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WAR CABINET.

TREATMENT OF WAR CRIMINALS.

Minute by the Secretary of State for Foreign Affairs.

I circulate to my colleagues a memorandum prepared at my request by the Law Officers of the Crown, setting out the issues which require consideration in deciding the policy of His Majesty's Government in regard to the treatment of war criminals after the war.

2. It will be recalled that the Prime Minister issued a statement on the 25th October last with particular reference to the shooting of hostages in France, laying down that "retribution for these crimes must henceforward takes its place among the major purposes of the war." The attitude of His Majesty's Government has been based upon this statement, to which reference was made by the representatives of the Allied Governments now established in London in the resolution passed at the meeting at St. James's Palace on the 13th January last. His Majesty's Government and the major Allied Governments, although represented by observers, did not participate in this resolution. The attitude of the United States Government was laid down by President Roosevelt on the 25th October in a statement similar to that issued by the Prime Minister. The Soviet Government have circulated three notes condemning German atrocities in the Soviet Union, in the most important of which, dated the 6th January, M. Molotov stated that "The Soviet Government . . . lays all the responsibility for these inhuman and rapacious acts committed by the German troops on the criminal Hitlerite Government of Germany."

3. The Allied resolution of the 13th January, the text of which is attached as Annex 3 to the Law Officers' memorandum, is of a general character. Certain of the Allied Governments, and in particular the Polish and Czechoslovak Governments, have since been pressing for a more detailed elaboration of this resolution with a view to committing the Allied Governments to definite action against war criminals. Other Allied Governments, in particular the Netherlands, Belgian and Greek Governments, have shown considerable reluctance to fall in with the Polish and Czechoslovak plans, and have pressed for some lead from His Majesty's Government. The so-called German reprisals against the Czechoslovak population for the death of Heydrich, and a recent increase in German atrocities in Poland, have intensified Polish and Czechoslovak pressure upon His Majesty's Government and the other Allied Governments. In particular, in a broadcast to Poland on the 9th June, General Sikorski stated: "The perpetrators of these crimes must be brought to account, and this principle ought to become the guiding policy of the Allies. Only the announcement of retribution and the application of reprisals wherever possible can stop the rising tide of madness of the German assassins and save several hundreds of thousands

of innocent victims from certain death." In a note dated the 2nd June, the Czechoslovak Government asked His Majesty's Government to take due note of their intention "to take all the necessary steps which they may regard as desirable to secure retribution . . . under the terms of the proclamation of the Inter-Allied Conference at St. James's Palace on the 13th January, 1942." On the 17th June the Czechoslovak Government went further and passed a resolution holding a list of Germans from Hitler downwards responsible for recent atrocities in Bohemia and Moravia, and providing for their immediate trial and execution after the liberation of Czechoslovakia. These have been broadcast to Czechoslovakia in this sense by Dr. Benes and the Czechoslovak Prime Minister.

4. Public opinion in this country is also taking an increasing interest in this question. At least two unofficial committees composed of British and Allied personalities have been formed and have already approached the Foreign Office. Since the Prime Minister's statement of the 25th October, the extension of the war to the Far East and the conduct of the Japanese troops towards British troops and civilians have also given this country a new and direct interest in the question of war criminals.

5. It is, therefore, becoming increasingly difficult to refer Allied Governments simply to the general principle enshrined in the Prime Minister's statement of the 25th October, and to refuse to give any further elucidation of the intentions of His Majesty's Government. Experience in and after the last war also suggests that there is a serious danger of public opinion, both British and Allied, getting out of hand after the war unless some general decision of policy is reached during the war. It seems important, on the one hand, to avoid any parallel to the "Hang the Kaiser" campaign, and on the other to avoid a situation arising in which far-reaching threats of punishment only result in a handful of trials and in inadequate sentences, as happened after 1918.

