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TAB "C" TO ANNEX "D" TO APPENDIX "A"

HEADQUARTERS
NORTH AFRICAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 534

CIRCULAR)
:)
NUMBER 11)

26 January 1944

INVESTIGATION OF WAR CRIMES

1. The following procedure is established to effect the purposes of the directives concerning war crimes of the Combined Chiefs of Staff of 29 October 1943 and Allie Force Headquarters Circular of 27 November 1943.

2. For the purpose of this directive war crimes are defined to be violations of the laws and customs of war, examples of which are set forth in paragraphs 347 and 355 of the Rules of Land Warfare, U. S. Army.

3. In order that the testimony of witnesses may be recorded in such form that it shall be admissible in their absence before legal tribunals in accordance with generally accepted rules, the following procedure is prescribed:

a. Whenever practicable, witnesses will be examined and cross-examined under oath on oral interrogatories in the presence of the accused and before a military officer termed a commissioner, who, for the purpose of such examination, shall have authority to administer oaths as an officer detailed to conduct an investigation within the purview of Article of War 114, U. S. Army.

b. The accused shall be entitled to be represented by counsel.

c. The oral examination of witnesses shall normally be conducted by military officer termed military counsel and by a military officer termed defense counsel, if the accused

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desires counsel. The commissioner before whom a witness is being examined may interrogate the witness in order to supplement the information adduced by counsel.

d. The examination of witnesses will take place when practicable at the scene of the alleged crime and as soon thereafter as circumstances permit.

4. a. The Commanding General of each Army shall designate, from officers of his command, one officer of field grade with legal qualifications as commissioner, one officer as military counsel and one officer as defense counsel.

b. Each Army Commander shall refer to the commissioner designated by him all cases involving war crimes in which the accused is in the custody of the Army Commander. He may also refer to such commissioner cases involving war crimes if witnesses are available in his command though the accused may not be in custody or even identified.

5. a. The Commissioner to whom cases are referred is responsible for their prompt investigation and reduction of the available evidence to permanent form, as prescribed herein. To accomplish this result he is authorized to give necessary instructions to the military counsel and the defense counsel in the preparation of interrogatories and cross-interrogatories and take such action with respect to time and place for conducting the taking of testimony as circumstances warrant.

b. The commissioner is responsible for the taking of all available testimony and for submitting the same in due form to the Army Commander by whom he was designated. He will authenticate the testimony of each witness at the end of the transcript by certificate as follows:

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"I certify that _____ personally appeared
 this _____ day of _____ 1944, at
 _____ before me a Commissioner
 duly designated by competent orders and in the presence of
 the accused, who was afforded the opportunity of cross-
 examination, and testified under oath in the matter of
 _____, in the manner above set forth.

"Place _____ Name _____

"Date _____ Rank _____"

6. The Army Commander will transmit to this headquarters the reports of commissioners designated by him.

7. Commissioners, military counsel and defense counsel will be designated by this headquarters to take testimony and make report in respect of the investigation of war crimes when either witnesses or the accused are not under the command of an Army Commander or for any other reason investigation by direction of an Army Commander is not practicable. Commissioners designated by this headquarters will conform to the procedure set forth herein except that their reports will be submitted directly to this headquarters.

8. Commissioners are authorized to receive any evidence which would have probative value to a reasonable man.

9. Officers may be detailed as investigators to assist commissioners.

(AG 000.5/367)

By command of Lieutenant General DEVERS:

E. L. FORD,
 Brigadier General, GSC,
 Chief of Staff.

OFFICIAL:

(Signed)
 H. V. ROBERTS,
 Colonel, AGD,
 Adjutant General.

DISTRIBUTION:

"Z"

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TAB "D" TO ANNEX "D" TO APPENDIX "A"

WAR CRIMINALS

ALLIED FORCE H.Q.
6 Feb 44

The following procedure will be adopted by British forces in this theatre in order to implement the directive of the Combined Chiefs of Staff of 29 Oct 43 and Allied Force Headquarters Circular "War Criminals" under reference AG 000. 5-1 G.A.P.--A.G.M., dated 27 Nov 43.

For the purpose of this directive war crimes are defined as violations of the laws and customs of war, examples of which are set out in paragraph 443, chapter XIV, Manual of Military Law.

As soon as any circumstances suggesting the commission of a war crime come to the notice of any officer he will immediately notify his commanding officer who will cause an investigation to be made and if necessary, apply through the usual channels for the assistance of the Field Security Police. Statements will be obtained from any available witnesses.

