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THE GENERAL BOARD

United States Forces, European Theater

WAR CRIMES AND PUNISHMENT OF WAR CRIMINALS

MISSION: Prepare Report and Recommendations on War Crimes and Punishment of War Criminals.

The General Board was established by General Orders 128, Headquarters European Theater of Operations, US Army, dated 17 June 1945, as amended by General Orders 182, dated 7 August 1945 and General Orders 312 dated 20 November 1945, Headquarters United States Forces, European Theater, to prepare a factual analysis of the strategy, tactics, and administration employed by the United States forces in the European Theater."

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THE GENERAL BOARD
UNITED STATES FORCES, EUROPEAN THEATER
APO 408

WAR CRIMES AND PUNISHMENT OF WAR CRIMINALS

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WAR CRIMES AND PUNISHMENT OF WAR CRIMINALS

CHAPTER 1

WAR CRIMES

SECTION 1

DEFINITIONS

1. War crimes are acts that violate the laws and usages of war. War criminals are persons who commit or abet war crimes.[1]

2. Categories. The Responsibilities Commission of the Paris Conference of 1919, classified 32 offenses as war crimes. The United Nations War Crimes Commission adopted the Paris list and added another offense,[2] but the Commission's list is not exclusive.[3]

3. The Nurnberg Indictment. The definitions and categories exclude many acts and persons for whose investigation, apprehension, and trial or extradition, United States forces in Europe are now responsible. The United Nations have undertaken to punish Germans and other nationals guilty of atrocities and persecution on racial, religious or political grounds committed since 30 January 1933.[4] Of course, these were not all "war crimes." The Four Powers, in their draft of the indictment for trial before the International Tribunal at Nurnberg, were careful to distinguish between "war crimes" and the other offenses charged: "crimes against peace" and "crimes against humanity."

SECTION 2

WAR CRIMES CHARGED IN THE INTERNATIONAL TRIBUNAL

4. Not all of the offenses listed by the United Nations War Crimes Commission are charged to the Germans in the European Theater of Operations. Count Three of the indictment preferred in the International Tribunal by the United States, United Kingdom, Soviet Union and French Republic, against high political and military personages of the former German State and groups and organizations represented by them, charges murder and ill treatment of prisoners of war and civilian nationals of occupied countries, and the following additional crimes against civilian populations: deportation for slave labor; plunder of public and private property; unlawful exaction of collective penalties; wanton destruction of cities, towns and villages in military operations; conscription of labor for purposes other than meeting the needs of the army of occupation and to an extent far out of proportion to the resources of the

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1. These definitions are abbreviated from the official statements. See CC/S 9705, 2 October 1944, Subject: "Obligations of Theater Commanders in Relation to War Crimes"; U.S. Joint Advisory EAC Draft Directive, "Apprehension and Detention of War Criminals", 21 October 1944.
2. Appendix 1.
3. "This list is intended to serve as a general guide in dealing with individual war crimes without unduly restricting the governments." C, 87 (1), 19 April 1945.
4. JCS 1023/10, Annex to Appendix A to Inclosure B.

countries involved; unlawful Germanization of occupied territory.[5]

5. Specifications. Acts specified in the indictment as committed within the period covered by the studies of The General Board include the following:

a. Arbitrary individual and collective arrests of French citizens, under political and racial pretext: at Clermont-Ferrand, 25 November 1943;[6] at Grenoble and Cluny, 24 December 1943; at Figeac and Eysieux in May 1944; at St. Pol-de-Leon in July 1944; and at Moussey in September 1944. It is alleged moreover, that these arrests were followed by brutal treatment and torture.

b. Brutality in German concentration camps: resulting in the death of 2,262 Frenchmen at Dora between November 1944 and March 1945; the death of 22,671 civilian deportees at Buchenwald between January 1943 and April 1945,[7] and the death of 11,560 detainees at Dachau between January and April 1945.[8]

c. Systematic extermination of Frenchmen at various localities in France; including the entire population of Oradour-sur-Glane, shot or burned alive in a church.

d. The deportation of able-bodied citizens of occupied countries for slave labor in Germany and other occupied countries; particularly, the deportation of approximately 1,000,000 from France alone in 1943-1944; and that such deportation was conducted under such barbarous circumstances as to cause the death of many in the course of their journey.

e. Murder and ill-treatment of prisoners of war: by denial of adequate food, shelter, clothing and medical care; by compulsion of labor under inhumane conditions; by assassination while in the act of surrender, or by guards or the Gestapo after surrender; by torture in concentration camps; by subjection to long, forced marches, by infliction of bodily punishment upon non-commissioned officers and cadets who refused to work.

f. Other acts, including the looting of occupied countries and the killing of hostages, are charged as continuing from 1940 to 1944.

g. At the time of filing this report there has been no trial of the persons and groups indicted in the International Tribunal.[9] The dignity of the prosecuting powers allows a fair presumption that the war crimes specified in the indictment will be proved, the issue of the trial being the personal responsibility of

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5. Army Talks, Vol IV, No 26, 11 November 1945, pages 19-24. For a brilliant expose of German occupation policies, see Lemkin, "Axis Rule in Occupied Europe," published, 1944, by the Carnegie Endowment, International Law Division.
6. This was the round-up of professors and students of the University of Strasbourg, who were imprisoned at Clermont-Ferrand.
7. A portion of the year 1943 is not included in the period covered by the study of The General Board. Buchenwald being in the Russian Zone of occupation, Soviet authorities have been asked to undertake prosecution of this crime.
8. It is alleged that 2,000,000 French deportees died in concentration camps during the war.
9. The case is to be tried at Nurnberg beginning 20 November, 1945.

the individuals accused and collective responsibility of the groups they severally represent.

h. The only reference in Count Three of the indictment to American personnel, particularly, is in the following paragraph:

> American prisoners, officers and men were murdered at Normandy during the summer of 1944 and in the Ardennes in December 1944. Americans prisoners were starved, beaten and otherwise mutilated in numerous Stalag in Germany, and in the occupied countries, particularly in 1943 and 1944 and 1945.