6. I therefore asked the Law Officers to consider the question and to set out as they have done in the enclosed memorandum, the issues upon which the guidance of the War Cabinet is required. I do not think that it is necessary or desirable for any further statement of policy to be made at present, but simply that general approval should be given to certain guiding principles, which would enable conversations to take place with the Allied Governments, thus reducing the risk of any unfortunate decisions being reached which might afterwards prove embarrassing to His Majesty's Government and generally to the policy of the United Nations. Our views might then be communicated confidentially to the Dominion Governments, United States Government, and, perhaps, also to the Soviet Government. The policy finally to be adopted must, however, be the subject of agreement between the United Nations, and I do not ask for any final decisions at this stage.

7. One important conclusion to be drawn from the Law Officers' memorandum is that a distinction should be drawn between outstanding enemy leaders, such as Hitler and Mussolini, and other enemy nationals. Judicial procedure would seem inappropriate for dealing with Hitler and Mussolini, and with a limited number of important enemy leaders such as Göring, Goebbels and Himmler. It is unnecessary at this stage to define this category precisely. The guilt of such individuals is so black that they fall outside and go beyond the scope of any judicial process. Moreover, the precedent of public trials of prominent statesmen shows that the procedure is rarely advantageous to the prosecution. It therefore seems more advisable to follow the precedent set in the case of Napoleon, and to contemplate a political decision of the United Nations. Judicial procedure based upon the laws of war would be reserved for the crimes committed by enemy nationals other than outstanding leaders. It should be noted that enemy leaders would not necessarily be synonymous with Heads of States, as this would seem to be inappropriate in the case, *e.g.*, of Italy, where the decisions have been taken by Mussolini rather than by the King. If it is argued that this procedure is unjust in that subordinates would be tried, whereas their responsible leaders would not, the reply is that the leaders could be dealt with just as severely by the executive action of the United Nations as by process of law.

8. I consider the best course to be that each Allied Government should be entrusted with the trial of the cases with which it is concerned, *i.e.*, where the

offences were committed on its own territory or against its own nationals. In particular, I regard it as essential that the delays and complications inseparable from setting up special tribunals should be avoided. For this reason, among others, I am not in favour of creating an international court, or, indeed, any other special judicial machinery for this purpose. The war criminals would be tried by military courts, or possibly in some countries by civil courts, applying the laws of war.

9. The question of the trial by Allied Governments of their own nationals (*e.g.*, Quislings) should be kept quite separate from that of the trial of war criminals. The offence in such cases is not against international law, but against the municipal law of the country concerned, and each country should be left to deal with such cases under that law. No inter-Allied policy is required in this case, though some special arrangements for the surrender of such persons may be necessary.

10. To sum up, I ask the approval of my colleagues for the general conclusions indicated in the Law Officers' memorandum and for authority to hold discussions with the Allied Governments on the basis that, while His Majesty's Government have not reached any final conclusions on the policy to be adopted, the following general principles represent their present views:—

(i) The fate of outstanding enemy leaders should be decided as a political question by the United Nations as in the case of Napoleon, and there should be no question of such leaders being tried either by national or international tribunals.

(ii) Policy regarding war criminals should ultimately be agreed between all the Allied Governments concerned.

(iii) All accused persons, other than the outstanding leaders whose cases are considered under heading (i), should be assured a legal trial before a recognised judicial tribunal. Since the offences under consideration would, at any rate in most cases, be covered by the laws of war, the appropriate tribunals would generally seem to be the military courts of each Ally concerned. It is understood that certain of the Allies may desire to use civil courts. No *ad hoc* international tribunals should be established for dealing with these cases.

(iv) In dealing with war criminals, whatever the court, it should apply existing laws and principles and no special *ad hoc* law should be enacted.

(v) The punishment of war criminals should be disposed of as soon as possible after the end of the war, in order—

(a) to ensure rapid justice,

(b) to prevent so far as possible wronged individuals taking the law into their own hands, and

(c) to prevent trials dragging on for years and so delaying the return to a peaceful atmosphere in Europe.

