IMMEDIATE

RELEASE

The President has received the following report from Mr. 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 prosecuting the principal Axis War Criminals. In brief, I have selected staffs from the several services, departments and agencies concerned, worked out a plan for preparation, briefing, and trial of the cases; allocated the work among the several agencies; instructed those engaged in collecting or processing evidence; visited the European Theater to acquaint the prosecution of captured documents; and the interrogation of witnesses and potential witnesses, constituted our preparation of the main cases with preparation by Judges Advocates of 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.

I.

The responsibilities you have conferred on me extend only to "the case of major criminals whose offenses have no particular geographical localization and who will be pursued by joint action 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. It does not include localized cases of any kind. Accordingly, in visiting the European Theater, I attempted to establish standards to aggregate from our case against the principal offenders, those against many other offenders and to exploit 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, the maiming of American soldiers, and other Americans who become prisoners of war. In order to assure effective military operations, the field forces from time to time have dealt with such offenses on the spot. Authorization of this prompt procedure, however, has been withdrawn because of the fact of continuing retaliation through execution of captured personnel in engaged troops. The surrender of Germany and liberation of our prisoners has made this danger. The actual and safety of our own troops and effective government of the control area seems to require prompt recapture of personnel dealing with this type of case. Such proceedings are likely to disclose evidence helpful to the case against the major criminals and will not prejudice it in view of the measures I have suggested to preserve evidence and to prevent procedures execution of those who are potential defendants or witnesses in the major case.

I flew to Paris and Brussels and conferred with Generals Marshall, Smith, Cill, and Biddle, among others, and arranged to have representatives on hand to clear questions of conflict in any particular cases. We also arranged for exchange of evidence between my staff and the Thaler judges advocates' staff. The officials of other countries were most helpful. For example, the French brought to General Eisenhower and to me in Paris evidence that civilians in Italy had been killed in reprisals against their American neighbors. They had identified from the German records identification of the civilians, had taken them to the court, and offered to deliver them to our forces. Cases such as these 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 since we have been tried and convicted. Some concentration camp cases are also soon to go on trial.

2. A second class of offenders, the presentation of which will not interfere with the major case, consists of those who, under the Moscow Declaration, are to be sent back to the zones of their crimes for trial by local authorities. These comprise localized offenses or atrocities against persons or property, usually of civilians of countries formerly occupied by Germany. The part of the United States in these cases consists of the identification of offenders and the surrender on demand of those who are within our control.
The United Nations War Crimes Commission is especially concerned with cases of this kind. It represents most of the United Nations, with the exception of Russia. It has been most useful as a body with which the agrieved of all the United Nations have reported their accusations and evidence. Lord Wright, representing Australia, is the Chairman of this Commission, and Lieutenant Colonel Joseph V. Hodgson is the United States representative.

In London, I conferred with Lord Wright and Colonel Hodgson in an effort to coordinate our work with that of the Commission. Whenever there might be danger of conflict or duplication, there was no difficulty in arriving at an understanding for mutual exchange of information. We undertook to respond to requests for any evidence in our possession against those listed by 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 America forces persons cannot be made through diplomatic or political channels, but, as 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 want him as a defendant or as a witness in the major case.

In a third class of cases, each country, of course, is free to prosecute treason charges in its own tribunal and under its own laws against its own treasonous nationals or nationals of the United States, "Lord Tweedsmuir," and the like.

The consequence of these arrangements is that prosecutions for the presentation of major war criminals will not impede prosecution of other offenders. In these latter cases, however, the number of known offenses is likely to amount greatly the number of prosecutions, because witnesses are rarely able satisfactorily to identify particular soldiers in uniform whose acts they have witnessed. 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. Far by so doing one there can 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 at a specific place, in writing, that these four powers join in a protocol establishing an international military tribunal, defining the jurisdiction and powers of the tribunal, listing the categories of acts declared to be crimes, and describing individuals and organizations to be placed on trial. Negotiation of such an agreement between the four powers is not yet completed.

