IMMEDIATE
RELEASE

June 7, 1945

The President has received the following report from Dr. Justice Robert H. Jackson, Chief of Counsel, for the United States in the prosecution of Axis War Criminals.

My Dear Mr. President:

I have the honor to report accomplishments during the month since you named me as Chief of Counsel for the United States in presenting the principal Axis War Criminals. In brief, I have selected staffs from several services, departments, and agencies concerned, worked out a plan for preparation, briefing, and trial of the cases assigned the work among the several agencies, instructed those engaged in collecting or processing evidence, visited the European Theater to assist the coordination of captured documents, and the interrogation of witnesses and prisoners; coordinated our preparation of the main case with preparation by Judges Advocates in many cases not included in my responsibilities; and arranged cooperation and mutual assistance with the United Nations War Crimes Commission and with counsel appointed to represent the United Kingdom in the joint prosecution.

1. The responsibilities you have conferred on me extend only to the case of major criminals whose offenses are of no particular geographical localization and which will be prosecuted by joint decision of the governments of the Allies, as provided in the Moscow Declaration of November 1, 1943, by President Roosevelt, Prime Minister Churchill, and Premier Stalin. As such, they do not include local crimes of any kind.

Accordingly, in visiting the European Theater, I attempted to establish standards to aggregate from our case against the principal offenders, cases against many other offenders and to expel their trials. These cases fall into three principal classes:

1. The first class comprises offenses against military personnel of the United States—such, for example, as the killing of American airmen who crash-landed, and other Americans who became prisoners of war. In order to ensure effective military operation, the field forces from time immemorial have dealt with such offenses in the spirit. In one or two of these cases, however, had been withdrawn because of the fear of stimulating retaliation through execution of captured personnel on trumped-up charges.

2. The second class comprises offenses committed by members of German partisan forces and other Allied forces in their own countries.

3. The third class comprises offenses committed by the local authorities.

I flew to Paris and Brussels and conferred with Generalissimo Stalin, Mr. de Gaulle, and Mr. Eden, among others, and arranged to have a representative on hand to clear questions of conflict in any particular case. We also arranged for the exchange of evidence between my staff and the Theater Judges Advocates' staffs. The officials of other countries were engaged in similar efforts. For example, the French brought to General Eisenhower and so to Mr. Eden evidence that civilians in Normandy had been killed by members of the German forces. They had obtained from the German Police ration cards of the victims, and from them the letters and cards they had been delivered to them by our forces. Cases such as this are not infrequent. Under the arrangements perfected, the military authorities are enabled to save in cases of this class without delay. Some we already under way; some by now have been tried and verdicts rendered. Some concentration camp cases are also soon to go on trial.

4. A second class of offenders, the prosecution of which will not interfere with the major case, consists of those who, under the Moscow Declaration, are to be tried by the courts of their crimes for trial by local authorities. These comprise localized offenses or atrocities against persons or property, usually of civilians or countries formerly occupied by Germany. This part of the United States in these cases consists of the identification of offenders and the surrender or demand of those who are within our control.
The United Nations War Crimes Commission is especially concerned with cases of this kind. It represents many of the United Nations, with the exception of Russia. It has been usefully engaged as a body with which the aggression of all the United Nations have reported their accusations and evidence. Lord Woolf, representing Australia, is the Chairman of this Commission, and Ambassador Colonel Joseph H. Jolson is the United States representative.

In London, I conferred with Lord Woolf and Colonel Jolson in an effort to coordinate our work with that of the Commission wherever there might be danger of conflict or duplication. There was no difficulty in arriving at an understanding for such exchange of information. We undertook to respond to requests for any evidence in our possession against those listed with the Commission as criminals, and to cooperate with each of the United Nations in efforts to bring this class of offenders to justice.

Requests for the surrender of persons held by American forces may present diplomatic or political problems which are not my responsibility. But so far as my work is concerned, I advised the Commission, as well as the appropriate American authorities, that there is no objection to the surrender of any person except on grounds that we would have him as a defendant or as a witness in the major case.

