

~~TOP SECRET~~

WDGAP 000.5  
(15 Dec 44)

23 January 1945

MEMORANDUM FOR RECORD:

Subject: Trial of European War Criminals.

1. The Legal Advisor of the Department of State has informed us that the Memorandum for the President on the above subject, which was signed by the Secretary of War and the Attorney General 21 January, was signed by the Secretary of State 22 January and dated that date.

2. Attached is a copy of a proposed implementing instrument, for signature if the Chiefs of State agree upon the plan proposed in the Memorandum referred to, together with an unsigned transmittal memorandum addressed by the Legal Advisor of the Department of State to Honorable Samuel I. Rosenman. The attached were delivered 20 January 1945.

3. There remains nothing more for the Personnel Division to do on this project at the present time.

H. C. B.

Distribution:  
AS/7 (2 copies)  
JAG (Attention: General Weir)

Copy for JAG (Attention:  
General Weir).

DECLASSIFIED  
E.O. 11652, Sec. 203 and 204 or (2)  
OSD letter, May 1 1971  
By *W.E.* NARS Date *12-19-72*

~~TOP SECRET~~

~~TOP SECRET~~

January 20, 1945

MEMORANDUM FOR JUDGE ROSENMAN

The White House

There is attached the implementing instrument which you asked the Attorney General to have me draw up and send to you.

In my opinion the effect of thus putting together in one paper the implementing provisions, without discussion or explanatory matter, is to clarify the nature of the project and how it will work out.

You will observe that the enclosed does not go into questions such as the procedure to be followed by the tribunals, or by what majority decisions should be reached. If the basic plan is approved by the interested parties, such questions will naturally arise. However, in my opinion, their introduction here might tend to bog down the project on details. While fully realizing the importance of such questions and the extent to which differences of opinion may arise about them, I am in favor of not trying to cover them at this time.

Enclosure:  
As stated.

DECLASSIFIED  
E.O. 11652, Sec. 255 and 258 or 259  
OCD Order, May 3, 1974  
BY *H.J.* WARS Date: *1-19-74*

~~TOP SECRET~~

~~TOP SECRET~~

DECLASSIFIED  
E.O. 11652, Sec. 509 and 501 or 02  
CSD letter, May 3, 1972  
BY AKT NARS Date 2-19-72

PUNISHMENT OF WAR CRIMINALS

The United Nations have on various occasions expressed their abhorrence for the unspeakable crimes and atrocities of which the German leaders and their associates are guilty, and have pledged themselves that those responsible for such crimes and atrocities shall not escape retribution.

The United Kingdom, the United States, and the Soviet Union in the Declaration issued at Moscow November 1, 1943 stated:

(1) that those German officers and men who have been responsible for or have taken a consenting part in these atrocities "will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free governments which will be created therein"; and

(2) that the above declaration was "without prejudice to the case of the major criminals, whose offenses have no particular geographical localization and who will be punished by the joint declaration of the Governments of the Allies."

The criminality of the German leaders and their associates does not consist solely of individual outrages, but represents the result of a systematic and planned reign of terror within Germany and within the areas occupied by German military forces, in connection with which the crimes and atrocities referred to were committed. We are satisfied that these crimes and atrocities were perpetrated pursuant to a premeditated criminal plan.

For the carrying out of the acts of oppression and terrorism which their program involved, the Nazi leaders and their associates created and utilized a numerous organization, chief among which are the SS, the Gestapo, and the SA.

Having in view the foregoing, and in order to press on with the necessary practical measures to bring to justice the criminals referred to, the President of the United States of America, the Prime Minister of Great Britain, and the Premier of the Soviet Union have agreed upon the following:

~~TOP SECRET~~

I

~~TOP SECRET~~

- 2 -

REVISED  
EC. 110.1, Sec. 20 and 201 or 20  
CPO 110.1, Sec. 2, 1971  
By                      DATE                     

I

The German leaders and their associates, and the organizations employed by them, such as those referred to above, will be charged with both the commission of their atrocious crimes, and also with joint participation in a broad criminal enterprise which included and intended these crimes, or was reasonably calculated to bring them about. The allegation of the criminal enterprise will be so couched as to permit full proof of the entire Nazi plan from its inception and the means used in its furtherance and execution, including the pre-war atrocities and those committed against their own nationals, neutrals, and stateless persons, as well as the waging of an illegal war of aggression with ruthless disregard for international law and the rules of war. There will be invoked the rule of liability, common to all penal systems and included in the general doctrines of the laws of war, that those who participate in the formulation and execution of a criminal plan involving multiple crimes are jointly liable for each of the offenses committed and jointly responsible for the acts of each other. In support of this charge there will be admitted in evidence the acts of any of the conspirators done in furtherance of the conspiracy, whether or not these acts were in themselves criminal and subject to separate prosecution as such.