In view of the immensity of our task, it did not seem wise to await consummation of international arrangements before proceeding with preparation of the American case. Accordingly, I went to Paris, to American army headquarters at Saint-Germain, 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 enterprise. I uniformly met with eager cooperation.

The custody and treatment of war criminals and suspects appeared to require immediate attention. I asked the War Department to try these prisoners who are suspected war criminals the privileges with which they are to be given to those held in our prisoner of war camps. The War Department has been subjected to some criticism from the press for these practices, for which it is fair that I should acknowledge responsibility. The most elementary considerations for insuring a fair trial and for the success of our case suggest the importance of permitting these prisoners to be interviewed individually or to use the facilities of the press to convey information to each other not to criminals are not to be treated as criminals, in which case they should be treated as such. I have communicated from the War Department that those likely to be released as war criminals will be kept in close confinement and under control.
Since a considerable part of our evidence has been assembled in London, I went there on May 29 with Special Counsel to arrange for its examination, and to confer with the United States War Crimes Commission, and with officials of the British Government responsible for the prosecution of war criminals. We had extended con-
ferences with the newly appointed Attorney General, the Lord Chancellor, the Foreign Office, the Treasury, the War Office, and others. On May 30, Justice Secretary Sutherland, chairman of the British Committee for War Crimes, announced in the House of Commons that Attorney General Sir David Maxwell Frye 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 upshot of these conferences is that the British are taking
steps parallel with our own to clear the military and local courts for immediate
trial, to afford a complete interchange of evidence and a coordination of planning and preparation of the case by the British and American representatives. De-
spite the fact that the prosecution of the major war criminals involves problems
difficult of their own, I am able to report that no substantial differences exist
between the United Kingdom representatives and ourselves, and that minor differences have been easily amicably solved in the better interests of this view.

The Provisional Government of the French Republic has decided that it accepts
in principle the American proposals for trials before an International Military
Criminal. It is expected to designate its representative shortly. The government
of the State of Soviet Russia has declined, unless yet promised, has been kept
informed of our steps and there is no reason to doubt that it will
ultimately join the prosecution. We propose to make provision for others of the United Nations to
become adherent to the agreement.

III.

The time, I think, has come when it is appropriate to outline the broad
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 unanswer-
ably responsible state or group of states under which the government will be
held accountable, is the possibility of those cases to ensure the safety of civilians and other criminals. In many cases
in our possession. That will be the case with whom, of course, act them at
large without a hearing. But it has meant uncounted thousands of American lives to
meet and hide those men. To free them without a trial would mean the dead and
worse effects of the living. On the other hand, we could execute or otherwise punish them
without a hearing. But under the rule of law, even without definite
findings of guilt, fairly arrived at, would violate pledges repeatedly given, and
which must not be easily on the American conscience or be punished by our
citizens with pride. The only other course is to determine the increase of guilt of the
accused after a hearing on the basis of the times and shows we deal with
will permit, and upon a record that will leave our reasons and motives clear.

2. These hearings, however, must not be regarded in the same light as a
trials 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 not
properly by obstructive and illitory tactics permitted to defendants in our
ordinary criminal trials.

For about such a defense to be considered as the absolute doctrine that a bale
of state is immune from legal liability. There is more than a suspicion that this
idea is a result of the doctrine of the civil right of States. It is, in any event,
brought to court at the suit of citizens who allege their rights have been de-
rienced. We do not accept the principle that legal responsibility should be the least
where power is the greatest. We stand on the principle of responsible government
declared some three centuries ago by John Locke in his chief Justice Oliver, who
proclaimed that over a King is still under God and the law.

With the doctrine of immunity of a bale of state usually coupled with, the
right of an official to carry on the duty of the time. It will be
recognized that the combination of these two doctrines means that nobody is responsible.
Society is generally supposed to manage an area of official irrespon-
sibility, there is no place in which the defense of abstinence to superior

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orders should prevail. If a convicted or exiled emperor is put on a firing squad, he should be held responsible for the majority of the sentences he carries out. But the case may be greatly altered where one has discretion because of rank or the latitude of his orders. And of course, the defense of expert order comes not 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 expert orders. The Tribunal can then determine whether they constitute a defense or merely extenuating circumstances, or perhaps carry no weight at all.

