

MEMORANDUM FOR THE ASSISTANT SECRETARY OF WAR

Subj: Draft Memorandum for the President on Trial and Punishment of War Criminals.

Encl: (A) Copy of SecNav ltr, Serial 0265313, to Sec State

1. I have your memorandum of 13 November 1944 enclosing the above-mentioned Draft Memorandum and requesting my views.

2. As I understand it, the recent meeting in your office was for the purpose of:

(a) Considering the preparation of appropriate consent replies to the letters from the Secretary of State of 3 November 1944 requesting the opinions of the War and Navy Departments on the proposals contained in an aide-memoire from the British Embassy in regard to the establishment of a United Nations War Crimes Court (treaty court) and of mixed military tribunals;

(b) Considering the preparation of a joint memorandum (State, War and Navy) to the President concerning (1) a United Nations War Crimes Court, (2) mixed military tribunals, and (3) the utilization of a general conspiracy charge for the trial of both individuals and groups such as the SS and Gestapo.

3. As I further understand it, the consensus of the meeting was that a joint memorandum (State, War and Navy) to the President be drafted by the War Department and circulated to the State and Navy Departments for consideration, and that the memorandum would in effect constitute an answer to the letters from the Secretary of State mentioned above and would present the alternatives available for consideration by the President.

4. Careful consideration has been given both to the above-mentioned letters from the Secretary of State and to the Draft Memorandum for the President enclosed with your memorandum to me. The informal conclusions reached in the Navy Department are as follows:

(a) That the matter under discussion at this time should be divided into two parts:

(1) The trial of war crimes, as defined in J.C.S. 1023 and C.C.S. 705;

(2) The trial of enemy perpetrators of atrocities against their own nationals.

(b) That the trial of war crimes is a subject in which the Navy Department has a direct interest but that the trial of enemy perpetrators of atrocities against their own nationals is primarily a political matter under the cognizance of the Department of State;

(c) That the Draft Memorandum does not present the available alternatives referred to above (par. 3);

(d) That the Navy Department should reply to the letter from the Secretary of State of 3 November 1944 mentioned above as per enclosure (a), after coordinating the contents with the War Department to insure that consonant replies will be sent from the two Departments;

(e) That, in view of the foregoing, it does not appear advisable to send the proposed joint memorandum to the President;

(f) That the proposal to utilize a conspiracy charge in the trial of WAR CRIMES should be given further consideration in the Navy Department.

5. This is my personal view based on many conversations within the Department and I feel confident that it is substantially the view of the Secretary. When necessary we can check this quickly.

/s/ R. KEITH KANE

Special Assistant to the  
Secretary of the Navy