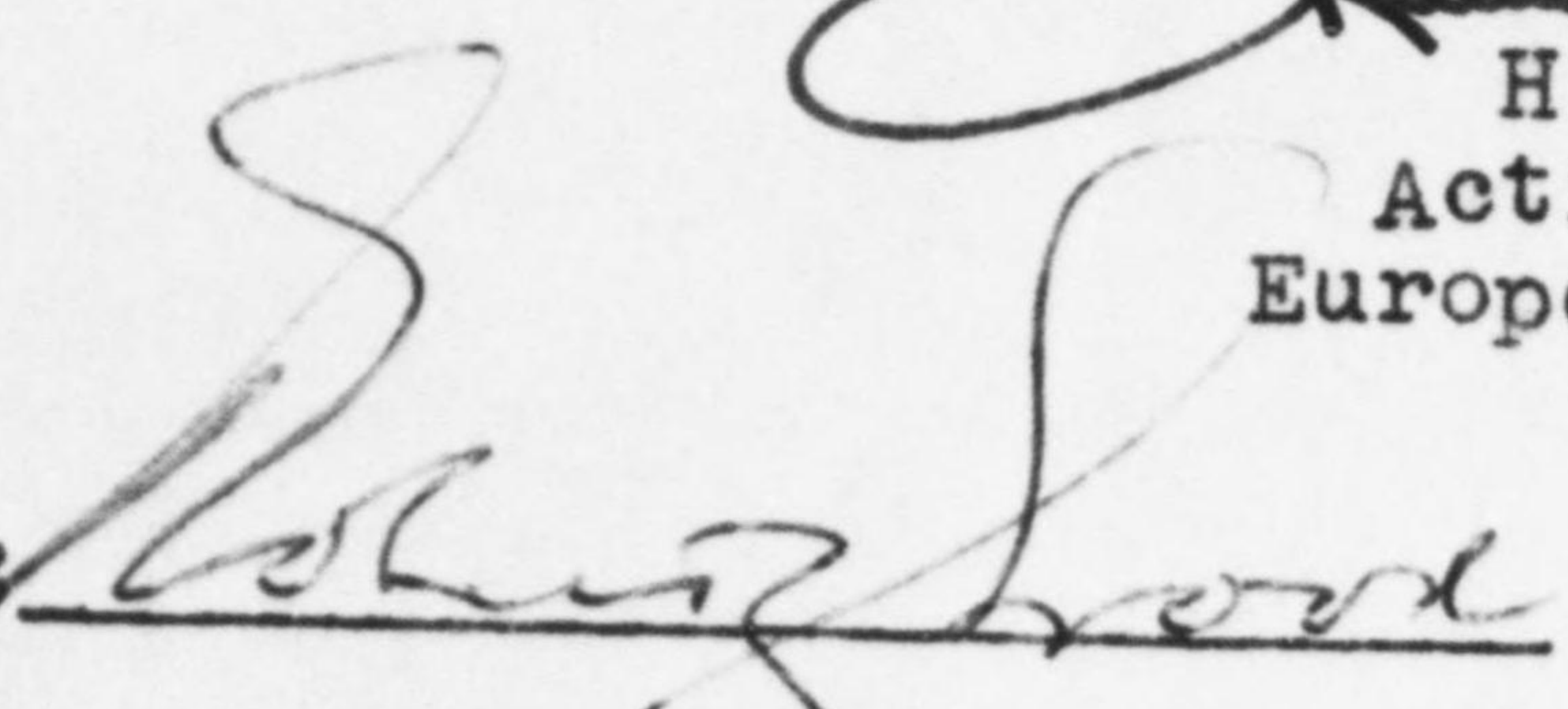
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In view of the above, Colonel Gunn has recommended that the European Subcommittee request the State-War-Navy Coordinating Committee to cancel the draft directive in SWNCC 50/1/D and advise the Joint Chiefs of Staff along the lines set forth by the Chief, War Crimes Branch, Civil Affairs Division.

It is requested that you indicate your comment or concurrence hereon and return to the undersigned, Room 2027 New War Building.


H. W. KARBEL,
Acting Secretary,
European Subcommittee

APPROVED:  *Robert Wood* *lie GSC*

DATE: 18 Dec 46

DEPARTMENT OF STATE

~~ASSISTANT SECRETARY~~

The Legal Adviser

December 6, 1946

Memorandum to the Acting Secretary of
the European Sub-committee - SWNCC:

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THE STATE-WAR-NAVY COORDINATING COMMITTEE
WASHINGTON, D. C.

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3 December 1946

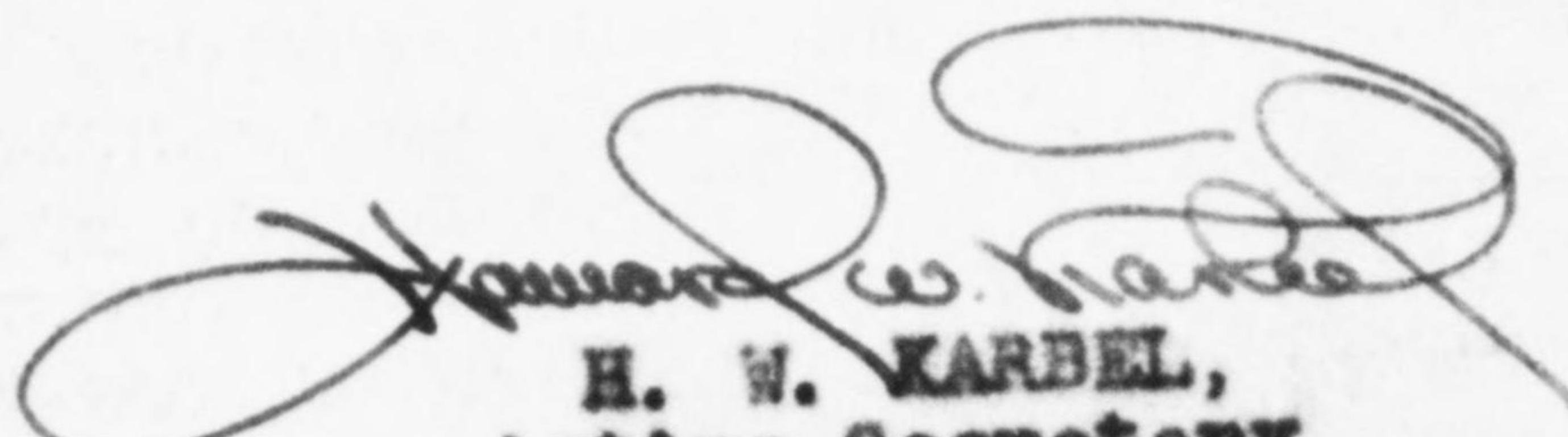
MEMORANDUM FOR THE STATE MEMBER, EUROPEAN SUBCOMMITTEE
WAR MEMBER, EUROPEAN SUBCOMMITTEE
NAVY MEMBER, EUROPEAN SUBCOMMITTEE

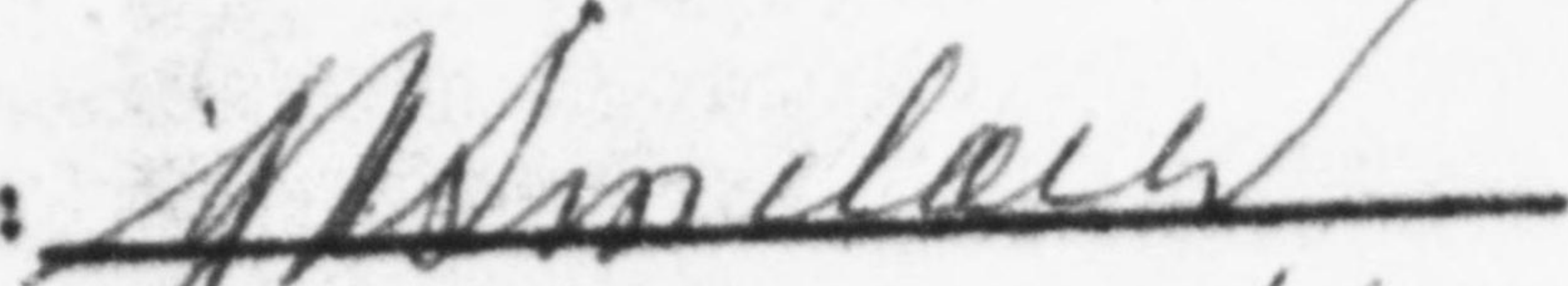
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"The present program of War Crimes in operation in Europe and the recent enactment by the Control Council in Germany of Directive 38 and Control Council Law No. 10 make unnecessary the publishing of an amended JCS 1023 paper."

