

WAR DEPARTMENT
CLASSIFIED MESSAGE CENTER
INCOMING CLASSIFIED MESSAGE

*File
War Crimes*

~~SECRET~~ TOT

DECLASSIFIED
E.O. 11652, Sec. 3(E) and 5(D) or (E)
OSD letter, May 3, 1972
By *ML* NARS Date *11-17-73*

From: United Nations Conference San Francisco California
To: Headquarters Communications Zone, European Theater
of Operations US Army Paris France

Information:
War Department

DTG: 091945Z 9 May 1945

To Eisenhower for Clay from McCloy.

Prosecution of War Criminals is subject. The President by executive order has designated Justice Jackson as Chief United States counsel to prosecute Major European Axis war criminals including the principal organizations which have participated in the execution of Axis criminal plans. Present United States proposal is that prosecutions be before one or more international military tribunals, one member of each such tribunal to be appointed by each member of the Control Council for Germany. Sentences imposed by the tribunal would be subject to approval by the Control Council by majority vote. Each tribunal would establish its own rules of procedure. Prosecutions would be in charge of an independent four man committee of the Chiefs of Counsel representing United States, Soviets, United Kingdom and France which would determine what defendants to try, what charges to bring and how to conduct prosecutions. Justice Jackson would be United States member of this committee and will be assisted by small planning group of civilian lawyers and officers assigned to Office Assistant Secretary of War. Judge Rosenman as special representative of the President is trying to negotiate in San Francisco a four party executive

CM-IN-11698 (13 May 45)

~~SECRET~~



*Judge Rosenmann
(White House)*

COPY No. 17

THE MAKING OF AN EXACT COPY OF THIS MESSAGE IS FORBIDDEN

WAR DEPARTMENT
CLASSIFIED MESSAGE CENTER
INCOMING CLASSIFIED MESSAGE

~~SECRET~~ TOT

DECLASSIFIED
E.O. 11652, Sec. 3(E) and 5(D) or (E)
OSD letter, May 3, 1972
By MLT/uc, NARS Date 10-17-73

Page 2

From: United Nations Conference San Francisco California

DTG: 091945Z

9 May 1945

agreement providing for these prosecutions and stating principal aspects of procedure. Proposal would not affect (1) trial in national courts or military tribunal of war criminals (not tried before an international military tribunal of type described above) returned to the scene of their crime in accordance with Moscow declaration or (2) trial in occupation or military courts, created by any one or more United Nations, of persons charged with specific offenses. Proposal contemplates that, if Axis organizations such as Gestapo and SS are found guilty of participation in a common criminal enterprise contemplating war crimes, voluntary members of these organizations would be subject to punishment upon proof of membership. Proposals advanced have been made with approval of the President and Justice Jackson and are consistent with recommendations of Secretary of State, Secretary of War and Attorney General to President last January. Your comments are requested urgently on the participation of Control Council as outlined above. Judge Rosenman and I believe it to be desirable. General United States policy is believed settled. Apparently there is tentative agreement on substance of proposals by the representatives of the other three powers in San Francisco although problems of form and procedure remain unsettled. Bowie, Marsh and Betts have general knowledge of the recommendations made last January and may be able to assist your consideration. Rosenman negotiations are secret.

End

Message not originally to War Department.

ACTION: Mr. McCloy
INFO : OPD, C of S

CM-IN-11698 (13 May 45) DTG 091945Z da



~~SECRET~~

COPY No. 17

THE MAKING OF AN EXACT COPY OF THIS MESSAGE IS FORBIDDEN

WAR DEPARTMENT
CLASSIFIED MESSAGE CENTER
INCOMING CLASSIFIED MESSAGE

~~SECRET~~ TOT

DECLASSIFIED
E.O. 11652, Sec. 3(E) and 5(D) or (E)
OSD letter, May 3, 1972
By MLT/ML, NARS Date 10-17-73

From: Supreme Headquarters Allied Expeditionary Forces,
Main, Versailles, France

To: War Department

Nr: S 87717 11 May 1945

S 87717 SHAEF Main from US Group CC from Clay signed
Eisenhower for AGWAR for McCloy.

Ref your San Francisco message, the proposed
procedure for trial and prosecution of war criminals appears
workable and satisfactory.

This headquarters is definitely of the view that the
tribunals should be appointed and its decisions approved by
the Control Council as any other procedure would certainly
undermine the authority of the Control Council as overall
governing agency for Germany. Its views will so effect the
proposal that the prosecutions should be in charge of an
independent four man committee of the Chiefs of Counsel of
the four parties.

This introduction of independent agencies not
subject to the Control Council within Germany would serve as
a precedent which might lead to other independent agencies
which would also undermine the authority of the Control
Council.

The difficulties of the latter in harmonizing with
the views of four nations under policies from their capitals
are great enough without having independent agencies also

CM-IN-11004 (12 May 45)

~~SECRET~~



Judge Rosenmann
(White House)
COPY NO. 39

THE MAKING OF AN EXACT COPY OF THIS MESSAGE IS FORBIDDEN

WAR DEPARTMENT
CLASSIFIED MESSAGE CENTER
INCOMING CLASSIFIED MESSAGE

~~SECRET~~ TOT

DECLASSIFIED

E.O. 11652, Sec. 3(E) and 5(D) or (E)

OSD letter, May 3, 1972

By MS/UC, NARS Date 10-17-73

Page 2.

