

~~MEMO 3461 AND MINUTES~~
JCAC
Joint Civil Affairs Comm.

TOP SECRET

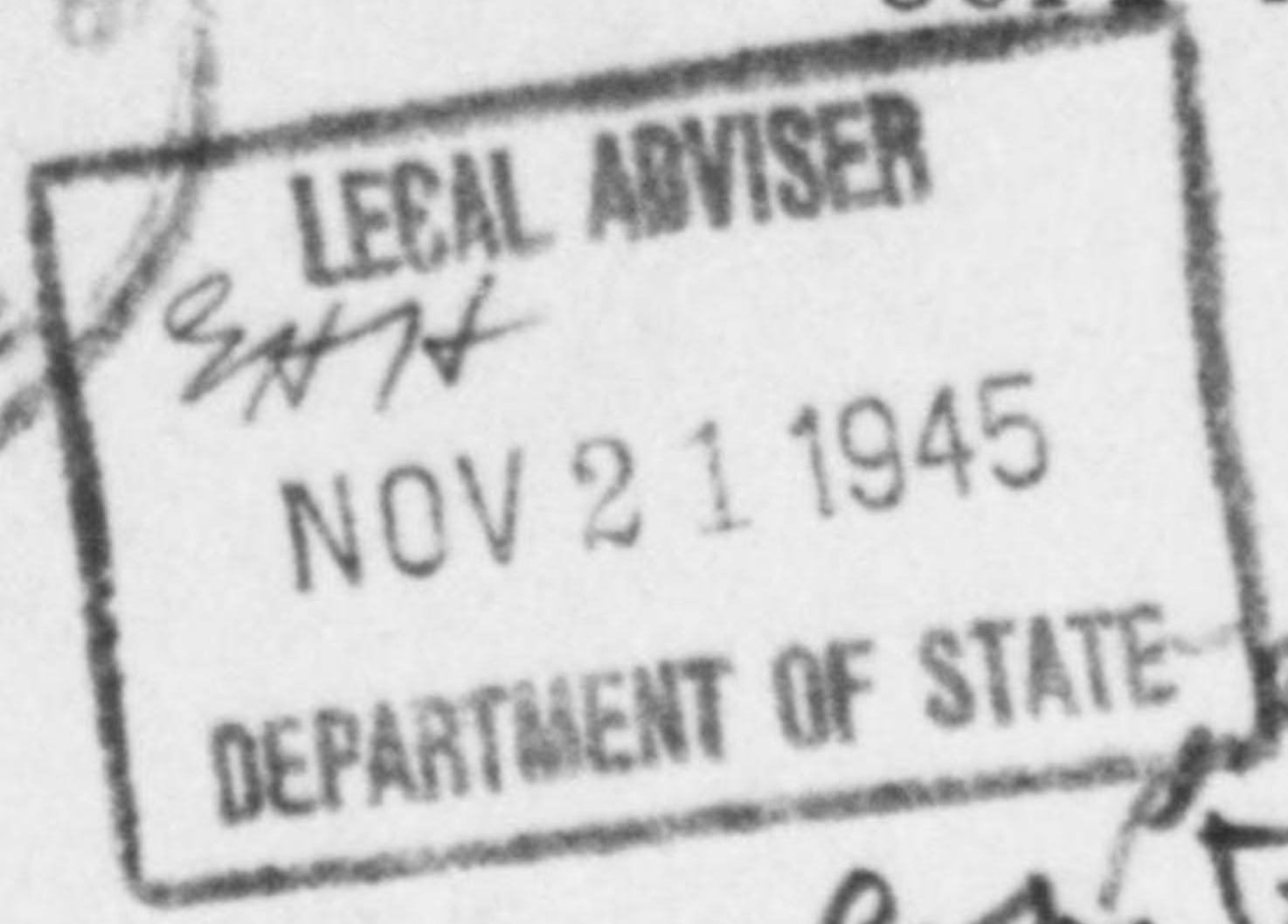
TOP SECRET

J.C.A.C. 70

15 November 1945



COPY NO. 28



LE

*copy to FE/Perfield
EUR Gardner*

JOINT CIVIL AFFAIRS COMMITTEE

TRIAL OF TOJO AND HIS CABINET
Reference: J.C.S. 1512

Note by the Secretary

On 14 November 1945 the Joint Chiefs of Staff referred the Enclosure (CA-54646 - CM-IN-4187, 12 November 1945) to the Joint Civil Affairs Committee for comment and recommendation.

WARDE M. CAMERON,
Secretary.

TOP SECRET

E N C L O S U R E

From: CINC AFPAC Advance, Tokyo, Japan

To: War Department

Nr: CA 54646

12 November 1945

From CINCAFPAC Adv to WARCOS JCS cite CA 54646.

TOP SECRET.

Your WARX 82533* leads me to believe that you have misunderstood the intention of my CA 54138** which was to try Tojo and his Cabinet not under the international provisions of the A classification but under the B classification for criminal action against the United States.

My suggested charge against him was drawn accordingly. For this reason I ask that this matter be again considered. I reaffirm my most earnest conviction that one of the gravest possible psychological mistakes will be made in not permitting the immediate trial of this group. It is self evident that no international action can be obtained here in the near future. This case should beyond all doubt be the first trial in Japan.

In this general connection I invite attention to the discrepancy which exists between this latest directive delaying the trial and the basic directive expressive of the desire of the President contained in your WARX 62612*** reading as follows: "In accordance with the desire of the President you will proceed without avoidable delay with the trial before appropriate military courts or tribunals and the punishment of such Japanese war criminals as have been or may be apprehended."

* Appendix "A"
** Appendix "B"
*** Appendix "C"

TOP SECRET