J. In a third class of cases, each country, of course, is free to prosecute treason charges in its own tribunal under its own criminal law against its own nationals—Quislings, Lenins, Lord Bee-Bee, and the like.

The consequences of these arrangements is that preparation for the prosecution of major war criminals will not involve prosecution of other offenders. In these latter cases, however, the number of known offenses is likely to exceed greatly the number of prosecutions because witnesses are rarely able unerringly to identify particular soldiers in uniform whose acts they bare witness.

This difficulty of adequately identifying individual perpetrators of atrocities and crimes makes it the more important that we proceed against the top officials and organizations responsible for originating the criminal policies, for only by so doing can there be just retribution for many of the most brutal acts.

II.

Over a month ago the United States proposed to the United Kingdom, Soviet Russia, and France a specific plan. In writing, that these four powers join in a protocol establishing an International Military Tribunal, existing the jurisdiction and powers of the tribunal, making the categories of acts declared to be crimes, and describing those individuals and organizations to be placed on trial. Negotiations of such an agreement between the four powers are not yet completed.

In view of the immense nature of our task, it did not seem wise to wait consummation of international arrangements before proceeding with preparation of the American case. Accordingly, I went to Paris, to American Army Headquarters at Frankfurt and Versailles, and to London, for the purpose of assembling, organizing, and instructing personnel from the existing services and agencies and getting the different organizations coordinated and at work on the estimates. I uniformly met with eager cooperation.

The arduous and treatment of war criminals and suspects appeared to require immediate attention. I asked the War Department to send those prisoners who are suspected war criminals the privileges with which apparatus to their rank if they were newly prisoners of war; to assemble them at convenient and secure locations for interrogation by our staffs; to deny them access to the press, and to hold them in the same confinement ordinarily given suspected criminals. The War Department has been subjected to some criticism from the press for these measures, for which it is fair that I should acknowledge responsibility. The most elementary considerations for ensuring a fair trial and for the success of any case suggest the inadmissibility of permitting these prisoners to be interrogated indiscriminately or to use the facilities of the press to convey information to each other and to criminals yet unapprehended. Our desire is between treating them as honorable prisoners of war with the privileges of their rank, or to identify them as war criminals, in which case they should be treated as such. I have requested from the War Department that those likely to be proven as war criminals will be kept in close confinement and strict control.
Since a considerable part of our evidence has been assembled in London, I went there on May 22 with General dos Santos to arrange for its examination, and to confer with the United Nations War Crimes Commission and with officials of the British Government responsible for the prosecution of war criminals. We had extended conferences with the newly appointed Attorney General, the Lord Chancellor, the Foreign Secretary, the Attorney General, and others. On May 30, Dr. James H. Macmillan announced in the House of Commons that Attorney General Sir David Maxwell Fyfe had been appointed to represent the United Kingdom in the prosecution. Following this announcement, members of my staff and I held extended conferences with the Attorney General and his staff. The result of these conferences is that the British are taking the same steps as we to clear the military and judicial messes for immediate trial, and to effect a complete interchange of evidence and a coordination of planning and preparation of the case by the British and American representatives. Despite the fact that the prosecution of the major war criminals involves problems of a new dimension, I am able to report that no substantial differences exist between the United Kingdom representatives and ourselves, and that minor differences have been adjusted as we or the other side advanced the better reasons for his view.

The Provisional Government of the French Republic has decided that it accepts in principle the American proposals for trials before an International Military Tribunal. It is expected to designate its representative shortly. The government of the Union of Soviet Socialist Republics, while not yet committed, has been kept informed of our steps and there is no reason to doubt that it will join in the prosecution. We propose to make provision for others of the United Nations to be present to abide by the agreement.

III.

The time, I think, has come when it is appropriate to outline the basic features of the plan of prosecution on which we are intensively proceeding in preparing the case of the United States.

