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25 May 1945

MEMORANDUM for General BETTS:

Subject: Jurisdiction To Try Violations of the Laws of War

1. The governing directive at this moment is Eclipse Memorandum No 18, of 16 Jan 1945 and specifically pars 16 and 17b:

"16. Pending further instructions, only those war criminals will be tried who are accused of such violations of the laws and customs of war as threatened the security, or impaired the efficiency of the forces under the command of Army Group/National Zone Commanders.

"17. Trial of the persons permitted to be tried in accordance with para 16 above, will be as follows:-

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(b) In GERMANY

Both civilians and military personnel may be tried by Military Commissions/Tribunals or Military Government Courts, provided that when the crime is committed in territory in which Military Government has, at the time, been established, trial will normally be by Military Government Court."

2. This replaced the rule in par 17 and 18 of UNSC letter dated Dec 1944 on War Criminals and Security Suspects:

"17. During the Operational Period.

In US Commands, the trial of such persons will be by Military Commissions set up in accordance with the terms of the European Theatre of Operations, US Army letter, AG 334 Op GA dated 19 November 1944, as amended.

In BRITISH Commands, trial will be by Military Tribunals.

In those areas of GERMANY where Military Government has been established, such persons will be tried by Military Government Courts, except where the crime was committed in unoccupied territory and the criminal is

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apprehended in occupied GERMANY, when trial may be by Military Government Court or Military Commission/Tribunal, at your discretion. All offences against the proclamations, ordinances and regulations of Military Government, will be tried by Military Government Courts.

"10. During the Static Period.

All persons accused of crimes against the Forces under your command committed after occupation, will be tried by Military Government Courts."

3. Now of only historical interest, since the operational period to which it applied is at an end, is par 2 of SHAEF Directive for Military Government of Germany Prior to Defeat or Surrender, dated 15 Dec 1944. The pertinent part was as follows:

"2. Paragraphs 3 and 4 of Section XV of the Annex III of the Directive are rescinded and the following substituted therefor:

"3. You shall establish as soon as practicable in accordance with Military Government Courts Ordinance (contained in Annex I) such Military Government Courts as are required to maintain order and preserve the security of the Allied Forces. You are authorized to appoint such courts, to review cases in such courts, and, in your discretion, to designate an officer or officers serving on your staff to act on your behalf in the exercise of your powers as an appointing and reviewing authority (but not of those as a confirming authority as provided in paragraph 5 hereof). Delegation and redelegation of all such powers to subordinate commanders and other officers are also authorized. Subject to such controls as you may deem desirable, no formal appointment of a Summary Military Court need be required. The jurisdiction of such Military Government Courts over persons and offenses shall be as provided in such Ordinance, provided that, as a matter of policy, until further instructions, violations against the laws and usages of war will not be tried except with respect to persons charged with the commission of such offenses which threaten to impair the security of your forces or the effectiveness and ability of such forces or members thereof, or within the occupied territory subsequent to its occupation. Authorization as hereby provided with respect to Military Government Courts shall not be construed as depriving you or any subordinate officers of any authority otherwise vested in you or them to appoint courts-martial, military commissions or other military tribunals which under the applicable authority may have concurrent jurisdiction with such Military Government Courts in respect of offenders or offenses.

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4. A practical construction of present responsibilities is found in Captain Bishop's Note for JA File, sub: "Conference on Division of Responsibility Among Legal Agencies of Control Council, 3-5 SHAEF and this headquarters with particular reference to trial of war criminals," dated 21 May 1945 at par 3b and c. Copy of the note is attached.

C.F.

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