(vi) Each Allied Government concerned should be encouraged at this stage to draw up so far as possible lists of criminals against whom it wishes to proceed and to prepare evidence against them, so as to enable agreed action to be taken as soon as hostilities cease.

(vii) Provision should be included in the armistice terms for the immediate capture or surrender of wanted criminals, and this should not be left over until after the conclusion of a peace treaty. Otherwise it might prove impossible, as after the last war, to obtain custody of the persons required. Lists, if any, included in the armistice terms should not, however, be regarded as exclusive, and authority would be reserved to demand the delivering up of additional persons later. Each peace treaty would subsequently contain any provisions which may be required to enable the action contemplated to be taken.

(viii) All possible steps should be taken to prevent war criminals in either category from obtaining asylum in neutral countries. In practice the neutral countries most likely to be concerned would seem to be Sweden and Switzerland, upon whom it should be possible to exercise considerable pressure either to prevent

the entry of such persons or to secure their subsequent surrender to Allied justice. But war criminals might be able to reach more distant neutral territory, *e.g.*, by aircraft or submarine.

(ix) Although no definite period can usefully be fixed at this juncture, it is desirable, for the reasons set out under (iii) above, that all trials should be instituted within a certain limited period after the termination of hostilities with the enemy Power concerned.

(x) A distinction should be drawn between enemy war criminals and nationals (*e.g.*, Quislings) of the Allied countries concerned. The latter should be dealt with by each Allied Government concerned under its own law, and no inter-Allied agreement is necessary for this purpose, although some special inter-Allied arrangements for surrender to the appropriate Allied authority might be required.

A. E.

Foreign Office, June 22, 1942.

ANNEX.

Memorandum by the Law Officers of the Crown.

THE object of this memorandum is to set out the issues which require consideration. On policy there has been a statement by the Prime Minister, a statement by President Roosevelt, a resolution by certain of the Allied Governments, and a note by M. Molotov, dated the 6th January. There was also a question in the House of Commons to the Foreign Secretary on the 10th March, 1942, about Japanese atrocities in Hong Kong.

Treatment of War Criminals: Heads of States or leaders, and subordinates.

2. As was recognised after the last war, the procedure which may be appropriate for subordinates who commit recognised war crimes is not necessarily appropriate for the Head or Leaders of the State. A distinction was drawn in the Treaty of Versailles between the Kaiser, should he have been surrendered, and others. The relevant paragraphs of the Treaty are attached (Annex No. 6). This distinction was in part based on the fact that the Kaiser was Head of the State, and there was a good deal of discussion as to whether, as such, he could be dealt with as a War Criminal under International Law. The distinction, however, is probably better drawn between those who have controlled and been responsible for national policy in the steps which led up to and the conduct of the war, and others, rather than between the individual who is in law the titular Head of the State, and others. In the case of Italy, for example, it is Mussolini rather than the King who is responsible for Italy's acts. In Germany it may be that there are others who should share with Hitler the responsibility for German policy and methods.

3. The reason for some such distinction becomes apparent on considering the main heads of "war crimes" as recognised by International Law. They are—

- (a) Offences against the laws of war committed in the course of operations.
- (b) Atrocities in occupied territories.
- (c) Maltreatment of prisoners of war.

Although the responsible leaders may have direct and immediate responsibility for these or some of them, in that they may have ordered them, the case against Hitler, Mussolini and other leaders goes far deeper and takes one into an area which is beyond that in which war crimes are recognised by International Law as appropriate for decision and punishment by a court.

4. The fate of Hitler and Mussolini may be settled by events, but on the assumption that they came into the hands of the Allied Governments the following appear to be the possible courses:—

- (a) Their fate should be decided, as was Napoleon's, by the Allied Governments. No doubt if this course were adopted the grounds for the action taken, in other words, the charges against the individual leader in question would be formulated in some formal statement which need not be necessarily elaborate in detail.
- (b) A tribunal of Allied or Neutral, or Allied and Neutral, judges should be set up, who should investigate and pronounce on the charges, adopting legal procedure, hearing evidence, the defence of those arraigned, and so on, and decide the punishment.
- (c) The same as (b), but restricting the tribunal to findings, leaving the punishment to be decided by the Allied Governments.
- (d) To submit charges to a body of judges or lawyers with power to alter or amend or add to them. Such a body would not be a tribunal, and there would be no trial or hearing, though they would have power to call for papers or possibly hear witnesses.

