

SECRET
COPY

Ad (D) or (S)

Aug. 10, 1972

Dept. of State
By M.T. / H.C. MARS Date 10-12-73

November 16, 1944.

MEMORANDUM FOR MR. McCLOY, Assistant Secretary of War.

I have examined the proposed memorandum to the President transmitted with your memorandum to me of November 13 regarding war criminals and offer the following observations:

1. In paragraph 1 of the memorandum reference is made to statements dated October 7, 1942, December 17, 1942 and November 1943. If these statements are to be listed you will probably want to include the President's statement of March 24, 1944.

2. In the third paragraph of the memorandum it is stated that these pronouncements contemplate punishing not only technical violations of the laws and customs of war but also (1) atrocities committed by the Nazis before there was a state of war and (2) atrocities committed by them against their own nationals on racial, religious and political grounds.

It will be noted that the various statements relied upon are in certain respects somewhat ambiguous. They could be interpreted as has been done in the memorandum, or they might be interpreted more narrowly. This leads me to inquire whether we should interpret the statements for the President or whether we should ask him whether he intended that the statements should have the broad implication of which they seem to be susceptible and which they are receiving.

3. I am wondering whether the several statements regarding conspiracy give a clear indication of the nature of the charge which it is proposed to bring. It is stated in the second paragraph on page 2 of the proposed memorandum that there has been a continuing conspiracy "necessarily involving the commission of the atrocities which the United Nations have pledged themselves to punish." It seems to me that the question is whether the conspiracy was to commit these crimes or whether it was a conspiracy for world domination as stated in the first paragraph on page 2 of the memorandum, in furtherance of or incidental to which these crimes were committed. A conspiracy for world domination could hardly be denominated a crime.

4. In the

SECRET

Ad (D) or (S)
Aug. 10, 1972
By M.T./H.C. NARS Date 10-12-73

November 16, 1944.

MEMORANDUM FOR MR. McCLOY, Assistant Secretary of War.

I have examined the proposed memorandum to the President transmitted with your memorandum to me of November 13 regarding war criminals and offer the following observations:

1. In paragraph 1 of the memorandum reference is made to statements dated October 7, 1942, December 17, 1942 and November 1943. If these statements are to be listed you will probably want to include the President's statement of March 24, 1944.

2. In the third paragraph of the memorandum it is stated that these pronouncements contemplate punishing not only technical violations of the laws and customs of war but also (1) atrocities committed by the Nazis before there was a state of war and (2) atrocities committed by them against their own nationals on racial, religious and political grounds.

It will be noted that the various statements relied upon are in certain respects somewhat ambiguous. They could be interpreted as has been done in the memorandum, or they might be interpreted more narrowly. This leads me to inquire whether we should interpret the statements for the President or whether we should ask him whether he intended that the statements should have the broad implication of which they seem to be susceptible and which they are receiving.

3. I am wondering whether the several statements regarding conspiracy give a clear indication of the nature of the charge which it is proposed to bring. It is stated in the second paragraph on page 2 of the proposed memorandum that there has been a continuing conspiracy "necessarily involving the commission of the atrocities which the United Nations have pledged themselves to punish." It seems to me that the question is whether the conspiracy was to commit these crimes or whether it was a conspiracy for world domination as stated in the first paragraph on page 2 of the memorandum, in furtherance of or incidental to which these crimes were committed. A conspiracy for world domination could hardly be denominated a crime.



4. In the

SECRET
COPY

Ad (D) or (S)

Aug. 10, 1972

Dept. of State
By *MT/HC* MARS Date *10-12-73*

November 16, 1944.

MEMORANDUM FOR MR. McCLOY, Assistant Secretary of War.

I have examined the proposed memorandum to the President transmitted with your memorandum to me of November 13 regarding war criminals and offer the following observations:

1. In paragraph 1 of the memorandum reference is made to statements dated October 7, 1942, December 17, 1942 and November 1943. If these statements are to be listed you will probably want to include the President's statement of March 24, 1944.

2. In the third paragraph of the memorandum it is stated that these pronouncements contemplate punishing not only technical violations of the laws and customs of war but also (1) atrocities committed by the Nazis before there was a state of war and (2) atrocities committed by them against their own nationals on racial, religious and political grounds.

It will be noted that the various statements relied upon are in certain respects somewhat ambiguous. They could be interpreted as has been done in the memorandum, or they might be interpreted more narrowly. This leads me to inquire whether we should interpret the statements for the President or whether we should ask him whether he intended that the statements should have the broad implication of which they seem to be susceptible and which they are receiving.