In view of the above, Colonel Gunn has recommended that the European Subcommittee request the State-War-Navy Coordinating Committee to cancel the directive in SWNCC 50/1/D and advise the Joint Chiefs of Staff along the lines set forth by the Chief, War Crimes Branch, Civil Affairs Division.

It is requested that you indicate your comment or concurrence hereon and return to the undersigned, Room 2027 New War Building.


H. W. KARBEL,
Acting Secretary
European Subcommittee

APPROVED: 

DATE: 9 December 1946

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THE STATE-WAR-NAVY COORDINATING COMMITTEE
WASHINGTON, D. C.

3 December 1946

MEMORANDUM FOR THE STATE MEMBER, EUROPEAN SUBCOMMITTEE
WAR MEMBER, EUROPEAN SUBCOMMITTEE
NAVY MEMBER, EUROPEAN SUBCOMMITTEE

The following is an extract from a memorandum by the Chief, War Crimes Branch, Civil Affairs Division, to Colonel Damon M. Gunn, Working Party member on SCE-2:

"The present program of War Crimes in operation in Europe and the recent enactment by the Control Council in Germany of Directive 38 and Control Council Law No. 10 make unnecessary the publishing of an amended JCS 1023 paper."

In view of the above, Colonel Gunn has recommended that the European Subcommittee request the State-War-Navy Coordinating Committee to cancel the directive in SWNOC SO/1/D and advise the Joint Chiefs of Staff along the lines set forth by the Chief, War Crimes Branch, Civil Affairs Division.

It is requested that you indicate your comment or concurrence hereon and return to the undersigned, Room 2027 New War Building.

H. W. KARBEL,
Acting Secretary
European Subcommittee

APPROVED: [Signature]

DATE: 9 Dec 46

SECRET

SECRET

3 December 1946

MEMORANDUM FOR THE STATE MEMBER, EUROPEAN SUBCOMMITTEE
WAR MEMBER, EUROPEAN SUBCOMMITTEE
NAVY MEMBER, EUROPEAN SUBCOMMITTEE

DATE: _____

The following is an extract from a memorandum by the Chief, War Crimes Branch, Civil Affairs Division, to Colonel Damon M. Gunn, Working Party member on SCE-2:

The present program of War Crimes in operation in Europe and the recent enactment by the Control Council in Germany of Directive 38 and Control Council Law No. 10 make unnecessary the publishing of an amended JCS 1023 paper.

In view of the above, Colonel Gunn has recommended that the European Subcommittee request the State-War-Navy Coordinating Committee to cancel the directive in SWNCC 50/1/D and advise the Joint Chiefs of Staff along the lines set forth by the Chief, War Crimes Branch, Civil Affairs Division.

It is requested that you indicate your comment or concurrence hereon and return to the undersigned, Room 3027 New War Building.

H. W. KARBEL,
Acting Secretary
European Subcommittee

APPROVED: _____

DATE: _____

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1st Ind.

TO: Secretary, SWNCC Subcommittee for Europe

3 December 1946

The attached papers are forwarded to you for necessary action.
I approve the recommendations contained therein.

Charles J. Barrett
CHARLES J. BARRETT
Colonel

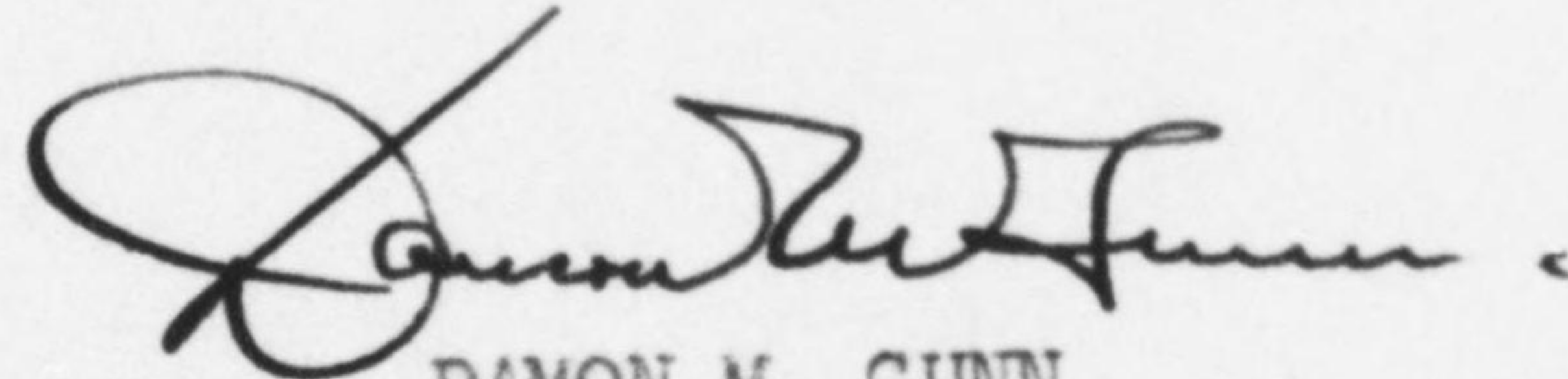
WAR DEPARTMENT
WAR DEPARTMENT SPECIAL STAFF
CIVIL AFFAIRS DIVISION
WASHINGTON 25, D. C.

2 December 1946

MEMORANDUM FOR COLONEL BARRETT, CAD Member of SWNCC Sub-Committee
for the Far East

SUBJECT: Reference SWNCC Paper Amending JCS 1023 Series.

Attention is invited to the attached memorandum from
Colonel Marcus who has recently returned from Europe. This
matter is forwarded for such action as you deem necessary in
regard to JCS 1023/14 and SWNCC 50/1/D.



DAMON M. GUNN
Colonel, GSC
Deputy, War Crimes Branch

WAR DEPARTMENT
WAR DEPARTMENT SPECIAL STAFF
CIVIL AFFAIRS DIVISION
WASHINGTON 25, D. C.

WDSCA

12 November 1946

MEMORANDUM FOR COLONEL GUNN
MISS BONTECOU

SUBJECT: Reference SWNCC Paper Amending JCS 1023 Series

" 1. The present program of War Crimes in operation in Europe and the recent enactment by the Control Council in Germany of Directive 38 and Control Council Law No. 10 make unnecessary the publishing of an amended JCS 1023 paper. "

2. Accordingly advise Colonel Reid that CAD believes that it is not necessary or desirable to firm the SWNCC paper on "War Crimes".

D.M.

DAVID MARCUS
Colonel, GSC
Chief, War Crimes Branch

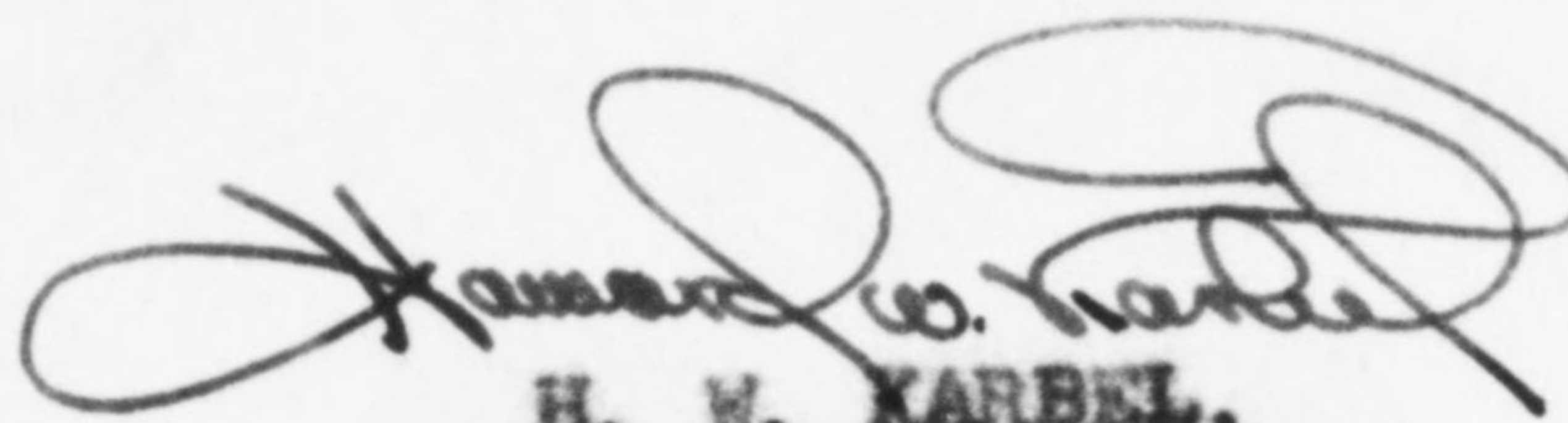
THE STATE-WAR-NAVY COORDINATING COMMITTEE
WASHINGTON, D. C.

