MEMORANDUM FOR THE PRESIDENT, THE SECRETARY OF STATE, AND JUSTICE JACKSON, SETTING FORTH SOME OBSERVATIONS WHICH MAY BE PERTINENT WITH RESPECT TO THE TRIAL OF GERMAN WAR CRIMINALS.

It is my considered opinion that for political, economic, and social reasons of the most primary importance, it is essential that prompt, and as adequate punishment as the civilized procedure to which we are attached will permit, should be meted out to those responsible for the war and for the carrying through of the objectives of the Nazi Party and the Nazi German Government. I permit myself to say that I believe that those who are responsible in our Government today for the decisions to be taken in this respect have a responsibility not only to our own people but to Germany itself and to the rest of the world which must be carried through, not only because of the immediate situations with which we have to deal, but because on our action now will depend so largely the character of the future problems with which we will be confronted. The adequate punishment of these war criminals is, I believe, an essential feature of and a factor in the maintenance of security and peace.
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I do not know the facts with regard to the manner in which the Soviet Government is alleged to have taken summary action in the execution of military and civilian officials whom they hold responsible for the attack on Russia and the crimes committed on her soil and against her people. It is probable, however, that in a considerable measure Soviet Russia has taken a purely realistic attitude, such as that which has consistently characterized her procedure, and has carried through many summary executions of war criminals in her power. I must say frankly that I do not believe that we are in a position to criticize Russia for any such action she may have taken because it is not likely that anyone not a war criminal was summarily executed, and because if, in addition to all else that we have suffered and borne, our territory had been violated and our civilian personnel and property destroyed as the Nazis did Russian persons and property, it is a question whether we would not have reacted in the same manner. If our people at home, in view of our traditions, may not agree with such summary executions, they are, I believe, nevertheless insistent upon punishment of an adequate character of war criminals, and any other action
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action by our Government would leave wide deception among our people, the significance and full extent of which we cannot now foresee.

So far as Germany is concerned, the bringing to justice and execution of some, and the permanent imprisonment and seclusion of other war criminals is essential as a part of the program of making possible a Germany which can eventually live in peace with the rest of the world. The German people today are aware of the guilt of those principally responsible for the war and they are aware of their individual guilt. We cannot bring to justice all of the Germans who have direct or indirect responsibility for the war and for the crimes, military and other, committed in connection therewith, but we must bring a very considerable number of those to justice and mete out punishment in various scales or we will create a situation in Germany and among the German people which will bear very bad fruit in the future and which will make more difficult any rehabilitation programs which we must carry through, and may even defeat such programs. Military disarmament, economic disarmament, controls military and civil, and re-education during a period of two generations are all necessary and, in many ways, inseparable factors in the problem before us now and in the years to come, but I am convinced that prompt and adequate punishment of war criminals is an

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essential part of this program, and any weakness in connection therewith on our part will bear bad fruit in Germany itself.

In this connection one must have an understanding of the German psychology. For generations the Germans have been taught that might is right and that force must control, and have been taught that ruthlessness is an essential element, and they will be the first to recognize not only the justice but the necessity of broad and prompt and adequate action with respect to the principal war criminals.

Parenthetically, in this connection I would like to make the following observations which I believe are pertinent in this matter. The United States and Russia today are the two principal world powers. While England remains a great power, her military, economic, and general strength are less than those of the United States and Russia. We are the principal world power today. We are stronger politically, economically, and in a military sense than any other country, and stronger in all these fields than Russia. In the political field we are still stronger than Russia, but in this field she is making great headway because of the ruthlessness and definiteness of her policy, and she is determined to make further headway. We may find ourselves in a relatively short time confronted by a Russia with political influence which may be as great as ours.
In the economic field we are stronger today than Russia
and immeasurably so, and stronger than any other country. No
other country than Russia has any chance to catch up with
us in the economic field. It will take Russia relatively
longer to gain strength in the economic field than in the
political field. Russia is determined to increase her
economic power. She is going to do so. Only the years can
determine whether it is only a question of years before
she may catch up with us in the economic field. The rate
of progress in this respect will depend somewhat on the rate
of development in her political power as compared with ours.
Even if Russia had no carefully defined program of economic
development, her economic power would grow rapidly without
such a program. To scoffers it is only necessary to point
out what conceptions existed among persons who thought
themselves well informed with regard to the development
of industrial power in Russia in the years immediately before
the war. What did happen should give us an indication of
what can probably and will probably happen. With a real
program the economic power of Russia will develop more
rapidly. The resources of her great territory, and the
satellite States which she is inevitably bringing within
her orbit, should and will be a great economic factor.

