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SECRET

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C.M. (48)

47th Conclusions

CABINET 47 (48)

CONCLUSIONS of a Meeting of the Cabinet held at 10 Downing Street, S.W. 1, on Monday, 5th July, 1948, at 11 a.m.

Present :

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| The Right Hon. C. R. ATTLEE, M.P., Prime Minister (<i>in the Chair</i>). | |
| The Right Hon. HERBERT MORRISON, M.P., Lord President of the Council. | The Right Hon. ERNEST BEVIN, M.P., Secretary of State for Foreign Affairs. |
| The Right Hon. SIR STAFFORD CRIPPS, K.C., M.P., Chancellor of the Exchequer. | The Right Hon. A. V. ALEXANDER, M.P., Minister of Defence. |
| The Right Hon. HUGH DALTON, M.P., Chancellor of the Duchy of Lancaster. | The Right Hon. VISCOUNT JOWITT, Lord Chancellor. |
| The Right Hon. J. CHUTER EDE, M.P., Secretary of State for the Home Department. | The Right Hon. A. CREECH JONES, M.P., Secretary of State for the Colonies. |
| The Right Hon. P. J. NOEL-BAKER, M.P., Secretary of State for Commonwealth Relations. | The Right Hon. A. WOODBURN, M.P., Secretary of State for Scotland. |
| The Right Hon. G. A. ISAACS, M.P., Minister of Labour and National Service. | The Right Hon. GEORGE TOMLINSON, M.P., Minister of Education. |

The Right Hon. J. H. WILSON, M.P.,
President of the Board of Trade.

The following were also present :

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| The Right Hon. E. SHINWELL, M.P., Secretary of State for War (<i>Items 1-3</i>). | The Right Hon. JOHN STRACHEY, M.P., Minister of Food (<i>Item 5</i>). |
| The Right Hon. JAMES GRIFFITHS, M.P., Minister of National Insurance (<i>Items 6-7</i>). | The Right Hon. SIR HARTLEY SHAW-CROSS, K.C., M.P., Attorney-General (<i>Items 3-4</i>). |
| The Right Hon. WILLIAM WHITELEY, M.P., Parliamentary Secretary, Treasury (<i>Item 4</i>). | Sir EDWARD BRIDGES, Treasury. |

Secretariat :

Sir NORMAN BROOK.
Mr. W. S. MURRIE.
Mr. S. E. V. LUKE.

Germany.

Situation
in Berlin.
(Previous
Reference:
C.M. (48) 46th
Conclusions,
Minute 1.)

1. *The Foreign Secretary* said that there had been no material change in the situation in Berlin. An exchange of letters between the British and Soviet Military Governors had produced no conclusive results; and it now seemed that there would have to be negotiations between Governments. So far, however, it had not been possible to get into a satisfactory form the draft note to the Soviet Government proposed by the United States Government. The United States authorities wished to include in this an offer to submit the issue to the United Nations. Such an offer was likely to prove embarrassing; but the French Government were unwilling to accept the alternative of offering to discuss the matter at the Council of Foreign Ministers. The Foreign Secretary was now considering whether the other two Governments would be content with a formula offering negotiation between the four Governments without specifying the method by which those negotiations would be pursued. It was desirable that the note should be despatched that evening, and it might be necessary that its terms should be considered later in the day by the Ministerial Committee on Germany.

Palestine.

(Previous
Reference:
C.M. (48) 46th
Conclusions,
Minute 2.)

2. *The Foreign Secretary* said that he had not yet received the official text of the proposals put forward by the United Nations Mediator in Palestine. When this was available the Cabinet should consider whether they could support the Mediator's proposals. Meanwhile, he intended to warn the Governments of the Arab States that they would be well advised not to reject these proposals out of hand.

War Crimes.

Disposal of
German
Generals
in British
Custody.
(Previous
Reference:
C.M. (46) 94th
Conclusions,
Minute 2.)