23 August 1946

MEMORANDUM FOR THE STATE MEMBER, EUROPEAN SUBCOMMITTEE
WAR MEMBER, EUROPEAN SUBCOMMITTEE
NAVY MEMBER, EUROPEAN SUBCOMMITTEE ←

SCE 2, dated 23 August 1946, a report by the Working Party in response to SWNCC 50/1/D, is circulated for consideration by the European Subcommittee.

It is requested that you indicate your comment or concurrence hereon and return to the undersigned, Room 178, State Department.


H. W. KARBEL,
Acting Secretary,
European Subcommittee

APPROVED: 

DATE: 2 Sept 1946.

THE STATE-WAR-NAVY COORDINATING COMMITTEE
WASHINGTON, D. C.

August 28, 1946

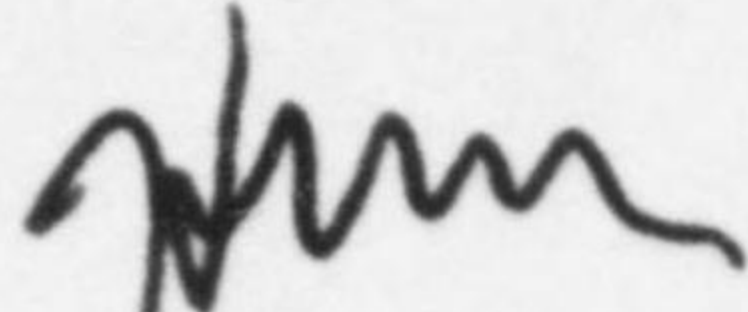
EUR - Mr. Hickerson ✓

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The attached paper requires your signature as the Acting Chairman of the European Subcommittee.

The substance of the paper is a revised draft directive on the identification and apprehension of persons suspected of war crimes or other offenses (see Appendix "A", page 3).

This paper was drafted by LE in collaboration with War and Navy representatives. LE has approved subject to a condition imposed by Mr. Fahey that the proposed directive be submitted to OMGUS for comment prior to its submission to JCS. I have written in this condition on the concurrence slip to make it a condition under which you approve the paper.


H.W.M.

THE STATE-WAR-NAVY COORDINATING COMMITTEE
WASHINGTON, D. C.

23 August 1946

MEMORANDUM FOR THE STATE MEMBER, EUROPEAN SUBCOMMITTEE
WAR MEMBER, EUROPEAN SUBCOMMITTEE
NAVY MEMBER, EUROPEAN SUBCOMMITTEE

SCE 2, dated 23 August 1946, a report by the Working Party in response to SWNCC 50/1/D, is circulated for consideration by the European Subcommittee.

It is requested that you indicate your comment or concurrence hereon and return to the undersigned, Room 178, State Department.

LE: *See concerns subject to the proposed directives being submitted to OMGUS for comment prior to its submission to the J.C.S. 8/25/46 BHB*

[Signature]
H. W. KARBEL,
Acting Secretary,
European Subcommittee

CE: *OK 8/27/46*

APPROVED: *[Signature]*

DATE: *Aug 27 1946*

Approved subject to the proposed Directive being submitted to OMGUS for comment prior to its submission to the JCS.

23 August 1946

MEMORANDUM FOR THE STATE MEMBER, EUROPEAN SUBCOMMITTEE
WAR MEMBER, EUROPEAN SUBCOMMITTEE
NAVY MEMBER, EUROPEAN SUBCOMMITTEE

SCC 2, dated 23 August 1946, a report by the Working Party in response to SWCC 50/1/D, is circulated for consideration by the European Subcommittee.

It is requested that you indicate your consent or concurrence hereon and return to the undersigned, Room 178, State Department.

H. W. KARBEL,
Acting Secretary,
European Subcommittee

APPROVED: _____

DATE: _____

S E C R E T

COPY NO. 25

SCE 2

23 August 1946

Pages 1 - 12, incl.

STATE-WAR-NAVY COORDINATING SUBCOMMITTEE FOR EUROPE

ORGANIZATION FOR FURTHER PROCEEDINGS AGAINST
AXIS WAR CRIMINALS AND CERTAIN OTHER OFFENDERS

Reference: SWNCC 50/1/D

The enclosure, a report by the Working Party in response to SWNCC 50/1/D, is circulated for consideration by the European Subcommittee.

H. W. KARBEL,
Acting Secretary,
European Subcommittee

SCE 2

S E C R E T

S E C R E TE N C L O S U R EORGANIZATION FOR FURTHER PROCEEDINGS AGAINST
AXIS WAR CRIMINALS AND CERTAIN OTHER OFFENDERSReport by the
State-War-Navy Coordinating Subcommittee for EuropeTHE PROBLEM

1. To study SWNCC 50/1/D, a draft directive revising JCS 1023/10 (Directive on the Identification and Apprehension of Persons Suspected of War Crimes or Other Offenses and Trial of Certain Offenders) and to make recommendations to SWNCC.

FACTS BEARING ON THE PROBLEM

2. The draft directive referred to in paragraph 1 was transmitted by the Joint Chiefs of Staff to the State-War-Navy Coordinating Committee on 17 January 1946. It was referred to the State-War-Navy Coordinating Subcommittee for Europe and was further referred on 23 January 1946 to a working party for that Subcommittee composed of representatives of the State, War and Navy Departments for study and report.

3. On 20 December 1945, Control Council Law No. 10 relating to the punishment of persons guilty of war crimes, crimes against the peace and crimes against humanity, was passed by the Allied Control Council in Germany. This law was not before the Joint Logistics Committee of the Joint Chiefs of Staff, which prepared and referred to the State-War-Navy Coordinating Committee, the draft directive amending JCS 1023/10.

4. On 5 March 1946, the Law for Liberation from National Socialism and Militarism submitted to the Office of Military Government in Germany (U.S.) by the Minister Presidents for Bavaria, Wurtemberg-Baden and Greater Hesse, was approved by the Military Governor acting through his deputy. This Law provides for German courts to be established to try and punish persons responsible for the crimes committed against the German people under the regime of National Socialism and Militarism.

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Enclosure

S E C R E T

S E C R E T

5. On 23 March 1946, by Cable No. CC 1890 the Office of Military Government (U.S.), Berlin, Germany, requested that JCS 1023/10 be kept in force, but be amended generally to conform to Control Council Law No. 10 which was initiated by the United States to carry out the terms of JCS 1023/10.

6. For additional facts bearing on the problem and for discussion, see Appendix "B".

CONCLUSIONS

7. The revised draft directive SWNCC 50/1/D should be further revised in the light of Control Council Law No. 10 and the Law for Liberation from National Socialism and Militarism and of Cable No. CC 1890.

RECOMMENDATIONS

8. It is recommended that after the views of the Joint Chiefs of Staff have been obtained, the State-War-Navy Coordinating Committee approve this report and the amended directive (Appendix "A") and that the Joint Chiefs of Staff be requested to dispatch the amended directive to the Commanding General, USFET, to supersede JCS 1023/10.

S E C R E TAPPENDIX "A"D R A F TDIRECTIVE ON THE IDENTIFICATION AND APPREHENSION OF
PERSONS SUSPECTED OF WAR CRIMES OR OTHER OFFENSES
AND TRIAL OF CERTAIN OFFENDERS

1. This directive is issued to you as Commanding General of the United States Forces in Germany for your future guidance in the identification, apprehension, trial and punishment of persons implicated in or connected with war crimes or related offenses. With relation to Germany it supersedes Directive JCS 1023/10.

2. The principles of the Moscow Declaration on German Atrocities of 30 October 1943, and the London Agreement of 8 August 1945 are re-affirmed.

3. The provisions of Control Council Law No. 10 are incorporated herein, subject to such amendments as the directive may require you to seek.

4. A further directive is being prepared to cover the procedure to be followed in prosecuting these persons who compose the groups now under indictment before the International Military Tribunal.

5. The preliminary investigation of the alleged members of the groups which may be declared criminal by the International Military Tribunal at Nuremberg should be instituted and continued without awaiting the outcome of the Nuremberg trial. Evidence should be obtained to establish the fact of membership, the date and circumstances of entry into the organization or unit, the actual participation in organizational activities and the particular functions and duties of the accused, and the place and date of his activities in the organization. A special file should be developed and maintained for each member and should include such service documents as the Soldbuch (Pay book), diaries, and pertinent extracts from official gazettes. These records shall

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Appendix "A"

S E C R E T

S E C R E T

be kept in the custody of the U.S. Army and be available to Military Government and the liaison offices of the United Nations and Italy.