It seems to us that the "charges" would go beyond any recognised war-crimes, and the first objection to a tribunal is that it would have to formulate a new law under which the acts embodied in the charges became offences appropriate to be dealt with by a court. One of the main charges in any indictment of Hitler would be that he brought about the war by successive unprovoked attacks on innocent neighbour States with a view to dominating Europe by force and making it subservient to Germany's will and needs. A further charge would be his unprovoked attacks on innocent neighbours in the course of the war with a view to improving his military position. These are crimes against civilisation, but, rightly or wrongly, not recognised as crimes under International Law to be dealt with and punished by a court.

5. There is another consideration which has a good deal of force. In the Report which the Law Officers (Lord Birkenhead being then Attorney-General) made to the War Cabinet on the 28th November, 1918, with regard to the Kaiser, no definite view was expressed as to whether he should be arraigned before a tribunal, or exiled, or otherwise punished by the decision of the Allies. On the other hand, the Law Officers expressed the view that it would be unprofitable to seek to charge him with responsibility for the origin of the war, as this would involve endless disputation. In an Interim Report of a special sub-committee appointed in this matter after the last war certain suggested charges which might appropriately be made against the Kaiser were put forward. These included waging an aggressive and unjust war, invasion of Belgium and Luxembourg, and systematic terrorism in Belgium and France, followed by some further twelve other charges. If such matters as these had really been tried out in detail the process would have been, or at any rate might have been, made interminable. The two charges which the Law Officers suggested in the Report already referred to were the invasion of Belgium and the order of unrestricted submarine warfare. Although in the treaty it was provided that a tribunal should be set up, we cannot help feeling that, at any rate so far as these two important charges were concerned, a tribunal was not required in order to establish the Kaiser's responsibility. The same, we should have thought, would apply, possibly with even greater force, to the main charges, which would justify the Allies in taking what action they thought proper against Hitler and other leaders. Breaches of treaties and engagements, unprovoked hostilities against neutrals are there for all to see, and the broad policy adopted in occupied countries does not need further investigation in order to substantiate the main facts. These are the lines on which, as it seems to us, the argument against a tribunal and trial develop themselves. It may be that arguments will be put forward in favour of a tribunal procedure. The general case for referring to an impartial tribunal matters appropriate for its decision do not need to be stated. It may be doubted whether any tribunal that could be assembled would be regarded by those in enemy countries as impartial, but, apart from this point, we thought it right to set out the legal and practical objections which we think ought to be considered against the tribunal policy. It may be easier to make a final decision when more consideration has been given to the formulation of the matters which would be put forward as the fundamental grounds for any action that may be taken.

War Crimes.

6. The three most likely categories of war crimes are those set out above, namely:—

- (a) Atrocities in occupied areas.
- (b) Maltreatment of prisoners of war.
- (c) Offences against the Laws of War committed in the course of operations.

The first of these is the subject of the Resolution of the Allied Governments already referred to. This resolution places among the principal war aims of the signatory Powers the punishment by legal procedure of those responsible for these crimes, whether they ordered, carried out or participated in them. It is no doubt intended that each occupied country, when it regains its freedom, should itself deal with those who have committed such crimes on its soil. The question no doubt of procedure would be one for the Allied country concerned, but in our opinion the proper court for dealing with this offence, as also with other war crimes, is a military court. There is some authority for saying that even ordinary crimes committed by an enemy soldier while in occupation of a territory are not

within the jurisdiction of the ordinary civil courts of that territory either at the time or subsequently when the enemy has been expelled. In any event, however, a military court seems to us appropriate, and some of the cases will no doubt raise matters particularly appropriate for such a court. For example, an act of brutality in occupied territory may be sought to be justified under International Law as necessary in the circumstances for the maintenance and safety of the occupying forces.