(1) The above is hardly a specification, disclosing no details of the alleged offenses. Investigation has proved no more than isolated instances of criminal mistreatment toward American prisoners by German military personnel in camps. It is known that members of the 12 SS Panzer (Armored) Division violated the Geneva Convention in Normandy,[10] but no formal charges have been preferred.

(2) However, the Ardennes atrocities are well substantiated. On 17 December 1944 approximately 120 American prisoners of war were lined up in a field near Malmedy, Belgium and shot to death.[11] At Ligneuville and Krinkel-Rocherath the same day, 12 other American prisoners of war were murdered by their German captors.[12] Elements of the 1 Adolf Hitler SS Panzer (Armored) Division were responsible for the Malmedy massacre. Some of the perpetrators have been identified and are in custody.

SECTION 3

WAR CRIMES PROVED OR CHARGED IN MILITARY COMMISSIONS AND MILITARY GOVERNMENT COURTS

6. The Bruns Case. Captain Curt Bruns of the German Army was convicted at Duren by a First Army Military Commission, 7 April 1945, upon the charge he had caused the murder of two American prisoners at Bleialt, Germany, on or about 20 December 1944. The victims were enlisted members of Interrogation Prisoner of War Team Number 154 and of Jewish extraction.[13]

7. Violence against captive American Airmen. A species of war crime of common occurrence but not specifically mentioned in the indictment for trial at Nurnberg, was the murder of American airmen forced to land in Germany, or acts of violence short of murder committed against them. About 800 such cases have been reported to American authorities.

a. Nearly all these crimes were committed by German

10. Rubinstein Report to the JAG, July 1944.
11. Case 33, Theater Judge Advocate, War Crimes Branch.
12. 12 Army Group War Crimes Bulletins 1 and 2, 17 February—12 March 1945.
13. Review by the Staff Judge Advocate, First Army, 20 April 1945.

civilians, few were charged to military personnel. But many of the murder cases involved members of the German police. In others, mob violence was directed by officials of the Nazi Party. There are a few cases of apparently spontaneous action by civilians suffering from the shock of an air raid.

b. Himmler, as head of the German police services, issued an order 10 August 1943, forbidding police officers to interfere with German civilians attacking bailed-out Anglo-American airmen. "It is not the task of the police", he said, "to interfere with German civilians in clashes between Germans and American terror fliers who have bailed out." This order was transmitted to all higher SS and Police leaders, with the instruction that it be delivered orally to subordinate officers and Gauleiters. In verbal communication, the order was interpreted as affirmative direction to policemen themselves that they should kill captive airmen committed to their custody. Before military commissions, police officers have pleaded orders from higher authority by way of defense[14] to the charge of murder. The Leader of the Party Chancellory, Martin Borman, 30 May 1944, signed a circular letter to the Party leaders (Kreisleiter and above) stating that no police measures should be taken against German civilians lynching crews landing from disabled planes which had taken part in "strafing attacks upon civilians."[15] As the war drew near its end, 25 February 1945, Himmler made more emphatic his order that policemen should not protect enemy aviators "against the fury of the people". "Authorities acting in contradiction to the popular mood", he said, "will have to account to me."

c. A typical case of mob violence inspired by a Nazi leader was the first brought to trial in occupied Germany, the case of Peter Back, et al.[16] An American airman had landed near the village of Preist in the Rhineland, 15 August 1944. A rural policeman went to the place where the airman had landed, to take him in charge. When he arrived, two German soldiers, home on furlough, were assisting the airman to remove his parachute equipment. At about the same time the Nazi Blockleiter, Peter Back, and numerous other civilians came to the scene. The Nazi leader was armed with a pistol which he fired at the airman, wounding him. The German soldiers and at least one civilian protested this treatment, but were menaced by Back, who again shot the prisoner. Back reminded the assembly of a

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14. Notably, Albert Bury, Police Chief of Langenselbold and his confederate, Wilhelm Hafner, Sergeant in the Reserve police, tried by a Third Army Military Commission at Freising 16 July 1945. They were convicted of killing T/Sgt Donald Hein, a prisoner in Bury's custody, 12 December 1944. In another case now pending in a General Military Court, it is charged that Adolf Weger, Criminal Commissar at Hanau, Julius Schulze, Criminal Secretary of the State Police, and Karl Neuber, of the Gestapo, shot three American fliers after they had been in police custody six hours. In the latter case, the Police Director was involved, but has committed suicide. An SS lieutenant, also charged has not been apprehended.
15. This was after Goebbels in the Volkische Beobachter, 28 May, 1944, had openly incited the population to massacre fliers who parachuted from disabled planes.
16. Back was tried at Ahrweiler, 17 June 1945. His co-accused were tried 1 June 1945 before Back was apprehended. All the accused except the rural policeman were executed, the latter sentenced to life imprisonment.

