

Herbert Pell Papers
Box 26
State Dept: Preuss

The following is a suggestion as to how the respective functions of the United Nations War Crimes Commission, the United Nations and SCAEF should be approached:-

A. The War Crimes Commission should list as war criminals:-

- 1) All members of the German forces and all persons employed by or on behalf of the German Government who have committed crimes contrary to the laws and usages of war, irrespective of the place where the offense was committed or the nationality of the victim. This will exclude internal German atrocities, such as the persecution of the Jews, since these will not be crimes against the usages of war.
- 2) All persons in specified categories, such as all members of the S.S. The nationality of the victim should be irrelevant.
- 3) See above. Persons who have been guilty of atrocious acts against persons of their own nationality or against local inhabitants (particularly where such acts have been committed on grounds of race), or the acts have been so heinous that their punishment is the concern of mankind generally. Should be collected by the Commission, since it is too wide to cover persecution of Germans by Germans, e.g. treatment of catholic priests in concentration camps.

B. The United Nations should agree that the maximum number of war criminals should be tried in national courts. These courts should be civil or military, as the particular country desires, but would in all probability be mostly military. In order to achieve this, the war criminals should be tried in the courts of a country where:-

- 1) The crime had been committed in that country.
- 2) A crime had been committed outside the country, on the victim, or some of the victims had been of the nationality of the country concerned.
- 3) The perpetrator being in the class specified in (1) and (2) above or of the nationality of the country concerned.

This would possibly account for the greater number of war criminals, but there would still be a number remaining who would not fall to be tried in any particular country under the above rules. These should be tried by a special United Nations court administering a uniform law and applying a uniform procedure. This court should sit in one or more divisions. These courts should not be set up under SCAEF.

If the above principles were adopted, then the duties of SCAEF would be confined to apprehending and detaining securely all war criminals, as far as possible having regard to military exigency, and handing over these criminals to the appropriate authorities or tribunals. This should be for SCAEF to do much towards conducting testimony in the cases of listed criminals other than exceptional cases, but in the case of suspected war criminals, SCAEF should collect the local evidence which should lead to the suspicions and forward it to the War Crimes Commission.

SCAEF should be directed to hand over the war criminals to the appropriate national authority or to the appropriate United Nations tribunal when requested.

REPRODUCED FROM HOLDINGS AT THE FRANKLIN D. ROOSEVELT LIBRARY

War criminals listed or suspected will be tried among the prisoners of war taken by the Allied Expeditionary Forces, or among civilians interned by them. Consequently, SCAEF's duty of keeping war criminals securely will be the responsibility of G1 in cooperation with G2 and G3 and the Displaced Persons and legal branches of G5.