

July 3

July 3, 1945.

MEMORANDUM TO JUSTICE JACKSON AND TO GENERAL DONOVAN:

Subject: Proposal for a Joint Tribunal with Four
Chambers

Many of the difficulties of a rapprochement with the Russians regarding the trial of major war criminals might be obviated by establishing a larger Joint Military Tribunal than had originally been envisaged, dividing it into Chambers, and providing that each of the four major powers shall appoint the President of one of the Chambers. Each of the Big Four should also contribute panels of candidates for the other judgeships, and a joint committee representing the lesser powers victimized by the Axis should also be invited to contribute a panel of candidates. From these lists, the Committee on Plan and Procedure (described below) should select the ordinary judges and alternates.

As General Donovan has suggested, a formula regarding the procedures in the Chambers of the Court can be devised which will be specific enough to prevent extreme deviations between the procedures in the different Chambers yet general enough to express a joint policy of the Big Four nations. For example, the formula might be: Each Chamber, acting on behalf of the Joint Military Tribunal of the United Nations, shall administer justice in accordance with the legal traditions and practices of civilized states, with especial emphasis in each Chamber on the legal procedures of the state to which its President belongs.

One Chamber could sit in Berlin; another in Paris; a third in Warsaw (covering Poland, Czechoslovakia, etc.); a fourth either in London or Rotterdam (representing Holland, Belgium, etc., as well as Great Britain, etc.)

The major defendants could be assigned to the different regional Chambers by a Committee on Plan and Administration consisting of the four Chiefs of Counsel and a fifth, neutral Counsel to be appointed by joint action of the smaller members of the United Nations who have been the victims of Nazi aggression and brutality.

This Committee would be governed by the following principles of selection and distribution of the major defendants, in the order of their importance:

(1) The most effective strategy for proof of the general conspiratorial nature of the Nazi program;

(2) Assignment of cases of various types to those countries (and Chambers) which had the best proof available (in quantity and quality) on the particular defendant;

(3) Recognition of the injured feelings of the countries victimized by the Nazis;

(4) Fair distribution of labor, taking into account the peculiar difficulties of certain aspects of the case, such as proof of economic crimes;

(5) Timing of the various prosecutions to get the maximum value of sustained public interest in the trials and to restrain public impatience with delays in prosecution.

As each conviction occurs in any particular Chamber, the case should be certified to the Committee on Plan and Administration which should immediately determine whether the defendant in question is needed as a witness in some as yet untried aspect of the whole case; and, if so, arrangements should be made for postponement of his execution.

The judgment of each Chamber would be the Judgment of the Court as a whole; and the opinions (written judgments) might be entitled somewhat as follows: "In the First Chamber of the Joint Military Tribunal of the United Nations." The cases would be entitled somewhat as follows: "The People of the United Nations ex rel. The Union of Soviet Socialist Republics, The United States of America, the Kingdom of England and Northern Ireland, and the Provisional Government of France versus Hermann Goering et al. (depending upon the particular defendant or group of defendants assigned to the particular Chamber). The order of names of the Powers will be so arranged as to put first that nation whose President presides over the particular Chamber.

Some of the Chambers will work more expeditiously than others; but since the proof to be presented by the United States against the defendants assigned to it would very probably be much more comprehensive and thorough than that to be furnished by the other nations in their trials, and since our procedures (including introduction of evidence)

would probably be more comprehensive and thorough than those supplied by the other nations at their trials, it may be assumed that our prosecution would outlast the others. This will enable us to weave ~~in~~ the judgments of conviction in the other Chambers into our main conspiratorial case, each Chamber of course taking judicial notice of the convictions (and supporting proof) of the other coordinate Chambers. Or, alternatively, after all the major defendants have been tried and convicted, it might be desirable for the Presidents of the four Chambers, sitting in joint session, solemnly to pronounce a joint judgment holding the various separate judgments of the Court's Chambers to have established and to add up to the existence of a German conspiracy to conquer and dominate the world by the various means proved in the separate Chambers.

It should be emphasized that despite this division into Chambers, the most important contribution that is to be made - the declaration of significant legal principles in the Executive Agreement - would still exist.