New subject: Please clarify abbreviations ZOA, no one here understands the reference.

End

CM-IN-4187

12 Nov 45)

- 2 -

Enclosure

TOP SECRET

APPENDIX "A"

Joint Chiefs of Staff
 CSP 2405 WD Ext 77500
 Col C R Peck, Inf

10 November 1945

Supreme Commander for the Allied Powers, USAF, Pacific,
 Southwest Pacific Area, Tokyo, Japan

Commander in Chief, Army Forces, Pacific, Command,
 Manila, Philippines

Number WARX 82533

TOPSEC to MacArthur from the Joint Chiefs of Staff.

Further to WARX 81029* and CA 54138.**

Position of U.S. Government is that Tojo, his Cabinet and other persons charged with crimes in category A in Paragraph 1 of Appendix "C" of J.C.S. 1512 should be tried by an international tribunal.

Other Allied signatories to Japanese surrender document have been requested to nominate panel of their nationals for appointment by you as members of such international tribunal. Transmission to Allied Governments of U.S. Policy contained in J.C.S. 1512 commits the U.S. to afford such governments a reasonable opportunity to participate in trials by international tribunal. State Department is making further representations to expedite action by other signatories. If the latter delay unduly or do not desire to participate, it is probable that the U.S. will proceed on unilateral basis along lines suggested by you.

Subject to the above, you are already fully authorized to proceed immediately with trial of war criminals for offenses in categories B and C of Paragraph 1 of Appendix "C" of J.C.S. 1512. Such trials should be held as soon as practicable.

End

CA 54138 is CM IN 14097 (31 Oct 45)

ORIGINATOR: JC/S

CM-OUT-82533 (Nov 45)

* Annex "A" to Appendix "A"
 ** Appendix "B"

TOP SECRET

ANNEX "A" TO APPENDIX "A"

2 November 1945

Commander in Chief
 Army Forces Pacific Advance
 Tokyo Japan

INFORMATION:

Commander in Chief
 Army Forces Pacific Command
 Manila Philippine Islands

Number: WARX 81029

CINCAFPAC Advance signed WARCOS reurad CA 14097.