7. Those who can be proved to have been guilty of maltreatment of prisoners of war are, of course, proper subjects for trial and punishment. If the prisoners of more than one of the Allied Governments are involved there no doubt might be some question as to the composition of the court and who should undertake the burden of the prosecution, but there should be no difficulty in solving this question.

8. With regard to breaches of the laws and customs of war in the course of military operations, this is probably more difficult. We understand that there is but little evidence available which would enable individuals to be identified. In the course which the war has taken breaches of this kind by our enemies have in some directions compelled us, on perfectly legitimate grounds, to adopt methods which we should not have resorted to had the enemy not resorted to them. It is probably also true that the vast majority, though not necessarily all, of these cases are cases where the act done was carried out under orders and under a general policy laid down by the military authorities. The question of the Defence of Superior Orders is considered below, but in the main we consider that the case for proceeding against individuals as war criminals under this head is probably less strong than under the two preceding ones, though there might be individual cases, for example, if a crew or passengers had been fired on while getting away in boats.

9. After the last war the whole policy in effect broke down on the impracticability of obtaining the custody of those against whom it was desired to proceed. In the result, as is well known, a small number of war criminals were tried by a German court at Leipzig and, although there were a few convictions, the result was regarded as very unsatisfactory. The only thing that can be said is that the fact that a certain number of German officers were tried and convicted of war crimes by a court of their own country shows clearly the appropriateness of applying legal procedure to such acts if it is desired. There is nothing useful that can be said on this aspect of the matter at this stage of the war. The difficulty, of course, arose in 1919 from the fact that the defeated countries were not occupied.

10. The question what effect ought to be given to a plea that the accused was acting under orders was considered after the last war in some detail. There is little clear authority on the point, and we set out below the paragraph dealing with this subject in the Report of the Committee of Enquiry into the Breaches of the Laws of War.

“ Superior Orders.

“ 41. The Committee have devoted considerable attention to the question whether an accused person can plead superior orders either in bar of his trial or as a mitigation of his offence. They are of opinion that no person should be punished for the commission of an act which he did not know to be forbidden or which he could not reasonably be expected to know to be unlawful. They recognise the fact that military discipline requires that members of the armed forces of a State should obey the commands of their superiors, and that such discipline also requires that those who execute such commands should do so with a knowledge that they will be immune from punishment for so doing. The Committee cannot, however, accept the doctrine that it is the duty of a sailor or soldier never to question an order which he receives. They consider that, if the act constituting the offence charged was done in obedience to the order of a superior, this should be treated as *prima facie* a defence, but that such defence might be displaced by proof:—

- “ (a) That the order did not relate to a military duty.
- “ (b) That the act charged was in excess of and not covered by the order given.
- “ (c) That the act charged was flagrantly and obviously contrary to the laws and customs of war and of humanity.

“(d) That there were circumstances from which knowledge of the illegality of the order could be imputed to the accused.

“(e) That it was an order in regard to the execution of which the accused had a discretion.

“If the plea of superior orders does not succeed as a defence, it may still be relevant as a circumstance to be considered in mitigation of punishment.”

We are not quite sure whether we accept the view that it is *prima facie* a defence. We think probably the right view is that it is not a defence; but it would be contrary to all our principles to proceed after hostilities are over against a subordinate acting under orders in circumstances in which he clearly had no option but to obey. To take an obvious example, if there had been an illegal shooting, no one would think of proceeding against the firing squad: they would proceed against the officer who had ordered the man to be shot.

11. We think it is important that decisions on policy should be taken, even if they can only be provisional, as to what cases or class of cases it may be desired to take proceedings. This will enable available evidence to be collected and cases prepared with the minimum of delay. It may well be that in the closing stages a large measure of retribution will be inflicted, not under legal process but in the inevitable course of events. It may also be that this will have more effect than a long series of individual trials after hostilities are over.

