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E.O. 11652, Sec. 3(a) and 3(c) or (d)  
Dept. of State InCex, Aug. 10, 1972  
by W.L.V. NAAS Date 11-1-77

the SS, the Gestapo, and the SA.

Having in view the foregoing, and in order to press on with the necessary practical measures to bring to justice the criminals referred to, the governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Socialist Soviet Republics, and the Provisional Government of the French Republic, acting by their respective duly authorized representatives, have agreed upon the following:

I

The German leaders and their associates, and the organizations employed by them, such as those referred to above, will be charged with the commission of their atrocious crimes, and also with joint participation in a broad criminal enterprise which included and intended these crimes, or was reasonably calculated or likely to bring them about. The allegation of the criminal enterprise will be so couched as to permit full proof of the entire Nazi plan from its inception and the means used in its furtherance and execution, including the pre-war atrocities and those committed against their own nationals, neutrals, and stateless persons, as well as the waging of an illegal war of aggression with ruthless disregard for international law and the rules of war. There will be invoked the rule of liability, common to all penal systems and included in the general doctrines of the laws of war, that those who participate in the formulation and execution of a criminal plan involving multiple crimes are jointly liable for each of the offenses committed and jointly responsible for the acts of each other. In support of this charge there will be admitted in evidence the acts of any of the conspirators done in furtherance of the conspiracy, whether or not these acts were in themselves criminal and subject to separate prosecution as such.

II

The trial of the charge described in Article I and the

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determination of the guilty parties will be carried out in two stages:

(a) There will be brought before an international tribunal to be created the highest ranking German leaders to a number fairly representative of the groups and organizations charged with complicity in the basic criminal plan. Adjudication will be sought not only of the guilt of those individuals physically before the tribunal, but also of the complicity of the members of the organizations included within the charge. The tribunal will make findings adjudicating the facts established, including the nature and purposes of the criminal plan, the identity of the groups and organizations guilty of complicity in it, and the acts committed in its execution. The tribunal will sentence those individual defendants physically before it who are convicted.

The above, which may take place in one or more trials, will complete the mission of this international tribunal.

(b) Thereafter, other individuals charged with specific atrocities and members of the organizations who are charged with complicity through such membership in the basic criminal plan but against whom there is not sufficient proof of specific atrocities shall, unless held for trial by one of the United Nations or sent back for trial under the provisions of the Moscow Declaration, be brought before occupation or other appropriate tribunals. The findings of the tribunal in the trial provided for in paragraph (a) of this Article will be taken to constitute a general adjudication of the criminal character of the groups and organizations referred to, binding upon all the members thereof in their subsequent trials in occupation tribunals or in other tribunals established under this instrument. In these subsequent trials the only necessary proof of

guilt of any particular defendant, as regards the charge of complicity, will be his membership in one of those organizations. Proof will also be taken of the nature and extent of the individual's participation.

(c) The defendant in each case shall, upon conviction, suffer death or such other punishment as the tribunal may direct, depending upon the gravity of the offense and the degree of culpability of the defendant.

III

The tribunal for the trial of the basic crimes referred to in Article II(a) shall be a military tribunal which shall consist of five to seven members, to be appointed as follows: one each by the British Commonwealth, the United States, the Soviet Union, and France, and one to three members to be chosen by agreement of the four members of the tribunal, first selected as above provided, from a panel consisting of one person each nominated by each of the other United Nations who may become parties to this instrument.

The members of the tribunal shall be military personnel of the nations of which they respectively are citizens.

IV

In order to accomplish the swift trial and punishment of those guilty of war crimes and other atrocities, the tribunal mentioned in Article II, the national courts of the United Nations, and the appropriate military and occupation courts, all shall adopt and apply, to the greatest extent possible, expeditious, fair, non-technical procedures. Such procedures, in a manner consistent with the other provisions of this agreement should:

(a) provide each accused with notice of the charges against him and an opportunity to be heard reasonably on such charges.

(b) permit the court to admit any evidence which it

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considered would have probative value ~~to a reasonable extent~~;

(c) except as the court in its discretion shall deem appropriate in particular cases, exclude any defence based upon the fact that the accused acted under orders of a superior officer or pursuant to state or national policy or upon the fact that the accused is or was the head or purported head or other principal official of a state, and

(d) confine trials strictly to an expeditious hearing of the issues raised by the charges.

V

(a) There shall be created at the earliest possible moment a full time executive group consisting of one military representative each of the British Commonwealth, the United States, the Soviet Union, and France. So far as the operations of this executive group are carried out within Germany or Austria, such operations shall be subject to the administrative direction of the Control Council for Germany or for Austria, as the case may be. This group shall be assisted by an adequate staff of attorneys and research personnel to compile and analyze data, prepare the charges in the principal case or cases to conform to the proof and arrange the evidence for presentation to the international tribunal.

(b) The presentation of the principal case or cases before the international tribunal shall be made by persons designated by the British Commonwealth, the United States, the Soviet Union, and France, each of these countries being entitled to designate one person, who may be its member of the executive group referred to in paragraph (a) of this Article.

(c) The full time executive group shall also be charged with:

- (1) the preparation of plans for, and general supervision of, the prosecution of individuals to be charged

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with specific war crimes and atrocities and with complicity (as mentioned in Article II, paragraph (c) above) in the basic criminal plan through membership in one of the organizations hereinbefore mentioned, not only in the national courts of the United Nations but also before occupation or other appropriate tribunals.

(2) the organization, through military or civil agencies of the several parties to this Agreement, of prosecuting organizations to prepare and present charges and to conduct trials.

(3) the planning and making of arrangements for the detection, apprehension, extradition, transfer, trial and punishment of persons charged with war crimes and atrocities or with participation in the basic criminal plan.

(4) the planning and putting into effect of suitable, expeditious, non-technical procedures for the swift but fair trial and punishment of war criminals in a manner consistent with the provisions of this Agreement and designed to bring to certain and prompt justice those guilty of war crimes and atrocities.

(5) the recommendation to the appropriate governmental authorities of agreements and measures supplemental to or in addition to this Agreement, necessary or appropriate to accomplish the objectives of this Agreement, and

(6) the maintenance of liaison among and with the appropriate military and civil agencies, authorities and commissions of or representing any of the United Nations which are or may be charged with responsibility for any matters dealt with in this Agreement.

VI

(a) The emoluments and expenses of those members of the

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tribunal provided for in Article III, designated by the British Commonwealth, the United States, the Soviet Union, and France, and of the executive group provided for in Article IV (a), shall be borne by the respective Governments just mentioned.

(b) The emoluments and expenses of the other three members of the tribunal shall be borne by the Governments of the other United Nations parties to this instrument.

(c) The emoluments and expenses of the staff assisting the executive group, and of secretarial staffs for the tribunal and the executive group, and incidental expenses, such as rent, heat, light, stationery and printing, shall be borne in equal shares by the British Commonwealth, the United States, the Soviet Union and France.

VII

All members of the United Nations shall be invited by the Government of the United Kingdom, acting on behalf of the other signatories hereto, to adhere to this instrument. Such adherence shall in each case be notified to the Government of the United Kingdom which shall promptly inform the other parties to this instrument.

Done at \_\_\_\_\_ this the \_\_\_\_\_ day of \_\_\_\_\_, 1945.

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