Urgency of your CA 54138* is recognized and matter has been discussed with State Department. U.S. Government has already communicated to the Allied Signatories of the Japanese Surrender Document the statement of U.S. policy contained in JCS 1512 regarding trial of major war criminals by an International Military Tribunal. At least one government has indicated its views will be forthcoming shortly. Further, Mr. McCloy will return to War Department 4 November. His report of discussions with you desired prior to final decision.

End

CA 14097 is CM-IN 14097 (31 Oct 45)

CM-OUT-81029

* Appendix "B"

TOP SECRET

APPENDIX "B"

From: Advanced Echelon, General Headquarters,
Army Forces Pacific, Tokyo, Japan

To: War Department

Nr: CA 54138

31 October 1945

From CINCAFPAC Adv to WARCOS, Joint Chiefs of Staff

This msg is TOP SECRET. Cite CA 54138.

I reiterate my previous recommendation* for permission to proceed without further delay with the trial of former Prime Minister Tojo and the members of his cabinet who participated in the authorization of the Pearl Harbor attack.

The charge would be that they illegally authorized the assumption by elements of the Japanese armed forces of belligerent rights before making a declaration of war and directed their use against the United States, thus causing the murder of nationals of a country with which their nation was still at peace.

I believe the commission for trial should be composed of United States personnel as the offense was solely against the United States.

I have discussed this matter at length with the Assistant Secretary of War, Mr. McCloy, during his recent visit here. I believe a grave mistake will be made if this matter should be further delayed.

End.

ACTION: JC/S

CM-IN-14097 (31 Oct 45)

*Annex "A" to Appendix "B"

TOP SECRETANNEX "A" TO APPENDIX "B"

From: Commander in Chief Army Forces Pacific Advance
Tokyo Japan

To: War Department

Nr: CA 52908 7 October 1945

From CINCAFPAC Adv to WARCOS cite CA 52908. This message is TOP SECRET.

Unless there are reasons of which I know nothing I believe it would be inadvisable to publish at this time the War Criminals Directive contained in your WX 67394*. It should certainly not be published until completion of the movement of all occupation troops into Japan, for its publication might well result in governmental dislocation which would impose the necessity for military government, as I doubt whether any Japanese government however liberal could survive the impact of such a publication.

We are already proceeding with the trials for atrocities in the Philippines and I recommend that I be authorized to proceed with the trial of Prime Minister Tojo to initiate proceedings in Japan. No foreign officers have as yet been nominated for such trials and Paragraph 5 of the Directive forbids the trial of the first classification of criminals pending authorization by the Joint Chiefs of Staff. Until the procedure is fully organized and ready to undertake these trials, I can see great disadvantages and no advantage in the premature publication of the directive, the basic principle already being known to the public, having been included in the terms of the surrender.

* Appendix "D" to JCS 1512 as amended by JCS 1512/1.

TOP SECRET

If release is determined upon I believe it should be in more general terms than the full Directive. As it embraces higher authority than my own, I believe any release if made should be accomplished by that authority.

End.

Note: See WAR 73740

CM-IN-3388

(7 Oct 45)

RESTRICTED

APPENDIX "C"

11 September 1945

Supreme Commander for the Allied Powers, Advance Tokyo

INFORMATION

Commander in Chief, Army Forces Pacific, Command, Rear,
Manila

Number: WARX 62612

To MacArthur from the Joint Chiefs of Staff

In accordance with the desire of the President you will proceed without avoidable delay, with the trial before appropriate military courts or tribunal and the punishment of such Japanese war criminals as have been or may be apprehended. A more comprehensive directive and statement of policy based upon the flexible procedure adopted in Europe will be furnished to you shortly.