6. Definition of "High Position" - Subparagraph 2(f) of Control Council Law No. 10 provides that persons who held "high position", political, civil or military (including General Staff positions), are deemed to have committed crimes against the peace. In connection with this you will interpret "high position" as one in which the incumbent must be presumed to have knowledge of the conspiracy of the Nazi regime to wage an aggressive war, in that his high position involved the use of initiative and discretion, which, by its nature, required the person holding the office to be acquainted with the larger plans in conformity with which he controlled or substantially influenced extensive undertakings. Proof of high position does not create a presumption of guilt but from the evidence offered the Court can infer knowledge of the conspiracy to wage aggressive war. As a defense, the accused may refute the evidence presented or its application to him.

7. You will follow the procedure outlined in Articles III and IV of Control Council Law No. 10 and will observe the priorities established by that article in connection with the trial or delivery for trial to other authorities of any persons apprehended by you and charged with crimes as defined by Control Council Law No. 10. You will not delay the delivery of any alleged war criminal on the ground that other requests for him are anticipated. You will take such measures as you deem necessary to insure that witnesses to crimes will be available when required.

8. Persons charged with any of the crimes defined in Allied Control Council Law No. 10 may be tried before a Special International Military Tribunal, a Zonal Court, a United States Military Commission, or a German Court as provided below.

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9. In planning for the reference of cases to the appropriate tribunal, you will proceed upon the following principles. You will select for trial in Zonal Courts, or in United States Military Commissions, those cases involving the most serious crimes and dangerous offenders, offenses against the United States nationals or mass atrocities. You may permit the prosecution in de-nazification tribunals of cases which seem likely to involve offenses not sufficiently serious to warrant punishment by more than ten years of hard labor, the maximum sentence provided by the Law for Liberation from National Socialism and Militarism. You will watch carefully and evaluate the operation of the machinery and procedures established by the Law for Liberation from National Socialism and Militarism of 5 March 1945 and will require reports as to the persons tried, with the charge and the sentence in each individual case. A summary of these reports will be included in your periodic reports to the War Department. If the De-Nazification Tribunals do not prove adequate to accomplish the desired objective, you will utilize Zonal Courts or United States Military Commissions for the trial of war criminals. You may also permit the trial in German Criminal Courts of offenses which constituted violations of German Criminal Law as it existed prior to 1933.

10. Only the following acts may receive the death penalty:

- a. The preparation and initiation of aggressive war.
- b. Murder - particularly of prisoners of war and slave laborers.
- c. Mayhem - particularly in the case of prisoners of war and slave laborers.
- d. Torture.
- e. Rape and systematic exploitation of women for immoral purposes.
- f. Planning and participation in mass killings, mass starvation of persons in custody, extermination because of race or culture.

S E C R E T

The death penalty may not be given when the only charge proved is that of membership in categories of a group or organization declared criminal by the International Military Tribunal.

11. Before the approval of any death sentence, care will be taken to make sure that the convicted person is not needed to give evidence in another war crimes trial.

12. War criminals may be used for reparations labor only after they have been judicially convicted of an offense defined in Allied Control Council Law No. 10.

13. The names of convicted war criminals with the length of sentence of each, including those convicted in the De-Nazification Tribunals, will be reported promptly to the proper Reparations Authority. You will make arrangements for the prompt delivery of persons sentenced to hard labor who may be desired for use for reparations labor service. You will also take appropriate measures to obtain periodic reports from the appropriate Reparations Authority of those remaining within its custody.

14. Reparations labor, when required, will be a substitute for the term of labor set by the sentence imposed by the court convicting the war criminal. It may not be exacted beyond the term of that sentence.

15. You will establish a Board to equalize sentences, insuring uniformity, to supervise their execution, whether in the form of reparations labor or otherwise, and to provide rules for clemency, parole or probation in appropriate cases.

16. Insofar as the above directive interprets, modifies or adds to the provisions of Control Council Law No. 10, you will attempt to obtain quadripartite agreement to the provisions of the directive. You will forward your recommendations for amendment to this directive to the War Department, with a statement of what is being done in the other zones so that the greatest amount of uniformity of policy throughout Germany may be developed.

S E C R E TAPPENDIX "B"FACTS BEARING ON THE PROBLEM AND DISCUSSIONFACTS

1. The Declaration of German Atrocities signed at Moscow on 30 October 1943 by Roosevelt, Churchill, and Stalin constitutes the basic statement which controls the whole policy as to punishment of war criminals in the European Theater. In its main clauses it provides that the Germans responsible for the commission of war crimes in World War II should be brought back to the scene of their crimes and charged and tried by the people whom they have outraged. It further provides that the major criminals whose offenses have no particular geographical localization "will be punished by the joint decision of the Governments of the Allies."
2. On 8 July 1945, the major provisions of the Moscow Declaration were implemented by Directive JCS 1023/10 which was issued to the Commander-in-Chief as an interim directive but which is still in force.
3. On 8 August 1945, the provisions of the Moscow Declaration relating to the trial and punishment of major war criminals were implemented by the London Agreement signed by the Representatives of the Governments of the United States, France, the United Kingdom and Russia and by the Charter of the International Military Tribunal annexed thereto. The Charter restated the three categories of war crimes and also provided that the Tribunal might declare criminal, organizations or groups of which indicted persons, brought to trial before it, were members. This provision has been interpreted to permit the subsequent trial for the crime of membership of the members of any organization or group so declared criminal.
4. By Executive Order No. 9547 of 2 May 1945, the Office of the Chief of Counsel was created for the purpose of prosecution of

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Appendix "B"

S E C R E T

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the major war criminals whose crimes had no specific geographical localization and Justice Jackson was appointed as prosecutor and representative of the United States. It is estimated that the persons who are members of the organizations which may be declared criminal number from 100,000 to 200,000.

5. On 24 February 1945, prior to the issuance of directive JCS 1023/10 and the London Agreement of 8 August 1945, a War Crimes Branch was established in the European Theater and continues to operate. This Theater Branch, whose headquarters are at Weisbaden, is charged only with the trial of persons accused of violation of the laws of war involving United States nationals or atrocities committed in concentration camps overrun by the United States Forces.

6. By letter of 4 December 1945, Justice Jackson wrote the President suggesting that the Office of Chief of Counsel be continued and incorporated in the Office of Military Government for the further prosecution in Zonal Courts of major war criminals. He requested that Colonel Telford Taylor be appointed his Deputy to plan for such further prosecutions and that upon Justice Jackson's withdrawal, Colonel Taylor be named Chief of Counsel for war crimes in the Office of Military Government.

7. By letter of 5 December 1945, the Commanding General, European Theater, pointed out the impossibility of literal compliance with the requirements of Directive JCS 1023/10, especially in connection with the offenses in Category (c) thereof. He requested that Justice Jackson's organization be continued after the close of the Nuremberg Trials as the agency responsible for the prosecution of cases of Axis criminality not falling within the jurisdiction of the Theater War Crimes Branch. He proposed that that office become an Office of Chief of Counsel for war crimes with the Office of Military Government (US) in Germany and that it be given the power to prosecute cases in Zonal Courts. He further requested that

S E C R E T

provisions be made for the trial of offenses under 3(c) of JCS 1023/10 (i.e. Crimes Against Humanity) in German Courts staffed by judges and prosecutors free from Nazi taint, and that the Military Governor be given discretion to determine how far down the scale of Nazi criminality prosecution should go.

8. Upon the receipt of these two letters, the following action was taken:

a. The plans outlined in the letters were approved in SWNCC ~~237/2~~ ^{237/2}.

b. On 16 January 1946 by Executive Order No. 9679, the President made effective the proposed changes in the Office of the Chief of Counsel.

c. On 22 January 1946, a cable was dispatched informing the Theater Commander of the executive order and of the approval by SWNCC of the plan outlined in the letter of the Commanding General of 5 December 1945.

d. An amended draft directive JCS 1023/14 was drafted and submitted to SWNCC by the Joint Chiefs of Staff. It was referred by SWNCC as SWNCC 50/1/D, to its European Subcommittee for study and report. Appendix "A" is now reported as a substitute for the earlier draft directive.

9. On 20 December 1945, Control Council Law No. 10 for the Punishment of Persons Guilty of War Crimes, Crimes Against Peace, and the Crimes Against Humanity which had been initiated by the United States Representative on the Council was adopted at Berlin.

10. By Cable Nr 23238 of 18 February 1946, the Office of Military Government for Germany (US) reported to the War Department its formulation of its plans for the future trial of war criminals under Control Council Law No. 10.

11. On 5 March 1946, the Military Governor at Berlin approved the Law for Liberation from National Socialism and Militarism submitted to him by the Minister Presidents of Bavaria, Wurtemberg-

SCE 2

- 9 -

Appendix "B"

S E C R E T

SECRET

Baden and Greater Hesse. This law was passed to enable the Germans to participate in the program for the elimination of Nazi and militaristic influences from German life.

12. By cable of 23 March 1946, the Office of Military Government requested that JCS 1023/10 be amended generally to conform to Control Council Law No. 10.