3. The Cabinet considered memoranda by the Secretary of State for War (C.P. (48) 151 and 165) and the Attorney-General (C.P. (48) 159) about the disposal of Field-Marschals von Brauchitsch, von Rundstedt and von Manstein and Colonel-General Strauss, who had been in British custody since 1945. Most of the victims of their crimes had been Russians and Poles and the direct interest of His Majesty's Government was limited to the responsibility of Field-Marshal von Rundstedt for an order under which British Special Air Service troops had been killed. On the other hand, cases against them had been registered with the United Nations War Crimes Commission and His Majesty's Government had been asked to hand over Field-Marschals von Brauchitsch and von Manstein to the Polish Government and Field-Marschals von Rundstedt and von Manstein to the Soviet Government. A memorandum sent to the Attorney-General in August 1947, by the United States authorities had disclosed a *prima facie* case against them, and the problem of their disposal had been discussed by the Foreign Secretary, the Lord Chancellor, the Secretary of State for War and the Law Officers during the autumn of 1947. In December it had been agreed that they should be brought to trial and that action should be taken to prepare a case against them. The Secretary of State for War had, however, thought it right to have them medically examined, and this had been done first by an Army Medical Board and subsequently by a Home Office Board of experienced prison medical officers. This latter board had reported that Field-Marshal von Brauchitsch was not fit to be brought to trial, but that the other three officers were fit to stand trial. The Cabinet were asked to decide whether all or any of the four officers should be brought to trial; whether, if they were not brought to trial, those who had been asked for by the Polish and Soviet Governments should be handed over to those Governments; and how any officers not brought to trial or handed over to the Polish or Soviet Governments should be disposed of. They were also asked to decide whether we should comply with a request that Field-Marschals von Brauchitsch, von Rundstedt and von Manstein should appear as defence witnesses in a United States trial now pending at Nuremberg.

The Secretary of State for War said that it seemed clear from the medical report on Field-Marshal von Brauchitsch that it would be wrong to attempt to bring him to trial. He also doubted whether it would be worth while to undertake the heavy task of attempting to bring the other three officers to trial. If the trials were to be undertaken it would be necessary to set up a special executive to collect evidence, and it was doubtful whether the Soviet and Polish Governments would give much help in this task. The total cost of the trials might amount to £10,000 and it would be impossible to complete them by September 1948, the date by which the Overseas Reconstruction Committee had asked him to arrange for the disposal of all cases of suspected German war criminals awaiting trial. He therefore proposed that these officers should not be brought to trial and that they should be retained in this country until 1st September, 1948, after which they should be returned to their homes in Germany, where they would have to face the risk of "denazification." He also proposed that Field-Marshals von Rundstedt and von Manstein should be produced as witnesses in the United States trial at Nuremberg, on the understanding that they would subsequently return to this country before they were sent to their homes in Germany.

The Attorney-General said that, in view of the information supplied by the United States authorities and the attitude which we had adopted to the requests from the Soviet and Polish Governments, he could see no grounds on which we could defend a decision not to bring to trial the three generals who were fit to stand trial. Subordinates of theirs had already been executed for carrying out the orders given by them, and His Majesty's Government would be open to an accusation of bad faith if the generals were not put on trial.

The Lord Chancellor expressed doubts about the wisdom of bringing these officers to trial. It would be a laborious task to collect the evidence against them and they might well be acquitted. Moreover, public opinion in the United Kingdom would regard the trial of these elderly and infirm officers as an act of vengeance rather than of justice.

The Foreign Secretary said that, although we had not given specific undertakings to the Soviet and Polish Governments that we would bring these officers to trial, we had allowed those Governments to understand that it was on this basis that we declined to hand them over. From the international point of view he thought it necessary that those officers who were fit to be tried should be brought to trial as soon as possible. Although the Overseas Reconstruction Committee had asked that the war crimes trials as a whole should be brought to an end by September 1948, these few and exceptional cases could if necessary be completed after that date.

In further discussion Ministers agreed that, as there was a *prima facie* case against these officers and as we were not prepared to hand them over to the Soviet or Polish Governments, they should be tried if they were fit to stand trial. The proceedings could take place in Germany.