1. The American case is being prepared on the assumption that an insuperable responsibility rests upon this country to conduct an inquiry, preferably in association with others, but alone if necessary, into the culpability of those whom there is probable cause to accuse of atrocities and other crimes. We have, moreover, proposed that this inquiry be conducted without delay. It has taken upwards of thousands of American lives to end and bind these men. To die without a trial would mean the dead and unborn of the living. On the other hand, we could execute or otherwise punish them without a hearing. But undermining the systems or punishments without definite findings of guilt, fairly arrived at, would violate pledges repeatedly given, and would not set easily on the American conscience be cleansed by our children with pride. The only other course is to determine the innocence or guilt of the accused after a hearing on dispassionate as the times and honors we deal with will permit, and upon a record which will leave our reasons and motives clear.

2. These hearings, however, must not be regarded in the same light as a trial under our system, where defense is a matter of constitutional right. Fair hearings for the accused are, of course, required to make sure that we punish only the right men and for the right reasons. But the procedure of these hearings may properly be obstructive and illusory, but not possessed by defendants in our ordinary criminal trials.

For what is such a defense to be regarded as the absolute doctrine that any act of state is immune from legal liability? There is more than a suspicion that this idea is a relic of the doctrine of the divine right of kings. It is, in any event, brought to court at the suit of citizens who alleges these rights have been invaded. We do not accept the principle that legal responsibility should be the least power in the greatest. We stand on the principles of responsible government. We shall not forget three centuries ago that King James by Lord Chief Justice Coke, who prophesied that even a King is still "under God and the law,"

With the doctrine of immunity of any act of state usually coupled with another, that refusal of an official to arrest me and the whole thing. It is to notice that the combination of these two doctrines means that nobody has responsibility. Society as a whole operates on the basis of an act of official irresponsibility. There is an area in which the defense of obedience to superior
orders should prevail. If a conscripted or enlisted soldier is put on a firing squad, he should not be held responsible for the validity of the sentence he receives. But the case may be greatly altered where one has discretion because of rank or the latitude of his action. And of course, the defense of superior orders cannot apply in the case of voluntary participation in a criminal or conspiratorial organization, such as the Gestapo or the S.S. An account should be allowed to show the facts about superior orders. The Tribunal can then determine whether they constitute a defense or merely extenuating circumstances, or perhaps carry no weight at all.

3. Whom will we accuse and put to their defense? We will accuse a large number of individuals and officials who were in authority in the government, in the military establishment, including the Generals, and in the financial, industrial, and economic life of Germany who by all civilized standards are proven to be criminals. We also propose to establish the criminal character of several voluntary organizations which have played a great and controlling part in subjugating first the German people and then their neighbors. It is not, of course, suggested that a person should be judged a criminal merely because he voted for certain candidates or admitted political affinities in the sense that we in America support political parties. The organizations which we will accuse here have no connection with our political parties. Organizations such as the Gestapo and the S.S. were direct action units, and were recruited from volunteers accepted only because of attitude or, not financial devotion to, their violent purposes.

In examining these accused organizations in the trial, it is our proposal to demonstrate their criminal and secret objectives, methods of recruitment, structure, lines of responsibility, and methods of effectuating their programs. In this trial, important representative members will be allowed to defend their organizations as well as themselves. The best possible action will be given, that is, named organizations stated accused and that every member is privileged to appear and state in their defense. If in the case trial an organization is found to be criminal, the second stage will be an identity list before regular military tribunals individual members not already necessarily convicted in the principal case. Findings in the case trial that an organization is criminal in nature will be contempt in any subsequent proceedings against individual members. The individual member will thereafter be allowed to plead only personal defenses or extenuating circumstances, such as that he joined under duress, and as to those defenses he should have the burden of proof. There is nothing novel in the idea that one may lose a part of all his defense if he fails to assert it in his appointed forum in a timely manner. In United States war-time legislation, the principle has been utilized and sustained as consistent with our concept of due process of law.