DISCUSSION

13. Draft Directive SWNCC 50/1/D (JCS 1023/14) requires revision in the light of Control Council Law No. 10, which incorporates the principles and policies of SWNCC 50/D (JCS 1023/10) and in the light of the Law for Liberation from National Socialism and Militarism. Moreover, certain specific requests of the Office of Military Government contained in Cable CC 1090 of 23 March 1946 have not been complied with in JCS 1023/14 (SWNCC 50/1/D).

14. Since definitions of war crimes and of the term "criminal" are now incorporated in Control Council Law No. 10, they need not be made a part of the amended draft directive. It should be noted that so far as the Control Law is applicable, the objection of the Commanding General in his letter of 5 December 1945 to the scope of the crimes under Category C of JCS 1023/10 has been met in part in Article II, 1(c) of the Control Law by limiting crimes against humanity to crimes against civilian populations.

15. Control Council Law No. 10 by Article II, subparagraph 1(d) defines as a crime membership in categories of a group or organization declared criminal by the International Military Tribunal. The full scope of this crime cannot be known until determination of the case before the International Military Tribunal at Nuremberg. It seems important, however, to initiate proceedings for the investigation of such cases in order that they may be disposed of promptly when the Nuremberg case is terminated. Paragraph 5 of the directive relates to the procedure in connection with the investigation of such cases.

S E C R E T

16. Paragraph 6 of the amended draft directive is in response to the request of the Office of Military Government for some guidance as to the nature of the proof necessary to convict and the defenses permissible to persons holding "high position" and charged with crimes against peace. Former directives have limited the scope of crimes against the peace by implying that only persons in "high position" can be guilty of such crimes. Since this limitation is not found in the Control Council Law it is omitted from the revised directive.

17. Further to lessen the scope of the work required of the Commanding General by JCS 1023/10, Paragraph 9 of the amended draft directive interprets Article III of Control Council Law No. 10 as permitting the use of the De-Nazification Courts for the trial of membership cases in accordance with the Law for Liberation from National Socialism and Militarism and as permitting the use of German criminal courts for the trial of offenses which constituted violations of German Criminal Law as it existed prior to 1933. The report of the Military Governor in Cable No. CC 3974 of 27 April 1946 states that it is not intended to permit specific crimes to be tried in the German Courts, unless they are offenses against local law.

18. It must be remembered that the systematic prosecution of the many offenders in Germany is undoubtedly a most important means of making effective the requirement of Directive JCS 1067/5 (Regarding the Military Government of Germany) that it must be brought home to the Germans that they cannot escape responsibility for what they have brought upon themselves, and that steps must be taken to prevent Germans from ever again becoming a threat to the people of the world. The systematic punishment and the confinement of such offenders should be a preventive against the resurgence of organizations propagating Nazi doctrines and thus constitute a measure in defense of the security of the United States. It is felt that extreme caution must be used in planning

S E C R E T

for the trial of war criminals in German courts. The burden placed upon the De-Nazification Courts on the enforcement of the Law for Liberation from National Socialism and Militarism is tremendous. Its scope goes far beyond the cases of those accused of membership in groups declared criminal for the International Military Tribunal. It involves the registration and classification into the five categories of the Act of every German over 18 years of age. Because of the difficulties involved in the execution of De-Nazification program it may prove in practice, desirable to punish the members of the groups of a more serious criminal character in tribunals other than the De-Nazification Courts.

19. Article II, paragraph 3 of the Allied Control Law No. 10 lists the punishments which may be imposed upon persons found guilty of war crimes. The law does not, however, relate these punishments to specific offenses. It is felt that when trials of war crimes are conducted on the large scale contemplated by the Control Law, injustices will result unless a more specific scale of punishments is prepared. Accordingly, the directive lists the crimes which may receive a death penalty and forbids the imposition of the death penalty in membership cases.

20. Since convicted war criminals may be made available for reparations labor, paragraphs 13 and 14 of the directive prescribe the manner in which agreements as to the reparations labor are to be implemented.

21. It is anticipated that upon the completion of war crimes trials a very large number of persons will have been convicted and sentenced. Sound penal practice would require that a special board be established to equalize sentences, supervise their execution, and provide for clemency in appropriate cases. Paragraph 16 of the directive directs the Commanding General to establish such a board.

SCE-2

WAR DEPARTMENT
WAR DEPARTMENT SPECIAL STAFF
CIVIL AFFAIRS DIVISION
WASHINGTON 25, D. C.

20 August 1946

SUBJECT: Revised Directive SWNCC 50/1/D.

TO : Secretary, State-War-Navy Coordinating Committee,
State Department. ATTN: Major Karbell.

Inclosed herewith are two (2) copies of the revision of
SWNCC 50/1/D as agreed upon by the Working Party of the European
Subcommittee.

D.M.

DAVID MARCUS
Colonel, GSC
Chief, War Crimes Branch

Incl:
as stated above.

SWNCC 50/

SecretENCLOSUREDRAFTSTATE-WAR-NAVY COORDINATING COMMITTEEORGANIZATION FOR FURTHER PROCEEDINGS AGAINST AXIS WAR
CRIMINALS AND CERTAIN OTHER OFFENDERS

References: a. SWNCC 50/D
 b. IPCOG 13
 c. SWNCC 237 Series

Report by the European SubcommitteeTHE PROBLEM

1. To study SWNCC 50/1/D, a draft directive revising JCS 1023/10 (Directive on the Identification and Apprehension of Persons Suspected of War Crimes or Other Offenses and Trial of Certain Offenders) and to make recommendations to ~~the European Subcommittee~~ SWNCC.

FACTS BEARING ON THE PROBLEM

2. The draft directive referred to in paragraph 1 was transmitted by the Joint Chiefs of Staff to the State, War and Navy Coordinating Committee on 17 January 1946. It was referred to the State-War-Navy Coordinating Committee Subcommittee ^{for} on Europe and was further referred on 23 January 1946 to a working part for that Subcommittee composed of representatives of the State, War and Navy Departments for study and report.

3. On 20 December 1945, Control Council Law No. 10 relating to the punishment of persons guilty of war crimes, crimes against the peace and crimes against humanity, was passed by the Allied Control Council in Germany. This law was not before the Joint Logistic Committee of the Joint Chiefs of Staff, which prepared and referred to State-War-Navy Coordinating Committee, the draft directive amending JCS 1023/10.

4. On 5 March 1946, the Law for Liberation from National Socialism and Militarism submitted to the Office of Military Government in Germany (U.S.) by the Minister Presidents for Bavaria, Wurtemberg-Baden and Greater Hesse, was approved by the Military Governor acting through his deputy. This Law

provides for German courts to be established to try and punish persons responsible for the crimes committed against the German people under the regime of National Socialism and Militarism.

5. On 23 March 1946, by Cable No. CC 1890 the Office of Military Government (U.S.) Berlin, Germany, requested that JCS 1023/10 be kept in force, but be amended generally to conform to Control Council Law No. 10 which was initiated by the United States to carry out the terms of JCS 1023/10.

6. For additional facts bearing on the problem and for discussion, see ^{Appendix} ~~Enclosure~~ B.

CONCLUSIONS

7. The revised draft directive SWNCC 50/1/D should be further revised in the light of Control Council Law No. 10 and the Law for Liberation from National Socialism and Militarism and of Cable No. CC 1890.

RECOMMENDATIONS

8. It is recommended that after the views of the Joint Chiefs of Staff have been obtained, the State-War-Navy Coordinating Committee approve this report and the amended directive (^{Appendix} ~~Enclosure~~ A) and that the Joint Chiefs of Staff be requested to dispatch the amended directive to the Commanding General, USFET, to supersede JCS 1023/10.

JCS 1023/

Appendix
ENCLOSURE "A"

DRAFT

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

1. This directive is issued to you as Commanding General of the United States Forces in Germany for your future guidance in the identification, apprehension, trial and punishment of persons implicated in or connected with war crimes or related offenses. With relation to Germany it supersedes Directive JCS 1023/10.
2. The principles of the Moscow Declaration on German Atrocities of 30 October 1943, and the London Agreement of 8 August 1945 are re-affirmed.
3. The provisions of Control Council Law No. 10 are incorporated herein, subject to such amendments as the directive may require you to seek.
4. A further directive is being prepared to cover the procedure to be followed in prosecuting these persons who compose the groups now under indictment before the International Military Tribunal.
5. The preliminary investigation of the alleged members of the groups which may be declared criminal by the International Military Tribunal at Nuremberg should be instituted and continued without awaiting the outcome of the Nuremberg trial. Evidence should be obtained to establish the fact of membership, the date and circumstances of entry into the organization or unit, the actual participation in organizational activities and the particular functions and duties of the accused, and the place and date of his activities in the organization. A special file should be developed and maintained for each member and should include such service documents as the Soldbuch (Pay book), diaries, and pertinent extracts from official gazettes. These records shall be kept in the custody of the U.S. Army and be available to Military Government and the liaison offices of the United Nations and Italy.

