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MEMORANDUM FOR THE PRESIDENT FROM THE SECRETARIES OF STATE, WAR AND NAVY:

Subject: Trial and Punishment of European War Criminals.

We have been giving consideration to ways and means for carrying out the United States policy regarding the trial and punishment of war criminals, as established in your statement on the subject dated October 7, 1942, the United Nations Declaration on Persecution of Jews of December 17, 1942, and the Moscow Statement on Atrocities of November 1943.

DIFFICULTIES INHERENT IN SEPARATE TRIALS FOR INDIVIDUAL OFFENSES

The attempt to try these crimes on the basis of the separate prosecutions of large numbers of individuals will only make good the Nazi assumption that their crimes would go unpunished if they committed them on a sufficiently grandiose scale. The practical difficulties of proceeding on this basis are almost prohibitive. The crimes to be punished have been committed the world over, and have been participated in by many hundreds of thousands of offenders. Millions of victims and witnesses to these offenses have perished.

Moreover, the United States policy as established in the pronouncements mentioned above contemplates trying and punishing not only technical violations of the laws and customs of war, but also (1) atrocities committed by the Nazis before there was a state of war, and (2) atrocities committed by them against their own nationals on racial, religious, and political grounds. These are not cognizable as war crimes in the technical sense. Also the prosecution of Axis leaders for offenses against their own nationals might be opposed as setting the unacceptable precedent of outside interference in the domestic relationships between a sovereignty and its nationals.



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NAZI ATROCITIES, BOTH PRE-WAR AND SINCE, COMMITTED PURSUANT TO
CRIMINAL CONSPIRACY AND PUNISHABLE AS SUCH

The criminality with which the Nazi leaders and groups are charged does not consist of scattered individual outrages such as may occur in any war, but represents the results of a purposeful and systematic pattern created by them to the end of achieving world domination. The objective in the prosecution of Nazi war crimes should be not only to punish the individual criminals, but also to expose and condemn the criminal purpose behind each individual outrage.

The writings and statements of the Nazi leaders themselves indicate that beginning even prior to the assumption of power by the Nazis in Germany, there has been a continuing conspiracy necessarily involving the commission of the atrocities which the United Nations have pledged themselves to punish. We believe that further research will develop the full scope of this conspiracy and enable its demonstration according to accepted judicial standards before a fair tribunal.

To such a state of facts the well recognized principles of the law of criminal conspiracy are plainly applicable, and may be employed. An indictment upon a charge of conspiracy will properly include the leaders of State, the governmental and party agencies such as the SS and Gestapo, and other individuals and groups who during the time in question have been in control of formulating and executing Nazi policy. Under such a charge, there would be properly admissible in evidence the acts of any of the conspirators done in preparation for, in furtherance of, and in consummation of the conspiracy, regardless of the fact that, separately considered, certain of these acts could not be prosecuted as war crimes in the accepted and most limited



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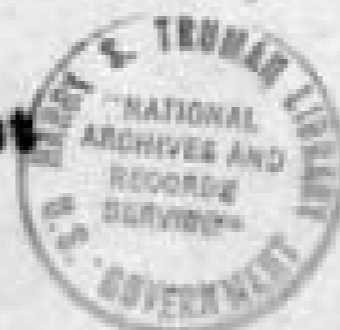
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definition of that term. The pertinent proof would include, among other things, the atrocities committed before there was a state of war, and those committed by the Nazis against their own nationals on racial, religious, and political grounds.

CONSPIRACY CHARGE COULD BE DISPOSED OF IN SINGLE TRIAL

The conspiracy charge could be disposed of in a single trial. The United Nations would physically bring to the bar in this trial only those individual defendants, considered to be fairly representative of the defendant groups and organizations, as they deem necessary. A judgment would be sought which adjudicates the existence, nature, and purposes of the conspiracy, its results, and the identity of the participants in it. The judgment would be binding upon all the individuals, groups and organizations against whom it is directed, and there would remain only the further requirements of identifying individual members of the groups and organizations whose criminality had been thus adjudicated, determining their respective degrees of guilt, and awarding appropriate punishments accordingly. This procedure could be remitted to the civil or military courts of the several United Nations, and could be carried out by them expeditiously, without prohibitive efforts or expense.

The proceeding will be judicial rather than political. It will rest securely upon traditionally established legal concepts. Not only will the guilty of this generation be brought to justice according to due process of law, but in addition, the conduct of the Axis will have been solemnly condemned by an international adjudication of guilt that cannot fail to impress the generations to come. The Germans will not again be able to claim, as they have been claiming with regard to the Versailles Treaty, that an admission of war guilt was exacted from them under duress. It may be noted, in addition, that



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those of the criminals who have been or may hereafter be taken prisoners of war will lose their protected status under the Geneva Prisoners of War Convention, and can be dealt with freed from the restrictions of that Convention.

RECOMMENDATION

We recommend that you approve this method of dealing with the basic war crimes problem.

CREATION OF TREATY COURT FOR TRIAL OF CONSPIRACY CHARGE

We favor a court constituted by international treaty for the trial of this charge. In such a treaty the crime will be defined, the jurisdiction of the court established, and provision made to insure that all dilatory and irrelevant technicalities are eliminated, without, however, impairing the essentials of due process. The treaty should be a simple document, and, by limiting the jurisdiction of the court to the trial of the charge described above, will avoid long-term and unforeseeable commitments. The court itself may consist of military or civilian personnel, or both, and should be representative of the interested United Nations.

In making this recommendation, we have given due consideration to the possible difficulties which might arise in the consummation of the necessary treaty. The process of ratification might be time-consuming. When the proposed treaty comes before some of the ratifying bodies, such as the United States Senate, there might be suggestions of undesirable reservations. The publicity might lead to anticipatory retaliations by the Axis on United Nations personnel in their custody. We believe, however, that these objections can be obviated in part by restricting the treaty to the simple and limited scope which has been described, and, for the rest, by deferring its public announcement and



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presentation to the necessary ratifying bodies until so doing would no longer hazard the safety of United Nations personnel in German custody. In the meantime, the terms of the treaty could well be negotiated and agreed upon by the interested United Nations.

RECOMMENDATION

We recommend that you approve the preparation and negotiation of a treaty as described above.

OTHER ESTABLISHED PROCEDURES NOT FORECLOSED

The program which we have described does not foreclose other available procedures for dealing with particular offenses. Thus, for example, atrocities against our nationals by identifiable Axis individuals will remain subject to trial by United States military and naval commissions. The military and civilian tribunals of the other United Nations will probably be employed to try other individual crimes, under either international or local law. These procedures present no new problems of law or policy, and are mentioned only for the sake of completeness. They do not require further action on your part at this time.

Secretary of State

Secretary of War

Secretary of the Navy.



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