recent air raid upon a nearby place, where 80 persons had been killed or injured. Two other civilians beat the wounded airman as he was dying, one with a hammer, another with a club. The rural policeman made no effort to prevent the assault by Back or the other civilians.

d. Nazi Party leaders and officials have been proved guilty or charged formally in similar cases, from the Rhineland to Czechoslovakia. In one case a German captain was required by a Party leader to order summary execution of a captured American flier then in his custody as a prisoner of war.[17] Party leaders have been present when police would kill their captives. They have exhorted civilians to attack prisoners under military escort. They have terrorized people who would have protected the prisoners.

e. Only two cases have been tried or formally charged against German military personnel, where captive American airmen were killed in military custody. One is mentioned in subparagraph c above. In the other, the slayer was a soldier in civilian clothes who never had been in combat because of physical disability.[18] In another case, German officers are said to have encouraged civilian abuse of a prisoner.[19]

8. Military Mission to Slovakia. The Germans did not recognize the lawful belligerency of military missions to Resistance and Partisan leaders in occupied territory. By order of 30 July 1944, the High Command directed that members of such missions should be treated in accordance with the Hitler "Commando" order of 18 October 1942; i.e., that they should not be treated as prisoners of war, even though taken in uniform.[20] The Allied Military Mission to Slovakia, 15 British and American officers, were shot, pursuant to this order, in January 1945.

9. Red Cross Cases. There are reported instances of German abuse of the Red Cross emblem in military operations, including use of ambulances for transport of combat troops. There are also charges of violence against protected personnel. Except in the Malmedy case, where non-combatants are said to have been among those murdered, no such charges are ready for trial.

10. The Hadamar Case. An American Military Commission tried the Hadamar Hospital case, involving systematic extermination of 450 Poles and Russians deported into Germany against their will. Death of these people was brought about by administration of injections, upon the hypothesis they were incurably ill.[21]

11. The Dachau Case. Atrocities in the Dachau concentration

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17. This murder was at Wolfenbuttel, 28 September 1944.
18. Case of Ernst Waldman, tried at Manich by a Third Army Military Commission,
19. At Mittenwald, June 1944.
20. The order directed that commandoes should "be mowed down to the last man in battle or in flight. Even if they give signs of surrendering, every pardon is to be refused. If individuals get into the hands of the armed forces by any means, they are to be turned over to the SD. Any custody under military guard, even temporary, is strictly forbidden, All commanders and officers are responsible to court-martial for non-compliance or failure to instruct troops."
21. Case tried at Wiesbaden, beginning 8 October 1945.

camp[22] have inspired charges against 40 persons involved in its operation. The trial of the Dachau case is in progress while this report is being prepared.

12. "War Crimes" are considered to have been committed at Dachau and Hadamar because victims were deported involuntarily into Germany, contrary to the laws and usages of war, and criminally mistreated in their places of concentration. Many thousands of Germans also were slain in Hadamar and suffered unto death in Dachau. These offenses of Germans against Germans were not "war crimes", but among the "crimes against humanity", denounced in the Nurnberg indictment.

SECTION 4

WAR CRIMES BY UNITED STATES FORCES

13. While this study is concerned with enemy war crimes, it should not be inferred that conduct among American troops was always beyond reproach. Rape was denounced as a war crime by the Responsibilities Commission at Paris in 1919; and this classification has been adopted by the United Nations War Crimes Commission.[23] Upon invasion of Germany by United States forces, there was a spiral increase in crimes of rape by occupying troops.[24] There was also much looting by troops in forward areas.[25] There were substantial charges that prisoners of war were mistreated.[26] There is one reported general court-martial charge that American escort murdered prisoners of war. The evidence was held legally insufficient to sustain conviction; but leaves only a reasonable doubt, without assurance that the accused were innocent.[27]

14. But these were individual offenses only. It is probable that some of them resulted from inadequate understanding of the obligation towards prisoners of war and civilian population of an occupied country. Certainly, there was no such systematic criminality among United States forces as pervaded the Nazi groups in Germany.

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22. See Page 2.
23. Appendix 1.
24. WOJG Geygan to G-1, USFET, Transmitting Chart, 4 September 1945.
25. 12 Army Group report of Civil Affairs Operations, 16 October - 17 November 1944.
26. 12 Army Group letter to army commanders 19 April 1945, subject: "Alleged Violation of the Geneva Convention by United States Troops." 20 complaints of German officers were listed involving alleged abuse, threats, assaults, robbery, etc.
27. CM ETO 4561 Ross 1945, Dig Op . ETO , Volume 2, pages 412-14.