The Cabinet—

- (1) Invited the Secretary of State for War to take immediate steps to collect evidence and make any other necessary preparations for the trial of all the four officers concerned, on the understanding that the question of trying Field-Marshal von Brauchitsch might be reconsidered if, after the evidence against him had been collected, it were found that he was still unfit to stand trial.
- (2) Authorised the Secretary of State for War to arrange for Field-Marshals von Rundstedt and von Manstein to appear as defence witnesses in the United States trial now pending at Nuremberg.

**Criminal
Justice Bill.**

Capital
Punishment.
(Previous
Reference:
C.M.(48)36th
Conclusions,
Minute 2.)

4. The Cabinet considered a memorandum by the Home Secretary (C.P. (48) 174) reporting the results of his consultations with Government supporters on the proposal that the death penalty should be retained for certain specified classes of murder.

The Home Secretary said that, as a result of these consultations, he was satisfied that a clause in the terms of the revised draft annexed to C.P. (48) 174 would be acceptable to the great majority of Government supporters, both those who in the earlier proceedings on the Criminal Justice Bill had favoured the suspension of the death penalty and those who had voted for its retention. He believed that there would be no risk of serious discontent among Labour Members in the Commons if the Government Whip were used in support of a clause in these terms. In framing the clause it had been his object to retain the death penalty for those types of murder which most stirred the public conscience. He had tested the efficacy of the clause by applying its provisions to the 98 persons convicted of murder in the years 1944 to 1947. During that period 51 persons had been executed; and 28 of these would not have been sentenced to death if this clause had been in operation. Of the 47 who were dealt with by committal to penal servitude or to Broadmoor Criminal Lunatic Asylum, 40 could not have been sentenced to death if the new clause had been in operation. This examination indicated that the new clause would have the effect of reducing very substantially the number of cases in which sentence of death was pronounced.

Ministers agreed that the clause annexed to C.P. (48) 174 could be commended to the House of Commons as a reasonable compromise, and that it should receive the support of the Government Whip. They recognised, however, that there might be more difficulty in persuading the House of Lords to accept this compromise. The Home Secretary suggested that when the clause had been published he should see the Archbishop of Canterbury and try to enlist his support for the clause. This suggestion was endorsed.

In detailed discussion of the draft clause the following points were made:—

(a) Should the death penalty be preserved for persons who murdered two or more victims on a single occasion? As the clause now stood, the sentence of death could not be passed on a man who wrecked a train: and, although a man might be sentenced to death if he had murdered three women on consecutive days, he could not be so sentenced if he had collected his victims together and disposed of them simultaneously.

(b) It would probably be argued that, if the new clause became law, trials for murders falling within its scope would have to be conducted in two phases. It would be suggested that, after the accused had been found guilty of murder, the jury should be asked to consider separately whether the murder was one for which sentence of death could be pronounced. It was pointed out, however, that this would be inconsistent with the principle of the clause, which provided that the particular type of murder must be charged in the indictment or inquisition before death sentence could be passed.

(c) There would also be some procedural complications under Section 1 (1) (e) of the new clause. First, it would be necessary to ensure that, when a person was believed to have committed more than one murder, prosecuting authorities should take particular care in framing the indictments. Secondly, if the accused were found guilty on the first charge, it would be necessary to empanel a fresh jury to try him on the second. Although his previous conviction would not be disclosed in the proceedings until he had been found guilty on the second charge, it was likely that the second jury would be aware of his earlier conviction and it could be argued that their minds would be influenced by that knowledge.

(d) It was for consideration whether the death penalty should be preserved for murder committed in the course of kidnapping.

(e) Section 1 (1) (e) of the new clause provided that the death penalty should be retained for murder "committed by means of,

and in the course of the systematic administration of, poison or any other similar destructive or noxious substance." The question was raised whether the word "similar" should be omitted from this paragraph. It was pointed out, in reply, that it was intended that the paragraph should be limited to murders caused by the administration of poison or destructive or noxious substances similar to poison. If the word "similar" were omitted, the scope of the paragraph would be extended far beyond poisoning.