It
It will depend upon developments in many phases of activity when the time will come that the political and economic power of Russia will be equal to or greater than ours. They may never be equal to or greater than ours, but it is a situation that this is a possibility which we have to face.

In the military field we are stronger and much stronger than Russia today. So far as land armies are concerned, Russia can muster greater numbers in a military struggle in the near future than we can. So far as equipment, technical development, and quality of individual man power are concerned, we will, I believe, remain ahead of Russia indefinitely and for many years. In the naval field we are tremendously superior, but in my opinion, there is no doubt that Russia is going to begin very rapidly to expand her naval power as soon as she has met some of her more immediate problems of readjustment and rehabilitation. In this phase of power we can be ahead of her for a very considerable period, in spite of whatever efforts Russia may put forth. In the field of air power we are tremendously ahead and will remain ahead, but I believe that those competent in this phase of military activity would agree that there are unlimited capacities within Russia for the development of air power.

Looking at it from any aspect that we may, one thing seems to be certain, and that is that our position of dominance today,
today, which we did not seek, which we may not like, and
which circumstances have thrust upon us in the political,
economic, and military fields, is not likely to last as
long as that of England. Instead of lasting for centuries,
as in the case of England, in our case we may, within a
few generations, be facing a Russia almost as strong, or
as strong, or even eventually stronger than we.

The foregoing thesis is very inadequately developed
and is intended to be more thought-provoking than specific.
I have not attempted to elaborate any phases of these ideas.
I believe, however, that the basic ideas advanced are sound
and that out of them we must draw the conclusion which I
think we have already drawn, that it is essential for us
to maintain the closest contact with Russia and to endeavor
to maintain the friendliest relations, to try to avoid
frictions, and to continue the processes in which we are
now engaged of bringing about greater understanding on the
part of responsible Russians of problems of which we, too,
have only learned some of the elements in the last fifty
years. If we exercise patience and understanding as we are
doing now, and at the same time use the strength which we
have wisely, there is much reason to believe that in the
next years there will develop in Russia a new group of men
who will be more understanding and more cooperative, and who
will be less likely to be aggressive. It is also probable
that
that in such a period industrial and social factors in Russia will change in such a manner as to bring about a higher standard of living, which will make the economic differences and price levels now existing less obvious, and which will make the political and economic readjustments of power between her and us and the rest of the world less explosive and dangerous for peace. This means, too, that while Russia will increase in power politically and economically and militarily, in the next years, it is altogether possible that we will not be drawn into an arms race between the two countries.

This involves, however, that we have to get away from the idea that we must always work first and only with Britain, and then with others. In our political thought we shall have to be as realistic as the Russians are. I am one of those who have been perhaps most consistent believers in the necessity for the most close Anglo-American collaboration, and I still believe that it is essential to world peace and security. I think, however, we have to recognize that there is a third factor in the problem, and when I say "we", I mean England as well as ourselves. We have got to recognize that the political, military, and economic power of Britain will decline rather than increase. We have got to recognize that the political and economic power of the United States and
and Russia will increase. It is absolutely essential for the maintenance of world peace that Britain, Russia, and ourselves work together, but this involves that we must not leave any foundation for the Russian suspicion which so strongly exists now and which is one of the principal problems with which we have to deal realistically today, that irrespective of the facts or circumstances, in the case of conflict we will always be first on the side of Britain. In making this statement I do not wish in the slightest to underestimate the importance of Anglo-American collaboration, which I consider just as important as ever, but it is just as important for Russia as it is for us, and this involves that some of our thinking has to change in the sense that in considering bilateral arrangements we will be thinking in terms consistently and constructively of three-power arrangements.

I have made mention of these foregoing considerations, which may seem irrelevant in the matter of war criminals, because so much depends upon what we and England do today as to what course of developments in Russia and what her attitudes will be. I am one of those who believe that if we permit ourselves to be weak or inadequate in this matter of war criminals and German war guilt, we shall presently lose the respect and confidence of those who are governing Russia today and responsible for her policy and who will be shaping it for the years in the immediate future which will be
be so crucial.

I do not advocate that we follow the method of summary execution which the Russians have allegedly followed, but I do believe that we must proceed with prompt and sufficiently adequate punishment of the war criminals or we will create a situation in our relationships with Russia for the immediate and immediately foreseeable future which will be a very unhappy factor.