CHAPTER 2

PUNISHMENT OF WAR CRIMINALS

SECTION 5

INVESTIGATION AND APPREHENSION

15. The SHAEF Court of Inquiry. With Allied invasion of Europe imminent, consideration began to be given at SHAEF to procedure for investigation of war crimes by enemy forces.[28] Before 20 August 1944, SHAEF determined to establish a standing Court of Inquiry to operate under the direction of the Assistant Chief of Staff G-1.[29] This Court of Inquiry was for collection and preservation of evidence only in cases involving Allied military personnel.[30]

a. SHAEF instructed Army Group commanders to apprehend and in custody, "so far as the exigencies of the situation permit", all war criminals, including: (1) a list of suspects; (2) members of Nazi groups designated by the Supreme Commander; (3) "those as to whom the Supreme Commander has evidence of responsibility for flagrant violation of the laws and customs of war in friendly or enemy territory prior to occupation or liberation by Allied Forces."[31]

b. Procedure and a form of reports of investigation by Army Groups were prescribed.[32] Reports of all cases were required, whether committed against Allied military personnel, members of resistance groups or civilians. Reports in cases affecting other than Allied personnel were forwarded to the national authorities concerned, who assumed responsibility for further investigation of the alleged crimes and eventual prosecution of the offender. PWX contact officers and DPX liaison officers were instructed to make preliminary investigation among liberated prisoners of war and displaced persons entering their camps. CIC personnel were ordered to forward information they might acquire in the course of security investigations.[33]

c. The Army Groups implemented the SHAEF directives by instructions to Armies and other subordinate commands.[34]

16. A War Crimes Branch was established in the Judge Advocate Section, ETOUSA. Its function was investigation of alleged war crimes and collection of evidence relating thereto; including, for transmission to the governments concerned, evidence relating to war crimes against nationals of the other United Nations.[35]

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28. Minutes of SHAEF Staff Meeting, 5 June 1944.
29. SHAEF Letter, AG 000.5-2 GAP-AGM, Subject: "Procedure on Reports Concerning Alleged Violations of the Geneva Convention", 20 August 1944.
30. SHAEF to various commands, 20 October 1944.
31. SHAEF to Army Groups, 7 September 1944.
32. SHAEF Letter, AG 000.5-2 GAP-AGM, Subject: "Procedure for Investigation of Alleged Violations of the Geneva Convention", 14 December 1944.
33. Ibid.
34. Instance 12 Army Group letter 092.2 (G-1), Subject: "Violation of Provisions of Geneva Convention and Laws and Usages of War by Enemy Forces", 7 November 1944.
35. LD Letter, AG 000.5 GB-S-AM, Subject: "Establishment of War Crimes Offices," 25 December 1944.

a. The Branch has been responsible for organizing and equipping war crimes investigating teams. These included, ideally, two legal officers, a medical officer (pathologist), a forensic evidence expert, a recorder of company grade or warrant officer, a court reporter, a stenographer, a photographer, an interpreter and two drivers.[36] At first these teams were under Army Group control but afterward they were assigned to Armies and operated from Army headquarters.

b. Organization of investigating teams was hindered by inadequacy of available personnel. In the winter of 1944-1945, there were but five pathologists in the European Theater. There was an inadequate number of court reporters even for the requirements of courts-martial.

17. The United Nations War Crimes Commission, established in London, 20 October 1943, represents 16 of the United Nations. Its stated function[37] is to investigate war crimes, record the testimony available, and report to the interested governments. Actually the Commission has not acted as an investigating agency. It has furnished to Theater commanders lists of suspected war criminals accused by different governments, for identification and apprehension. The United States has shown reluctance to file with the Commission the evidence which other governments knew the United States had collected concerning war crimes committed againsttheir nationals.[38] It is apparent that it was early decided to deal directly with the missions or liaison teams of Allied governments attached to United States Forces.

18. CROWCASS and other agencies. SHAEF established a Central Registry of War Criminals and Security Suspects (CROWCASS). It maintains and publishes "wanted" and "detained" lists, and compiles data of war crimes and the probable whereabouts of war criminals. The Office of Strategic Services had sustained the loss of certain among its personnel by means considered to have violated the laws of war. The Office of Strategic Services thereupon organized its own war crimes investigation section, which has not confined its investigations to offenses against OSS personnel.

19. Problems of Apprehension:

a. Counter-Intelligence Corps personnel were provided lists of security and war crime suspects to be detained. They were also instructed to arrest all members of the SD;[39] and the Gestapo;[40] all officials of the Nazi Party holding the office of Amtsleiter or higher, or the rank of Gemeinschatsleiter or higher; all officers of the Waffen SS[41] and non-commissioned officers down to and including

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36. TD & A, ETOUSA, 22 March 1945.
37. Lord Simon, 20 October 1943.
38. Colonel Joseph Hodgson, US Deputy Commissioner to Theater Judge Advocate, 21 September 1945.
39. Security service of the SS; membership in this group was secret; it was the political information service of the Nazi Party.
40. Secret state police; its function was the detection and supression of political crime. It may be said to have been the executive arm of the SD.
41. A militarized body recruited originally from the SS, having its own supply and administrative organizations, but fighting under the tactical supervision of the High Command.

the rank of Scharführer; Allmegeine SS officers and non-commissioned officers down to and including the rank of Unterscharführer;[42] all ranks of the Totenkopfverbände;[43] all female members of the SS; and all officers of para-military formations of rank equivalent to Sturmbannführer or higher.[44]

b. The primary function of CIC was to protect the security of Allied forces. It was hindered by inadequate personnel from complete investigation and reporting of war crimes. Its reports were indicative that charges deserved investigation, but were not intended to be definitive of the evidence. In transmission through channels, documentary evidence was often detached at interested headquarters; thus, lost to the War Crimes Branch. Moreover, CIC detachments were moving continually and losing contact with their prisoners. Civilians were arrested upon mere suspicion, out of care for security, and left behind by the capturing units to languish in prisons without apparent justification.[45]

c. The magnitude of the apprehension problem is suggested by the great number of persons believed to have been implicated in war crimes. G-2 USFET, has a list of 150,000 security and war crimes suspects. Membership of the groups indicted for trial at Nurnberg is many times larger. Whatever the policy may be toward the ranks of the SS and SA, the number of their responsible officers and non-commissioned officers is impressive of the tremendous undertaking to apprehend and punish the alleged war criminals of Nazi Germany.