D. B. S.
D. P. M. F.

Law Officers' Department,
April 15, 1942.

List of Annexes.

1. Statement by the Prime Minister, October 25, 1941.
2. Statement by President Roosevelt, October 25, 1941.
3. Resolution of an Allied Meeting, January 13, 1942.
4. Statement by M. Molotov, January 6, 1942.
5. Extract from Parliamentary Debates (House of Commons), March 10, 1942.
6. Extract from Treaty of Versailles (Articles 227-230).

Annex No. 1.

Statement by the Prime Minister, October 25, 1941.

“His Majesty’s Government associate themselves fully with the sentiments of horror and condemnation expressed by the President of the United States upon the Nazi butcheries in France. These cold-blooded executions of innocent people will only recoil upon the savages who order and execute them.

“The butcheries in France are an example of what Hitler’s Nazis are doing in many other countries under their yoke. The atrocities in Poland, in Yugoslavia, in Norway, in Holland, in Belgium, and above all behind the German fronts in Russia, surpass anything that has been known since the darkest and most bestial ages of mankind. They are but a foretaste of what Hitler would inflict upon the British and American peoples if only he could get the power.

“Retribution for these crimes must henceforward take its place among the major purposes of the war.”

Annex No. 2.

Statement by President Roosevelt, October 25, 1941.

“The practice of executing scores of innocent hostages in reprisal for isolated attacks on Germans in countries temporarily under the Nazi heel revolts a world already inured to suffering and brutality.

“Civilised peoples long ago adopted the basic principle that no man should be punished for the deed of another.

“ Unable to apprehend the persons involved in these attacks, the Nazis characteristically slaughter fifty or a hundred innocent persons.

“ Those who would ‘ collaborate ’ with Hitler or try to appease him cannot ignore this ghastly warning.

“ The Nazis might have learned from the last war the impossibility of breaking men’s spirits by terrorism. Instead, they develop their *Lebensraum* and ‘ New Order ’ by depths of frightfulness which even they have never approached before.

“ These are the acts of desperate men who know in their hearts that they cannot win.

“ Frightfulness can never bring peace to Europe. It only sows the seeds of hatred, which will one day bring a fearful retribution.”

Annex No. 3.

Resolution of an Allied Meeting on January 13, 1942.

“ Les soussignés, représentant le Gouvernement belge, le Comité national français, le Gouvernement hellénique, le Gouvernement luxembourgeois, le Gouvernement norvégien, le Gouvernement des Pays-Bas, le Gouvernement polonais, le Gouvernement tchécoslovaque et le Gouvernement yougoslave;

“ Constatant que l’Allemagne, dès le début du présent conflit ouvert par sa politique d’agression, a instauré dans les pays occupés un régime de terreur, caractérisé notamment par des emprisonnements, des expulsions en masse, des exécutions d’otages et des massacres : que ces violences sont également pratiquées par les alliés et associés du Reich et, dans certains pays, par des complices de l’occupant; qu’une solidarité internationale est nécessaire pour éviter que la répression de ces violences ne s’exerce par la simple vindicte publique; et pour répondre au sentiment de justice du monde civilisé;

“ Rappelant que le droit des gens, et notamment la Convention signée à La Haye en 1907 sur les lois et coutumes de la guerre sur terre, ne permet aux belligérants, dans les pays occupés, ni les violences contre les civils, ni le mépris des lois en vigueur, ni le renversement des institutions nationales :

- “ (1) Affirment que les violences ainsi exercées contre les populations civiles n’ont rien de commun ni avec la notion de l’acte de guerre, ni avec celle du crime politique, telles que les conçoivent les nations civilisées;
- “ (2) Prennent acte des déclarations faites à cet égard le 25 octobre 1941 par M. le Président des États-Unis d’Amérique et par M. le Premier Ministre britannique;
- “ (3) Placent parmi les buts principaux de guerre le châtement, par les voies d’une justice organisée, des coupables ou responsables de ces crimes —qu’ils les aient ordonnés, perpétrés, ou qu’ils y aient participé;
- “ (4) Décident de veiller dans un esprit de solidarité internationale à ce que (a) les coupables et responsables, à quelque nationalité qu’ils appartiennent, soient recherchés, livrés à la justice et jugés; (b) les sentences prononcées soient exécutées.

