

8 May 1945  
SECRET

EXECUTIVE AGREEMENT RELATING TO THE PROSECUTION  
OF EUROPEAN AXIS WAR CRIMINALS

CLASSIFIED  
11031, E.O. 12958 and 501 or (C)  
of State letter, Aug. 10, 1972  
DATE: 02/27/83

1. Whereas, (1) The Declaration issued at Moscow on November 1, 1943 stated that those German officers and men who have been responsible for or have taken a consenting part in the atrocities and crimes committed by the Axis Powers "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 that will be erected therein"; and

(2) this Declaration was stated to be "without prejudice to the case of major criminals, whose offenses have no particular geographical localization and who will be punished by joint decision of the Governments of the Allies";

Now Therefore joint action is necessary to provide for the prompt prosecution and trial of these major criminals including the principal organizations which participated in the commission of crimes and in the execution of criminal plans.

2. To provide the necessary practical measures for the achievement of these ends, this Executive Agreement

is entered into by the Governments of the Union of Soviet Socialist 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, on their own behalf and on behalf of any other members of the United Nations who shall adhere to this Agreement as hereinbelow provided.

3. 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 Agreement. Such adherence shall in each case be notified to the Government of the United Kingdom which shall promptly inform the other parties to this Agreement.

4. For convenience, (a) the four signatories will sometimes be referred to as "the Signatories," (b) the members of the United Nations adhering hereto as provided in the preceding Article will sometimes be referred to as "the Adherents," and (c) the Signatories and all Adherents will sometimes be collectively referred to as "the parties to this Agreement".

INTERNATIONAL MILITARY TRIBUNALS

5. There shall be set up by the Control Council for Germany one or more international military tribunals (hereinafter referred to as "International Military Tribunal") which shall have jurisdiction to hear and determine any charges presented pursuant to Article 10. Each such International Military Tribunal shall consist of four members and four alternates, to be appointed as follows: one member and one alternate each by the representatives upon the Control Council for Germany of the Soviet Union, the United States, the United Kingdom and France. The alternate, so far as practicable, shall be present at the sessions of the tribunal. The presiding officer of each International Military Tribunal shall be determined by lot.

6. In the event of the death or incapacity of any member of an International Military Tribunal, his alternate shall sit in his stead. All actions and decisions shall be taken by majority vote of all the members of the tribunal. In the event that the tribunal is in disagreement as to its judgment, the accused may be brought to trial before a second tribunal, no member of which shall have taken part in the first trial.

7. An International Military Tribunal may sit in any zone in Germany, Austria or Italy or in any other country with the consent of such country. It shall have 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 and generally to exercise in a manner not inconsistent with the provisions of this Agreement plenary judicial authority with respect to the trial of charges brought pursuant to this Agreement.

8. An International Military Tribunal shall have the power to establish its own rules of procedure, which shall be not inconsistent with the provisions of this Agreement.

9. This Agreement shall not in any way prejudice the creation of other tribunals by the parties to this Agreement or any of them for the trial of persons who are not prosecuted before an International Military Tribunal.

PREPARATION OF CHARGES AND PROSECUTION

10. The parties to this Agreement agree to bring to trial before an International Military Tribunal, in the

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NAMES of their respective peoples, the major criminals, including the principal persons and organizations charged with participation in the commission of crimes and in the execution of criminal plans. To this end, the Soviet Union, the United States, the United Kingdom and France shall each designate at the earliest possible time a representative to act as its chief of counsel. Such chiefs of counsel, acting by majority vote, shall determine the persons and organization to be brought to trial before an International Military Tribunal and, acting as a group, they shall prepare the charges and institute and conduct the prosecution.

11. The chiefs of counsel shall also be charged with:

(a) recommending to appropriate governmental authorities agreements and measures supplemental to or in addition to this Agreement, necessary or appropriate to accomplish the objectives thereof, and

(b) 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.

DECLARATION OF LEGAL PRINCIPLES

12. In any trial before an International Military Tribunal, the tribunal shall be bound by this declaration of the parties to this Agreement that the following acts are criminal:

a. Atrocities and offenses against persons or property constituting violations of international law or of the laws, rules and customs of war.

b. Atrocities and offenses committed since 1933 in violation of any applicable provision of the domestic law of any of the parties or of any Axis Power or satellite, including atrocities and persecutions on racial or religious grounds.

c. Invasion by force or threat of force of other countries in violation of international law or treaties.

d. Initiation of war in violation of international law or treaties.

e. Launching a war of aggression.

f. Recourse to war as an instrument of national policy or for the solution of international controversies.