3. I am wondering whether the several statements regarding conspiracy give a clear indication of the nature of the charge which it is proposed to bring. It is stated in the second paragraph on page 2 of the proposed memorandum that there has been a continuing conspiracy "necessarily involving the commission of the atrocities which the United Nations have pledged themselves to punish." It seems to me that the question is whether the conspiracy was to commit these crimes or whether it was a conspiracy for world domination as stated in the first paragraph on page 2 of the memorandum, in furtherance of or incidental to which these crimes were committed. A conspiracy for world domination could hardly be denominated a crime.

4. In the

SECRET

~~SECRET~~
COPY

DECLASSIFIED
E.O. 11652, Sec. 3(E) and 5(D) or (2)
Dept. of State letter, Aug. 10, 1972
By _____ NARS Date _____

- 2 -

4. In the first full paragraph of the recommendations on page 4, a treaty is recommended under which a court would be established. Nothing is said about the fact that Britain does not favor the treaty process but would be agreeable to the establishment of mixed military tribunals for the handling of cases that can not be tried in national courts. I think that the President would be interested in knowing the British attitude. I am also wondering whether it would be inconsistent with thinking in your Department to suggest the possibility, as an alternative to a treaty court, of a mixed military tribunal, the creation of which, as I understand the situation, would not require a treaty.

5. I also note the statements in the paragraph at the bottom of page 4 and the top of page 5, regarding the undesirability for the time being of publicity. I think that it should be borne in mind, however, that the chances for preventing publicity once steps to obtain a treaty are taken will be very small, however carefully we may proceed.

- - -

The foregoing comments represent roughly thoughts that have occurred to me. You may have already explored these points and have ready answers. I feel, however, that the proposed action would constitute a very important step which may have many ramifications and needs to be weighed most carefully.

Agreeably to your suggestion, I have sent a copy of this memorandum to Mr. Kane in the Navy Department.



Green H. Hackworth

~~SECRET~~
SECRET

~~SECRET~~
COPY

DECLASSIFIED
E.O. 11652, Sec. 3(a) and 5(D) or (E)
Dept. of State letter, Aug. 10, 1972
By _____ NARS Date _____

- 2 -

4. In the first full paragraph of the recommendations on page 4, a treaty is recommended under which a court would be established. Nothing is said about the fact that Britain does not favor the treaty process but would be agreeable to the establishment of mixed military tribunals for the handling of cases that can not be tried in national courts. I think that the President would be interested in knowing the British attitude. I am also wondering whether it would be inconsistent with thinking in your Department to suggest the possibility, as an alternative to a treaty court, of a mixed military tribunal, the creation of which, as I understand the situation, would not require a treaty.

5. I also note the statements in the paragraph at the bottom of page 4 and the top of page 5, regarding the undesirability for the time being of publicity. I think that it should be borne in mind, however, that the chances for preventing publicity once steps to obtain a treaty are taken will be very small, however carefully we may proceed.

The foregoing comments represent roughly thoughts that have occurred to me. You may have already explored these points and have ready answers. I feel, however, that the proposed action would constitute a very important step which may have many ramifications and needs to be weighed most carefully.

Agreeably to your suggestion, I have sent a copy of this memorandum to Mr. Kane in the Navy Department.



Green H. Hackworth

~~SECRET~~

~~SECRET~~
COPY

DECLASSIFIED
E.O. 11652, Sec. 3(a) and 5(D) or (E)
Dept. of State letter, Aug. 10, 1972
By _____ NARS Date _____

- 2 -

4. In the first full paragraph of the recommendations on page 4, a treaty is recommended under which a court would be established. Nothing is said about the fact that Britain does not favor the treaty process but would be agreeable to the establishment of mixed military tribunals for the handling of cases that can not be tried in national courts. I think that the President would be interested in knowing the British attitude. I am also wondering whether it would be inconsistent with thinking in your Department to suggest the possibility, as an alternative to a treaty court, of a mixed military tribunal, the creation of which, as I understand the situation, would not require a treaty.

5. I also note the statements in the paragraph at the bottom of page 4 and the top of page 5, regarding the undesirability for the time being of publicity. I think that it should be borne in mind, however, that the chances for preventing publicity once steps to obtain a treaty are taken will be very small, however carefully we may proceed.

The foregoing comments represent roughly thoughts that have occurred to me. You may have already explored these points and have ready answers. I feel, however, that the proposed action would constitute a very important step which may have many ramifications and needs to be weighed most carefully.

Agreeably to your suggestion, I have sent a copy of this memorandum to Mr. Kane in the Navy Department.



Green H. Hackworth

~~SECRET~~