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 made me as Chief of Counsel for the United States in presenting 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 involved, assigned those engaged in collecting or presenting evidence, visited the European Theater to consult the commanding of captured documents, and the interrogation of witnesses and petitioners. I concluded the preparation of the main case with preparation by Judges Advocates of many cases not included in my responsibilities; and arranged cooperation and mutual assistance with the United States 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 cases of major criminals whose offenses have no particular geographical localization and who will be punished 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. It does not include local cases 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 minor or other offenders and to expedite 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 measures, the field forces from time to time have dealt with such offenses on the spot. Authorization of this prompt procedure, however, had been withdrawn because of the fear of stimulating retaliation through execution of captured agents on trumped-up charges. The surrender of Germany and liberation of our prisoners has ended that danger. The morale and safety of our own troops and effective government of the control area seem to require prompt recognition of such offenses with this type of case. Such proceedings are likely to disclose evidence helpful to the cause against the major criminals and will not prejudice it in view of the nature of the case. I have suggested to preserve evidence and to prepare procedure execution of those who are potential defendants or witnesses in the major case.

I flew to Paris and Brussels and conferred with Generals Eisenhower, Smith, Clay, and Betts, among others, and arranged to have a representative on hand to clear questions of conflict in any particular case. I also arranged for an exchange of evidence between my staff and the Theater Judges Advocate's staff. The officials of other countries were most anxious to help. For example, the French brought to General Eisenhower and to me in Paris evidence that civilians in Germany had been killed by troops of the Russian Government, identification of the killers, and time from the date of their service. The French authorities, however, were not willing to deliver them to our forces. Cases such as this are not infrequent. Under the arrangements perfected, the military authorities are enabled to save cases of this class without delay. Some we already under way can by now have been tried and verdicts rendered. Some concentration camp cases are also soon to go on trial.

2. 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 sent back to the scene of their crimes for trial by local authorities. These comprise local offenses, such as atrocities against persons or property, usually of civilians, of countries formerly occupied by Germany. This 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 any of the United Nations, with the exception of Russia. It has been usefully engaged as a body with which the aggrieved of all the United Nations have presented their accusations and evidence. Lord Wright, representing Australia, is the Chairman of this Commission, and Lieutenant Colonel Joseph R. 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 wherever 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 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 treat him as a defendant or as a witness in the major case.

3. In a third class of cases, each country, of course, is free to prosecute those crimes in its own tribunals and under its own laws against its own nationals—Quislings, Jews, "Lord Be視為," and the like.

The consequence of these arrangements is that preparation for the prosecution of major war criminals will not lapse prosepective 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 steadfastly 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 activities, 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, uniting the jurisdiction and powers of the tribunals trying the categories of acts declared as crimes, and describing those 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 Frankfurt and Vicenza, and to London, for the purpose of assembling, organizing, and transmitting personnel from the existing services and agencies and getting the different organizations coordinated and at work on the enterprise. Uniformly sat with eager cooperation.

The speedy and full treatment of war criminals and suspects appeared to require immediate attention. I asked the War Department to send these prisoners who are suspected war criminals the privileges which would otherwise be their right if they were merely prisoners of war; to assemble them at convenient and secure locations for interrogation by our staff; 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 our case suggest the impossibility 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 not imprisoned. Our choice is between keeping 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 communicated from the War Department that those likely to be named 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 28 with General Doss, to arrange for its extraction, and to confer with the United States War Crimes Commission and with officials of the British Government responsible for the preparation of the evidence. We had extensive conferences with the newly appointed Attorney General, the Lord Chancellor, the Foreign Secretary, the Treasury Solicitor, and others. In May 29, James McDonald, Judge, announced in the House of Commons that Attorney General Sir David Maxwell Fyfe had been appointed to represent the United Kingdom to the prosecution. Following this announcement, members of my staff and I held extensive conferences with the Attorney General and his staff. The result of these conferences is that the British are taking steps parallel with ours to close the military and civil courts for immediate trial, and to adopt a complete interdiction 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 some dimensions, I am able to report that no substantial differences exist between the United Kingdom representatives and ourselves, and that minor differences have been as little as one or the other of us 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 follow us in the prosecution. We propose to make provision for others of the United Nations to become adherents to 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 on honorable 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 may have sued men in our possession. That shall we do with them. We seek, of course, not to wrong them at large without a hearing. But it has been calculated that thousands of Americans live in fear and with anxiety of the living. On the other hand, we could execute or otherwise punish them without a hearing. But undertaking to execute or punish them without definite findings of guilt, fairly arrived at, would violate pledged repeatedly given, not would not act in so the American conscience or be commended by our children with pride. The only other course is to determine the increase of guilt of the accused after a hearing on defendant's as the times and honors 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 trial under our system, where defense is a matter of constitutional right. Fair hearings for 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 very properly by obstructive and illiberal tactics precluded by defendants in our ordinary criminal trials.

