I. Examination of points covered in U.S. note.
1. Do these involve matters which can or should be discussed on a
bipartite basis or should the Russian and French be included?
2. Do they really involve the fundamental principles which must be
decided at the governmental level before planning can proceed?
(Mr. Beirne holds none of the two Secretary's and the A.D.
ought to be treated as classified.)
3. In view of the fact that Judge Rosenau, who is really a represen-
tative of the President, has been designated to act, should
the President be discussed without including the Russian and
the French?
4. Shall we put forward an affirmative program?
5. What consultation with Mr. Ginzberg is appropriate or possible?

II. Affirmative program we desire to put forward.
1. Trial of major war criminals.
   a. A policy of trial rather than an agreed political disposition
      should be favored.
   b. Common enterprise theory
      1. Trial of the major war criminals for their participation
         in the great Nazi enterprise which included these many
         atrocities as part of the ruthless destruction of all
         that stood in their way to race supremacy. Establishment
         of the facts (both pre-war and later) of the enterprise,
         and adequate proof that it was a systematic and planned
         reign of terror.
      2. Simultaneous declaratory judgment or "class relief"
         prosecution of the major organizational participants in
         the common enterprise -- SS - Gestapo -- organizations
         charged with genocide program. This rests in part upon
the fact that the SS, the Gestapo, etc. are made up of carefully selected volunteers pledged to absolute obedience, and hence can be said to be made up of men who are committed recklessly to a course of already dictated from above.

3. Military international

4 to 5 members -- 1 US, 1 UK, 1 French, 1 Russian, 1 to 2 other representatives of United Nations.

4. Necessity of judicial procedure on an expeditious, non-technical basis -- which affords the minimum requirements of due process but without encompassing irrelevancies or delay. Such a procedure should seek to prove

1. the common enterprise and its illegality in the sense that it was reasonably likely to result in the commission of war crimes and other atrocities; that these did result and were in essence a part of the definite policy of the program.

II. The identity of the participating individuals or groups and the fact of their participation. The procedure need only afford an opportunity to hear all and refute the charges made or to deny participation in the enterprise.

5. Procedure should be adapted on a governmental level --

1. permitting any evidence deemed to have probative value

II. denying political necessity or state policy as a defense and hence excluding propaganda, defense speeches

III. making "superior orders" no defense but merely to be given appropriate weight

IV. excluding from protection any state leader or official -- "sovereign immunity"

V. permitting summaries of testimony to be introduced -- i.e., special masters might be appointed to investigate and report on the actions permitted by the Nazi leadership in Germany (with respect to minorities) and in the
the policies pursued by them,
the deliberate program or persecution of minorities,
the continuing policy of national territorial expansion
through force or threat of force.

4. To meet the evidence adduced, the defense should be permitted
to show merely absence or lack of truth of the facts alleged,
argued as to legal insufficiency of the allegations or as
to theories of national or political right (inconsistent with
ordinary decency) should not be permitted in the guise of
evidence, nor as purported justification. The applicable law
should be determined by the executive agreement so far as in
reach.

5. Stage 2 proceedings —
Organizations found to have participated in the common enterprise
would be determined in the first stage. Members would be subject
to penalty:

a. upon identification as members
b. upon their failing to prove (i) that their membership was
   involuntary; or (ii) that their participation was minimal
   only.

Involuntary service or rehabilitation work would be normal
punishment for membership more than minimal. Proof of explicit
consent to, direction of, or participation in any atrocity would be
required for capital punishment. Trials at this stage would be in
the nature of orders to show cause and verification of identity.

6. War criminals charged with specific crimes.

1. Trial by

a. military court, court martial, military commissions of
   U.S. or Allies
b. national courts of United Nations
c. occupation courts or tribunals.

2. Offenses

a. war crimes in the technical sense of offenses against the
   laws and customs of war
by offenses against national law of occupied nations
5. offenses against law of Axis nations — possibly disregarding
entirely Axis decree or administrative regulations permitting
rational or religious persecution, on the ground that these are
imposed as fundamentally inhuman and outrageous.

5. Organization.
1. Use of War Crimes Commission.
The case, so far as they go, are helpful but the Commission
is not a prosecuting or planning body — but merely a research
and advisory body. In this capacity it may have usefulness.
2. There is need of a compact, coordinated organization on a quadri-
partite basis
a. to formulate court procedures on the prosecution of all cases
of which national courts or to recommend policies for adoption,
where further international executive or military agreements are considered
necessary
b. to prepare major cases for trial and to conduct the trials
b. to organize prosecutions of specific cases
b. to screen German nationals and NWs, to list all those and
all people and to see that they are retained in custody
b. to encourage German people to identify and surrender those
guilty of crimes in either organization. This will
involve development of system of propaganda, rewards etc.

4. Possible levels of organization
a. Central Council — military level
b. Separate organization (probably useless)
c. Governmental level (like IAG)
   Probably would induce conflict with military and Central Council
4. Local Organization
   Probably necessary to supplement Central Council group,
but should not be the directing agency.
Whatever level is selected, upon or shortly after its activation,
It should be given the support of an executive or military international agreement.

1. defining its jurisdiction
2. settling the principal policy problems -
   (i) offenses to be tried
   (ii) theory of prosecutions
   (iii) elimination of defenses
   (iv) provision for "streamlined" judicial proceedings rather than political disposition
3. giving it power to formulate detailed policy and procedures, establish an organization, initiate proceedings etc.


Although the Control Council seems the appropriate body to which to attach the coordinating organization, the organization need not be exclusively military. Counsel and administrators of the highest competence and of some real distinction should be called upon to organize the work and control its operations. These should be selected from both available civilian and military legal and investigative personnel. Their ability should be so unquestioned that, not only will they do a first-rate piece of work of prosecution but the public must have confidence in their capacity to do so.

It is important that the leading military and civilian members of the coordinating group be assured at once, be given an opportunity to participate in planning, and be started on the work of collecting an organization.