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25 May 1943

MEMORANDUM FOR GENERAL STETO:

Subject: Jurisdiction To Try Violations of the Laws of War

1. The governing directive at this moment is Eclipse Memorandum to 16, of 26 Jan 1943 and specifically para 16 and 17b:

"16. Pending further instructions, only those war criminals will be tried who are accused of such violations of the laws and the rules 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:-

(a) In civilian

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 is, at the time, in existence, trial will normally be by Military Government Court."

2. This replaced the rule in para 14 and 15 of Chief letter dated 26 May on war criminals and security suspects:

"17. During the Operational Period,

In all Commands, the trial of such persons will be by Military Commissions set up in accordance with the terms of the European Theatre of Operations, or Army letter, Op 159. The dated 15 November 1942, as amended.

In British Commands, trial will be by Military Tribunals.

In those areas of Command, 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/Tri-
bunal, at your discretion. All offenses against the
proclamations, ordinances and regulations of Military
Government, will be tried by Military Government Courts.

"15. During the static period,

All persons accused of crimes against the
forces under your control 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 para 2 of Staff Directive for Military
Government of Germany Prior to Defeat or Surrender, dated 26 Dec 28/4.
The pertinent part was as follows:

"3. 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of the Directive are rescinded and the following substituted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 1, 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 6 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 Govern-
ment Courts over persons and offenses shall be as pro-
vided in such Ordinance, provided that, as a matter of
policy, until further instructions, violations against
the laws and usage 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 officer of any authority otherwise
vested in you or them to appoint courts-martial,
national commissions or other military tribunals which
under the applicable authority may have concurrent
jurisdiction with such Military Government Courts
in respect of persons or offenses.
4. A practical construction of present responsibilities is found in Captain Bishop's note for 6 May, 1945; "Conference on Division of Responsibility among Legal Agencies of Control Council, 3:30 AM and this headquarters with particular reference to trial of any criminals," dated 15 May 1945 at 6:27 PM. Copy of the note is attached.