Our object as a defense be conceived as the absolute doctrine that a head 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 when their rights have been violated. We do not accept the doctrine that legal responsibility should be the last resort when the least. We stand on the principle that responsible government is the first responsibility of the government. This principle is as old as the government. With the doctrine of immunity of a head of state usually is coupled another, that orders from an official superior protect one the same time. It will be noticed that the combination of these two doctrines means that nobody is responsible. Society is ordained and governed on broad an area of official irresponsibility. There is no place in it where the defense of obedience to superior.
orders should prevent. If a neutral or allied prisoner is put on a firing squad, he should not be held responsible for the decision of the sentence he carries out. But the case may be altered where one has discretion because of rank or the latitude of his office. And of course, the defense of superior orders cannot apply in the case of voluntary participation in a criminal or unconstitutional organization, such as the Gestapo or the SS. An accused should be allowed to show the facts about superior orders. The Tribunal can then determine whether they constitute a defense or merely exculpatory circumstances, or perhaps carry no weight at all.

3. What 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 General Staff, and in the financial, industrial, and economic life of Germany who by all civilized standards are provable to be criminals. We also propose to establish the criminal character of several voluntary organizations which have played a great, not 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 solely 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 have no connection to our political parties. Organizations such as the Gestapo and the SS were direct action units, and were recruited from volunteers accepted only because of aptitude for, not fanatical devotion to, their violent purposes.

In examining the accused organizations in the trials, it is our proposal to demonstrate their declared and covert objectives, methods of recruitment, structure, lines of responsibility, and methods of effectuating their programs. In this trial, important representatives will be allowed to defend their organizations as well as themselves. The best practicable action will be given, those named organizations named accused and that any member is uniquely accused and not in their defense. If in the next trial an organization is found to be criminal, the second stage will be to identify and try before regular military tribunals individual members not already necessarily convicted in the principal case. Findings in the next trial that an organization is criminal in nature will be constraining in any subsequent proceedings against individual members. The individual will thereafter be allowed to plead only personal defenses or exculpatory circumstances, such as that he joined under duress, and as to those defenses he shall have the burden of proof. This is nothing novel in the idea that one may lose a part of all his defense if he fails to assert it in its proper form at an earlier time. As United States wartime legislation, this principle has been utilized and sustained as consistent with the spirit of due process of law.

4. Our case against the major defendants is concerned with the Nazi master plan, not with individual duplicities and perfections which coursed independently of that central plan. The groundwork of our case must be factually authentic and constitute a well-documented history of what we are charged was a great, concerted plan. We do not omit the aggressions and injustices which have occurred and must not forget that when the Nazi plans were being developed, they were as unprecedented in the world's history as it was unaccountably. Unless we write the record of this movement with objectivity and precision, we cannot know the future if we are to avoid it again. We also propose to establish the character of the defendants. We also propose to estABLISH THE NATURE OF THEIR OFFENSES.

5. Not specifically are the crimes with which these individuals and organizations should be charged, but what were their conduct as criminals?