13. In any trial before an International Military Tribunal, the tribunal shall apply the general rule of lia-

bility that those who participate in the formulation and execution of a criminal plan involving multiple crimes are liable for each of the offenses committed and responsible for the acts of each other.

14. In any trial before an International Military Tribunal any defense based upon the fact that the accused is or was the head or purported head or other principal official of a state is legally inadmissible and will not be entertained.

15. In any trial before an International Military Tribunal the fact that a defendant acted pursuant to order of a superior or government sanction shall not constitute an absolute defense, but may be considered either in defense or in mitigation of punishment if the tribunal determines that justice so requires.

#### DUE PROCESS FOR DEFENSE

16. In order to insure fair trial for defendants charged with crime pursuant to this Agreement, it is declared that the following is required in order to constitute due process in their behalf:

- a. Reasonable notice shall be given to the defendants of the charges against them and of the

opportunity to defend. Such notice may be actual or constructive. An International Military Tribunal shall determine what constitutes reasonable notice in any given instance.

b. The defendants physically present before an International Military Tribunal (a) will be furnished with copies translated into their own language, of any indictment, statement of charges or other document of arraignment upon which they are being tried and (b) will be given fair opportunity to be heard in their defense personally and by counsel. The tribunal shall determine to what extent proceedings against defendants may be taken without their presence.

c. Organizations, official or unofficial, may be charged before an International Military Tribunal with criminal acts or with complicity therein by producing before the tribunal and putting on trial such of their number as the tribunal may determine to be fairly representative of the group or organization in question. Upon conviction of an organization hereunder, the tribunal shall make written findings and enter written



judgment, finding and adjudicating the charges against

such organization and the representative members on trial.

EVIDENCE AND PROCEDURE

17. An International Military Tribunal shall adopt and apply to the greatest extent possible expeditious and non-technical procedures.

18. An International Military Tribunal shall (a) admit any evidence which has probative value, (b) confine trials strictly to an expeditious hearing of the issues raised by the charges, (c) disallow action by defendants which will cause unreasonable delay or the introduction of irrelevant issues or evidence, and (d) employ with all possible liberality simplifications of proof, such as but not limited to: requiring defendants to make proffers of proof; taking judicial notice of facts of common knowledge; and utilizing reasonable presumptions.

PUNISHMENT

19. Defendants brought to trial before an International Military Tribunal as provided in this Agreement shall, upon conviction, suffer death or such other punishment as shall be determined by the Tribunal before which they are tried

and approved by the Control Council acting by majority vote. The Control Council, by such vote, may approve, reduce or otherwise alter the sentences determined by the Tribunal, but may not increase the severity thereof.

20. The sentences, when and as approved by the Control Council, shall be carried into execution in accordance with the written orders of the Control Council.

PROSECUTION OF MEMBERS OF CRIMINAL ORGANIZATIONS

21. Upon conviction of an organization before an International Military Tribunal, persons charged with criminal liability by reason of membership therein may be prosecuted in occupation courts or other military tribunals established by the Signatories or any of them. In the trial of such prosecutions the legal principles declared in Articles 12, 13, 14 and 15 shall be binding upon the court or tribunal and the findings and judgment of an International Military Tribunal shall be conclusive with respect to the criminal purposes and activities of the organization. Upon proof of membership in such an organization, the burden shall be upon the defendant to establish any circumstances relating to his membership or participation therein which

are relevant either in defense or in mitigation.

22. The chiefs of counsel designated pursuant to Article 10 shall prepare and recommend to the Control Council plans for the prosecution and trial of persons charged pursuant to Article 21 with liability by reason of membership in organizations found criminal by an International Military Tribunal.

EMOLUMENTS AND EXPENSES

23. The emoluments and expenses of the members of an International Military Tribunal and their alternates designated as provided in Article 5 of this Agreement and of the chiefs of counsel designated as provided in Article 10 of this Agreement, shall be borne by the respective Signatories by whom they have been designated.

24. The emoluments and expenses of the staffs for the International Military Tribunal and the chiefs of counsel and incidental expenses, such as rent, heat, light, stationery and printing shall be borne in equal share by the Signatories.

25. The emoluments and expenses of those occupation courts or other military tribunals which may be established for the trial of prosecutions instituted in accordance with

Article 21 of this Agreement shall be justly apportioned between the Signatories concerned and any participating Adherents as may be agreed between them.

RETURN OF OFFENDERS TO THE SCENE  
OF THEIR CRIMES

26. The Signatories agree that the Control Council for Germany shall establish policies and procedures governing (a) the return of persons charged with criminal offenses to the scene of their crimes in accordance with the Moscow Declaration and (b) the surrender of persons in the custody of any of the Signatories who are demanded for prosecution by any party to this Agreement.

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