SECTION 6

JUDICIAL PROCEEDINGS

20. Before V-E Day. The trial of war crimes cases generally had to await the end of hostilities. At first, commanders were forbidden to set up courts for trial.[46] If a prisoner of war was identified as a war crime suspect, he was not segregated, but evacuated along with other prisoners; a notation of his status as a suspected war criminal being made on his card. Of course the motive for delay in prosecution and punishment was fear of reprisals by the enemy.

a. However, Army Group commanders were soon given authority to appoint military commissions, and authorize Army, corps and division commanders to appoint such commissions, for the trial of persons charged with "such violations of the laws of war as threaten or impair the security of United States forces or the effectiveness and ability of such forces or members thereof."[47] This authority was

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42. The General SS as distinguished from the Armed SS. The SS was the elite guard of the Nazi Party.
43. Death head units of the SS, guarding concentration camps.
44. SHAEF Handbook Governing Policy and Procedure for the Military Occupation of Germany, page 323. Para-military organizations included the SA, indicted along with the SS and Gestapo for trial at Nurnberg before the International Tribunal. The SA comprised the Storm Troops of the Nazi Party. Its membership was estimated at a million and a half.
45. For a statement of the difficulties and deficiences of CIC investigations see the report of Colonel Purvis to General Clay, subject: "War Crime Investigation and Apprehension Programs", 7 September 1945.
46. SHAEF to Army Groups, 7 September 1944.
47. Letter ETOUSA, AG 334 OpGA, Subject: "Authority to appoint Military Commissions", 12 November 1944.

delegated to Army commanders; but only one such case was tried before V-E Day, that of Captain Curt Bruns.[48] In fact, on V-E Day, very few war crime cases were ready for preferment of charges.[49]

21. After V-E Day. This period is not included in the study assigned to The General Board. It may be mentioned, however, that restrictions on trials have been removed. War criminals may now be tried by military commissions or Military Government court, regardless of the nationality of the victim and regardless of whether the offense was committed before or after occupation;[50] except prisoners wanted by other governments or high political and military figures to be tried by the International Tribunal. Most cases up to this time have been tried by military commission, but it is now the practice in the War Crimes Branch to refer such cases for trial by Military Government courts.

22. Results. Prior to 1 November 1945, 19 war crime cases had been tried, involving 56 accused, of whom nine were acquitted. Twenty-eight death penalties were assessed. At the time of this report, about a dozen war criminals have been executed.

23. Group Convictions. It is hardly to be doubted that the International Tribunal at Nurnberg will convict the indicted Nazi groups and organizations, whose membership may be estimated at nearly 2,000,000. Some are wanted by one or more of the United Nations or Italy. The direction to commanders of United States Forces is that such wanted persons in their custody be delivered upon request.[51]

a. But United States forces will have the stupendous task, not only to apprehend and try individual offenders charged in particular cases, but to proceed toward punishment of those in the American zone adjudged guilty by reason of membership in the SS, the Gestapo, the SA, etc. The measure of individual guilt and degree of punishment in such cases will have to be determined by some competent tribunal or administrative agency. The current directive of the United States Group Control Council is that trial be by Military Government court.[52]

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48. Page 3, this report.
49. Colonel March, Legal Division, US Control Group to G-5 USFET, 27 May 1945.
50. Combined Chiefs of Staff CCX Cables 18-96119, June 1945 and WX 25769, 2 July 1945.
51. JCS 23-10, Annex A to Inclosure B, paragraph 6.
52. Mr. Fahy (US Group Control Council) to the Theater Judge Advocate, 11 October 1945.

CHAPTER 3

CONCLUSIONS AND RECOMMENDATIONS

24. Definition of War Crimes.

a. There should be a general codification of the laws of war, similar to that prepared in 1863 by Dr. Lieber.[53] FM 27-10, Chapter 1, Paragraph 3, makes reference to "unwritten rules or laws of war* * * well defined by recognized authorities on international law and well established by the customs and usage of civilized nations." The Manual is, however, mainly annotation of the international conventions. It should be revised to include definition generally of the established rules.

b. The definition of war crime should be expanded to include acts that violate international law and provoke war, such as sabotage and the manufactured Polish and Czech frontier incidents.

c. FM 27-10 does not state clearly that the torture or killing of hostages is a war crime. This was listed as a war crime by the Responsibilities Commission in Paris in 1919 and is among the offenses denounced as war crimes by the Nurnberg indictment. FM 27-10 should be amended in this regard.[54]

25. Instruction of Military Personnel in the Laws of War. It is believed that this would both minimize misconduct on the part of United States troops in military operations and occupation and would promote the apprehension of war criminals. Probably the most signifi- information obtained from interrogation of repatriated prisoners of war was the American lack of knowledge of the Geneva Convention. Instruction of military personnel was a responsibility assumed by the United States under Article 27 of the Red Cross Convention. This responsibility was not adequately discharged.[55]

26. Centralization of Responsibility. It is believed that one agency should be made responsible for execution of any United States War Crimes program. In the European Theater there are now the two agencies, civilian and military, respectively: The United States Chief of Counsel and the Judge Advocate General. It is recommended their functions be consolidated after the Nurnberg trial.