When the investigation has been completed a brief report together with any statements obtained from witnesses will be forwarded through the usual channels to DJAG, AFHQ, who will advise G-1(B) whether a court of inquiry should be assembled, its terms of reference, and the witnesses to be summoned. If a court of inquiry is ordered to assemble, it will do so, when practicable, at or near the scene of the alleged crime. It will consist of two officers, the president being a member of the Deputy Judge Advocate staff of the Judge Advocate General and the convening officer will order that the evidence be taken on oath.

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Whenever practicable the accused will be present and will have the right to be represented by a military officer as counsel.

The court will record all relevant evidence whether for or against the accused and will receive any evidence which in their opinion has probative value.

The evidence will be recorded in narrative form except that the cross-examination of witnesses will, upon the request of the accused, be recorded in the form of question and answer.

Each witness will sign his name at the foot of the record of his evidence.

The examination and cross-examination of witnesses will normally be conducted by a military officer, termed military counsel (when practicable a member of the JAG's legal staff) and by a military officer, termed defence counsel (when practicable an officer with legal qualifications).

The president may question any witness in order to supplement the information adduced by counsel.

The following certificate will be signed by the president and member at the foot of the proceedings:-

CERTIFICATE

The above witnesses appeared in person before us this _____ day of _____ 1944, at _____ and /in the presence of the accused, who was afforded the opportunity to cross-examine/* gave evidence upon oath as set out above.

*If the accused was not present the words in brackets will be omitted.

The president will forward the proceedings together with the convening order, under secret cover to the convening officer who will forward them to DJAG, AFHQ.

G.1B/3305/A3

PSS/NA/2/44/6,000--AFHQ Press 1594

JCS 1023

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APPENDIX "B"

D R A F T

COMBINED CHIEFS OF STAFF

OBLIGATIONS OF THEATER COMMANDERS IN RELATION TO
WAR CRIMES

Memorandum by the United States Chiefs of Staff

1. On 28 October 1943 the Combined Chiefs of Staff issued instructions (FAN 260) to the Commander-in-Chief, Allied Forces, North Africa, regarding procedures to be followed in respect to war crimes.
2. Questions have arisen concerning the definition of war crimes and the obligations of theater commanders in respect of (a) the investigation of such crimes, (b) the apprehension and detention of war criminals, (c) the routing and lodgment of proof of war crimes, and (d) the trial of war criminals. The United States Chiefs of Staff are of the opinion that it would be desirable to agree upon a definition, and to establish uniform policy regarding the obligations referred to.
3. The United States Chiefs of Staff recommend:
 - a. That the Combined Chiefs of Staff approve the attached directive on this subject (Annex "A" to Appendix "A", page 23) and issue it to theater commanders under their control.
 - b. That the British and United States Chiefs of Staff issue the same directive to theater commanders under their respective control.
 - c. That identical letters (Annex "B" to Appendix "B", page 29) be dispatched to the British Embassy and to the United States Department of State.

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ANNEX "A" TO APPENDIX "B"

D R A F T

INSTRUCTIONS TO THEATER COMMANDERS REGARDING THE
HANDLING OF WAR CRIMES

I. DEFINITIONS

1. The term "war crimes" covers those violations of the laws and customs of war which constitute offenses against person or property, committed in connection with military operations or occupation, which outrage common justice or involve moral turpitude.
2. A typical list of what are regarded as "war crimes", furnished for illustrative purposes only and not to be regarded as exhaustive, is set out in the Tab (page 27).
3. a. For the purposes of this directive the following dates are established:
 - The war in the Far East began 7 July 1937.
 - The war between Germany and Czechoslovakia began 10 March 1939.
 - The war in Europe began 1 September 1939.
- b. War crimes do not include offenses committed prior to the beginning dates set out in subparagraph a above.
4. War crimes do not include acts committed by enemy authorities against their own nationals.
5. Guilt may be either as principal or accessory. The taking of a consenting part in the commission of a war crime is likewise punishable; as, for example, omission of a superior officer to prevent war crimes when he knows of, or is on notice as to, their commission or contemplated commission and is in a position to prevent them.

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II. GENERAL POLICY

6. The apprehension and secure detention of known or suspected war criminals, and the perpetuation of the available proof concerning their offenses, are declared to be military interests of prime importance.