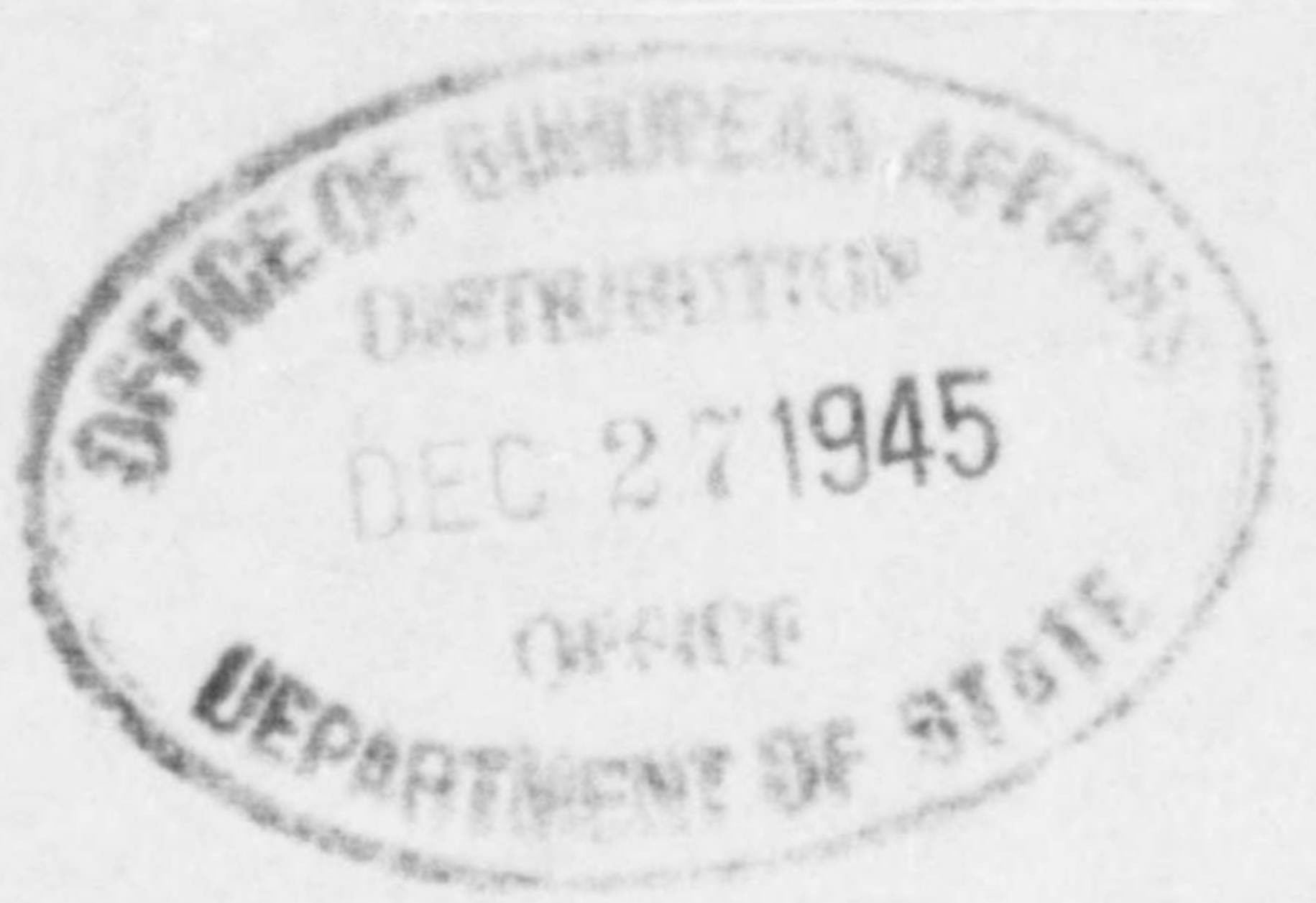
End.