4. Our case against the major defendants is concerned with the Nazi master plan, not with individual hecatomb and perversion which conformed independently of any central plan. The groundwork of our case must be factually authentic and constitute a well-documented history of what we are charged with a great, concerted plan. To fail to present the clear and palpable facts which have submerged the evidence we must not forget that when the Nazi plans were broadly presented they were as unswerving that the world refused to take them seriously. Unless we write the record of this document with clarity and precision, we cannot know the future if in days of peace it is impossible to read the necessary occurrences during the war. We must establish incredible events by credible evidence.

5. Our specifically are the crimes with which these individuals and organizations should be charged, and what action their conduct in original

There is, of course, real danger that trials of this character will become smothered in a deluge of particulars of things committed by individual officers throughout the course of the war, and in the multitude of record disputes which may arise out of a lawyer's inquisitiveness. We can save ourselves from these pitfalls if our trial is a legal trial and gives precedence to those things which fundamentally involve the conscience of the German people and brought them finally to the point where the nation and civilization could not exist in the world with the best power.

These notes which offend the conscience of our people were criminal by standards generally accepted in all civilized countries, and I believe that we may proceed to present these responsibilities in full accord with both our own conditions of fairness and with standards of just conduct which have been internationally accepted. I think that through these trials we should be able to establish that a
process of retribution by law accords those who in the future similarly attack civilization. Before stating these offenses in legal terms and concepts, let us recall what it was that affected the sense of justice of our people.

Early in the Nazi regime, people of take action came to bear upon the Nazi Government as not constituting a legitimate state pursuing the legitimate objectives of a member of the international community. They came to view the Nazis as a band of brigands, not as adhering within Germany every vestige of a rule of law which would entail no aggression of people to be looked upon collectively as a member of the family of nations. Our people were troubled by the oppression, the cruel forms of torture, the large-scale murder, and the unlawful confiscation of property which permitted the Nazi regime within Germany. They witnessed persecution of the greatest severity in religious, political and racial grounds, the breakdown of trade unions, and the liquidation of all religious and social influences. This was not the legitimate activity of a state within its own boundaries, but was preparatory to the launching of an international course of aggression and war with the will intention, openly expressed by the Fiihrer, of compelling the form of the German state as an instrumentality for opening their roads to other countries. Your people felt that these were the deepest offenses against the international law described in the Fourth Hague Convention of 1907 as including the "laws of humanity and the dignity of the public consciences."

Once these international brigades, the top leaders of the Nazi party, the S.S. and the Gestapo, had firmly established themselves within Germany by terrorism and crime, they immediately set out on a course of international pillage. They hired, armed, and incited to treason the citizens and subjects of other nations for the purpose of enacting their fifth column of espionage and sabotage within those nations. They ignored the solemn obligations of one state respecting the international affairs of another. They lightly and so grossly broke international agreements as a part of their settled policy to deceive, corrupt, and overawe. They ended, not only to deceive, but to defeat, the anti-fascist movements in Europe. They did not hesitate toizi ares the air forces to treacherous attack on the United States. Our people saw in this succession of events the destruction of the solemn elements of truth which can hold the community of nations together in peace and progress. Then, in consummation of their plan, the Nazis swept down upon the nations they had deceived and ruthlessly conquered them. They flagrantly violated the obligations which states, including their own, have undertaken by convention or tradition as a part of the rules of conduct in war, and laid the law of war. They thoughtlessly destroyed cities like Rotterdam for no military purposes. They wiped out whole populations, as in Lidice, which did not raise any military purpose were to be served. They confiscated property of the Poles and gave it to German owners. They transported in labor battalions great sections of the civilized population of the occupied countries. They refused the ordinary protections of law to the populations which they violated. The feeling of outrage grew in this country, and it became ever more clear that these were crimes committed against us and against the whole body of civilized nations by a band of brigands who did not respect the instrumentality of a state.

I believe that these facts of our people were right not when they should arise as the fundamental causes of our country. We know what acts which have been regarded as criminal since the time of Plato and have been written in every civilized code.

