To: General Donovan,

From: Dr. von Schlebrendorff

Subject: Answer to Dr. Pathy's letter of 19 October 1945.

I have the privilege of making the following reply to the opinion of Dr. Pathy on 19 October 1945:

1. The fact that the main plan of the indictment is based on the political side exclusively on the breach of the Treaty of Versailles cannot be accepted without reservations in my opinion. The Treaty of Versailles has been considered not only in Germany, but in the entire world, as a treaty of doubtful value. I remind you of the criticism by American historians, for instance the criticism of Professor Barnes, and Churchill's criticism in his speech of 20 March 1920 before the House of Commons. For the assumption of a war crime the fact that force has been used is decisive. In my opinion it would have been better to base the main indictment on the forcible breach of the principles of good faith. In this way it would have been possible, to make Hitler's breach of all internal treaties just as much the object of the indictment as the establishment by force of his criminal dictatorship over Germany. Thus the International Military Tribunal would have been the speaker not only for the United Nations, but for the conscience of the world. I ask you to examine whether it is not possible, in the course of the trials, to take this viewpoint and to give expression to it in the sentence.
2. I think it would be right to base the sentencing of the defendants not exclusively on the general indictment. The general indictment is sufficient in the case of such persons as Goering, Streicher, Keitelbrunner, Ley, etc., but it does not suffice against men like Schacht, von Papen, and Neurath. Everybody in Germany knows that the last named persons neither wanted the war nor intended any crimes against humanity. Their policy was indeed basically wrong. But in order to sentence a person as a war criminal it is necessary to accuse him of a concrete act. If this is not done, then the counsel for defense would indeed have an easy task. I would take it upon me to defend men like Schacht and Papen in such a way that the International Military Tribunal would have difficulty in pronouncing a sentence.

3. I urgently recommend dropping the point mentioned in the indictment of the murder of the 925 Polish officers in the Katyn Forest, at the latest during the trial. The counsel for the defense would otherwise be in the position to call a large number of witnesses who know that the 925 Polish officers in Katyn Forest were murdered by the Russians. On the other hand, I consider it as desirable to try to prove the following war crimes at the latest in the course of the trial:

A. Hitler ordered that civilian centers and historical monuments should be hit in the air raids on England.

B. Hitler ordered that parachutists be shot immediately after being taken prisoners, even though they were in uniform.

C. Hitler ordered that all Russian commissars be shot immediately after their capture.
D. Hitler ordered that all Russian prisoners be shot in so far as they were members of the Communist Party.

E. Hitler ordered that Moscow and its entire population should be made to vanish from the earth by flooding it.

F. Upon Himmler's order 7,000 Russian citizens of Jewish faith were shot by the SS in the fall of 1941 at Borrisov.

In the discussion of these points it will become apparent that the orders were issued against the opposition of the German General Staff.

4. I consider it right, during the trials of the first 24 defendants, to give the representatives of the General Staff an opportunity to prove that the members of the General Staff did everything to overthrow Hitler and Nazism.

5. It is certainly correct to state that the majority of the members of the Reich Cabinet are guilty in the sense of the indictment. But this statement is not true with regard to all of them. A small minority within the Cabinet fought against Hitler and resigned from the Cabinet only after they had lost this fight. This includes in my opinion such men as Schacht, von Papen, Hugenberg, and Freiherr Eltz von Ruebenacht. I believe that the attorneys of these persons will be able to submit ample proof of this fact. The prosecution authority will do well to be prepared for such a move before the beginning of the hearings.

In conclusion I should like to make the following remarks:

It is a paradox to anyone familiar with the internal German conditions to read in the indictment that the German General Staff
is a criminal organization, whereas no mention is made of the Nazi party. Viewing the future historical judgement of the trials before the International Military Tribunal I consider it correct, however, that the indictment describes as criminals only the corps of political leaders of the Nazi party and not the Nazi. I am convinced that the historians of the future will construe such prudent reserve as an expression of justice and impartiality.

von Schlebendorff

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