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26 October 1945.

TO: General Donovan.

FROM: Dr. von Schlabrendorff.

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

I have the honor to reply to the attitude of Dr. Pathy as expressed in his letter from 19 October 1945.

1. The fact that the principal part of the draft of the accusation in its political aspects is based entirely on the breach of the Treaty of Versailles, is, I think, rather questionable. The Treaty of Versailles was not only by Germany but by the whole world looked upon as a treaty-work whose value is doubtful. I may refer here to the criticism on the part of American historians such as Professor Barnes, and to the criticism as expressed by Churchill in his speech before the House of Commons on 20 March 1920. The decisive factor for the presumption of a war-crime is the employment of force. Therefore it would have been better, in my opinion, to base the main accusation on the breach by force of the principles of faith and confidence. In that way, it would have been possible to make the breach by Hitler of all international agreements a point in the accusation as well as the establishment by force of his criminal dictatorship over Germany. That way, the International Military Tribunal would speak not only for the United Nations but for the conscience of the world. Permit me to ask whether it would not be possible to adopt this point of view during the trial, and to express it in the sentence.

2. I believe it to be right to bare the verdict on the 24 defendants not entirely on the general accusation. The general accusation is sufficient in the case of people like Goering, Streicher, Kaltenbrunner, Ley, etc. It is not sufficient in the case of a man like Schacht, Popen, and Neurath. Everybody in Germany knows that these men did not want the war, and did not plan crimes against humanity. Their policy was certainly and entirely wrong. But in order to sentence them as war criminals it is necessary to reproach them for definite acts; if that is not done the defense of these defendants shall have it very easy. I'd be able to defend men like Schacht and Popen in a manner that it would be difficult for the International Military Tribunal to convict them.

3. I recommend very thoroughly the dropping from the accusation, at the latest during the trial, the paragraph on the murder of 925 Polish officers in the Katyn Forrest, otherwise the defense would be easily in a position to name a large number of witnesses who know that the 925 Polish officers in the Katyn Forrest were murdered by the Russians. However, I'd recommend to prove in the course of the trial for the following war crimes:

A. Hitler ordered that civilian centers and historic monuments in air attacks on England be hit.

B. Hitler ordered the execution of parachutists immediately after their capture, even if they were in uniform.

C. Hitler ordered to execute at once all captured Russian Commissars.

D. Hitler ordered to shoot all Russian prisoners who were members of the Communist Party.

E. Hitler had ordered that the city of Moscow with all its inhabitants be caused by inundation to disappear from the face of the earth.

F. On Himmler's orders 7000 Russian Jews were shot in Borrisow by the SS in fall 1941.

In discussing these points it will be found that these orders were issued against the opposition of the German General Staff.

4. I consider it fair during the trial of the first 24 defendants to give representatives of the General Staff an opportunity to prove that members of the General Staff have done everything within their power to overthrow Hitler and Nazism.

5. It is certainly correct that the majority of the members of the Reich Cabinet are guilty in the sense expressed by the accusation. However, this does not hold true for all of them. A small minority within the Reich Cabinet has fought Hitler and left the Reich Cabinet after they were defeated. Men like Schacht, Popen, Hugenberg, and Freiherr Eltz von Rübénacht, belong to these. I am of the opinion that the defense of these people will be in a position to present abundant material to prove this point. The prosecutors should be prepared for this before the trial begins.

In conclusion, permit me to remark the following:

For one who knows the internal situation in Germany it is paradox to read in the indictment that the German General Staff is a criminal organization with the Nazi Party is not mentioned. For the sake of the judgement of history on the trials before the International Military Tribunal, I believe it to be correct that the indictment designates not the Nazi Party but only the group of political leaders of the Nazi-Party as criminals. I am convinced that the historian of the future shall recognize such a wise restraint as an expression of justice and impartiality.

Von Schlabrendorff

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