There will no doubt be constitutional lawyers and many of our good people in the United States and in England who will shrink from the idea of anything other than the usual criminal trial, and who will advocate that this is the kind of trial we should have for the German war criminals. Any other procedure will, in fact, be repugnant to them. For this reason I believe it is necessary further to inform our own public opinion so that it will have in mind more definitely that in the first place this war was not a war such as we have known in the past. Some little excuse could be found in the past for most wars, or some justification could be built up for them. For this war there can be no such justification or such excuse. It is a war criminally undertaken by a Government and a people for the purpose of securing world domination, and it involved the enslavement of all other peoples as a definite objective. In bringing about this war, every known rule of international law and justice
justice was deliberately broken by the German Government and its responsible leaders. Further, this war was not fought in accord with any of the rules of war by Germany. Certain of her Generals may have endeavored to maintain the rules of war, and in some cases succeeded. Those who are responsible for this war and for its conduct, and for the military crimes that were committed, and for the crimes against civilians and against property, placed themselves beyond the pale of juridical procedure as we know it, and they knew they were doing so when they did it, but they were prepared to take all risks because by their very ruthlessness they were going to dominate. They openly and deliberately declared their intention to dominate the world and to enslave other peoples. They deliberately and openly declared their intention to destroy the sovereignty of other States and peoples. They deliberately and openly declared that any methods which were necessary to achieve that end were justified. In provoking the war and in carrying it through, they were guilty of acts which placed them beyond the jurisdiction of any court of justice as we know such courts and which would be governed by its rules. They themselves placed themselves without the law by their own aims and acts and crimes. They deliberately declared that they had no use for treaties or for the rights of others or for the law. They made for themselves
themselves in Germany a code of laws which recognized in
the political, economic, and individual field no principle
except that of force, and which denied all real right to
the individual. For us, therefore, to endeavor to apply
the usual rules of justice and trial for those responsible
for the war and its conduct would place us before the world
in ridicule, for we would be applying to them principles
which they denied to others and the very existence of which
they ignored and denied.

The guilt of those who were in the German Government,
and many military and civilians responsible for these crimes
is an historical record which has been written in the declared
aims of the Nazi German Government and in its destruction of
the sovereignty of other countries, and in the enslavement
and murder and persecution of their peoples. They themselves
wrote the record. They themselves have written the indictment
against them. There is no necessity for proof, for the proof
is in the war which they provoked, in the property which they
destroyed, in the cruelties which they inflicted, and in the
enslaved labor which they enforced. Of these things there
is no further need of proof. They are historical record.

It is therefore my conviction, which I respectfully
advocate for consideration, that when these war criminals are
brought to the bar of justice it must be a summary court not
governed
governed by the usual laws of criminal procedure. In my opinion all that is necessary to do when any of these persons are brought before the courts is for the criminal responsibility of Germany to be established in a brief statement, the individual rank and post of the person before the court in the Nazi Government or administrative hierarchy be established. Proof of such position is sufficient for responsibility and judgment. Proof of specific acts is not necessary and would make the trial a farce before the world. After such a statement by the court officer, it may be considered an advisable procedure that counsel assigned to the defense be permitted to make a brief statement and, in the discretion of the court, the individual criminal before it may be permitted to make a brief statement. The court, in my opinion, should then pass summary judgment without discussion, without the hearing of witnesses, and without interrogation. I respectfully submit that this is the only procedure which with dignity and honor, and justice and effectiveness, is possible.

We need only recall what happened when certain persons were brought before a civil tribunal in the United States within the last few years and during the war itself, when in spite of the fact that they themselves had written the proof of their guilt in their acts and words, the trials degenerated
degenerated into a mere struggle between lawyers for the prosecution and the defense. The net result was that even though in the midst of war, the drastic and adequate action which should have been taken and which the public expected to be taken was not taken. The present trial of Pétain in Paris is similarly significant. The guilt of Pétain is written in the secret history of Europe in the period before and between the first world war and the second. The guilt of Pétain is written in his own acts during the Vichy Government. Whatever may be said or adduced as having been Pétain's inner reactions can have no effect because it is his official acts and the historical record which establish his guilt and his treason to France. The only question which was really before the court, or which should have been before the court, was whether sentence of death or imprisonment for the rest of his life should be passed on Pétain. Of the crime of treason to the French Government I believe there is no doubt. The question before the court was not that of guilt or of the crime, but of the nature of the punishment, and now we read daily in the press, to the horror of all the world, that the court has degenerated into a stage set in which the principal character, Pétain, keeps at least an honest and discreet silence, and
one of the principal actors is Laval, whose criminal responsibility is as great as that of any of the Nazis and who, in some ways, is more despicable because instead of fighting for his country, he sold it out.