“ En foi de quoi, les soussignés dûment autorisés à cet effet ont signé la présente déclaration.

“ Fait en neuf exemplaires, à Londres, le treize janvier, mil neuf cent quarante-deux.”

Annex No. 4.

Statement by M. Molotov of January 6, 1942.

“ The Soviet Government and its organs are conducting a detailed registration of all these evil crimes of the Hitlerite army. This is demanded by the angered Soviet people, who call for vengeance.” “ The Soviet people will never forget nor will they ever forgive these crimes.” “ The Soviet Government lays all the responsibility for these inhuman and rapacious acts committed by the German troops on the criminal Hitlerite Government of Germany.”

Extract from Parliamentary Debates (House of Commons), March 10, 1942.

Hong Kong (Japanese Barbarities).

Sir John Wardlaw-Milne (by Private Notice) asked the Secretary of State for Foreign Affairs whether he is yet in a position to make a statement regarding the treatment of military prisoners and civilians by the Japanese army at Hong Kong after the capitulation?

The Secretary of State for Foreign Affairs (Mr. Eden): Yes, Sir. Out of regard for the feelings of the many relations of the victims, His Majesty's Government have been unwilling to publish any accounts of Japanese atrocities at Hong Kong until these had been confirmed beyond any possibility of doubt. Unfortunately, there is no longer room for doubt. His Majesty's Government are now in possession of statements by reliable eye-witnesses who succeeded in escaping from Hong Kong. Their testimony establishes the fact that the Japanese army at Hong Kong perpetrated against their helpless military prisoners and the civil population, without distinction of race or colour, the same kind of barbarities which aroused the horror of the civilised world at the time of the Nanking massacre of 1937.

It is known that fifty officers and men of the British army were bound hand and foot and then bayoneted to death. It is known that ten days after the capitulation wounded were still being collected from the hills and the Japanese were refusing permission to bury the dead. It is known that women, both Asiatic and European, were raped and murdered and that one entire Chinese district was declared a brothel, regardless of the status of the inhabitants. All the survivors of the garrison, including Indians, Chinese and Portuguese, have been herded into a camp consisting of wrecked huts without doors, windows, light or sanitation. By the end of January 150 cases of dysentery had occurred in the camp, but no drugs or medical facilities were supplied. The dead had to be buried in a corner of the camp. The Japanese guards are utterly callous, and the repeated requests of General Maltby, the General Officer Commanding, for an interview with the Japanese commander have been curtly refused. This presumably means that the Japanese High Command have connived at the conduct of their forces. The Japanese Government stated at the end of February that the numbers of prisoners in Hong Kong were: British 5,072, Canadian 1,689, Indian 5,829, others 357; total 10,947.

Most of the European residents, including some who are seriously ill, have been interned and, like the military prisoners, are being given only a little rice and water and occasional scraps of other food. There is some reason to believe that conditions have slightly improved recently, but the Japanese Government have refused their consent to the visit to Hong Kong of a representative of the Protecting Power and no permission has yet been granted for such a visit by the representative of the International Red Cross Committee. They have, in fact, announced that they require all foreign consuls to withdraw from all the territories they have invaded since the outbreak of war. It is clear that their treatment of prisoners and civilians will not bear independent investigation.

I have no information as to the conditions of our prisoners of war and civilians in Malaya. The only report available is a statement by the Japanese official news agency of the 3rd March stating that 77,699 Chinese have been arrested and subjected to what is described as "a severe examination." It is not difficult to imagine what that entails.