There is, of course, real danger that trials of this character will become overshadowed in various particulars by events committed by individuals outside throughout the course of the war, and to the multitude of factual disputes which are made of a lawyer's perplexities. To state the few legal points which give occasion to these things which fundamentally the existence of the American people and brought to them, finally to the statement that their own liberty and civilization could not persist in the world with the least power.

Those who offended the conscience of our people were criminals by standards generally accepted in all civilized countries, and I believe that we shall proceed to prove these responsible in full accord with both our own standards of fairness and with standards of just conduct which have been intellectually accepted. I think also that through these trials we should be able to establish that a
process of retribution by law results in the future similarly attack civilization. Before stating these offenses in legal terms and concepts, let me recall what it was that affected the sense of justice of our people.

Early in the Nazi regime, people of that country came to look upon the Nazi Government as a perfect instrument of injustice acting in the interests of a certain section of the community. They saw it as a body of brigands, not an instrument of a government. They were governed by the principles of the law of the jungle, which would settle all disputes by force. The state's only function was to enforce law and order, to protect the rights of individuals, and to maintain the social and economic order. The state was not concerned with the well-being of the individual or the community. The state's only concern was to maintain its own power and to suppress any opposition to its rule. The state was not subject to any checks or balances, and its actions were not subject to any judicial review. The state was the ultimate authority, and its decisions were final.

Once these international brigades, the top leaders of the Nazi party, the S.S., and the Gestapo, had established themselves within Germany by terrorism and crime, they immediately set up a system of internment camps. They burned, and incinerated the towns and subjects of other nations for the purpose of establishing their own system of internment camps. They opened internment camps, and the people of those nations were forced to live in these camps as a sort of their settlement to offer, permit, and overawe. They made, and acted upon, secret agreements to exploit any nation, and to make use of the advantages or international agreements to establish the discipline of the international law described in the Fourth Hague Convention of 1907 as including the "laws of humanity and the duties of the public conscience."

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I believe that these facts of our people were right that they should give us as the fundamental test of a country's chances of success. We accept the sacrifices of any nation whose leaders have been guided by the principles of the Fourth Hague Convention, and whose actions are not subject to any judicial review. We accept the sacrifices of any nation whose leaders have been guided by the principles of the Fourth Hague Convention, and whose actions are not subject to any judicial review. We accept the sacrifices of any nation whose leaders have been guided by the principles of the Fourth Hague Convention, and whose actions are not subject to any judicial review. We accept the sacrifices of any nation whose leaders have been guided by the principles of the Fourth Hague Convention, and whose actions are not subject to any judicial review.
(a) Atrocities and offenses against persons or property constituting violations of international law, including the laws, rules, and customs of just and national warfare. The rules of warfare were well established, and generally accepted by the nations, prior to the turn of the twentieth century. They include offenses of such conduct as killing of the wounded, refusal of quarter, ill treatment of prisoners of war, firing on undefended localities, plunder of wells and storehouses, pillage and wanton destruction, and ill treatment of inhabitants in occupied territory.

(b) Atrocities and offenses, including atrocities and prevarications on moral or religious grounds, committed since 1973. This is only to recognize the principles of criminal law as they are generally observed in civilized states. These principles have been assimilated as a part of international law at least since 1907. The Fourth Hague Convention provided that inhabitants and belligerents shall remain under the protection 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 rule of liability, common to all legal systems, that all who participate in the formulation or execution of a criminal plan involving multiple acts are liable for each of the offenses committed and responsible for the acts of each other. All are liable who have joined, ordered, procured, or counseled the commission of such acts, or who have taken what the treason statute describes as "a causing part" therein.

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 absolutism to make war respectable.