In surveying these trials we must also bear in mind the expectations with which our people have faced the necessities of war. After we entered the way, and as we expanded to our men and our allies to arm out these wrongs, it was the universal feeling of our people that if out of this war some unassailable rules and principles of morality from which we might always conduct ourselves in our dealings with other states would have that we would be held perpetually responsible and we would be permanently punished. Our people have been writing for these ideas in the spirit of W. Wilson, who hoped to give to international law the kind of vitality which it can only have if it is a real expression of our moral judgment.

Against this background it may be useful to retrieve in mere technical lawyer's terms the legal charges against the top Nazi leaders and the various executioins such as the S.S. and Gestapo which discredited about ideas and were over the prime instrumentality, first, in capturing the German state, and then, in directing the German state to its applications against the rest of the world.
IV.

The legal position which the United States will maintain, being based on the common sense of justice, is relatively simple and non-technical. We must not permit it to be complicated or obscured by sterile legalisms developed in the age of internationalism to make war respectable.

Doubtless what appears to sum up good and common sense as the crime which comprehends all lesser crimes, is the crime of making unjustifiable war. War necessarily is a calculated series of killings, of destructions of property, of aggressions. Such acts unquestionably would be criminal except that International Law gives a state of protection around acts which otherwise would be crimes, when deemed in pursuit of legitimate warfare. In this they are distinguished from the same acts in pursuit of piracy or brigandage which have been considered punishable whenever and by whoever the guilty are caught. But International Law as taught in the Hague and the early part of the present century assumes that warfare was not illegal and is no crime at all. Supplementing by a strained authority, its attitude was that "when parties to every war are expected as being in an identical legal position, and consequently as being possessed of equal rights." This, however, was a departure from the doctrine taught by Grotius, the father of International Law, that there is a distinction between the just and the unjust war — the war of defense and the war of aggression.

International Law is more than a scholarly collection of abstract and immutable principles. It is an outgrowth of treaties or agreements between nations and of accepted customs. But every custom has its origin in some single act, and every agreement has to be initiated by the action of some state. Unless we are prepared to abandon every principle of growth for International Law, we cannot deny that our own day has its right to institute customs and to conclude agreements that will themselves become sources of a newer and strengthened International Law. International Law is not capable of development by legislation. There is an continuous and unending International Legislation, innovations and revisions in International Law are brought about by the action of governments designed to meet a change in circumstances. It grows as if it were a common law, through cussions reached from time to time in relating settled principles to new situations. Even if it is not disturbed by the lack of precedent for the law when we purpose to conduct. After the shock of civilization of the last World War, however, a period of reaction to the earlier and sounder doctrines of International Law took place. By the time the Axis came to power it was thoroughly established that launching an aggressive war or the institution of war by terrorism was illegal; not that the defense of legitimate warfare was no longer available to those who engaged in such enterprises. It is high time that we set in the juridical principle that aggressive war-making is illegal and criminal.
The re-establishment of the principle of unjustifiable war is incalculable in many steps. One of the most significant is the Briand-Kellogg Pact of 1928, by which Germany, Italy and Japan, in common with nineteen other nations, renounced war as an instrument of national policy, bound themselves to seek the settlement of disputes by pacific means, and conferred resources to war for the solution of international controversies. Unless this Pact altered the legal status of war of aggression, it has no meaning at all, and none close to being an act of deception. In 1929, Mr. Stimson, as Secretary of State, gave voice to the American concept of the Pact. He said, "War between nations was renounced by the signatory powers of the Briand-Kellogg Treaty, meaning that it has become illegal throughout practically the entire world. It is no longer to be the source and subject of rights. It is no longer to be the principle around which the States, the conduct, and the rights of nations revolve. It is an illegal thing.** By that very act, we have made clear that all legal precedent not given the legal profession the task of recognizing many of its crimes and transgresses."