3. When 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 Secret State, and in the financial, industrial, and economic life of Germany who by all civilized standards are possible to be accused individuals. 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 maintained political affiliations in the sense that we in America support political parties. The organizations which we will accuse here have no connection to our political parties. Organizations such as the Gestapo or the S.S. were direct action units, and were recruited from volunteers accepted only because of aptitude for, not national devotion to, their violent purposes.

In examining the accused organizations in the trial, it is our proposal to demonstrate their stated and covert objectives, methods of recruitment, structure, lines of responsibility, and methods of equipping their programs. In this trial, important representatives will be allowed to defend their organizations as well as themselves. The best practicable notice will be given, that accused organizations stated accused and that every member is privileged to answer and state in their defense. If in the trial an organization is found to be criminal, the second stage will be to identity and try before regular military tribunalsindividual members not already necessarily convicted in the principal case. Findings in the main trial that an organization is criminal in nature will be constituents in any subsequent proceedings against individual members. The individual members will thereafter be allowed to plead only personal defenses or extenuating circumstances, such as that he acted under duress, and as to those defenses he should have the burden of proof. Every is setting novel in the idea that one may lose a part of all his defense if he fails to assert it in an appointed form at an earlier time. In United States wartime legislation, this 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 aggressions and persecutions which coursed independently of our central plan. The groundwork of our case must be factually authentic and constitute a well-documented history of what we are accused as a great, concerted plan to destroy by violence and terror all who opposed the Führer. We must not forget that when the Nazi plans were boldly proclaimed they were supported and not discredited by the world as unreasonably. Unless we write the record of this movement with clarity and precision, we cannot know the future if in years of peace it is lost and may itself be lost by the very policies pursued during the war. We must establish incredible events by credible evidence.

5. But specifically are the crimes with which these individuals and organizations should be charged, not what their conduct as criminal?

There is, of course, real danger that trials of this character will become mired in vexatious particulars of crimes committed by individual defendants throughout the course of the war, not in the context of the overall issue of the war from which these defendants derived their power. We can save ourselves from these pitfalls if our trials in which our offenses are contained in these things which fundamentally changed the character of the German people and brought them finally to the destruction which their own liberty and civilization could not resist in the final war with the First Power.

Those which offended the conscience of our people were criminal by standards generally accepted in all civilized communities, and I believe that we may proceed to state those responsibilities in full accord with both our own principles of fairness and with standards of just conduct which have been internationally accepted. I think that the trials of 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 offended the sense of justice of our people.

Early in the Nazi regime, people of that country came to look 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, as an adventuring within Germany every vestige of a rule of law which would entitle no aggregation of people to be looked upon collectively as a member of the family of nations. Our people were shocked by the atrocities, the cruellest forms of torture, the large-scale murder, and the wholesale violation of property which characterized the Nazi regime within Germany. They witnessed prevention of the greatest enormities in religious, political, and moral grounds, the breakdown of trade unions, and the liquidation of all religions and racial influences. This was not the legitimate activity of a state within its own boundaries, but was premeditated in the planning of an international course of aggression and war with the well intention, openly expressed by the Nazis, of imposing the form of the German state on an instrumentality for spreading their rule to other countries. No people felt that these were the deepest offenses against that international law described in the Fourth Hague Convention of 1907 as including the "Laws of Humanity and the Dignity of the Public Conscience."