I believe that one of the criteria which we have to bear in mind is that every member of the Nazi Government in any high position is responsible for the acts of the German Government as a whole, even though he may not have been directly associated with the execution of the acts. The members of the German Government were collectively responsible and individually so for the acts of the Nazi Government. There is no division or separation of responsibility. Every single member of the German hierarchy down to the heads of the State Governments, and even a bit further down, is as responsible as Hitler. How far down we shall go in the Nazi hierarchy so far as punishment by death or confinement is concerned is more difficult to determine, but one thing is, in my opinion, clear and that is that the death sentence alone cannot be passed and carried through solely on members of the Cabinet. It must extend to the so-called Under Secretaries and, in some cases, to secondary officials in these Ministries. Others, such as important leaders of the S.S. and S.A. and Gestapo, and the heads of the administrative machinery in the German States must, in my opinion, have the
the sentence of death passed upon them and carried through. I know that this sounds drastic, but it will not seem drastic to the millions of those who mourn as a result of the Nazi criminality and terror. Those who will be executed, or even the total of those who will be executed and imprisoned, will be infinitesimal as compared with those the death of whom they bear the responsibility.

When it comes to certain lesser officials, the punishment of life imprisonment will be sufficient, except for those whose direct responsibility for atrocities must be brought against them as clearly established by the record, and where the death sentence is therefore the only possible one.

When it comes to the German Generals and military, the situation is even more difficult, but it must be borne in mind that while the highest Generals of the German Army at the beginning of the Nazi régime were not in favor of the régime, not even of its objectives for domination even on the more limited scale that the Nazis conceived it in the earliest years of the régime, they were interested in re-establishing the power of the German Army in order, as they thought, to re-establish German prestige in Europe and in the world. It must be recognized that in carrying through the rearmament programs effectively, for the Nazis could not have done it without these Generals, they made it possible for the Nazis to carry
carry through their whole program. It must be recognized that while this was the position in the very beginning, a number of Nazi Generals quickly succumbed to the lure of power and the dreams of world domination which so rapidly developed among the Nazis. It cannot be ignored that as the German Generals saw the lack of action and the lack of consciousness of what was going on in other States, and as they saw the continued success of the Nazi officials whom they considered as dreamers, fanatics and, in many cases, madmen, they succumbed to the spell and became as Nazi as the Nazis themselves. While some of the Nazi Generals to the end may not have been in accord with the aims of the Nazi German Government, all of them in the end were instruments of that régime. It is my opinion that those Generals who are still alive and who early associated themselves so fully with the Nazi ambitions are just as guilty as Hitler, Goebbels, Goering and others in the high civilian Nazi hierarchy. Others of the German Generals endeavored to maintain the rules of war and, while they became imbued with the Nazi ideology and aims, they remained to a certain extent military men who wished to follow the rules of war. These, it is ventured, may be treated in a different category, and seclusion, that is, imprisonment, may be sufficient, but the stamp of guilt must be officially passed on them or
or they will go down in history, even among a reconstructed
German generation, as heroes, which they were not.

So far as those Generals are concerned, who permitted
officials of the German Government to treat persons, military
or civilian, in an inhuman way, or who deliberately permitted
the mass executions of persons military or civilian, as was
the case in Poland and Russia and perhaps elsewhere, or who
permitted in civilian camps in sections under their military
jurisdiction atrocities and murders, these men are responsible
no matter how high their military grade and should not only
have the sentence of death passed on them, but it should be
carried through for they failed not only their country but
their military duty. I venture that as military officers
having the means at their disposal to prevent such crimes,
they nevertheless permitted them to be carried through under
their eyes and jurisdiction and they are therefore just as
responsible as though they had been carried through by their
orders.

The foregoing memorandum is very inadequate and incomplete.
I present it in all humility as the views of one who had,
in his line of duty, such intimate contact with so many of
these men responsible for these war crimes and many of whom
were committing crimes when I was under the necessity of
having such official contact with them. Out of the experience
which I have had in the service of my Government, and out of
such
such little wisdom which I may have acquired from that experience and observation, I consider it my duty to express these views, even in this inadequate form, for the consideration of our highest authorities.

México, D.F., August 5, 1945.