7. Military commanders have the power to try and punish persons who have committed offenses against the laws of war, including war crimes. However, in dealing with war crimes commanders will be guided by the following policies:

a. Military commanders may, if in their judgment advisable, try war crimes immediately if the offenses involve the security or the successful carrying out of military operations or occupation under their direction.

b. Military commanders, principally in order to avoid the danger of reprisals, will not try any other war crimes prior to the termination of active operations against the nation concerned. In such cases military commanders will forward evidence of the war crimes as directed in paragraph 10 below.

III. INVESTIGATION OF ALLEGED OFFENSES AND PERPETUATION OF PROOF

8. Each theater commander will cause an immediate investigation, as complete and thorough as circumstances permit, to be made of all reports of the commission of war crimes within his theater, irrespective of whether the alleged crime was committed before or after Allied military operations or occupation in the theater began.

9. If the investigation discloses evidence that a war crime has been committed, a full record of all facts and of the available evidence will be made. Insofar as practicable, the evidence will be taken and recorded in such form that it will be admissible against the accused in the event of a trial.

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10. a. Evidence recorded as provided in paragraph 9 above will be disposed of as follows:

(1) In the event the war crime was committed against United States or British nationals, two copies of the record will be forwarded by the United States or British commander in the theater, as the case may be, through normal military channels to the United States or British Government.

(2) In all other cases, two copies of the record will be forwarded by the theater commander directly to the United Nations government against whose national or nationals the crime was committed, or to the French Committee of National Liberation, or to the Italian Government, in cases where the crime was committed against a French or Italian national.

b. In the event of the immediate trial of a suspected war criminal before a military tribunal, as authorized in subparagraph 7 a above, two copies of the record of trial, in addition to the usual disposition made of records of trials by military tribunals, will be forwarded in the same manner as indicated in subparagraph 10 a. above with respect to records of investigation.

IV. APPREHENSION AND DETENTION OF WAR CRIMINALS

11. The apprehension and detention, to the fullest practicable extent, are directed of all persons in each theater against whom there is a reasonable suspicion that they have committed war crimes.

12. The United Nations Commission for the Investigation of War Crimes has been set up in London by the governments concerned for the purpose of collecting lists of war criminals, recording the available supporting proof, and making recommendations as to the tribunals to try and the procedure for trying war criminals. Theater commanders are authorized to receive

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directly from the commission lists of persons certified by it as suspected of having committed war crimes within the definitions of this directive. Such persons may be certified either by name or by general categories (for example, Gestapo). Persons so certified may be apprehended and detained without requiring further proof. A full record of all facts and of the available evidence in their cases will be made as hereinabove directed. Where considered necessary by the theater commander, he may ask the commission directly for additional information regarding such persons.

13. Persons taken into custody as war criminals should not, prior to the cessation of active hostilities, be segregated from other prisoners of war or civilian internees. However, special steps will be taken to see that all such persons are clearly identified as suspected war criminals and that all pertinent information about them is made available to the authorities responsible for their detention or evacuation, so as to insure against their inadvertent release. Special care will be taken to identify and keep records of all such persons at the time they are taken into custody or as soon thereafter as is reasonably possible. All relevant documents will accompany them if they are moved. Necessary action will also be taken to see that records of the whereabouts of persons apprehended pursuant to this directive, including any changes in their custody and detention, are promptly furnished to the national government to which the record of investigation was forwarded under the provisions of subparagraph 10 a above.

14. In order to avoid all risk of reprisals, no person in custody as a suspected war criminal will be handed over to any Allied authorities for trial and punishment except by arrangements between the governments concerned.

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TAB TO ANNEX "A" TO APPENDIX "B"

TYPICAL ILLUSTRATIVE LIST OF WAR CRIMES

Disguised poisoning of wells or streams.

Refusal of quarter, or directions to give no quarter.

Treacherous request for quarter resulting in illegal wounding or killings.

Deliberate killing of bearers of flag of truce.

Misuse of the Red Cross flag for military purposes.

Deliberate attack on or destruction of hospital ships.

Deliberate destruction of relief ships.

Killing or cruel treatment of wounded or prisoners of war.

Causing death of civilians or prisoners of war by compelling the sick and wounded to work.

Torture of troops or civilians in any form.

The laying of delayed-action bombs, mines, etc., at the time of retreat, in places which will presumptively be used largely by the civilian population.

Use of civilians as a screen for troops, or for clearing minefields or removing mines, or for any other work immediately connected with actual fighting.