Once these international brigands, 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 bribed, they intimidated, and incited to treachery the citizens and subjects of other nations for the purpose of assembling their fifth column of sympathizers and saboteurs within those nations. They honored the smallest obligations of one state respecting the international affairs of another. They ruthlessly and greedily broke international engagements as a part of their settled policy to deceive, corrupt, and overwhelm. They defied and even to violence, pledged respecting the demilitarized Rhineland and Saar territory, the Reich, and Austria. They did not hesitate to violate the most fundamental norms of international conduct such as the United States. Our people saw in this succession of events the destruction of the oldest elements of trust 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 ignominiously violated the obligations which they had violated, their own, their understanding by convention or trinity or custom or the laws of war, or of the laws of war. They trampled the little states like Bethlehem in an international crusade. They swept out whole populations, as the Jews, whom no military purpose was to be served. They confiscated property of the wealth of the Jews and gave it to petty enemies. They transported in labor camps vast sections of the civilian populations of the conquered countries. They refused the ordinary protection of law to the populations which they enslaved. The feeling of outrage grew in this country, and it became clear and more felt that these were crimes committed against us and against the whole variety of civilized nations by a band of brigands who had trampled the instrumentality of a state.

I believe that these crimes of our people were right not because they should guide us as the fundamental tests of opinion. We accept to punish acts which have been regarded as criminal since the time of Plato and have been written in every civilized code.

In regarding these tribulations we must also bear in mind the necessities of war. After we entered the way, and as we expanded our power and our will to stem all these wrongs, it was the universal feeling of our people that this was not of our will but against our wish and against our will. We could not have the same kind of victory which we could have had if it were a real expression of our moral judgment.

Against this background it may be useful to resist in more technical lawyer's terms the legal charges against the top Nazi leaders and the voluntary execution of such as the S.S. and Gestapo who disregarded the need for the protection of the civilian populations over the prime necessities of first, in capturing the German state, and then, in directing the German state to its obligations against the rest of the world.
(a) Atrocities and offenses against persons or property constituting violations of international law, including the laws, rules, and customs of armed conflict.

(b) Atrocities and offenses, including atrocities and breaches of moral and religious grounds, committed since 1935. This is to recognize the principles of international law as they are generally observed in civilized states. These principles have been established as a part of international law at least since 1907. The Hague Peace Convention provided that inhabitants and belligerents shall respect the protection and the rule of the laws of nations, as they result from the usage established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

(c) Inventions of other countries and initiation of wars of aggression in violation of international law or treaties.

The persons to be reached by these charges will be determined by the rules of liability, common to all legal systems, that all who participate in the formulation or execution of a criminal plan involving multiple victims are liable for each of the offenses committed or responsible for the acts of each other. All are liable who have misled, ordered, procured, or connived the commission of such acts, or who have taken what theosaic Declaration describes as "a consenting part" thereof.

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 legalities developed in the age of impersonal to make war respectable.

Domestically as a nation of good will and common sense as the crime which comprehends all lesser crimes is the crime of making unjustifiable war. It necessarily is a calculated series of killing, destructions of property, and oppressions. Such acts unquestionably would be criminal except that international law brings a state of protection around acts which otherwise would be crimes, when connected in pursuance of legitimate warfare. In this they are distinguished from the same acts in pursuance of piracy or brigandage which have been considered punishable regardless of however guilty are caught. But international law is taught in the Hague and the only part of the Court of Inquiry recently concluded that wrongdoing was not illegal and is no crime at law. Summarized by a standard authority, it is taught that "such parties to every war are regarded 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 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, for there is no continuously sitting international legislature. Innovations and revisions in International Law are brought about by the action of governments desiring to meet a change in circumstances. It grows, as it is common law, through decisions reached from time to time in doctrine settled principles as new situations. Hence it is not disturbed by the lack of precedent for the lawmaking process to conduct. After the shock to civilization of the last World War, however, a period of revolution in the earlier and sounder doctrines of international law took place. By the time the treaty was made to govern it was thoroughly established that aggression on aggressive war or the institution of war by treachery was illegal and that the defense of legitimate warfare was no longer available to those engaged in such enterprises. It is high time that we act in the juridical principle that aggressive wars-making is illegal and criminal.
The remission of the principle of unjustifiable war is incalculable in any steps. One of the most significant is the Brindisi-Seligman of 1898, by which Germany, Italy, and Japan, in common with neutrals and practically all the nations of the world, renounced war as an instrument of national policy, bound themselves to seek the settlement of differences only 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 is no more at all, done close to being an act of deception. In 1929, Mr. Stimson, as Secretary of State, gave voice to the American concept of the Pledge. He said, "War between nations was renounced by the signatures of the Brindisi-Seligman Treaty. This means 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 cheques on any legal precedents and have given the legal profession the task of remaking many of its texts and treatises."