27. Investigation of War Crimes. It is recommended:

a. That war crime investigating teams be established and trained, and moved with combat and occupational units as they advance

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53. War Department General Orders Number 100.
54. FM 27-10 recognized legality of taking hostages and contains the dictum "when a hostage is accepted, he is treated as a prisoner of war," paragraph 76 h, page 18; paragraph 359, page 90.
55. AG Letter, War Department, 8 April 1945, Subject: "Preliminary Report of Investigation by Inspector General with respect to Improvements in our Efforts to Protect United States Prisoners of War in German hands through the Protecting Power," pages 8 and 9. The Army Judge Advocate, Third United States Army did undertake the instruction of troops in that command, Soldier's Handbook on Rules of Land Warfare, Annex No. 4, After-Action Report, Judge Advocate Section, Third United States Army.

into enemy territory. These would function toward the investigation of war crimes in the same way as CIC detachments in security matters and CID agents in cases of military offenders.

d. That unit commanders, CIC personnel and IPW teams be provided forms for reporting information of war crimes, and directed to transmit such report directly to the War Crimes Branch of the Judge Advocate Section or other agency having responsibility for investigation of war crime charges.

e. That adequate personnel, equipment and transportation be provided the War Crimes Branch or such other agency for investigation of reported charges.

28. Apprehension of War Criminals. It is recommended that the maximum use be made of the indigenous police services, as adapted to Military Government, for apprehension of war crime suspects. Specifically, it is believed the denazified German police service can be utilized efficiently for the capture of criminals now at large in Germany.

29. Trial of War Crimes Cases. It is not believed that Military Government courts are the best tribunals for determining the measure of guilt and degree of punishment among the members of Nazi groups and organizations to be tried at Nurnberg. It is believed more effective results could be had, and justice more fully obtained, if this also were entrusted to German authorities under the scrutiny and close supervision of the Military Government or its successor. It is anticipated, students of history will retort by reference to the meager conviction and punishment by the German Court at Liepzig after World War I. But the political situation in Germany now is incomparable to that of 1919. The administrative and judicial services are manned by Germans who never bowed the knee to Baal; who, in most instances, have suffered themselves from Nazi oppression. It is not believed they would neglect their duty to the Allies, to effect swift, just punishment of those responsible for German degradation.[56]

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56. Stars and Stripes, 4 Oct 45, reported trial of five SS guards, charged as war criminals, in a German Peoples Court, Berlin. Two were sentenced to death, the others given long prison terms. A Bulgarian Peoples Court tried and sentenced to death or prison terms the political and military personages held responsible for Bulgaria's participation in the war as an Axis ally.

APPENDIX 1

LIST OF WAR CRIMES

1. Murder and massacres--systematic terrorism.
2. Putting hostages to death.
3. Torture of civilians.
4. Deliberate starvation of civilians.
5. Rape.
6. Abduction of girls and women for the purpose of enforced prostitution.
7. Deportation of civilians.
8. Internment of civilians under inhuman conditions.
9. Forced labour of civilians in connection with the military operations of the enemy.
10. Usurpation of sovereignty during military occupation.
11. Compulsory enlistment of soldiers among the inhabitants of occupied territory.
12. Attempts to denationalize the inhabitants of occupied territory.
13. Pillage.
14. Confiscation of property.
15. Exaction of illegitimate or of exorbitant contributions and requisitions.
16. Debasement of the currency and issue of spurious currency.
17. Imposition of collective penalties.
18. Wanton devastation and destruction of property.
19. Deliberate bombardment of undefended places.
20. Wanton destruction of religious, charitable, educational and historic buildings and monuments.
21. Destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers and crew.
22. Destruction of fishing boats and of relief ships.
23. Deliberate bombardment of hospitals.
24. Attack and destruction of hospital ships.
25. Breach of other rules relating to the Red Cross.
26. Use of deleterious and asphyxiating gases.
27. Use of explosive or expanding bullets and other inhuman appliances.
28. Directions to give no quarter.
29. Ill-treatment of wounded and prisoners of war.
30. Employment of prisoners of war on unauthorized works.
31. Misuse of flags of truce.
32. Poisoning of wells.

ITEMS ADDED BY THE WAR CRIMES COMMISSION

33. Indiscriminate mass arrests.

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* Drawn up by The Responsibilities Commission of the Paris Peace Conference in 1919.

APPENDIX 2

ANSWERS TO THE JUDGE ADVOCATE QUESTIONNAIRES

Most officers plead lack of experience in war crimes investigations and prosecution, to excuse themselves from answering the war crimes paragraphs of the Judge Advocate Questionnaire. A few commented upon the topic and offered recommendations.

