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By *267/44*, NARS Date *10-17-73*

DRAFT

13 April, 1945

The Secretary of State presents his compliments to his Excellency, the Soviet Ambassador, and has the honour to invite his attention to certain matters remaining undetermined by the Soviet Union, the United Kingdom and the United States with respect to the prosecution and punishment of war criminals.

In the statement jointly issued by the late President of the United States, Premier Stalin and Prime Minister Churchill on 1 November, 1943, usually referred to as the Moscow Declaration, a policy was announced with respect to the punishment of those members of the Hitlerite forces who have been responsible for, or have taken a consenting part in, atrocities and war crimes in territory occupied by the Axis forces. It was then provided that those guilty persons would be sent back to the countries in which their abominable deeds were done in order that they may be judged according to the laws of those countries.

No policy was fixed in the statement of 1 November 1943 covering the punishment of the major war criminals, whose offenses have no particular geographical localization beyond the announcement that they would be punished by joint decision of the Governments of the Allies. Similarly the joint statement did not deal with the methods of punishment of those members of the principal Nazi organizations, the Gestapo and S.S., who engaged in carrying out the ruthless policies of the Nazi regime but who cannot readily be identified with particular war crimes. In view of the progress made by the Allied armies, it would now seem appropriate for the Governments of the Soviet Union, the United Kingdom, and the United States and the Provisional Government of France to fix the policies and procedures to be employed in prosecuting and punishing

(a) the major Nazi leaders for their instigation of the broad program of war crimes and atrocities which

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REF ID:
E.O. 11652, Sec. 3(D) and 5(D) or (E)
Dept. of State letter, Aug. 10, 1972
By *N.T.H.C.*, NARS Date *10-17-73*

have characterized the Nazi regime since 1933 and

(b) the principal Nazi organizations and their members, through whom the most bestial of the Nazi cruelties have been put into effect.

After Germany's defeat or unconditional surrender, the Allies by joint action, pursuant to treaty or otherwise, ^{could probably agree} to put to death the most notorious Nazi criminals without trial. Such action, however, would be violative of concepts of justice, which the freedom loving United Nations accept and, on that account, would be distasteful. It is felt that all reasonable efforts should be made to avoid such a purely political disposition of the Nazi leaders. Instead, it should be possible to determine upon a suitable judicial process more in accord with the common traditions of the principal United Nations. As a distinguished Soviet author has recently pointed out (see "The Criminal Responsibility of the Hitlerites", by a Professor Trainin), it is believed that most of the criminal activities of the Nazi regime are a part of a deliberate program and plan of aggressive action involving the institution of a reign of terror within Germany, the former satellite Axis countries and the occupied countries of Europe. The criminality involved in this program does not consist solely of individual outrages, but largely has been the outgrowth of a systematic and planned policy in which the Nazi leaders and the whole membership of the principal Nazi organizations share responsibility. The leaders and their organizations must be made to pay the penalties which international law and the laws and customs of war exact for war crimes and atrocities of the type which were the natural and probable ^{consequences} of such a program. In this program members of the S.S. and the Gestapo, as volunteers pledged to absolute obedience, joined, with their leaders.

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E.O. 11652, Sec. 1.4
Dept. of State letter, Aug. 10, 1972
By *MLT-H* NARS Date *10-17-73*

Doubtless various methods of prosecution and punishment could be developed which would result in the judicial punishment of both the leaders and also the Nazi organizations and their members. All those plans which may be advanced by any of the United Nations should be given study ~~and one should be given study~~ and one should be adopted which embodies sound principles of swift justice and certainty of punishment of all those, who after the trial are found to be guilty. The Government of the United States advances for your consideration a plan which in no way would interfere with the punishment of ^{individual} Hitlerites at the scene of their crimes for specific atrocities which they have committed, but which would ensure the punishment of the Nazi leaders and the active members of the principal Nazi organizations for the program in which they have played the major part.

The German leaders and organizations employed by them (for example the S.S. and Gestapo) should be charged before an Allied military court, both with the commission of their atrocious crimes and also with joint participation in the broad criminal enterprise which included these crimes and of which ~~they~~ ^{these crimes} were the natural and probable consequence. The proof of the criminal enterprise should cover the entire Nazi plan from its inception and all the means used in its furtherance and execution, including ^{among other things,} prewar atrocities, atrocities committed against Axis minorities, neutrals and stateless persons, the initiation and waging of an illegal war of aggression with ruthless disregard for international law and the rules of war. Such a charge would be founded firmly upon principles of criminal liability, recognized by all penal systems, that those who participate, by association or otherwise, in the execution of a criminal plan naturally resulting in multiple crimes, are jointly liable for all the offenses committed.

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In the trial of such a charge, judicial determination should be made not only of the guilt of the individual Nazi leaders physically before the court but also of the extent of the participation in the enterprise of those Nazi organizations and groups charged with complicity in the criminal Nazi program and plan. Thereafter, appropriate judicial proceedings could be taken to bring to justice and punish individual members of the Nazi organizations which may be found guilty of such complicity. The punishment of such individuals would depend upon the nature and extent of their personal participation in the Nazi criminal program.

The foregoing statement is a brief outline only of certain principles to which this Government believes that ^{the} Government of the Soviet Union will wish to give attention in connection with its study of the prosecution and punishment of war crimes. It is believed that the proposals outlined above can be carried out in a manner both fair and expeditious, and that the trials proposed can be properly confined to the vital issues affecting the guilt of the accused.

It is believed that consideration should now be given to two further matters in connection with the procedures for the prosecution of war crimes and atrocities.

a The four principal Allies might appropriately agree upon ^{measures} ~~expeditious, fair and practicable procedures~~ which would ~~ensure swift and impartial justice~~ and prevent improper resort to such technical defenses as that an accused person acted under orders of a superior officer or pursuant to state policy or that he was a principal official of a state.

b There should promptly be established at some central place an Allied agency charged with ^{the prosecution and punishment} the joint planning of ^{of} war crimes and atrocities. There is substantial work involved in gathering and presenting the full proof



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DECLASSIFIED
E.O. 11652, Sec. 5(C) and 5(D) or (E)
Dept. of State Order, Aug. 10, 1972
By ALM/c, NARS Date 10-17-73

of the Nazi criminal program and enterprises. That work should be undertaken by the cooperative action of the four principal Allies. Accordingly, it is suggested that each of them name one ~~principal~~^{chief} representative of an Allied executive group to ~~take charge of~~^{undertake} this work and to present together before the appropriate Allied military tribunals the charges which the freedom loving nations of the world have to bring against the Hitlerites. Naturally the members of such an executive group would be guided by the governments which they respectively represent. They should be assisted by a competent staff.

The foregoing matters are believed to be ripe for discussion in the near future. The Secretary of State believes that it would be appropriate to have an early meeting of representatives of the four principal Allies for the purposes of such discussion or to deal with the matter through usual diplomatic channels. He would be pleased to have an expression of the views of the ^{Government of the} Soviet Union upon this subject.



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