

May 24, 1945

MEMORANDUM FOR HONORABLE SCOTT W. LUCAS

Re: Punishment of War Crimes

1. The Moscow Declaration of November 1, 1943 provided that all war criminals whose crimes had a particular localization in any of the overrun countries should be returned to those countries to be tried therein according to the local law.

Under this Declaration Belgium, Holland, France, etc., will try and are trying a great many war criminals whose crimes were committed in those countries.

2. The Moscow Declaration specifically provided that other war criminals whose crimes had no geographical localization would be handled differently.
3. The United Nations War Crimes Commission was set up in London on October 20, 1943. It constitutes representatives of sixteen nations. Our representative was originally Herbert G. Pell, but it is now Colonel Joseph V. Hodgson. The difficulty with the United Nations War Crimes Commission is that Russia is not a member.

The function of this commission has been chiefly to act as a central filing place for evidence submitted to it by its member nations with respect to specific crimes and criminals. It examines the evidence on file, and when it is convinced that there is enough to convict a person, they file what they apparently call an "indictment". Of course this is a misnomer because there is no court with whom the indictment can be filed nor has the commission any authority to file any indictment or try any case. However, its actions are causing considerable confusion, and it is hoped that Justice Jackson, who is now in London, may be helpful in stopping this confusion.

4. The United States has taken the lead in the matter of disposing of those criminals not included in the Moscow Declaration;

(a) When I was in London in April of this year, I took up with the British, at the suggestion of President Roosevelt, our plan for trying these criminals;

(b) When I was recalled by the President's death on April 12, 1945 these talks were interrupted;

(c) On May 3, 1945 I submitted the same proposals, ^{in San Francisco} to Commissar Molotov, representing the Soviet Union, Mr. Eden, representing the United Kingdom, and Mr. Bidault, representing France. Of course Mr. Stettinius had been kept informed of our proposals and was well aware of them. Each of these Foreign Ministers appointed a representative to carry on negotiations with me, and these representatives informed me that each of them had transmitted back to their governments a memorandum and proposed protocol agreement which I had submitted for signature of the four governments.

To date we have received no reply. On Monday, May 21, 1945, our Department of State sent a cable urging speed, and urging these three foreign governments to send representatives to Washington, or designate some one now in Washington, to carry on these negotiations. This request to carry on the negotiations in Washington rather than in San Francisco was made by the three representatives in San Francisco because they were so busy with other matters at the Conference that they could not put in the necessary time for this purpose.

If we do not hear from the Soviet Union, the United Kingdom and France within a few days, I shall ask the State Department to send another cable.

5. I do not think that our American proposals should be released or publicly discussed at this time while the other governments have them under consideration. I am sending you a copy of the press release issued in San Francisco. For your information, and for the information of the members of the Foreign Relations Committee however, the following items in the proposed plan may be useful as background:



(a) Each of the four governments constituting the Control Council for Germany -- the United Kingdom, France, Russia and the United States -- shall appoint one member of an International Military Tribunal:

(b) Each of these nations should appoint one prosecuting officer similar to Justice Robert Jackson, who has been appointed by President Truman, for that purpose:

(c) These four prosecutors should name the top leading Nazi-fascist criminals to be tried by this international tribunal;

(d) Such top criminals should be tried before the tribunal either separately or otherwise, in the discretion of the four prosecutors. The protocol agreement provides for a short trial without delay or evasion, but one which provides for notice of charges, right to counsel, and opportunity to be heard. The details of the procedure to make sure of an expeditious trial are to be worked out by the prosecutors and the court;

(e) The same court or a similarly constituted international military tribunal shall try the leading criminal organizations such as the Gestapo, the SS and the SA for criminal conspiracy or common enterprise to do the things they have done - such as violation of treaties, prosecution of minorities, shooting of civilians, shooting of prisoners of war, running concentration camps and crematories, etc., etc.;

(f) Once the societies and organizations are convicted of criminal conspiracy, then each voluntary member of these organizations becomes ipso facto a war criminal. Then by proof or admission of membership they can be sentenced as war criminals - to death if their complicity in atrocities was great or to hard labor in France or Belgium or Russia if their complicity was not so great. These members of organizations could be tried en masse since the only question is one of membership; and, undoubtedly, most of the members would be willing to concede membership in order to avoid an extra penalty if they compel us to prove membership.

6. In addition to all of the foregoing classes of criminals there will be cases of war crimes committed in Germany by non-leading Nazis such as directors of concentration camps, etc. All of these probably would be caught and convicted in the class of members of the SS or Gestapo, but if not, they could be tried either by the Army having possession of them as prisoners, or by the Army having control of the zone where the concentration camp was located or the crime was committed. The protocol agreement provides that additional military courts can be set up in any of the zones for the trial of such criminals.
7. The United States, in addition to taking the lead in making these proposals, has taken the lead in appointing Justice Jackson. He is now in London, and will probably go to Germany to see that the proper kind of evidence is being collected. He will also talk with the United Nations War Crimes Commission and explain what we are doing and proposing. He will also endeavor to get the other three

governments to appoint prosecutors with powers similar to his own. In this connection, the State Department several days ago sent a cable to the other three governments asking them each please to appoint a prosecutor similar to Justice Jackson.

I think that without revealing any of the details of our plan, you can very well call to the attention of the Senate and of the nation that the United States has definite plans about trying and punishing the top criminals, and has taken the lead in submitting those plans to the other governments which will control Germany; that it is waiting to receive approval of these plans or some counter-suggestions; that the plans call for speedy, expeditious trials by a military court; that the United States has taken the lead in appointing a prosecutor of great eminence; that the prosecutor has assembled a staff, and is assembling his evidence; that if the other governments do not soon come to agreement with us on a speedy procedure, we expect to proceed ourselves and try the top criminals now in our possession ourselves. I am sure that you can say all this in polite international and senatorial language.

If there is any further information that I can give you, please call on me.



SAMUEL I. ROSENMAN

Samuel I. Rosenman has been in San Francisco for the last several days as the personal representative of President Truman to present the proposals of the United States with respect to the prosecution and trial of European Axis war criminals. He is acting in the matter in conjunction with Secretary of State Stettinius. He has been in consultation with Mr. Justice Robert Jackson, who will be United States chief of counsel in prosecuting the major war criminals, and with other interested government departments.

His mission is not connected with the agenda of the Conference as such but is being carried on in San Francisco as a convenient meeting place of the nations concerned.

The objective of his visit is to arrange for the organization of an international military tribunal to try the major European war criminals, and also for the adoption of a procedure for trial.

The purpose is to organize a machinery and set up a procedure which will assure a fair and expeditious hearing to the major individuals and organizations accused of atrocities and war crimes in Europe - but one which will permit no evasion, undue delay or dilatory tactics.

This tribunal would not affect the principle stated in the Moscow Declaration of November 1, 1943 that those criminals guilty of specific atrocities in any of the occupied countries would be returned to those countries for trial according to their own laws.

The proposals of the United States are now being considered by the other governments concerned.