Enclosure "A"

6. Definition of "High Position" - Subparagraph 2(f) of Control Council Law No. 10 provides that persons who held "high position", political, civil or military (including General Staff positions), are deemed to have committed crimes against the peace. In connection with this you will interpret "high position" as one in which the incumbent must be presumed to have knowledge of the conspiracy of the Nazi regime to wage an aggressive war, in that his high position involved the use of initiative and discretion, which, by its nature, required the person holding the office to be acquainted with the larger plans in conformity with which he controlled or substantially influenced extensive undertakings. Proof of high position does not create a presumption of guilt but from the evidence offered the Court can infer knowledge of the conspiracy to wage aggressive war. As a defense, the accused may refute the evidence presented or its application to him.

7. You will follow the procedure outlined in Articles III and IV of Control Council Law No. 10 and will observe the priorities established by that article in connection with the trial or delivery for trial to other authorities of any persons apprehended by you and charged with crimes as defined by Control Council Law No. 10. You will not delay the delivery of any alleged war criminal on the ground that other requests for him are anticipated. You will take such measures as you deem necessary to insure that witnesses to crimes will be available when required.

8. Persons charged with any of the crimes defined in Allied Control Council Law No. 10 may be tried before a Special International Military Tribunal, a Zonal Court, a United States Military Commission, or a German Court as provided below.

9. In planning for the reference of cases to the appropriate tribunal, you will proceed upon the following principles. You will select for trial in Zonal Courts, or in United States Military Commissions, those cases involving the most serious crimes and dangerous offenders, offenses against the United States nationals or mass atrocities. You may

permit the prosecution in de-nazification tribunals of cases which seem likely to involve offenses not sufficiently serious to warrant punishment by more than ten years of hard labor, the maximum sentence provided by the Law for Liberation from National Socialism and Militarism. You will watch carefully and evaluate the operation of the machinery and procedures established by the Law for Liberation from National Socialism and Militarism of 5 March 1945 and will require reports as to the persons tried, with the charge and the sentence in each individual case. A summary of these reports will be included in your periodic reports to the War Department. If the De-Nazification Tribunals do not prove adequate to accomplish the desired objective, you will utilize Zonal Courts or United States Military Commissions for the trial of war criminals. You may also permit the trial in German Criminal Courts of offenses which constituted violations of German Criminal Law as it existed prior to 1933.

10. Only the following acts may receive the death penalty:

- a. The preparation and initiation of aggressive war
- b. Murder - particularly ^{of} the prisoners of war and slave laborers
- c. Mayhem - particularly in the case of prisoners of war and
slave laborers
- d. Torture
- e. Rape and systematic exploitation of women for immoral purposes
- f. Planning and participation in mass killings, mass starvation
of persons in custody, extermination because of race or culture.

The death penalty may not be given when the only charge proved is that of membership in categories of a group or organization declared criminal by the International Military Tribunal.

11. Before the approval of any death sentence, care ^{will} ~~should~~ be taken to make sure that the convicted person is not needed to give evidence in another war crimes trial.

12. War criminals may be used for reparations labor only after they have been judicially convicted of an offense defined in Allied Control Council Law No. 10.

13. The names of convicted war criminals with the length of sentence of each, including those convicted in the De-Nazification Tribunals, will be reported promptly to the proper Reparations Authority. You will make arrangements for the prompt delivery of persons sentenced to hard labor who may be desired for use for reparations labor service. You will also take appropriate measures to obtain periodic reports from the appropriate Reparations Authority of those remaining within its custody.

14. Reparations labor, when required, will be a substitute for the term of labor set by the sentence imposed by the court convicting the war criminal. It may not be exacted beyond the term of that sentence.

15. You will establish a Board to equalize sentences, insuring uniformity; to supervise their execution, whether in the form of reparations labor or otherwise, and to provide rules for clemency, parole or probation in appropriate cases.

16. Insofar as the above directive interprets, modifies or adds to the provisions of Control Council Law No. 10, you will attempt to obtain quadripartite agreement to the provisions of the directive. You will forward your recommendations ^{for amendment to this directive} to the War Department, with a statement of what is being done in the other zones so that the greatest amount of uniformity of policy throughout Germany may be developed.

JCS 1023/

Appendix
ENCLOSURE "B"DRAFTDIRECTIVE ON THE IDENTIFICATION AND APPREHENSION OF PERSONS SUSPECTED
OF WAR CRIMES OR OTHER OFFENSES AND TRIAL OF CERTAIN OFFENDERSFACTS BEARING ON THE PROBLEM AND DISCUSSIONFACTS

1. The Declaration of German Atrocities signed at Moscow on 30 October 1943 by Roosevelt, Churchill, and Stalin constitutes the basic statement which controls the whole policy as to punishment of war criminals in the European Theater. In its main clauses it provides that the Germans responsible for the commission of war crimes in World War II should be brought back to the scene of their crimes and charged and tried by the people whom they have outraged. It further provides that the major criminals whose offenses have no particular geographical localization "will be punished by the joint decision of the Governments of the Allies."

2. On 8 July 1945, the major provisions of the Moscow Declaration were implemented by Directive JCS 1023/10 which was issued to the Commander-in-Chief as an interim directive but which is still in force.

3. On 8 August 1945, the provisions of the Moscow Declaration relating to the trial and punishment of major war criminals were implemented by the London Agreement signed by the Representatives of the Governments of the United States, France, the United Kingdom and Russia and by the Charter of the International Military Tribunal annexed thereto. The Charter restated the three categories of war crimes and also provided that the Tribunal might declare criminal, organizations or groups of which indicted persons, brought to trial before it, were members. This provision has been interpreted to permit the subsequent trial for the crime of membership of the members of any organization or group so declared criminal.

4. By Executive Order No. 9547 of 2 May 1945, the Office of the Chief of Counsel was created for the purpose of prosecution of the major war criminals whose crimes had no specific geographical localization and Justice Jackson was appointed as prosecutor and representative of the United States. It is

Enclosure "B"

estimated that the persons who are members of the organizations which may be declared criminal number from 100,000 to 200,000.

5. On 24 February 1945, prior to the issuance of directive JCS 1023/10 and the London Agreement of 8 August 1945, a War Crimes Branch was established in the European Theater and continues to operate. This Theater Branch, whose headquarters are at Weisbaden, is charged only with the trial of persons accused of violation of the laws of war involving United States nationals or atrocities committed in concentration camps overrun by the United States Forces.

6. By letter of 4 December 1945, Justice Jackson wrote the President suggesting that the Office of Chief of Counsel be continued and incorporated in the Office of Military Government for the further prosecution in Zonal Courts of major war criminals. He requested that Colonel Telford Taylor be appointed his Deputy to plan for such further prosecutions and that upon Justice Jackson's withdrawal, Colonel Taylor be named Chief of Counsel for war crimes in the Office of Military Government.

7. By letter of 5 December 1945, the Commanding General, European Theater, pointed out the impossibility of literal compliance with the requirements of Directive JCS 1023/10, especially in connection with the offenses in Category (c) thereof. He requested that Mr. Justice Jackson's organization be continued after the close of the Nuremberg Trials as the agency responsible for the prosecution of cases of Axis criminality not falling within the jurisdiction of the Theater War Crimes Branch. He proposed that that office become an Office of Chief of Counsel for war crimes with the Office of Military Government (US) in Germany and that it be given the power to prosecute cases in Zonal Courts. He further requested that provisions be made for the trial of offenses under 3(c) of 1023/10 (i.e. Crimes Against Humanity) in German Courts staffed by judges and prosecutors free from Nazi taint, and that the Military Governor be given discretion to determine how far down the scale of Nazi criminality prosecution should go.

8. Upon the receipt of these two letters, the following action was taken:
 - a. The plans outlined in the letters were approved in SWNCC 273/2.
 - b. On 16 January 1946 by Executive Order No. 9679, the President made effective the proposed changes in the Office of the Chief of Counsel.
 - c. On 22 January 1946, a cable was dispatched informing the Theater Commander of the executive order and of the approval by SWNCC of the plan outlined in the letter of the Commanding General of 5 December 1945.
 - d. An amended draft directive JCS 1023/14 was drafted and submitted to SWNCC by the Joint Chiefs of Staff. It was referred by SWNCC as SWNCC 50/1/D, to its European subcommittee for study and report. Enclosure A is now reported as a substitute for the earlier draft directive.
9. On 20 December 1945, Control Council Law No. 10 for the Punishment of Persons Guilty of War Crimes, Crimes Against Peace, and the Crimes Against Humanity which had been initiated by the United States Representative on the Council was adopted at Berlin.
10. By Cable NR 23238 of 18 February 1946, the Office of Military Government for Germany (US) reported to the War Department its formulation of its plans for the future trial of war criminals under Control Council Law No. 10.
11. On 5 March 1946, the Military Governor at Berlin approved the Law for Liberation from National Socialism and Militarism submitted to him by the Minister Presidents of Bavaria, Wurtemberg-Baden and Greater Hesse. This law was passed to enable the Germans to participate in the program for the elimination of Nazi and militaristic influences from German life.
12. By cable of 23 March 1946, the Office of Military Government requested that JCS 1023/10 be amended generally to conform to Control Council Law No. 10.

