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APO 413
U.S. Army

5 July 1945

The Right Hon. The Lord Wright
Chairman, United Nations War Crimes Commission
Royal Courts of Justice
Strand, W.C.2.

Dear Lord Wright:

I have to thank you cordially for the kindness with which you and Colonel Hodgson received Mr. Whitney, Colonel Bernays, and Lt. Donovan on the matter of our plans for the prosecution of the major Nazi criminals and their principal agents and accessories.

It may be helpful to have before you an informal outline of what I have generally in contemplation in that regard. I am advisedly limiting myself to a statement of the U.S. views, not because of any divergences between the U.S. view and that of the Allies with whom we are engaged at this time in working out a cooperative method of procedure, but, rather, because I should not feel free to speak in any sense as to the attitude of our Allies until a definitive procedure has been agreed upon. However, it goes without saying that any material which the members of your Commission and their respective Governments may furnish us in support of the contemplated international prosecution of these criminals will be made available to all of our associates in such prosecution.

I am proceeding upon the assumption that we should aim to prove that the conduct of the defendants was along the following broad lines:

(a) The defendants entered into a common criminal plan or enterprise aimed at the establishment of German domination over Europe and eventually the world, which plan included or intended, or was reasonably calculated to result in, atrocities and other crimes such as those referred to below. The plan goes back many years before the commencement of the war.

(b) The defendants invaded other countries in breach of treaties, agreements, or assurances between nations, and launched wars of aggression. They planned for these acts long before they were actually committed.

(c) The defendants violated the laws, rules and customs of war. These violations were a part of the defendants' criminal enterprise or were reasonably calculated to result therefrom, and included, among other things, mass murders and ill treatment of prisoners of war and civilian populations, the plunder of such populations, and similar acts.

(d) In furtherance of their criminal enterprise, the defendants planned and perpetrated persecutions and deportations on political, racial, or religious grounds, and atrocities and other crimes, both inside and outside Germany. These offenses would be prosecuted regardless of whether they were in violation of the domestic law of the country where perpetrated.

It is assumed that the general rule of criminal liability would apply that those who participate in the formulation or execution of a criminal plan involving multiple crimes are liable for each of the offenses committed and responsible for the acts of each other. Acts not criminal per se could nevertheless be proved against the defendants if they were taken in furtherance or execution of the criminal plan.

Defenses of sovereign immunity and superior orders would not be entertained.

It is believed that in the planning and commission of the above offenses an active part was taken by, among others, the following organizations and groups: SS, Gestapo; the Nazi party leaders and officials; the Reich Government (German Ministries, commissariats, and supreme Reich authorities); and groups within the military establishment.

Accordingly, the defendants in our prosecution should presumably comprise (1) individuals to be selected, such as Goering, Hess, Ribbentrop, and others, (2) groups and organizations such as the foregoing. The objective will be to try all the leading defendants in a single main case before an International Military Tribunal, where we shall prove the broad criminal plan and such specific acts as may be desired.

The defendant groups and organizations, which may be official or unofficial, would be tried on a representative basis; that is to say, any such aggregation may be charged with criminal acts or with complicity therein by producing before the Tribunal and putting on trial such of their number

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as would be fairly representative of the organization in question. The individual defendants would in all likelihood turn out to be appropriate representatives of the aggregations as well.

In this one trial, adjudication should be sought not only of the guilt of those individuals physically before the Tribunal, but also of the complicity of the members of the groups and organizations included within the charges. The Tribunal should 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 should sentence those individual defendants who are physically before it and are convicted.

Upon conviction of any group or organization, any of the nations which adheres to an agreement setting up the proposed International Military Tribunal may bring charges against any person for participation in the criminal activities of such group or organization before an appropriate tribunal, including the national courts of such nation. In the trial of individuals thus charged, the findings of the International Military Tribunal as to the criminality of the group or organization may be binding upon the tribunal in which the case is tried.

If, in the case of any given individual, charges are made of specific atrocities in addition to the charge of participation referred to above, all such charges can, if desired, be combined and heard in a single trial, and justice meted out accordingly.

The advantages of this method of procedure will be immediately apparent to you. They have been noted from time to time, as I remember, in the discussions and proceedings of your Commission. Indeed, we are much indebted to your Commission for the stimulation and encouragement which its discussions and proceedings have given us in working out the project I am describing.

The essence of the case will be, naturally, the proof of the defendants' unlawful common plan or enterprise. Many ways for making this proof readily suggest themselves. One approach would be to demonstrate the plan, and the defendants' purposes and objectives in connection with it, by establishing the common pattern of the defendants' conduct at different times, in different places, and against a variety of victims. This common pattern included, with regard to the countries represented on your Commission, the following:

1. Pre-war infiltration by native and imported fifth columns, subversion, bribery, and subornation of corruption, all for the purpose of opening the door to the defendants' influence on local policy and of weakening or destroying resistance to the defendants' intended military and political encroachments.

Also, pre-war utilization of economic devices, some of them frauds per se and others possibly not, for subjecting other nations to the economic domination of the German Reich in pursuance of the criminal plan.

2. Employment of a policy of entering into treaties and agreements, and giving assurances of friendly intentions, without meaning to observe them and thereafter treacherously violating them in furtherance of the defendants' plans of domination and conquest.

3. Launching wars of aggression, in many instances treacherously and without warning.

4. After invasion, a common pattern of terrorization of conquered populations, mass murders, enslavement; plundering and looting and economic spoliation generally; and the ruthless exploitation by divers means of the human and economic treasure of the occupied countries.

It is here that the members of your Commission and the Governments represented by them can make one more contribution of the first importance toward rectifying the wrongs which they have suffered. What is needed is to have each of these countries document its experiences at the hands of the German aggressor and make that documentation available for use in the preparation of the main case. Nobody can possibly know the story as do the European nations which are familiar with the Nazi atrocities and oppressions at first hand.

A second important object of search would be for orders or other evidence supporting a direct tracing of responsibility to higher, and perhaps to the highest, authorities.

I would not have you think that this is the only proof which is being considered in preparation for the trial of the main case. On the contrary, as I reported recently to the President and have since told the delegations of the

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other Powers with which we are conferring, the United States has not considered it advisable to postpone the collection of the proof until the International Military Tribunal has actually been established.

Sincerely yours,

ROBERT H. JACKSON
U. S. Chief of Counsel

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