

April 19, 1946

MEMORANDUM FOR THE PRESIDENT

WAR CRIMINALS

I am giving you this memorandum of the situation as it exists today, as well as the background.

Last January, at the request of the late President I started conferences with the Department of State, the Department of Justice and the War Department to try to arrive at some consensus as to the most effective method of trying and punishing war criminals. After many conferences a memorandum was prepared, signed by Secretary of State Stettinius, Attorney General Biddle and Secretary of War Stimson and handed to the President.

The memorandum is attached and is self-explanatory.

It was prepared for the President to take to the Crimea Conference for the purpose of discussion with the Prime Minister and Marshal Stalin.

However, there was no opportunity to discuss the subject, and it was decided to leave the matter in the hands of the three foreign secretaries for disposition.

While I was abroad on my mission re civilian supplies for the liberated countries of Western Europe, I received a message from the late President asking me to take up the question of war criminals in London and try to come to some agreement on the subject.

I was assisted in these negotiations by General John Weir and Colonel Ammi Cutter -- both designated by the Army for that purpose.

We met several times with the Lord Chancellor of Great Britain, the Attorney General, the Treasury Solicitor, the Solicitor of the Foreign Office and a few others working on the subject. The Lord Chancellor had been charged with responsibility in this matter by the Prime Minister for some time, and was in charge of the discussions on behalf of the British.

After several conferences, we came to the following tentative agreement, subject of course to final approval in Washington and to approval by the War Cabinet in London:

- (1) That the Moscow Declaration of November 1, 1943 be

reaffirmed to the effect that where the identity of any war criminal can be established and where the situs of his crime can be fixed, such criminal should be sent back to the country in which his crime was committed to be tried and punished therein by the said country.

(2) That the six or more top criminals (Hitler, Mussolini, Goering, Goebbels, Himmler and von Ribbentrop) should be given a special trial before a mixed military tribunal. This tribunal should consist of four officers - one each from the United States, United Kingdom, Soviet Union and France (with perhaps an additional three representing all of the other smaller United Nations).

The trial would consist of filing against them a bill of arraignment setting out, in documentary form, the crimes against humanity which these men have committed -- such as the formal Nazi decrees issued in the occupied countries; the Nuremberg decrees against minorities; excerpts from Mein Kampf; photographs of concentration camps, torture chambers and crematories, etc. The bill of arraignment would be so fully documented that oral evidence would be practically unnecessary. The criminals would be given a copy of these charges and an opportunity to be heard in their own defense - the time of which would be fixed in advance so that the trial could not be protracted.

(3) The foregoing, however, leaves untried and unpunished a vast number of war criminals, whose identity could not be established by competent proof, or against whom evidence would not be obtainable. These would include thousands, or perhaps hundreds of thousands, of members of the Gestapo, S. S. troops and similar organizations. The United States proposal advanced in my negotiations with respect to these criminals was the one included in the attached memorandum signed by Secretaries Stimson and Stettinius, and Attorney General Biddle, which, in general terms, met with the approval of President Roosevelt.

The British conference accepted the proposal.

This plan provides that a trial be held before a military tribunal similar to the one mentioned in paragraph (2), charging these various organizations with entering into a common enterprise or conspiracy to persecute and rob minorities (before 1939 and after 1939), to occupy neutral countries by force and in violation of treaties, to commit war crimes and atrocities of all kinds, etc. If the organizations were convicted of this conspiracy charge, each member of the organizations would be guilty of the conspiracy, and would be punished. The punishment would not necessarily be death, but, depending upon the circumstances, might be hard labor in reconstructing war devastation in Russia, France, etc.

(4) That the plan for a so-called treaty court recommended

some time ago by the United Nations War Crimes Commission be disapproved as cumbersome, dilatory and ineffective. This plan would have called for the setting up by treaty of a United Nations War Crimes Court to try all originals.

(5) That the United Nations War Crimes Commission be permitted to continue with their function of collecting the names and addresses of war criminals, and such evidence as might be obtainable against them. I believe that they now have about 1800 of such names, etc., most of these, of course, being originals who would be returned to the scene of their crimes for trial and punishment.

(6) That there be set up at once an executive committee consisting of a representative of the United States, United Kingdom, Soviet Union and France to begin immediately to prepare for the presentation and prosecution of (a) the trial against the major originals and (b) the conspiracy trial heretofore set forth in paragraph (3).

The Lord Chancellor agreed to submit the above tentative agreement to the British War Cabinet for approval. I had an opportunity of talking with the Prime Minister about it in advance, as well as the Foreign Secretary, and I asked them please to expedite the matter on the agenda of the War Cabinet so that some decision could be reached before I submitted the tentative agreement to my own government.

The British War Cabinet had a special meeting on the subject the same day that the late President died, but before the news of his death had been received. I left London immediately upon learning the news. However, I had a chance to speak with the Lord Chancellor on the phone before my departure and he informed me that the British War Cabinet was generally in approval with the tentative agreement, but that it had unanimously disapproved the trial of the six top originals. Their unanimous view was that these originals be not given a trial, but that they should be dealt with politically by agreement of the four major powers and that they be shot forthwith.

In my prior conversation with the Prime Minister he had told me that he was personally of the same opinion and that he had so stated to Marshal Stalin at the time of the Moscow Declaration, but that the Marshal had insisted upon a trial.

Upon learning the decision of the War Cabinet, I told the Lord Chancellor that I was sure that President Roosevelt would be opposed to that policy and that Secretary Stimson would also be violently opposed, but that I did not know the views of President Truman.

At the very beginning of my conferences with the Lord

Chancellor, I stated that in my opinion it was essential that the Russians be brought into these negotiations at once. I did not think that there should be an Anglo-American agreement presented as a fait accompli to the Russians. Apparently there was reluctance about this in some quarters. Finally, in company with Ambassador Winant, I called on Foreign Secretary Eden and stated my views. Mr. Eden suggested that the Russians be not consulted until the British and Americans had reached some agreement between themselves. As a result, the Russians have not yet been informed of the discussions or brought into them in any way.

Now that I have had a statement of your own view that you do not believe in a political disposition of these top criminals but believe that some kind of trial should be afforded, I recommend:

(1) That the British be informed through our State Department that the United States insists on that position; and

(2) that we open negotiations through our State Department with the Russians as soon as Mr. Molotov comes to Washington.

My understanding is that you wish me to continue these negotiations, and if you approve, I shall proceed along the line of the above two recommendations. I am calling a meeting of the representatives of State, War and Justice who participated in preparing the attached memorandum for President Roosevelt, to inform them, in top secrecy of course, of the present state of the negotiations.

SAMUEL I. ROSENMAN