CM-OUT-62612

(Sep 45)

TOP SECRET

TOP SECRET
J.C.A.C. 70/2
23 December 1945



COPY NO. 28

*LE/Garnett
(for your files)*

JOINT CIVIL AFFAIRS COMMITTEE

TRIAL OF TOJO AND HIS CABINET

- References: a. J.C.S. 1512/5
- b. J.C.S. 1512/6
- c. J.C.A.C. 70 Series

Note by the Secretary

On 11 December 1945 the Joint Chiefs of Staff approved the recommendations of the Joint Civil Affairs Committee contained in J.C.S. 1512/5. On the same date cable CA-55816 (Enclosure "B", J.C.S. 1512/6) was received by the Joint Chiefs of Staff from CINCAFAC. The Joint Civil Affairs Committee recommended that the Joint Chiefs of Staff postpone implementation of J.C.S. 1512/5 pending consideration by the Joint Chiefs of Staff of the draft reply (Enclosure "A", J.C.S. 1512/6) to this cable.

*WARX 89365
dis. Dec 19, 1946.*

On 19 December 1945 the Joint Chiefs of Staff approved the recommendation in J.C.S. 1512/6 and dispatched the cable at Enclosure "A" as WARX-89365. The Secretariat of the Joint Chiefs of Staff then removed J.C.S. 1512/5 from the Joint Chiefs of Staff agenda.

No further action will be taken by the Joint Civil Affairs Committee on the J.C.A.C. 70 Series.

WARDE M. CAMERON,
Secretary.

*See SWNCC 57/10
May
15
approved
for trial
if it
can be done
replies
to 55816*

TOP SECRET

TOP SECRET

COPY NO. 28

LE

J.C.A.C. 70/1

4 December 1945

AHG

JOINT CIVIL AFFAIRS COMMITTEE

TRIAL OF TOJO AND HIS CABINET

References: a. J.C.S. 1512/5
b. J.C.A.C. 70

Note by the Secretary

The Joint Civil Affairs Committee, by informal action, approved its report on J.C.A.C. 70 and submitted it to the Joint Chiefs of Staff on 30 November 1945 for consideration. The report was subsequently circulated as J.C.S. 1512/5, copies of which have been furnished all those who normally receive J.C.A.C. papers.

WARDE M. CAMERON,
Secretary.