1. Colonel C. B. Mickelwait, JAGD, Deputy Theater Judge Advocate, Head of the War Crimes Branch, Weisbaden, recommends the following changes in the rules of land warfare: (1) provide that the rations of prisoners of war shall be equivalent to that of their own forces; (2) provide that Red Cross packages shall be delivered to addressees or if furnished without addresses distributed equitably among prisoners of the nation which provides the packages; (3) make a definite distinction in the trial and punishment authorized by the appropriate treaty for prisoners of war who commit offenses after capture and those who commit offenses prior to capture, such as war crimes.

a. Colonel Mickelwait recommends special war crimes teams with appropriate equipment and transportation and the following personnel: two officer investigator-examiners, two court reporters, two interpreters, one photographer, two drivers; and that specialized personnel, such as pathologists, fingerprint experts, etc., should be kept in a pool at the War Crimes Branch, Judge Advocate Section. "For prompt investigation of cases such a team should be established in each division and comparable unit."

b. The CIC under G-2 is regarded as the section best qualified for apprehension of war criminals.

c. The military commission is deemed the appropriate court for trials of war crimes. The Articles of War should indicate clearly the jurisdiction and procedural latitude of commissions; the trial procedure should be prescribed; and plans should be made for providing legal and technical staff to such commissions.

d. War crimes should be investigated promptly, statements of witnesses, including the accused, reduced to writing in their own language and properly authenticated; and photographs properly authenticated.

2. Colonel Charles L. Decker, JAGD, formerly Staff Judge Advocate, XIII Corps, recommends more intensive education of troops prior to combat to help avoid breaches of the laws and usages of war. "Special emphasis should be placed upon the possibility of reprisals. Our mission might be accomplished by preaching a doctrine of 'kill or be killed' or of 'kill and win.' Care should be taken to distinguish this doctrine from 'hate the enemy blindly.'"

a. Colonel Decker recommends that war crimes teams be organized and trained so as to be available upon penetration of enemy territory; that there be five teams for each infantry division, ten teams for corps headquarters; and that such teams be held at army or army group headquarters, readily available for assignment when needed.

3. Colonel Cherles Fairman, JAGD, Chief of the International Law Division, Office of The Theater Judge Advocate: "A few principles

of simple decency and integrity need to be stressed during the period of training for combat. Soldiers, and even most officers, do not need to know much about the details of the rules. For most of them it will suffice to be put straight on the moral essentials. The need for emphasis upon these simple truths is at least as great among high-ranking officers as among the men in the ranks. The simple rules; don't mistreat those who have submitted as prisoners of war; and don't carry away what doesn't belong to you; would go far toward achieving a satisfactory compliance with the essentials of the laws of war.

"The work of the war crimes branch merits the selection of outstanding military lawyers with imagination, purposefulness and unusual professional attainments. The present situation as to war crimes, with a variety of territorial authorities and jurisdictions involved, produces difficulties of principle and of practice. It takes resourcefulness and imagination to overcome the obstacles. The personnel should be selected for their ability as counsel, or as prosecutors, or as examiners of elusive evidentiary materials.

"It is important, for the eventual trial of cases, that the investigation be not merely prompt and energetic, but especially that the record show with particularity just who did what to whom at what time and place. Otherwise those who eventually prepare the case for trial find the preparatory work less helpful than it should be.

"One of the great needs in this business is a simple and really effective system of registration after apprehension which, like a complete catalog, would reflect at once who has been taken into custody. Our difficulties have been not nearly so much with apprehension as with the registration and documentation of those taken into custody.

"The difficulties appear to be rather of a practical than of a legal character. On the legal side one simply needs to make sure that he has stated in apt terms an offense against the law of war, and then to go ahead to prosecute the case in an orderly way. The clearer the conception of the legal framework of the case, the easier it will be to develop what is relevant to establishing the offense. But in the present situation the difficulties of digging out evidence and selecting the proper defendants, finding where they are, locating and examining essential witnesses, and arranging for a proper court, have been found to be very considerable."

4. Colonel Joseph V. Hodgson, JAGD, attached to the Office of the Military Attache, American Embassy, London, for duty with United Nations War Crimes Commission. Colonel Hodgson has been connected with the Commission since his first arrival in the European Theater of Operations 26 May 1944. The President appointed him United States Commissioner 10 May 1945, after his previous service as Deputy Commissioner and War Department Representative:

"I feel that a general (not specific) codification of the customary laws of war, similar to that prepared in 1863 by Dr. Lieber (WD General Orders No. 100) should be prepared; for, in my opinion, this branch of international law has been so neglected that very little is known about it even by scholars (mostly civilians). This has occurred even though Grotius' first volume was on the laws and customs of war. As a result, and aside from the serious misstatements

contained in texts of civilian writers, many lawyers, including some military lawyers, have come to feel that unless conduct is denounced by a convention it is not a war crime. Of course, only a small part of the laws and customs of war have been incorporated into conventions.

"It should be made clear that the torture or killing (not taking) of hostages is a war crime. FM 27-10 should be clarified in this regard. The killing of hostages was listed as a war crime by the Committee on Responsibilities at Paris in 1919, has been denounced as such by President Roosevelt and many other statesmen, and is stated to be such in the Agreement executed in London by the United States, United Kingdom, Russia and France.

"Offenses preceding and leading to war, as well as those committed during a war, should be war crimes. Examples are the Japanese policy of distributing opium in China, sabotage, the manufactured Polish and Czech frontier "incidents", etc.