The Cabinet—

- (1) Approved in principle the draft clause annexed to C.P. (48) 174, but asked that the Home Secretary and the Secretary of State for Scotland, in consultation with the Law Officers, should again examine it in detail in the light of the points noted in paragraphs (a) to (d) above;
- (2) Subject to this further scrutiny of the details, authorised the Home Secretary to publish the clause as a modification of the Lords' amendments to the Criminal Justice Bill;
- (3) Agreed that the clause should be commended to the House of Commons and should receive the support of the Government Whip.

**International
Wheat
Agreement.**
(Previous
Reference:
C.M. (48) 40th
Conclusions,
Minute 3.)

5. The Cabinet considered a memorandum by the Minister of Food (C.P. (48) 172) on the situation resulting from the failure of the United States Senate to ratify the International Wheat Agreement. They also had before them Washington telegrams AMAZE 9235 and 9236 of 1st and 2nd July from the United Kingdom Delegation to the International Wheat Council.

The Minister of Food recalled that on 17th June the Cabinet had agreed that the International Wheat Agreement should be ratified. A new situation had, however, been created by the failure of the United States Senate to ratify the Agreement. Congress had now gone into recess and was not expected to reassemble until the beginning of 1949; in the meantime the United States Government had no power to implement the Agreement. But it could not be effective without United States participation and the Minister therefore endorsed the suggestion put forward by the United Kingdom Delegation that, at the meeting of the International Wheat Council on 6th July, they should give provisional notice of withdrawal on 31st August next, if the Agreement had not then been ratified by the United States Congress.

In discussion, it was pointed out that Article XX of the Agreement provided that any Government might, at the opening of the first session of the Council, effect its withdrawal by notification to the United States Government. The Article made no provision, however, for conditional withdrawal, and it was suggested that a notification in the terms proposed by the Minister of Food would have no legal validity. As it was, in any event, uncertain what attitude would be adopted towards the Agreement by the new United States Administration after the Presidential election in November, it would be unwise to take any risk of incurring a continuing obligation under the Agreement in default of United States participation, and in the circumstances there seemed to be no alternative to immediate notification of withdrawal. Care should, however, be taken to make clear to the Canadian Government and to public opinion generally the fact that His Majesty's Government had withdrawn only because of the failure of Congress to ratify the Agreement.

The Cabinet—

- (1) Authorised the Minister of Food to instruct the United Kingdom Delegation to the International Wheat Council to announce the intention of His Majesty's Government to withdraw from the International Wheat Agreement on account of the failure of the United States Congress to ratify it;
- (2) Invited the Minister of Food to ensure that suitable publicity was given to the reasons for this decision.

**Civil
Service
Superannua-
tion.**

(Previous
Reference:
C.M. (48) 40th
Conclusions,
Minute 4.)

6. The Cabinet considered a memorandum by the Chancellor of the Exchequer (C.P. (48) 170) dealing with certain points which had been raised when the Cabinet had considered his proposals in C.P. (48) 148 for providing pensions for widows and orphans of civil servants and for improving the pensions of civil servants retired through ill health after short service.

The Chancellor of the Exchequer explained that under the scheme set out in C.P. (48) 148 the proposed reductions in gratuities would have met half the additional cost of providing the new pensions. In order, however, to bring out the contributory nature of the scheme, he now proposed that civil servants should be given an option to make their contribution either wholly or partly by deductions from their pay on the lines indicated in paragraphs 5 to 7 of C.P. (48) 170. Appendix I to C.P. (48) 170 showed that the maximum annual charges arising from consequential improvements in the provision made for the widows and orphans of other public servants would be £1,685,000 on the Exchequer and £965,000 on the rates, and that the cost of any consequential improvements in pensions for widows of members of the Forces should be considerably less than £1.5 million. In Appendix II he had given examples of certain industrial schemes which compared favourably with his proposals for the Civil Service.