This Pact constitutes only one in a series of acts which have reversed the viewpoint that all war is legal and have brought international law into harmony with the common sense of mankind, that unjustifiable war is a crime. While attempting no exhaustive catalogue, we may mention the Geneva Protocol of 1929 for the peace settlement of international disputes, signed by representatives of forty-eight governments, which declared that "a war of aggression constitutes an international crime." The Eighth Assembly of the League of Nations in 1927, on a unanimous resolution of the representatives of forty-eight member nations, including Germany, declared that a war of aggression constitutes an international crime. At the Sixth Pan-American Conference of 1928, the twenty-four American Nations unani- mously adopted a resolution stating that "war of aggression constitutes an interna- tional crime against the human race."

The United States is vitally interested in recognizing the principle that treaties renouncing war have juridical as well as political meaning. It is no longer upon the Briand-Kellogg Pact and makes it the cornerstone of our national policy. We neglected our commitments and war machinery to reliance upon it. All violations of it, wherever started, menace our peace as we have in the past to know. An attack on the foundations of international relations cannot be regarded as anything less than a crime against the international community, which may properly vindicate the integrity of its fundamental concepts by punishing aggressors. We therefore propose to charge that a war of aggression is a crime, and that modern international law has absolved the offense that those who commit it are engaged in legitimate business. Thus, the forces of the law are mobilized on the side of peace.

Any legal position asserted on behalf of the United States will have considerable significance in the future evolution of international law. In unvitiated times progress toward an effective rule of law in the international community is slow indeed. Recent years have witnessed the advent of nations upon any other.

Now we stand at one of those rare points when the thought and institutions and habits of the world have been shaken by the impact of war, the first time in the lives of countless millions. Such occasions should come and quickly pass. We are put under a heavy responsibility to see that our deliberation during this unsetled period will direct the world's thought toward a firmer foundation of the laws of international conduct, as to make war an illegal alternative to those who have governments and the destinies of peoples in their power.

I have left until last the first question which you and the American people are asking: when can this trial start and how long will it take? I should be glad to answer if the case were within my control. But it would be foolish to assume that which depends upon the action of other govern- ments and of such agencies. At this point, the case, however, as it is now, should be handled to which my atti- tude toward the time and duration of the case.

I know that the public has a deep sense of urgency about these trials. Because I, too, have a sense of urgency, I have presented with the representatives of the twenty- one other nations before conclusion of the diplomatic exchanges concerning the tribunal to hear it and the agreement under which we are to work. We must, however, recognize the difficulties that are presented in presenting the case. It is no criticism to say that until the surrender of Germany the primary objective of the military intelligence service was actually to gather military information rather than to prepare a legal case for trial. We must now start and proceed within.
A remarkable volume of evidence relating to a multitude of crimes committed in several countries and participated in by thousands of actors over a decade of time,
the preparation must cover military, naval, diplomatic, political, and commercial
aspects. The evidence is scattered among various agencies and in the hands of
several nations. The captured documentary evidence—literally tens of orders, rec-
cords, and reports—in large in foreign languages, must be translated into several languages. An immense amount of work is necessary
to bring this evidence together physically, to select that is useful, to thor-
oughly examine it into a case, to overstress all relevant detail, and at the same time not
all suits to avoid biasing but in a willfulness of single instances. Some
surprise of perfection to speak our already be ends off, of course, requiring every
personal convenience and comfort for all of us who are engaged in this work.

Beyond this I will not go in prophecy. The task of making this record complete
and accurate, while countries are fresh, while witnesses are alive, and while
all facts are available, is too important to the future opinion of the world, to be
undertaken before the case can be sufficiently prepared to make a worthwhile presenta-
tion. Intelligent, informed, and sober opinions will not be satisfied with less,

The trial must not be protracted in duration by anything that indicative
or sensible, but we must see that it is fair and deliberate and not hurried
in time to come by any art spirit. These who have report for the good name
of the United States as a symbol of justice under law would not have so pressed them-
self.

May I ask that your personal encouragement and support have been a source of
strength and inspiration to every member of my staff, as well as to me, as we go
forward with a task so immense that it can never be done completely or perfectly,
but which we hope to do acceptably.

Respectfully yours,

[Signature]

[Address]