II

The trial of the charge described in Article I and the determination of the guilty parties will be carried out in two stages:

(a) There will be brought before an international tribunal to be created the highest ranking German leaders to a number fairly representative of the groups and organizations charged with complicity in the basic criminal plan. Adjudication will be sought not only of the guilt of those individuals physically before the tribunal, but also of the complicity of the members of the organizations included within the charge. The tribunal will make findings adjudicating the facts established, including the nature and purposes of the criminal plan, the identity of the groups and organizations guilty of complicity in it, and the acts committed in its execution. The tribunal will sentence those individual defendants physically before it who are convicted.

The above will complete the mission of this international tribunal.

(b)

~~TOP SECRET~~

(b) Thereafter, other individuals charged with specific atrocities and members of the organizations who are charged with complicity through such membership in the basic criminal plan but against whom there is not sufficient proof of specific atrocities shall, unless held for trial by one of the United Nations or sent back for trial under the provisions of the Moscow Declaration, be brought before occupation or other appropriate tribunals. The findings of the tribunal in the trial provided for in paragraph (a) of this Article will be taken to constitute a general adjudication of the criminal character of the groups and organizations referred to, binding upon all the members thereof in their subsequent trials in occupation tribunals or in other tribunals established under this instrument. In these subsequent trials the only necessary proof of guilt of any particular defendant, as regards the charge of complicity, will be his membership in one of those organizations. Proof will also be taken of the nature and extent of the individual's participation.

(c) The defendant in each case shall, upon conviction, suffer death or such other punishment as the tribunal may direct, depending upon the gravity of the offense and the degree of culpability of the defendant.

III

The tribunal for the trial of the basic crime referred to in Article II(a) shall consist of seven members, to be appointed as follows: one each by the British Commonwealth, the United States, the Soviet Union, and France, and three by agreement among the other United Nations who become parties to this instrument.

The members of the tribunal may be civilian or military as the appointing authority in each case may prefer.

IV

(a) There shall be created a full time executive group consisting of one military representative each of the British Commonwealth, the United States, the Soviet Union, and France. This group shall be assisted by an adequate staff of attorneys and research personnel to compile and analyze data, prepare the charges to conform to the proof and arrange the evidence for presentation to the international tribunal.

(b)

(b) The presentation of the case before the international tribunal shall be made by persons designated by the British Commonwealth, the United States, the Soviet Union, and France, each of these countries being entitled to designate one person, who may be its member of the executive group referred to in paragraph (a) of this Article.

V

(a) The emoluments and expenses of those members of the tribunal provided for in Article III, designated by the British Commonwealth, the United States, the Soviet Union, and France, and of the executive group provided for in Article IV(a), shall be borne by the respective Governments just mentioned.

(b) The emoluments and expenses of the other three members of the tribunal shall be borne by the Governments of the other United Nations parties to this instrument.

(c) The emoluments and expenses of the staff assisting the executive group, and of secretarial staffs for the tribunal and the executive group, and incidental expenses, such as rent, heat, light, stationery and printing, shall be borne by the parties to this instrument in equal shares.

VI

All members of the United Nations shall be invited by the Government of the United Kingdom, acting on behalf of the other signatories hereto, to adhere to this instrument. Such adherence shall in each case be notified to the Government of the United Kingdom which shall promptly inform the other parties to this instrument.



Done at \_\_\_\_\_ this the \_\_\_\_\_ day of \_\_\_\_\_, 1945.

DECLASSIFIED  
E.O. 11652, Sec. 202 and 203 or 95  
CSD Order, May 3, 1972  
BY: [signature] DATE: 12-17-72