It would seem that the proposed system would have several advantages over the originally envisaged joint trial in one large unified proceeding before one single court:

(1) It ought to permit of quicker agreement with the Russians;

(2) It will permit of a sound division of labor and equalize the burden of each country;

(3) It will avoid the dangerous possibility of a single joint prosecution deteriorating into a hodge podge of confusing differences of procedure - a trial of the unity of the Big Four rather than a trial of the issues of guilt;

(4) It will prevent the blunting of the sword of justice and the danger of the less provable and legally more questionable Counts diluting the clearer and more dramatic Counts (such as those dealing with atrocities in violation of the laws of war and of the fundamental tenets of all civilized systems of penal law). While each Chamber would have cases pertaining to all Counts, it will be far easier to point up the more dramatic and legally unimpeachable materials in a fourth of the cases than in all of them.

(5) It will simplify and clarify each country's task as consisting of conviction of the particular defendants ~~xx~~ assigned to it - conviction for both the particular substantive crimes committed by those special defendants and for participation as co-conspirators in the large conspiracy to dominate the world by means of aggressive and criminal warfare, the setting up of such sub-conspiratorial organizations as the Gestapo, their ruthless violation

of the laws and customs of warfare, the commission of crimes by Germans against their fellow-nationals for religious, economic or political reasons, etc.

In the trial of each of the major defendants those particular strands of the complete conspiratorial web would be gone into ~~ix~~ which they most directly wove. Thus, for example, Goering would be grilled and convicted largely for welding the Luftwaffe into a weapon of lawless domination of lesser powers and of indiscriminate bombings in violation ~~ixx~~ of the laws and customs of warfare (e. g., razing of Rotterdam after Holland had surrendered; bombing hospital and Red Cross installations, bombing civilians on the roads of Paris, etc.) Von Ribbentrop would be grilled and convicted largely for helping to plan the conspiracy to dominate the world by the abuse of political power and diplomatic pressure politics, fifth columns, etc.; Schacht would be convicted largely for organizing systematic looting as part of a plan to obtain the sinews of illegal war by theft, in pursuance of the general conspiracy to conquer the world by stripping non-Germans and non-Aryans of their property. The top members of the German General Staff and leading field marshalls and generals would be prosecuted for participating in the general plan of aggressive and lawless warfare in furtherance of the major conspiracy to conquer the world and for issuing orders to refuse to grant quarter to surrendered prisoners~~x.Hxxxxxx~~ Heydrich and other top Gestapo leaders

would be grilled and convicted for planning and developing
and murder
a ~~xxxxxx~~ regime of terror/through such devices as concentration camps, gas autos, crematoria, etc. And so with other top leaders who specialized in one or two phases of the general marshaling of evil forces in pursuance of the major aim of the Government of the Third Reich to conquer and enslave the world.

(6) The proposed plan will give the smaller nations, who have furnished most of the corpses, a reasonable participation in the judging of the accused, while at the same time control will be retained by the four major powers.

(7) It will give each major nation more prominence in the entire enterprise than if they acted jointly in one large case. Yet the partnership among the nations in prosecuting and punishing the Nazi malefactors would remain intact.

(8) The plan proposed will permit of variations and exchange of ideas, especially as to ~~xx~~ lesser convicts, in respect to penal treatment, these to be accommodated through a joint Committee of the Control Council.

(9) In brief, the suggested plan is the best way of arriving at a common denominator of legal tradition and methods of procedure as between the various countries; and it falls legitimately within the general terms of the Moscow Declaration.

Finally, in case the difficulties of arriving at a mutually satisfactory agreement with the Russians persist, the question ~~x~~ will have to be faced whether the United States should "go it alone" or should joint with England and France. I think it might be preferable not to join with the other two powers in a coalition that - however much it will be explained to the public - will probably be adopted as a symbol of the Western Powers against Soviet Russia. It might be preferable for the United States and Great Britain to act jointly, leaving France and Russia to prosecute their major war criminals either separately or jointly, than for the Big Four to divide three to one.

S. G.