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Preamble

The United Nations have on various occasions expressed their abhorrence for the unspeakable crimes and atrocities of which the German leaders and their associates are guilty, and have pledged themselves that those responsible for such crimes and atrocities shall not escape punishment.

The United Kingdom, the United States, and the Soviet Union in the Declaration issued at Moscow November 1, 1943 stated:

(1) that those German officers and men who have been responsible for or have taken a consenting part in these atrocities "will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free governments which will be created therein"; and

(2) that the above declaration was "without prejudice to the case of the major criminals, whose offenses have no particular geographical localization and who will be punished by the joint declaration of the Governments of the Allies".

The criminality of the German leaders and their associates does not consist solely of individual outrages, but represents the result of a systematic and planned reign of terror within Germany and within the areas occupied by German military forces, in connection with which the crimes and atrocities referred to were committed. It is apparent that these crimes and atrocities were perpetrated pursuant to a premeditated criminal plan.

For the carrying out of the acts of oppression and terrorism which their program involved, the Nazi leaders and their associates

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created and utilized a numerous organization, chief among which are the SS and the Gestapo.

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 Union of Socialist Soviet Republics, the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the Provisional Government of the French Republic, acting by their respective duly authorized representatives, have agreed upon the following:

I.

Arraignment and Trial of Principal Axis Leaders

1. The executive group mentioned in Article IV below, subject to the approval of the Governments represented on the group, shall prepare a document of arraignment (hereafter called the arraignment) setting forth the offenses which the United Nations allege that Hitler, Mussolini, Goebbels, Himmler, Ribbentrop, Goering, and possibly a certain few others of the principal Nazi and Fascist leaders have committed, caused or permitted. The arraignment shall set forth in adequate detail the principal facts of the great Nazi criminal enterprise from its inception through the whole of its attempted execution, including among other things--

a. The program of persecutions of minority groups in Germany and the occupied countries;

b. The encouragement of internal disorders in countries bordering upon Germany with a view to making them easy prey for the Nazi invader;

c. The treacherous invasion by force, or threat of force, of neighboring countries in violation of international customs and treaties;

Dept. of War
by *SLK* NARS Case 12-7-23

- d. The initiation and waging of a ruthless war of aggression in deliberate and calculated disregard and violation of treaties and international law;
 - e. The murder and deliberate mistreatment of prisoners of war and displaced persons;
 - f. The cruel and relentless oppression of the nationals of territories occupied by the Germans in violation of international conventions and practices and in gross disregard of the laws and customs of war, including, among other things, the initiation of a reign of terror, the enslavement of subject peoples, the unlawful confiscation and looting of private and public property, the unreasonable administration of military occupation, the wanton destruction of towns and villages, the murder, rape and despoilment of the inhabitants, the deportation of peoples, the unreasonable and excessive punishment of individuals for the acts of others for which they were in no way responsible, and the ruthless program of mass extermination in these occupied areas.
2. Each phase of the arraignment shall be supported by reports of investigations, authentic original documents, records, photographs, affidavits and accurate statements of the particular facts and circumstances alleged therein, with a view to setting forth, in the form of a complete dossier of reliable documents, a comprehensive analysis and proof of the totality of the criminal and uncivilized acts for which the freedom loving nations of the world are in duty bound to call upon the principal Nazi aggressors to make an accounting and to bring them to trial.
3. An Allied military court of four members shall be appointed by the Control Council for Germany, for the purpose

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of examining the arraignment, causing written notice thereof to be given to the persons accused therein, and presiding at the trial of such accused persons at which they shall be given fair opportunity to be heard personally and by counsel with respect to the facts charged therein. Each member of the Control Council shall designate one member of the Court. The military court may sit in any zone in Germany, Austria or Italy or in the territory of any one of the United Nations which shall adhere to this agreement, with the consent of any such nation. It shall have within Germany, Austria and Italy (and elsewhere to the extent permitted by the laws of the territory in question) the power to summon witnesses and to compel their attendance, to require the production of documents, to administer oaths, to appoint special masters and other officers, to hold hearings, to make or cause to be made investigations as to the facts set forth in the arraignment and generally to exercise plenary judicial authority with respect to its subject matter, in a manner consistent with the provisions of this agreement.