S E C R E T

J.C.A.C. 70/7

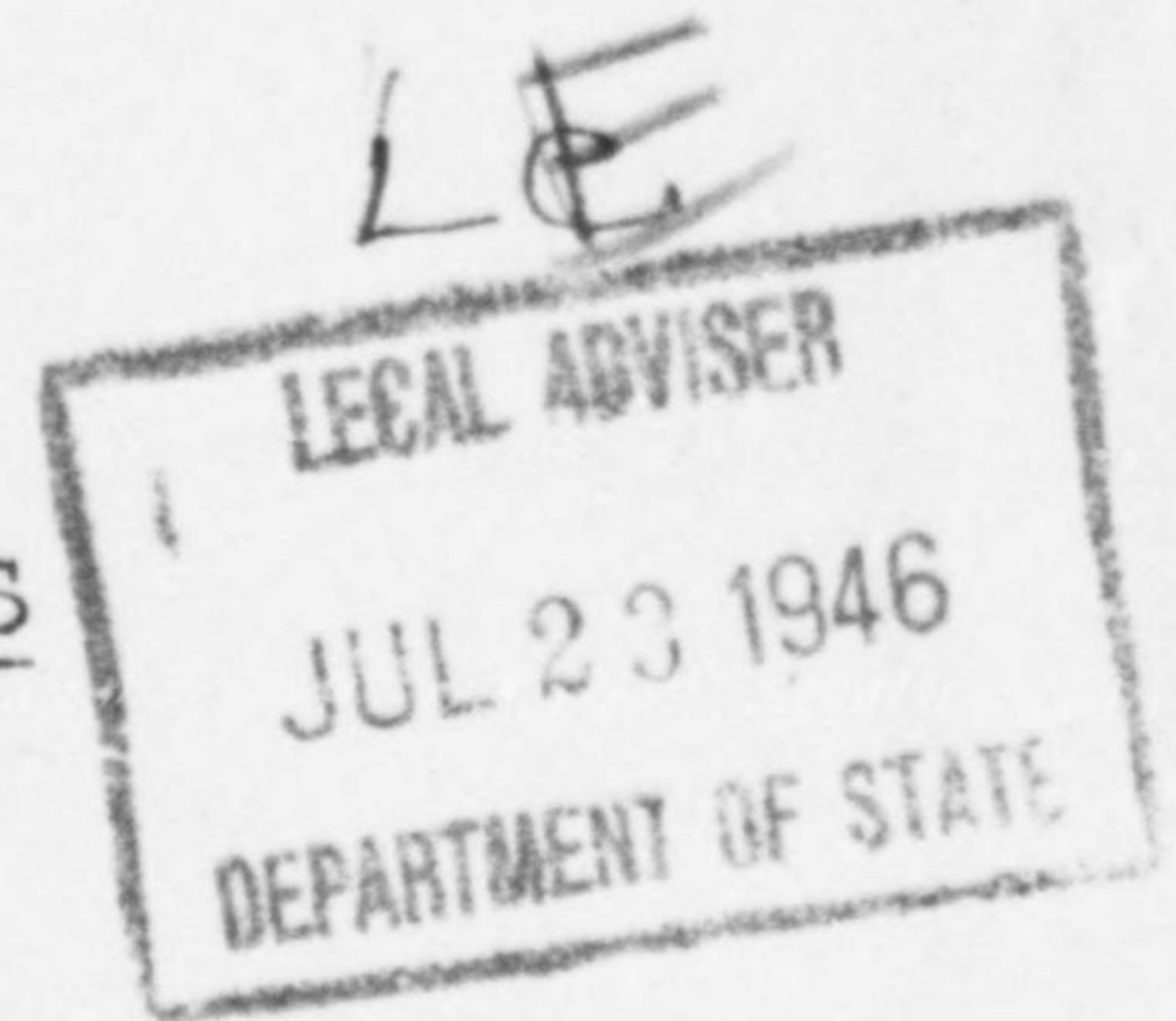
12 July 1946



COPY NO. 26

JOINT CIVIL AFFAIRS COMMITTEE

POLICY AS TO DISPOSITION OF WAR CRIMINALS
Reference: CCS 705/18



Note by the Secretary

On 11 July 1946 the Joint Chiefs of Staff referred CCS 705/18 to the Joint Civil Affairs Committee for comment and recommendation. Copies of CCS 705/18 have been furnished all those who normally receive J.C.A.C. papers.

FRANK F. MITER,
Secretary

Submitted by CAD
and then
withdrawn.
B

S E C R E T
JCAC 70/7/P

JOINT CIVIL AFFAIRS COMMITTEE

POLICY AS TO DISPOSITION OF WAR CRIMINALS

References: CCS 705/18; JCAC 70/7; CCS 705/9; CCS 705/13

THE PROBLEM

1. To comment and make recommendation on CCS 705/18, a memorandum by the Representatives of the British Chiefs of Staff concerning the hand over to other Allied countries of persons wanted for war crimes only when such persons are listed as war criminals by the United Nations War Crimes Commission (UNWCC).

FACTS BEARING ON THE PROBLEM AND DISCUSSION

2. Some confusion and lack of uniformity has existed in connection with the requests for transfer and/or extradition of persons wanted by an Allied country for a war crime committed against its nationals. Particular difficulties arise when the person wanted may be a Quisling or renegade and not a war criminal in the strict sense of the word. There is a definite need for a method of centrally sifting the cases of wanted war criminals and for an equally definite directive to insure both the expeditious handling of such requests and a regulatory practice therein.