It is most painful to have to make such a statement to the House. Two things will be clear from it, to the House, to the country and to the world. The Japanese claim that their forces are animated by a lofty code of chivalry, Bushido, is a nauseating hypocrisy. That is the first thing. The second is that the enemy must be utterly defeated. The House will agree with me that we can best express our sympathy with the victims of these appalling outrages by redoubling our efforts to ensure his utter and overwhelming defeat.

Sir J. Wardlaw-Milne: Arising out of this statement, terrible and horrible as it is, may I ask my right hon. friend whether he will do everything possible to make the facts public, so that the people of this country will really at last know what they are up against and put their backs into the war?

Mr. Eden: Naturally we had to be most careful about the facts before we made this statement. That is the only reason why it has not been made sooner. The Government felt that it would be wrong to make a statement unless they were absolutely convinced of the facts. That being so, in spite of the sufferings of the relatives, we felt it was our duty to make the truth known.

Sir Percy Harris: Will my right hon. friend make it clear that not only the Emperor, but the Government and the whole Japanese people, are responsible for these atrocities, and not merely the army?

Mr. Eden: Yes, Sir, that is certainly so.

Mr. Lawson: Will special steps be taken by the B.B.C. to let the German and Italian people know how the New Order is working under their new ally?

Mr. Eden: The widest possible publicity in all languages will be given to these tragic facts.

Captain Sir William Brass: Is Japan a member of the League of Nations?

Mr. Eden: No, Sir, she is not.

Captain McEwen: My right hon. friend said that the Japanese Government have asked for the withdrawal of all foreign consuls from places they have occupied. Does that include German and Italian Consuls?

Mr. Eden: I should like to have notice of that.

Sir W. Davison: Has anything been heard of the assurance given by the general in command of the Japanese troops to whom Singapore was surrendered that decent treatment would be extended to those who surrendered and that the rules of Bushido would be carried out?

Mr. Eden: I have said that I have received no definite reports from Malaya, but the Government cannot regard the position as satisfactory until Japan allows the Protecting Power and the International Red Cross to function.

Mr. Bellenger: With reference to my right hon. friend's answer that the whole of the Japanese nation is responsible, surely the general officer commanding the Japanese is personally responsible and should be held personally responsible by us? Will my right hon. friend make it perfectly clear that we hold him personally responsible? Does this not show the futility of our capitulation of such a large body of prisoners?

Mr. Eden: Obviously the Japanese general officer commanding is primarily responsible, but the Government are also responsible for not allowing the Protecting Power to do its duty.

Mr. Granville: In view of the fact that General Bennett has arrived in Australia from Singapore, can my right hon. friend give any information as to whether there is an adequate food supply for prisoners who are in Singapore?

Annex No. 6.

TREATY OF VERSAILLES.

Part VII.—Penalties.

ARTICLE 227.

The Allied and Associated Powers publicly arraign William II of Hohenzollern, formerly German Emperor, for a supreme offence against international morality and the sanctity of treaties.

A special tribunal will be constituted to try the accused, thereby assuring him the guarantees essential to the right of defence. It will be composed of five judges, one appointed by each of the following Powers: namely, the United States of America, Great Britain, France, Italy and Japan.

In its decision the tribunal will be guided by the highest motives of international policy, with a view to vindicating the solemn obligations of international

undertakings and the validity of international morality. It will be its duty to fix the punishment which it considers should be imposed.

The Allied and Associated Powers will address a request to the Government of the Netherlands for the surrender to them of the ex-Emperor in order that he may be put on trial.

ARTICLE 228.

The German Government recognises the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Germany or in the territory of her allies.

The German Government shall hand over to the Allied and Associated Powers, or to such one of them as shall so request, all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office or employment which they held under the German authorities.

ARTICLE 229.

Persons guilty of criminal acts against the nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that Power.

Persons guilty of criminal acts against the nationals of more than one of the Allied and Associated Powers will be brought before military tribunals composed of members of the military tribunals of the Powers concerned.

In every case the accused will be entitled to name his own counsel.

ARTICLE 230.

The German Government undertakes to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the discovery of offenders and the just appreciation of responsibility.