DISCUSSION

13. Draft Directive SWNCC 50/1/D (JCS 1023/14) requires revision in the light of Control Council Law No. 10, which incorporates the principles and policies of SWNCC 50/D (JCS 1023/10) and in the light of the Law for Liberation from National Socialism and Militarism. Moreover, certain specific requests of

the Office of Military Government contained in Cable CC 1090 of 23 March 1946 have not been complied with in JCS 1023/14 (SWNCC 50/1/D).

14. Since definitions of war crimes and of the term "criminal" are now incorporated in Control Council Law No. 10, they need not be made a part of the amended draft directive. It should be noted that so far as the Control Law is applicable, the objection of the Commanding General in his letter of 5 December 1945 to the scope of the crimes under Category C of JCS 1023/10 has been met in part in Article II, 1(c) of the Control Law by limiting crimes against humanity to crimes against civilian populations.

15. Control Council Law No. 10 by Article II, subparagraph 1(d) defines as a crime membership in categories of a group or organization declared criminal by the International Military Tribunal. The full scope of this crime cannot be known until determination of the case before the International Military Tribunal at Nuremberg. It seems important, however, to initiate proceedings for the investigation of such cases in order that they may be disposed of promptly when the Nuremberg case is terminated. Paragraph 5 of the directive relates to the procedure in connection with the investigation of such cases.

16. Paragraph 6 of the amended draft directive is in response to the request of the Office of Military Government for some guidance as to the nature of the proof necessary to convict and the defenses permissible to persons holding "high position" and charged with crimes against peace. Former directives have limited the scope of crimes against the peace by implying that only persons in "high position" can be guilty of such crimes. Since this limitation is not found in the Control Council Law it is omitted from the revised directive.

17. Further to lessen the scope of the work required of the Commanding General by JCS 1023/10, Paragraph 9 of the amended draft directive, interprets Article III of Control Council Law No. 10 as permitting the use of the De-Nazification Courts for the trial of membership cases in accordance with the

Law for Liberation from National Socialism and Militarism and as permitting the use of German criminal courts for the trial of offenses which constituted violations of German Criminal Law as it existed prior to 1933. The report of the Military Governor in Cable No. CC 3974 of 27 April 1946 states that it is not intended to permit specific crimes to be tried in the German Courts, unless they are offenses against local law.

18. It must be remembered that the systematic prosecution of the many offenders in Germany is undoubtedly a most important means of making effective the requirement of Directive JCS 1067/5 (Regarding the Military Government of Germany) that it must be brought home to the Germans that they cannot escape responsibility for what they have brought upon themselves, and that steps must be taken to prevent Germans from ever again becoming a threat to the people of the world. The systematic punishment and the confinement of such offenders should be a preventive against the resurgence of organizations propagating Nazi doctrines and thus constitute a measure in defense of the security of the United States. It is felt that extreme caution must be used in planning for the trial of war criminals in German courts. The burden placed upon the De-Nazification Courts on the enforcement of the Law for Liberation from National Socialism and Militarism is tremendous. Its scope goes far beyond the cases of those accused of membership in groups declared criminal for the International Military Tribunal. It involves the registration and classification into the five categories of the Act of every German over 18 years of age. Because of the difficulties involved in the execution of De-Nazification program it may prove in practice, desirable to punish the members of the groups of a more serious criminal character in tribunals other than the De-Nazification Courts.

19. Article II, paragraph 3 of the Allied Control Law No. 10, lists the punishments which may be imposed upon persons found guilty of war crimes. The law does not, however, relate these punishments to specific offenses. It is felt that when trials of war crimes are conducted on the large scale contemplated by the Control Law, injustices will result unless a more specific scale of punishments is prepared. Accordingly, the directive lists the crimes which

may receive a death penalty and forbids the imposition of the death penalty in membership cases.

20. Since convicted war criminals may be made available for reparations labor, paragraphs 13 and 14 of the directive prescribe the manner in which agreements as to the reparations labor are to be implemented.

21. It is anticipated that upon the completion of war crimes trials a very large number of persons will have been convicted and sentenced. Sound penal practice would require that a special board be established to equalize sentences, supervise their execution, and provide for clemency in appropriate cases. Paragraph 16 of the directive directs the Commanding General to establish such a board.

THE STATE-WAR-NAVY COORDINATING COMMITTEE
WASHINGTON, D. C.

COPY

SOE-4
23 January 1946

MEMORANDUM FOR: Mr. A. H. Garretson, Steering
Member (S-2295)
Colonel Damon Gunn (W-71704)
Colonel David Marcus, OAD (W-73110)
Captain F. B. Gary, USNR (N-3355)
Commander H. E. Billingsley (N-63910) ←
Captain G.A. Sinclair

Subject: Appointment of a Working Party,
SWNC Subcommittee for Europe

1. The State, War, and Navy Departments have designated the above named individuals as a working party to study and report to the European Subcommittee on SWNCC 50/1/D.
2. Copies of SWNCC 50/1/D are enclosed herewith.

Florence Whiteside
Ensign (W) USNR
Secretary, European Subcte

Encl.
SWNCC 50/1/D

Comdr Billingsley requested that this memo be forwarded to him on 24 Jul.

*Second copy sent to Comdr. Billingsley on 19th August.
D.O.*

B. J.



SECRET

THE STATE-WAR-NAVY COORDINATING COMMITTEE
WASHINGTON, D. C.



SCE-4
23 January 1946

Miss Fite 5-3150

MEMORANDUM FOR: Mr. A. H. Garretson, Steering Member (S-2295)
Colonel W. H. Peters, (W-2207) *Damon Sumner* (W-71704)
Col. David Marcus, CAD ~~Captain J. G. Hutcheson (W-71840)~~
Captain F. B. Gary, USNR (N-3355) 61558
Lieutenant P. P. Claxton USNR (N-61723)

SUBJECT: Appointment of a Working Party, SWNC Subcommittee for Europe

1. The State, War, and Navy Departments have designated the above-named individuals as a working party to study and report to the European Subcommittee on SWNCC 50/1/D.
2. Copies of SWNCC 50/1/D are enclosed herewith.

Florence Whiteside
Ensign (W) USNR
Secretary, European Subcommittee

Encl. 38 SWNCC 50/1/D already delivered to Mr. Garretson
39

- 40 - Colonel Peters
- 41 - ~~Captain Hutcheson~~
- 42 - Captain Gary
- 43 - Lieutenant Claxton

Organization for Further Proceedings Against Axis War Criminals and Certain Other Offenders

SECRET

Col. Sumner 413935

50/1/D



WAR DEPARTMENT
CIVIL AFFAIRS DIVISION
WASHINGTON 25, D. C.

12 March 1946

Miss Florence Whiteside
Secretary
European Subcommittee

Dear Miss Whiteside:

Subject: Appointment of Working Party,
SWNCC Subcommittee for Europe 50/1/D

It is requested that Colonel Damon Gunn be substituted for Colonel W. H. Peters as a member of the Working Party to study and report to the European Subcommittee on 50/1/D in accordance with your Memorandum dated 23 January 1946.

David Marcus

DAVID MARCUS
Colonel, GSC
Chief, War Crimes Branch,
Civil Affairs Division

50/1/D





THE STATE-WAR-NAVY COORDINATING COMMITTEE
WASHINGTON, D. C.



SCE-4A

MEMORANDUM FOR: STATE MEMBER, EUROPEAN SUBCOMMITTEE
WAR MEMBER, EUROPEAN SUBCOMMITTEE
NAVY MEMBER, EUROPEAN SUBCOMMITTEE

The report of the working party on SWNCC
50/1/D, dated 1946, is circulated for con-
sideration by the European Subcommittee.

It is requested that you indicate your con-
currence or comment hereon.

Florence Whiteside
Secretary, European Subcommittee

APPROVED: _____

DATE: _____

50/1/D

SECRET

COPY NO. _____

SWNCC 50/1/D

18 January 1946

Pages 9 - 15, Incl.