This Pact constitutes only one in a series of acts which have reversed the viewpoint that war is legal and have brought international law into harmony with the common sense of mankind. This unjustifiable war is in a state. Without attempting to exhaustive catalogues, we may mention the Geneva Protocol of 1929 for the Pacific Settlement of International Disputes, signed by the representatives of forty-eight governments, which declared that "war of aggression constitutes an international crime." The Eighth Assembly of the League of Nations in 1927, on 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 1929, the twenty-three American Nations unani mously adopted a resolution stating that "war of aggression constitutes an international crime against the human race."

The United States is vitally interested in recognizing the principle that treaties renouncing war are just as well as political means. It relies upon the Brindisi-Seligman Pact and nobly it the expression of our national policy. We neglected our contempt and our war machine to reliance upon it. All violations of it, wherever started, menace our peace as we see have good reason to know. An attack on the foundations of international relations cannot be regarded as anything less than a crime against the international community, which properly vindicates the integrity of its fundamental compact by punishing aggressors. We therefore propose to charge that a war of aggression is a crime, and that modern international law has absolved the defense that those who take or wages it are engaged in legitimate businesses. One way the foresight of the law be put in 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 untried cases, progress toward an effective rule of law in the international community is slow indeed. In this case, more especially, the world has been shaken by the impact of war on the lives of countless millions. Such occasions most cases and quickly pass. We are put under a heavy responsibility to see that our deliberations during this session is a period will direct the world's thought toward a firmer enforcement of the laws of international conduct, so as to make our less attractive 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 about this war and how long will it take. I should be glad to answer if the answer were within my control. But it would be foolish to assume dates which depend upon the actions of other governments and of many agencies. It is, however, true that if in a few months, however, would not expect full and entire the time and duration of the war.

I know that the public has a deep sense of urgency about these trials. Because I, too, feel a sense of urgency, I have been careful to the protection of the interest and the desire of the American people that the matters before us be brought to a decision and that the trial be promptly and fairly conducted.

I am certain that the public is deeply interested in the case and in the decision of the court. I shall, therefore, try to present the facts of the case and to state the principles involved in a simple and clear manner, so that the public may understand the nature of the question and the basis of the decision. I shall try to avoid any unnecessary delay in the trial and to bring the case to a conclusion as soon as possible.

My dear friends, I am sure that you are all eager to have the case tried and decided. I am certain that the public is deeply interested in the case and in the decision of the court. I shall, therefore, try to present the facts of the case and to state the principles involved in a simple and clear manner, so that the public may understand the nature of the question and the basis of the decision. I shall try to avoid any unnecessary delay in the trial and to bring the case to a conclusion as soon as possible.
A possible cause may be the result of a multitude of cases committed in
the preparation and the collection of accurate, careful, and complete
information. The evidence is obtained from various agencies and to the
beauties of the sea. The captured documentary evidence—literally tons of
records, maps, and reports—is largely in Foreign Languages. Every document
and the trial must be translated into several languages. An immense amount of
work is necessary to bring this evidence together completely, to select that is
relevant, to accumulate all the relevant detail, and at the same time and
all costs to avoid bias and vast in a manner of single instances. Line
critics of perfection to speak can only be found and, of course, against 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 writing this record complete
and accurate, while many are fresh, while others are bitter, is not
possible. The trial must be interrupted at a few key points in the
future. It is too late to begin to write it before the men can be sufficiently
prepared to make a successful presentation. Important, informed, and lesser
opinions will not be satisfied with less.

Yet I still that your personal courage and integrity have been a source of
strength and inspiration to every member of my staff, as well as to us, 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]

[Name]