3. It is believed that previous instructions contained in FAN 591 (Enclosure to CCS 705/9) and FAN 633 (Appendix to CCS 705/13) lent themselves somewhat to misunderstanding and confusion and perhaps to some ill feelings between certain countries in that such instructions provided, in part, that Supreme Allied Commander, Mediterranean, (SACMED) should hand over Germans wanted for war crimes against Allied Nationals or Italy to respective national authorities provided that the military authorities have no reason to doubt the bona fides of, and war crimes justification for, any Allied or Italian request for war criminals. The instructions as set out in the draft message in the Enclosure to CCS 705/18 establishes a uniform practice which precludes the requirement and/or responsibility of the military authorities passing upon the primary question of the bona fides of, and war crimes justification for, such requests by any Allied country.

4. The draft message also modifies the provisions of FAN 591 in that it requires that persons not listed by UNWCC should be handed over "only in cases of exceptional urgency and then only after satisfactory prima facie evidence of guilt has been established". The previous instructions (FAN 591) provided that Allied authorities concerned should deliver only a plain statement that Germans asked for were "wanted for one or more specified crimes committed at a specified date and place either in their territory or against their own nationals", with a further provision that reference to Central Registry of War Criminals and Security Suspects be made to insure that there is not reason to suppose such persons are required as accused or witnesses by another Allied country. It is felt that the more stringent requirements set forth in the draft message will tend to bring about a more complete central listing of wanted war criminals with UNWCC.

5. The Legal Division (Mr. Fahy) of the Department of State has informally concurred in the recommendation made herein.

6. Further discussion is contained in the Enclosure.

RECOMMENDATION

7. That the message in the Enclosure be forwarded to the Combined Chiefs of Staff.

S E C R E T

E N C L O S U R E

DRAFT

COMBINED CHIEFS OF STAFF

POLICY AS TO DISPOSITION OF WAR CRIMINALS

Reference: CCS 705/9; CCS 705/13; CCS 705/18

Memorandum By The United States Chiefs of Staff

The United States Chiefs of Staff have considered the memorandum by the Representatives of the British Chiefs of Staff contained in CCS 705/18 and agree to the dispatch of the message in the Enclosure with the following proviso:

That the word "only" be deleted from the first sentence in paragraph 2 of the draft message (Enclosure to CCS 705/18). It is felt that by deleting this word the instructions will then be more mandatory and definitive in establishing uniformity of practice.

ENCLOSURE

Attached hereto is J.C.A.C. 70/7/P for approval. It is requested that concurrence be communicated verbally to Cecil F. Hubbert, Room No. 4C-931, The Pentagon, Telephone Extension 71426, or to the Secretary, J.C.A.C. Room 4B-872, Pentagon, Telephone Extension 4567 - 73167, and confirmed in writing to the Secretary by signature as indicated below.

In the event of non-concurrence, it is desired that amendments be presented to the Secretary in the form suggested in paragraph 4, J.C.A.C. Memorandum for Information No. 27.

Cecil F. Hubbert
CECIL F. HUBBERT

21 August 1946

I concur in J.C.A.C. _____.

Per* _____

*When applicable

Enclosure

S E C R E T
JCAC 70/7/P
21 October 1946

JOINT CIVIL AFFAIRS COMMITTEE

POLICY AS TO DISPOSITION OF WAR CRIMINALS

References: CCS 705/18; JCAC 70/7
CCS 705/9; CCS 705/13

THE PROBLEM

Appendix A)

1. To comment and make recommendation on CCS 705/18, a memorandum by the Representatives of the British Chiefs of Staff concerning the handing over to other Allied countries of persons wanted for war crimes only when such persons are listed as war criminals by the United Nations War Crimes Commission (UNWCC).