Murder.

Rape.

Cruel treatment of inhabitants in occupied territory.

Causing death by wilful starvation of populations, as by excessive removal or wanton denial of foodstuffs.

Abduction of girls and women with the object of prostitution.

Wholesale uprooting of peoples in occupied territory.

Pillage and plunder.

Wanton devastation or destruction of property.

Deliberate destruction of hospitals and religious, charitable, educational, and historic buildings and monuments when not required by legitimate military necessity.

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Destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers or crew.

Systematic terrorism, such as the arbitrary selection and killing of innocent individuals as punishment for sabotage or other acts committed against the security of the occupant; unnecessarily depriving persons of shelter, clothing or other means of sustenance; abduction of relatives.

Infliction of cruel or unusual punishment, or infliction of any punishment without due process of law.

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J.C.S. 1023/10

8 July 1945

Pages 61-77, incl.

Please return to

COPY NO. 69

L E: Garrison

JOINT CHIEFS OF STAFFDIRECTIVE ON THE IDENTIFICATION AND APPREHENSION OF
PERSONS SUSPECTED OF WAR CRIMES OR OTHER OFFENSES
AND TRIAL OF CERTAIN OFFENDERSReferences: a. J.C.S. Info Memo 146
b. J.C.S. 1067 series
c. J.C.S. 1023 series
d. C.C.S. 705 seriesReport by the Joint Logistics CommitteeTHE PROBLEM

1. To submit recommendations, from a military point of view, on the draft directive (Enclosure "B", page 63) 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" (page 72) 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" (page 62) be forwarded to the State-War-Navy Coordinating Committee.

JCS 1023/10

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DECLASSIFIED

Authority NND 760030
By CGD, NARS Date AUG 4 1975

~~SECRET~~ENCLOSURE "A"D R A F TMEMORANDUM TO THE STATE-WAR-NAVY COORDINATING COMMITTEE

The Joint Chiefs of Staff have examined the enclosed report (Enclosure "B", page 63) by the Working Party of the Informal Policy Committee on Germany and perceive no objections to this report from a military standpoint.

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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, page 21) provides that those German officers and men and members of the Nazi Party who have been responsible for or who have taken a 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

* Enclosure "C", page 72.

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whose offences 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 quadripartite 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", page 6) is an adequate expression of U.S. policy to furnish guidance to Ambassador Winant for negotiation in the EAC. However, as quadrapartite 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" (pages 65 and 71) be dispatched.

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APPENDIX "A" TO ENCLOSURE "B"

D R A F T

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.

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ANNEX TO APPENDIX "A" TO ENCLOSURE "B"

D R A F T

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. 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, 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 2 b, the term

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"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 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 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.

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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

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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 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.

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APPENDIX "B" TO ENCLOSURE "B"

D R A F T

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.

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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

* See Appendix "A", page 75.

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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 example, 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

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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.

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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.

- 13a. 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.

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15a. 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 to the property of those concerned, such as its seizure, custody or surrender.

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APPENDIX "B" TO ENCLOSURE "C"

MEMORANDUM FROM THE ASSISTANT MILITARY ADVISER
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."

~~SECRET~~COPY NO. 5319 November 1947J.C.S. 1454/11JOINT CHIEFS OF STAFFDECISION AMENDING J.C.S. 1454/11

A Report by the Joint Military Transportation Committee
(In collaboration with the Joint Staff Planners
and the Joint Logistics Committee)

on

MERCHANT SHIPPING REQUIREMENTS FOR NATIONAL DEFENSENote by the Secretaries

1. On 19 November 1947 the Joint Chiefs of Staff:
 - a. Amended J.C.S. 1454/11 as indicated in J.C.S. 1454/13.
 - b. Approved the recommendations of the Joint Military Transportation Committee in J.C.S. 1454/11 after amending the recommendation in paragraph 11 c to indicate that the memorandum in Enclosure "A" should be forwarded to the Secretary of Defense rather than to the Chairman, United States Maritime Commission.
2. Revised pages 87, 91, 92, 93, and an additional page 87 a incorporating the amendments indicated in J.C.S. 1454/13 are attached.
3. This decision now becomes a part of and shall be attached as the top sheet of J.C.S. 1454/11.

DECLASSIFIED

Authority NND 760030
By C G D, NARS Date AUG 4 1975W. G. LALOR,
J. H. IVES,