In discussion there was general approval of the modifications proposed in paragraphs 5 to 7 of C.P. (48) 170.

The following additional points were made :—

(a) The scheme would apply to the Foreign Service as well as the Home Civil Service.

(b) Consequential claims were likely to be made for the improvement of pensions payable to widows of members of the Services.

(c) The introduction of the proposed scheme would lead teachers to revive their claim that any period of military service rendered by them before entering the teaching profession should be recognised for superannuation purposes.

The Cabinet—

Approved the scheme set out in the Annex to C.P. (48) 148 for providing pensions for widows and orphans of civil servants and for improving the pensions of civil servants retired through ill health after short service, subject to the modifications proposed in paragraphs 5 to 7 of C.P. (48) 170.

**National
Insurance
(Industrial
Injuries)
Act.**

Supple-
mentary
Injuries
Benefits
for Miners.
(Previous
Reference:
C.M. (48) 46th
Conclusions,
Minute 5.)

7. At their meeting on 1st July the Cabinet had invited the Minister of National Insurance and the Minister of Fuel and Power to arrange with the National Coal Board and the National Union of Mineworkers for a modification of the proposed scheme of supplementary injuries benefits for miners which would bring the pension payable to a young, able-bodied, childless widow into line with the war pension payable to a similar widow.

The Cabinet were informed that in their subsequent negotiations with the Board and the Union the Ministers had secured agreement that the supplementary pension payable to widows of this class should be reduced from 20s. to 5s. It would not have been possible to reach agreement on a complete abolition of the difference between the amount payable to a miner's widow and the corresponding amounts payable to other industrial widows and to war widows, and the Prime Minister had accordingly authorised the Ministers to approve the scheme as modified on the lines provisionally agreed in the negotiations.

The Cabinet—

Took note with approval of the modification which the Minister of National Insurance and the Minister of Fuel and Power had been able to obtain in the scheme of supplementary injuries benefits for miners.

**European
Economic
Co-operation.**

Loans under
the European
Recovery
Programme.
(Previous
Reference:
C.M. (48) 44th
Conclusions,
Minute 1.)

8. *The Chancellor of the Exchequer* said that discussions had been proceeding with the United States authorities on the provision of loans under the European Recovery Programme. The Economic Co-operation Act prescribed that \$1,000 million of the total vote for the first year of the Programme should be provided by way of loans. The terms tentatively suggested for such loans by the Economic Co-operation Administrator were not unreasonable as a basis for negotiation: it was proposed that the rate of interest should be 3 per cent., that the loans should be repayable over a period of 20 years as from 1956, and that there should be a waiver clause similar to that in the Anglo-American Financial Agreements. The latest reports from Washington indicated, however, that the Administrator, on the advice of the National Advisory Council, would probably decide and announce that, in order to meet the requirements of the Act, all aid under the Programme must be divided between grant and loan in a predetermined proportion for individual countries; and it was understood that, for the United Kingdom, this proportion was likely to be three to one. The purpose of this device was to ensure that the loan money was fully used, since there was a risk that Congress would otherwise object to providing further assistance in subsequent years. But its effect was to make the amount of aid received under the Programme dependent on the willingness of the participating countries to accept loans according to the prescribed proportions. In so far as they were used for the purchase of capital equipment, or even of certain raw materials, the acceptance of loans could be justified, but the adoption of the arrangement proposed might render it impossible to restrict the use of loan monies in this way. The United States authorities had provisionally suggested that the amount of the United Kingdom loan for the first year of the Programme might be \$400 million, and the Chancellor proposed that, without prejudice to the ultimate decision on the question, they should be informed that His Majesty's Government were prepared to accept a loan of \$100 million for the first quarter of that year. The whole question would have to be re-examined when the Administrator's final decision was known.

The Cabinet—

Approved the proposal made by the Chancellor of the Exchequer.

*Cabinet Office, S.W. 1,
5th July, 1948.*