"The lives, religious and family life of the people and the economic structure of invaded and occupied countries should be more fully protected. While most of the offenses committed against the people and institutions of an occupied country are war crimes, there are border line cases which should also be definitely included.

"Permissible devastation should be more clearly defined and limited.

"Prisoners of war should be more fully protected, particularly as regards the enforcement of the provisions of the Geneva Convention.

"Economic practices, such as those used by the Germans in the occupied countries of Europe, should be specifically denounced rather than being left to the general denunciation of pillage and illegal contributions and requisitions.

"Such organizations as the SS and Gestapo should be specifically outlawed and membership in them should be made a crime.

"The preparation and launching of an aggressive war should be made a crime.

"Positive protection should be afforded to racial and religious minorities.

"Provision should be made for examining and investigating infractions of the laws and customs of war during the war and any denial of these rights should be war crimes."

5. Lieutenant Colonel Henry H. Mize, JAGD, formerly Assistant Judge Advocate, Ninth United States Army, with primary duty of establishing and supervising the War Crimes Branch; also Assistant Judge Advocate, 12 Army Group, with primary duties in the War Crimes Branch; now in the War Crimes Branch, United States Forces, European Theater:

"I am definitely of the opinion that during combat the judge

advocate sections of the divisions and corps should be augmented by the following war crimes personnel:

Division:

1 legally trained officer.
1 interpreter
1 stenographer.
1 driver, with vehicle.

Corps:

3 legally trained officers.
1 interpreter.
1 stenographer.
2 drivers, with vehicles.

The personnel recommended above is considered to be the absolute minimum for the proper operation of war crimes branches at those levels, and steps should be taken to prevent the use of this personnel on any other duties which might interfere with their primary function.

"During hostilities and prior to our advance through Germany the military government authorities had a pool of officers who were available for the administration of areas not then occupied. Several good officers were obtained from them for war crimes work. At the end of hostilities a number of qualified officers and enlisted men should be easily obtainable from combat units. In the contemplation of future war crimes programs definite plans should be made in advance for the orientation and utilization of these and other sources of personnel when needed.

"The sources of information concerning war crimes are numerous. Among them are news reports, G-2 Periodic Reports, G-5 publications, prisoner of war interrogation reports, liaison groups, censorship of civilian communications, Counterintelligence Corps, and civilian informants. Every officer and man is a potential source of information, and unless all military personnel understand generally what a war crime is and where it should be reported, many good leads will never reach war crimes agencies or will be received so late that they cannot be properly followed up. For this reason attention should be given to including in the training programs of all units lectures or moving pictures on war crimes and war crimes agencies. Such instruction must be brought "down to earth" so that it will be interesting to the average soldier, whom we must remember is not an attorney.

"The need for prompt investigation, though desirable in every case, is most essential in battlefield violations of the laws of war. Unless an investigation can be conducted in a few hours after the commission of the offense, the result is the dissipation and loss of valuable sources of information. In fast moving situations the enemy unit responsible is most difficult to determine after an appreciable time has elapsed. These are the reasons for my recommending war crimes personnel at division and corps level. Commanders with whom I talked unanimously feel that the prompt investigation of battlefield violations of the laws of war would have a most favorable

influence on the morale of the comrades of the victim.

"The use of war crimes bulletins is quite effective as a means of causing the soldier to hate the enemy and is also a method of advertising to all personnel that there is an agency interested in information concerning war crimes. See copies of War Crimes Bulletin, Headquarters 12 Army Group, attached hereto.

"All persons should be informed of the value of obtaining and forwarding to War Crimes agencies photographic and documentary evidence.

"All investigative personnel should be issued pistols in lieu of rifles and carbines. The latter are cumbersome weapons to handle during interrogations, especially when agents are entering civilian homes.

"A confidential fund of money and bartering materials should be established for the purpose of compensating informants for obtaining information. Some means must be provided for the feeding and care of friendly witnesses during interrogations, attendance at trials, or where protective custody is deemed desirable."

APPENDIX 3

COMMENT BY CHIEF OF SECTION

The foregoing study of War Crimes and Punishment of War Criminals was prepared in the Judge Advocate Section, The General Board, United States Forces, European Theater. The records of 12 Army Group and Fifteenth United States Army were available at The General Board. Other records were examined and officers interviewed at the War Crimes Branch, Theater Judge Advocate Section, Wiesbaden; Headquarters Third United States Army, Munich; Headquarters Seventh United States Army, Heidelberg; Headquarters United States Group Control Council, Berlin; and at Headquarters, The Chief of United States Counsel before the International Tribunal, Nurnberg. A questionnaire was sent to all judge advocate officers serving in the European Theater during operations. Their replies were considered in the conclusions reached.

The study was directed by Captain Ernest May, AUS, of the Judge Advocate Section, The General Board. Much of the research was done by First Lieutenant Joseph Sudarsky, JAGD, of the War Crimes Branch, Theater Judge Advocate Section, United States Forces, European Theater, who also contributed to the drafting of the Report.

The experience of the Judge Advocate Section, Fifteenth United States Army (which became the Judge Advocate Section, The General Board) in the establishment of a War Crimes Branch and in prosecution of the first war crime case against German civilians tried in occupied Germany was valuable to this study. The several members of the Judge Advocate Section, all of them on duty in the European Theater during operations, contributed to this study and concurred in the conclusions and recommendations.

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