STATE-WAR-NAVY COORDINATING COMMITTEE

DIRECTIVE

ORGANIZATION FOR FURTHER PROCEEDINGS AGAINST AXIS WAR
CRIMINALS AND CERTAIN OTHER OFFENDERS

- References: a. SWNCC 50/D
b. IPCOG 13
c. IPCOG 13/1
d. SWNCC 237 Series

Note by the Secretaries

The enclosure, a memorandum on the above subject from the Secretary, Joint Chiefs of Staff, is referred to the State-War-Navy Coordinating Subcommittee for Europe for study and recommendation.

ALEXANDER D. REID

B. L. AUSTIN

RAYMOND E. COX

Secretariat

Working Committee
Capt. S. C. Hutchison 71840
4 B 940

Col. W. H. Peters, W-2907
Rm 4 B 948

Garretson A.H. Room 261
2295

Gary F.B. Capt 3355
Clapton P.P. Lt.

SWNCC 50/1/D

S E C R E TE N C L O S U R ETHE JOINT CHIEFS OF STAFF
Washington 25, D.C.SM-4747
17 January 1946

MEMORANDUM FOR THE STATE-WAR-NAVY COORDINATING COMMITTEE:

Subject: Organization for Further Proceedings
against Axis War Criminals and Certain
Other Offenders.

The Joint Chiefs of Staff, on 26 December 1945, forwarded to the State-War-Navy Coordinating Committee a memorandum with reference to a letter from the Commanding General, U.S. Forces, European Theater, to the Chief of Staff, United States Army, dated 5 December, subject: "Organization for Further Proceedings against Axis War Criminals and Certain other Offenders", and a letter from Justice Jackson to the President, dated 4 December, on the same subject. In this memorandum the Joint Chiefs of Staff stated that the proposed plan was desirable from the military point of view, and that if the action proposed by Justice Jackson is approved by the President, the War Department will immediately issue the necessary instructions to the Commanding General, U.S. Forces, European Theater.

The Joint Chiefs of Staff have now completed a study to determine what changes are necessary in the directive issued to the Commanding General, U.S. Forces, European Theater, on the identification and apprehension of persons suspected of war crimes or other offenses and trial of certain offenders which was circulated as SWNCC 50/D, in order that it may permit future action in accordance with the plan proposed by the theater commander.

The Joint Chiefs of Staff consider that the amended directive enclosed herewith (Appendix) will provide a suitable basis for the implementation of the plan of the theater commander, and in

SECRET

doing so will provide flexibility and a realistic treatment of the problem that is lacking in the present directive. They, therefore, request that the State-War-Navy Coordinating Committee obtain approval of the State, War and Navy Departments to the dispatch of the amended directive to the Commanding General, U.S. Forces, European Theater. In this connection the Joint Chiefs of Staff wish to invite attention to the fact that amendments to the directive are entirely independent of action which may be taken by the President on Justice Jackson's recommendation.

For the Joint Chiefs of Staff:

/s/ A. J. McFarland
A. J. McFARLAND,
Brigadier General, U.S.A.,
Secretary.

SECRETAPPENDIXREVISION OF DIRECTIVE ON THE IDENTIFICATION AND APPREHENSION
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, European Theater. 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 violations 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 especially repugnant to the ideals of the United Nations, including atrocities and persecutions on racial, religious or political grounds, committed since 30 January 1933, of which the United Nations should take cognizance.

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 such organizations or groups connected with the commission of such crimes as may be declared criminal by an international military tribunal. With reference to paragraph 2b, the term "criminal" is intended to refer to persons who have held high political, civil or mili-

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tary (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 agreed 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 United States 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.

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e. You may require the Germans to give you such assistance as you deem necessary including the prosecution, in such German Criminal Courts as may be reorganized and staffed by prosecutors and judges free from Nazi taint, of such cases falling under paragraph 2c as may be determined by the Military Governor. Such prosecutions will be closely supervised by the responsible occupation authorities.

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

SECRET

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 Nation 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, and such German Criminal Courts as provided in paragraph 5e, 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:

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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, co-belligerents, 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.

d. The extent to which prosecutions of persons whose crimes or offenses fall within the scope of this directive should be carried down the scale of Nazi criminality is a matter of policy and judgment which is left to the discretion of the Military Governor acting in consonance with the general policies of the Control Council and such instructions as may hereafter be issued by the Joint Chiefs of Staff.

DEPARTMENT OF STATE SCE-9A
DIVISION OF EUROPEAN AFFAIRS

EUR/14

Mar. 15
OFFICE OF EUROPEAN AFFAIRS
DIRECTOR
MAR 18 1946
MR MATTHEWS
DEPARTMENT OF STATE

Dear Doc

The SWNCC
subcommittee has agreed
upon the attached
reply to the French
request to change
the French zone in
Germany.

If you
approve, the paper
can go to SWNCC for
final action

JWR

15/10/D



Col. Spangler



THE STATE-WAR-NAVY COORDINATING COMMITTEE
WASHINGTON, D. C.

SCE-9A

MEMORANDUM FOR : *→* STATE MEMBER, EUROPEAN SUBCOMMITTEE
WAR MEMBER, EUROPEAN SUBCOMMITTEE
NAVY MEMBER, EUROPEAN SUBCOMMITTEE

The report of the working party on SWNCC
15/10/D, dated *13 March* 1946, is circulated for
consideration by the European Subcommittee.

It is requested that you indicate your con-
currence or comment hereon.

Florence Whiteside

Florence Whiteside
Secretary, European Subcommittee

APPROVED: *C.J. Bennett, Col GSC*

DATE: *12 Mar 46*

50/19/0
(2)



THE STATE-WAR-NAVY COORDINATING COMMITTEE
WASHINGTON, D. C.



SCE-9A

MEMORANDUM FOR : STATE MEMBER, EUROPEAN SUBCOMMITTEE
WAR MEMBER, EUROPEAN SUBCOMMITTEE
NAVY MEMBER, EUROPEAN SUBCOMMITTEE

The report of the working party on SWNCC
15/10/D, dated 1946, is circulated for
consideration by the European Subcommittee.

It is requested that you indicate your con-
currence or comment hereon.

Florence Whiteside
Secretary, European Subcommittee

APPROVED: _____

DATE: _____

*Navy signed approval missing
Approved by telephone by
Comdr. Clifton for Adm. McCrea*

15/10/D

SECRET

Mr. Fowler

Room 319

SWNCC 50

INFORMAL POLICY COMMITTEE ON GERMANY

FRENCH MEMORANDUM ON WAR CRIMINALS

Report of the Working Party of the Informal Policy Committee on Germany

References: a. JCS 1067/6
b. SWNCC 37/D

THE PROBLEM

1. To consider the memorandum of the French Delegation in the European Advisory Commission (EAC) dealing with the detention of members of the German armed forces, the S.S., etc., for the purpose of arresting those suspected of war crimes (EAC(45)13) and to advise the United States Representative, EAC, of the U.S. policy with respect thereto.

FACTS BEARING ON THE PROBLEM

2. The memorandum referred to in paragraph 1 was transmitted by Ambassador Winant to the Department of State. It has been referred to the Informal Policy Committee on Germany (IPCOG) for necessary action.

3. In IPCOG 1 (JCS 1067/6), at paragraph 7a, it is provided in effect that the personnel of all German armed forces, including para-military organizations, will be disarmed and controlled, and that prior to their final disposition the zone commander will arrest and hold all military personnel who come within the categories of persons, including war criminals, set forth in paragraph 8 of the same paper; paragraph 8 thereof deals with suspected war criminals and security arrests. A more detailed directive is being prepared with respect to suspected war criminals (SWNCC 50/D).

4. The Department of State has forwarded to Ambassador Winant for his information a copy of IPCOG 1.

DISCUSSION

5. The provisions of IPCOG 1 referred to in paragraph 3 above deal specifically with the subject matter covered by the French memorandum.

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6. It is not necessary for this report to be transmitted to the JCS for their views as they have already considered JCS 1067/6 and they have found no objections, from a military point of view, to the provisions dealing with the apprehension and detention of suspected war criminals.

CONCLUSION

7. It is concluded that the United States Representative, EAC, should be provided with the U.S. views as contained in the Appendix.

RECOMMENDATION

8. It is recommended:

- a. That this report should not be transmitted to JCS for their views.
- b. That this report should be approved by the Informal Policy Committee on Germany.
- c. That the memorandum at the Appendix should be forwarded to the Secretary of State.

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APPENDIX

MEMORANDUM TO THE SECRETARY OF STATE

The Informal Policy Committee on Germany has considered the memorandum of the French Delegation, KAC(45)13. IPCOG 1 (JCS 1067/6), particularly at paragraphs 7a and 8, sets forth the U.S. policy with regard to the arrest and detention of suspected war criminals, including those who have been members of German armed forces and para-military organizations. Ambassador Winant should be advised to refer to that paper for his guidance in dealing with the subject matter of the French memorandum.

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