



1. H.M.G. assume that it is beyond question that Hitler and a number of arch-criminals associated with him (including Mussolini) must, so far as they fall into Allied hands, suffer the penalty of death for their conduct leading up to the war and for the wickedness which they have either themselves perpetrated or have authorised in the conduct of the war. It would be manifestly impossible to punish war criminals of a lower grade by a capital sentence pronounced by a Military Court unless the ringleaders are dealt with with equal severity. This is really involved in the concluding sentence of the Moscow Declaration on this subject, which reserves for the arch-criminals whose offences have no special localisation treatment to be determined in due course by the Allies.

2. It being conceded that these leaders must suffer death, the question arises whether they should be tried by some form of tribunal claiming to exercise judicial functions, or whether the decision taken by the Allies should be reached and enforced without the machinery of a trial. H.M.G. thoroughly appreciate the arguments which have been advanced in favour of some form of preliminary trial. But H.M.G. are also deeply impressed with the dangers and difficulties of this course, and they wish to put before their principal Allies, in a connected form, the arguments which have led them to think that execution without trial is the preferable course.

3. The central consideration for deciding this difficult choice must, in H.M.G.'s view, be reached by asking - what is the real charge which Allied people and the world as a whole makes against Hitler? It is the totality of his offences against the international standard which civilised countries try to observe which makes him the scoundrel that he is. If he were to be indicted for these offences in the manner that is necessary for reasons of justice in a criminal court, and if his fate is to be determined on the conclusion reached by the tribunal as to the truth of this bundle of charges and the adequacy of the proof, it seems impossible to conceive that the trial would not be exceedingly long and elaborate. He, of course, must have in such a trial all the rights properly conceded to an accused person. He must be defended, if

he wishes; by counsel, and he must call any relevant evidence. According to British ideas, at any rate, his defence could not be forcibly shut down or limited because it involves a great expenditure of time. There is nothing upon which British opinion is more sensitive in the realm of criminal procedure than the suspicion that an accused person - whatever the depths of his crime - has been denied his full defence.

4. There is a further consideration which, in the view of H.M.C. needs to be very carefully weighed. If the method of public trial were adopted, the comment must be expected from the very start to be that the whole thing is a "put-up job" designed by the Allies to justify a punishment they have already resolved on. Hitler and his advisers - if they decide to take part and to challenge what is alleged - may be expected to be very much alive to any opportunity of turning the tables. Public opinion as the trial goes on is likely to weary at the length of the process. It is difficult to think that anybody would in the course of time look on Hitler as an injured man, but it is by no means unlikely that a long trial will result in a change of public feeling as to the justification of trying Hitler at all. Will not some people begin to say "The man should be shot out of hand"? And if in the complicated and novel procedure which such a trial is bound to adopt - for Russian, American and British ideas must in some way be amalgamated - the defence secured some unexpected point, is there not a danger of the trial being denounced as a farce?

5. There is a further point. Reference has been made above to Hitler's conduct leading up to the war as one of the crimes on which the Allies would rely. There should be included in this the unprovoked attacks which, since the original declaration of war, he has made on various countries. These are not war crimes in the ordinary sense, nor is it at all clear that they can properly be

described as crimes under international law. These would, however, necessarily have to be part of the charge and if the tribunal had - as presumably they would have - to proceed according to international law, an argument, which might be a formidable argument, would ~~not~~ be open to the accused that this part of the indictment should be struck out. It may well be thought by some that these acts ought to be regarded as crimes under international law. Under the procedure suggested this would be a matter for the tribunal, and would at any rate give the accused the opportunity of basing arguments on what has happened in the past and what has been done by various countries in declaring war which resulted in acquiring new territory, which certainly were not regarded at the time as crimes against international law.

7. H.M.G. earnestly hope: that their Allies will consider the arguments set out above for they are most anxious that a very early agreement should be reached as to the method of dealing with Hitler and his chief associates, and that the method should be one in which the principal Allies concur. It would in any case be valuable if a document could now be drawn up giving the reasoned basis for the punishment of the men concerned.