FACTS BEARING ON THE PROBLEM AND DISCUSSION

2. See Enclosure.

RECOMMENDATION

3. That the message in the Enclosure be forwarded to the Combined Chiefs of Staff.

Secretary, JCAC

S E C R E TENCLOSUREDRAFTCOMBINED CHIEFS OF STAFF

POLICY AS TO DISPOSITION OF WAR CRIMINALS
References: CCS 705/9; CCS 705/13; CCS 705/18

Memorandum By The United States Chiefs of Staff

1. Since the inception of the War Crimes program in the European and Mediterranean Theaters, requests by the United States Government for suspects and witnesses have been prepared and submitted to Central Registry of War Criminals and Security Suspects (CROWCASS). In relatively few instances have requests been filed with UNWCC.
2. Requests for extradition of suspects and witnesses under United States control are processed to the Theater Commanders. Such requests are routed to the Theater Judge Advocates and in the European Theater through appropriate delegation to the Deputy Theater Judge Advocate for War Crimes.
3. The present procedure has been in effect for well over a year. Under it, the actual transfer of suspects and witnesses from one zone to another or to other Allied Nations has been effected through liaison groups representing the Allied Nations and, in the European Theater, in accordance with the provisions of Control Council Law No. 10.
4. There are hundreds of cases in preparation for trial and about to be tried in both the European and Mediterranean Theaters. To require a change in procedure at this late date would cause delay in bringing many of these cases to trial at a time when every effort is being made to bring the War Crimes program to a speedy conclusion. In addition to delaying the trials, the proposed change in procedure would necessitate the recruiting of additional clerical, stenographic and reviewing personnel to prepare reports on suspects and witnesses in accordance with the more involved procedure of the UNWCC.
5. The proposed change in procedure would also result in delay in the transfer of suspects and witnesses from the custody of one Allied Nation to another necessitated by the formal presentation of the facts to the UNWCC, at London, England. This delay will be particularly apparent and

apparent and/

burdensome in the European Theater, where, under present procedure, liaison groups representing most of the Allied Nations are housed in the same building as the Deputy Theater Judge Advocate in charge of War Crimes. As a result, immediate decision can be had in most cases involving the requested transfer of suspects and witnesses. In the event of disagreement, the file can be forwarded directly to the Allied Control Council in Berlin. Further delay would also be entailed in awaiting the decision of the UNWCC, and its promulgation to the field.

6. The adoption of the proposed procedure would so flood the UNWCC with reports that months would elapse before recommendations were acted on.

7. To add to the number of channels through which field personnel must go to transfer suspects and witnesses from the custody of one Allied Nation to another would be impractical at this late stage in the development of the War Crimes program.

8. The Deputy Theater Judge Advocate for the European Theater, in which Theater a majority of pending war crimes cases remain to be investigated and tried, has strongly indicated that the adoption of the proposal of the British Chiefs of Staff would create serious administrative problems in the European Theater and, further, that the adoption of the proposal would delay operations and result in the Theater having to increase its personnel requirements.

9. The United States Chiefs of Staff, therefore, are of the opinion that the instructions issued to the British commands overseas contained in paragraph 4 of the Memorandum by the Representatives of the British Chiefs of Staff to the Combined Chiefs of Staff should not be issued to United States commands overseas. Further, the United States Chiefs of Staff do not agree to the dispatch of the message in the Enclosure to CCS 705/18.

E N C L O S U R E

Attached hereto is J.C.A.C. 70/7/P for approval. It is requested that concurrence be communicated verbally to Edward F. Lyons, Room No. 4c-931, The Pentagon, Telephone Extension 71426, or the Secretary, J.C.A.C, Room 4B-872, Pentagon, Telephone Extension 4567-73167, and confirmed in writing to the Secretary by signature as indicated below.

In the event on non-concurrence, it is desired that amendments be presented to the Secretary in form suggested in paragraph 4, J.C.A.C. Memorandum for Information No. 27.

EDWARD F. LYONS

21 October 1946

I concur in J.C.A.C. _____.

*Per _____

*When applicable

Enclosure