

23 October 1945

My dear Bob:

Responding to your request I have prepared a memorandum dealing with the question of enlarging your authority as Chief of Counsel both in regard to military commissions and the setting up of chambers or divisions. As you know, I have always believed that we would have better international amity if we had done some such thing in the beginning and you as Chief of Counsel could be spared controversy. I think further as a matter of statesmanship that you will be looked to to set the tone both for having Germans testify on the affirmative side of the principal case and for the establishment as quickly as possible of German courts to try their own war criminals.

Should the conditions you require be met in the present matter and you would then feel able to accept the added responsibility, it seems to me that you already have a place in Special Projects where certain of the specific problems raised by General Betts could be dealt with. In Special Projects and under your direction they are already dealing with the disposition of the trial of major war criminals who have not been included in the present indictment. In addition, field teams could be sent to the prison concentration centers of the 7th and of the 3rd Armies. There the bulk of the work could be done in relation to the examination of these various SS and similar people. Above all, it should be a small group but of necessity it would have to be within your organization because it is an inherent part of your problem. To do otherwise would be to create, as you suggest in your letter, duplication and conflict.

Further, the return of alleged war criminals to the vicinage of the crime should proceed at once.

An essential part of the problem is a further educational program larger than the question of how we proceed here.

W. J. D.

23 October 1945

MEMORANDUM to Mr. Justice Jackson

FROM General Donovan

In Article 6 of the International Agreement there is nothing "to prejudice the jurisdiction or the powers" of any national occupational court to be established in Germany for the trial of war criminals.

On this phase of the problem it is easy enough to have the various military commissions brought within your jurisdiction without further reference to the other nations.

On the major phase, however, that is the setting up of separate chambers or divisions, we cannot escape an amendment to Article 5 of the Constitution of the Tribunal. You remember that this directs that the establishment, functions and procedures of other tribunals that may be set up must be "identical and shall be governed by this Charter".

The only thing to do, therefore, is to deal with that Article squarely by an amendment in line with the following suggestion:

Amendment to
Article 5 of
the Constitu-
tion of the
International
Military Tri-
bunal.

In case of need and depending upon the number of the matters to be tried, each of the Signatories shall in its discretion have the right to set up within its own occupational zone other tribunals as chambers or divisions of the International Military Tribunal. Each of such chambers shall not exceed three members appointed by the Signatory government all of whom will be nationals of such Government.

The functions and procedure of each of such tribunals acting on behalf of the International Military Tribunal shall not be inconsistent with or contrary to the principles laid down in this Charter and each Tribunal shall be

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bound by the findings of law and of fact by the International Military Tribunal concerning the acts constituting crimes as provided in Article 6 of the Constitution. But judgments of each chamber or division would be the judgment of the International Military Tribunal as a whole.

W. J. D.