4. The Court shall proceed with its duties expeditiously with a view to completing at the earliest practicable moment the trial of the accused persons upon the charges set out in the arraignment. So far as such service can be effected, it shall serve three copies of the arraignment, and its supporting documents, at least 20 days prior to the date set for hearing upon the arraignment, upon each of the individuals named therein. Such copies shall be translated into the native language of the persons named. The accused persons shall be required to admit or to deny in writing the several facts set forth in the document of arraignment within 15 days after service of the arraignment upon them and to state the names and addresses of any witnesses whom they wish to call in their defense and the substance of the testimony which each will present. The Court shall then fix a reasonable limit of

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28 April 1945

time within which the several persons arraigned may attempt in open court to controvert, and offer relevant evidence with respect to, the facts charged in the document and be heard in person and by counsel. The Court shall have full power to determine what evidence has probative value and is relevant, and, among other evidence, may give such weight, as it may deem proper, to (a) the documents submitted in support of the arraignment; (b) any facts of which the Court in its discretion may decide to take judicial notice. The Court shall determine whether and to what extent the facts warrant the punishment of the persons named in the arraignment and may recommend to the Control Council such sentence as it may deem proper, subject only to the written approval of the Control Council for Germany which may approve, reduce, or otherwise alter such sentences or any of them. Such sentences, when and as approved, shall be carried into execution in accordance with the written orders of the Control Council.

II

Charges Against Certain Nazi Organizations and their Members.

The German leaders (but without prejudice to the trial of the arraignment of any of them in accordance with Article I) and their associates, and the organizations employed by them, such as those referred to in the preamble to this Agreement, 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

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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.

III

Trial of Organizations and their Members.

The trial of the charge described in Article II and the determination of the guilty parties will be carried out in two stages:

(a) Stage 1 - There will be brought before an international tribunal to be created high ranking German leaders, other than those already arraigned and punished, in the manner provided in Article I, 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

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

(b) Stage 2 - Thereafter there will be brought before occupation or other appropriate tribunals:

(1) other individuals charged with specific atrocities, unless held for trial by one of the United Nations or sent back for trial under the provisions of the Moscow Declaration; and

(2) persons, against whom there is not sufficient proof of specific atrocities, who are members of those organizations (or sections of organizations) which have been adjudicated to be criminal in the Stage 1 proceedings, and who through such membership are charged with complicity in the basic criminal plan.

The findings of the tribunal in the trial provided for in paragraph (a) of this Article III will be taken to constitute a general adjudication of the criminal character of the groups and organizations referred to in such findings, 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 punishment as the tribunal may direct, depending upon the gravity of the offense, the degree of culpability of the defendant.

IV

Tribunal for Trial of Nazi Organizations and their Members.

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The tribunal for the trial of the individuals and organizations charged with the basic crime referred to in Articles II and III (a) shall be a military tribunal which shall consist of four members, to be appointed as follows: one each by the representatives on the Control Council for Germany of the Soviet Union, the United States, the British Commonwealth and France.

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

V

Certain Procedural Matters.

In order to accomplish the swift trial and punishment of those guilty of the war crimes and other atrocities dealt with in this Agreement, the tribunals mentioned in Articles I and III, 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 considers would have probative value;

(c) except as the court in its discretion shall deem appropriate in particular cases, exclude any defense based upon the fact that the accused acted under orders of a superior officer or pursuant to state or national policy;

(d) exclude any defense based upon the fact that the accused is or was the head or purported head or other principal official of a state; and

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Part of Sec. 1, Aug. 10, 1972
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(e) confine trials strictly to an expeditious hearing
of the issues raised by the charges.

VI

Executive Group.

(a) There shall be created at the earliest possible moment an executive group consisting of one representative each of the Soviet Union, the United States, the British Commonwealth and France. Each such representative shall be a member of, or be designated to act for, the military forces of the nation which designated him. The operations of this executive group, so far as within Germany or Austria, 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 in the prosecutions referred to in Articles I and III (a).

(b) The presentation of the arraignment against the chief leaders, as provided in Article I, and of the principal case or cases against the Nazi Organizations before the international tribunal, as provided in subparagraph (a) of Article III, shall be persons designated by the Soviet Union, the United States, the British Commonwealth 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 executive group shall also be charged with:

(1) the preparation of plans for, and the furnishing of advice with respect to, the prosecution of individuals to be charged with specific war crimes and atrocities

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Dept. of State letter, Aug. 10, 1972
By ALC/MS, NADS Date 10-17-73

and with complicity (as mentioned in Article III, paragraph (b) 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) planning and assisting in making 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.

(3) planning and recommending suitable, expeditious, non-technical procedures for the swift but fair trial and certain punishment ^{in a manner} consistent with the provisions of this Agreement, of those guilty of war crimes and atrocities.

(4) recommending to 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

(5) the maintenance of liaison among and with the appropriate military and civil agencies, authorities and commissions of or representing any of the United Nations with respect to the matters dealt with in this Agreement.

VII

(a) The emoluments and expenses of those members of the tribunals provided for in Articles I and IV, designated by the Soviet Union, the United States, the British Commonwealth

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By *W. L. ...*, NARS Doc# *100-11-22*

and France, and of the executive group provided for in Article V (a), shall be borne by the respective Governments just mentioned.

(b) 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 Soviet Union, the United States, the British Commonwealth and France.

VIII

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.