Doubtless what appears to sum of guilt will not be common sense as the crime which comprehends all lesser crimes, the crime of making an unjustifiable war. We necessarily think of crimes of ill will, destruction of property, oppression. Such acts unquestionably would be crimes, except that international law makes a state of protection around acts which otherwise would be crimes, when committed in pursim of legitimate warfare. In this sense acts 1 are taken from the same acts in pursuit of piracy or brigandage which have been considered punishable wherever and by whoever the guilty are caught. But international law as taught in the Hague and the early part of the United States generally considered that warfare was not illegal and is no crime at law. Summarized by a standard authority, its attitude was that "both parties to every war are expected as being in an identical legal position, not 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 nation 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 continuous 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 the Common-law, through decisions reached from time to time in adapting settled principles to new situations. Once it is not disturbed by the lack of precedent for the injury we propose to redress. After the shock to 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 First Congress to pass the United States's first interstate commerce bill in 1945, it was thoroughly established, the launching of aggressive war or the institution of war by terrorism 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 principles that aggressive war-making is illegal and criminal.
The remission 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 a means of settling international disputes and condemned recourse to war for the settlement of international controversies. Unless this Pact altered the legal status of war in the eyes of nations or peoples, it has been destined to fall into complete disuse whenever it becomes the subject of international organizations. Unless the Pact altered the legal status of war in the eyes of nations or peoples, it has been destined to fall into complete disuse whenever it becomes the subject of international organizations.

The United States is vitally interested in recognizing the principle that treaties renouncing war have judicial as well as political meaning. If reliance is placed upon the Briand-Kellogg Pact and upon the processes of our national policy, we neglected our agreements and our war machine to reliance upon it. All violations of it, whenever started, menace our peace as we have never before seen before. The attack on the foundations of international relations cannot be regarded as anything less than a crime against the international community, which may properly be considered as the integrity of its fundamental compacts by punishing aggressors. We therefore propose to charge that a war of aggression is a crime, and that a war which has abolished the defense that the nation in which it is engaged in justifiable because of aggression.

The United States is vitally interested in recognizing the principle that treaties renouncing war have judicial as well as political meaning. It is unwise to lose sight of this fact, for we have never before seen before. The attack on the foundations of international relations cannot be regarded as anything less than a crime against the international community, which may properly be considered as the integrity of its fundamental compacts by punishing aggressors. We therefore propose to charge that a war of aggression is a crime, and that a war which has abolished the defense that the nation in which it is engaged in justifiable because of aggression.

I have left until last the question which you and the American people are asking when we are about to start upon the trial of this case. I should be glad to answer if the case were within my control. But it would be unfair to accuse a nation which depends upon the action of other nations and upon our agreement. It is our hope to see it finally solved, however, would not assuredly if we were about to change our attitude toward the issue and duration of time.

I know that the public has a deep sense of urgency about these trials. Because I, too, feel a sense of urgency, I have presented with the agreement of the American people the agreement which you refer to the extent to which we are to work. We must, however, recognize the existence of various difficulties to be overcome in presenting the case. It is an obligation to say that until the surrender of Germany the early objective of the United States was naturally to gather military information rather than to prepare a case for trial. We must now shift our concern within
A remarkable volume of evidence relating to a multitude of crimes committed in various countries and participated in by thousands of actors over a period of time.

The preparations must cover military, naval, diplomatic, political, and commercial interests. The captured documentary evidence—literally tons of orders, records, and reports—is largely in foreign languages. Every document and the trial itself 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 the agents at home, to order, to review details, and to use it at the same time and in all cases to avoid basing trust in a multitude of single instances. The nature of perfection is such that it is only found and, of course, is never exercised over personal, convenience and comfort for all of us are engaged in this work,

But now I will not go into prophecy. The task of seeing this record complete and accurate, while countries are fresh, while witnesses are living, and while a net is available, is to express the effective opinion of the world to be undertaken before the case can be sufficiently prepared to make a successful presentation. Intelligent, informed, and sober opinions will not be satisfied with less,

The trial must not be frustrated in duration by anything that is distracting or oblique, but we must see that it is fair and deliberate and not favored in time to come by any act of spirit. These who have regard for the good name of the United States as a symbol of justice under law will not have us proceed otherwise,

Yours sincerely,

[Signature]

(Robert H. Jackson)