From: Supreme Headquarters Allied Expeditionary Forces,
Main, Versailles, France

Nr: S 87717

11 May 1945

operating within Germany, each member thereof obtaining his instructions from his home capital.

If the status of our counsel is considered such that it could not be made a part of US Group Control Council, then consideration should at least be given to having the four man committee of Chiefs of Counsel operate under the general supervision of the four man Control Council.

I do not believe this would actually in any way hamper or restrict the independence of the four Chiefs of Counsel either individually or collectively. If this not done, then the Control Council cannot be considered in fact as the governing authority for Germany.

If we believe in an Allied Control authority in Germany, we must support it to the full as there is possibility that other members there might like the formation of separate commissions for specific problems, thus circumventing the original objective which led to establishment of the Control Council as an international undertaking.

End

ACTION: Mr. McCloy

INFO : ASF
OPD
CAD
C of S



CM-IN-11004

(12 May 45)

DTG 111830B

rel

~~SECRET~~

COPY NO. 39

THE MAKING OF AN EXACT COPY OF THIS MESSAGE IS FORBIDDEN

WAR DEPARTMENT
CLASSIFIED MESSAGE CENTER
OUTGOING CLASSIFIED MESSAGE

DECLASSIFIED
E.O. 11652, Sec. 3(E) and 5(D) or (E)
OSD letter, May 3, 1972
By ALT-NK, NARS Date 10-17-73

Assistant Secretary of War
4078

12 May 1945

Headquarters, Communications Zone
European Theater of Operations
Paris, France

Number: WAR 81511

To Eisenhower for US Group Control Council for Clay from
McGloy.

Your message 87717 has been discussed with Mr Justice Jackson. Glad you approve appointment of tribunals by Control Council members and approval of sentences by Council. Executive Order 9547 of 2 May this year makes it plain that US Chief of Counsel is direct representative of the US in preparing and prosecuting principal war crimes charges. I feel, as does Justice Jackson, that it would be inappropriate to have him subject to policy supervision by Control Council particularly as a large part of his duties may be performed outside of Germany. Indeed, you may come to the conclusion that trials should not be in Germany at all. Believe difficulties you anticipate are hardly likely to arise in view of Justice Jackson's long government experience and desire to cooperate with you, which he has already expressed. Since Control Council will appoint the tribunals, Chiefs of Counsel individually and as a group must obviously coordinate their activities with Control Council. In administrative matters also, Chiefs of Counsel will be dependent upon the Control Council for assistance. I do not feel that independence of Chiefs of Counsel sets any dangerous precedent, not only because war crimes matter is in many respects unique but also because of circumstances outlined above. It should be borne in mind prosecution for major war crimes will largely, if not entirely, relate to matters long preceding activation of the Control Council

CM-OUT-81511

(May 45)



Judge Rosenmann
(White House)

COPY NO. 41

THE MAKING OF AN EXACT COPY OF THIS MESSAGE IS FORBIDDEN

16-30609-1 GPO

WAR DEPARTMENT
CLASSIFIED MESSAGE CENTER
OUTGOING CLASSIFIED MESSAGE

WAR 81511

Page -2-

and not to matters currently occurring. I feel certain there would be strong and justified opposition to putting Chiefs of Counsel under Control Council and therefore suggest you reconsider your comments in the light of this message. Please inform me whether you wish to press your suggestions. Greatly appreciate promptness of your reply.

End

DECLASSIFIED
E.O. 11652, Sec. 2(E) and 5(D) or (E)
CSD letter, May 3, 1972
By MLT-HGT NARS Date 4-17-73

ORIGINATOR: Mr McCloy

INFORMATION: ASF-JAG
OPD
G-1
CAD
Mr Justice Jackson
C of S



CM-OUT-81511

(May 45)

DFG 12/23182 aj

COPY No. 41

THE MAKING OF AN EXACT COPY OF THIS MESSAGE IS FORBIDDEN

16-39609-1 GPO

WAR DEPARTMENT
CLASSIFIED MESSAGE CENTER
INCOMING CLASSIFIED MESSAGE

SECRET TOT

PRIORITY

DECLASSIFIED
E.O. 11652, Sec. 3(E) and 5(D) or (E)
OSD letter, May 3, 1972
By NLT-HL NARS Date 10-17-73

From: Supreme Headquarters, Allied Expeditionary Forces,
Forward, Rheims, France

To: War Department

Nr: FWD 21461 14 May 1945

Reference your W 81511 to AGWAR for McCloy from
SHAEP Forward from Clay signed Eisenhower. FWD 21461.

We have no fear whatsoever of being able to cooperate
fully with Justice Jackson and with men of his caliber. If
Chiefs of Counsel were placed under the Control Council there
would be no interference with their independence. Our sole
apprehension is that establishment of a precedent under which
United States policy could flow into Germany other than through
the established channel.

We must be guided by your view that the proposed action
will not set a dangerous precedent.

End

ACTION: Mr. McCloy
INFO: ASF
OPD
G-1
CAD
Mr. Justice Jackson
C of S

CM-IN-13144 (14 May 45)

DTG 141740B FMW

~~SECRET~~



Judge Rosenmann
(White House)

COPY No. 42

THE MAKING OF AN EXACT COPY OF THIS MESSAGE IS FORBIDDEN