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E.O. 11652, Sec. 305 and 307 or 308  
Dept. of State letter, Aug. 10, 1972  
By 2025 for NARS Date 3-24-73

The Commission has been widely and publicly criticized for the paucity of the results of its work. In recent months its activities have been marked by dissensions. The British representative, who was also Chairman of the Commission, and the Norwegian member, have resigned.



### III. SCOPE AND DIMENSIONS OF THE WAR CRIMES PROBLEM

The crimes to be punished. 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, in the satellite Axis countries, and in the occupied countries of Europe. This conduct goes back at least as far as 1933, when Hitler was first appointed Chancellor of the Reich. It has been marked by mass murders, imprisonments, expulsions and deportations of populations; the starvation, torture and inhuman treatment of civilians; the wholesale looting of public and private property on a scale unparalleled in history; and, after initiation of "total" war, its prosecution with utter and ruthless disregard for the laws and customs of war.

We are satisfied that these atrocities were perpetrated in pursuance of a premeditated criminal plan or enterprise which either contemplated or necessarily involved their commission.

The criminals to be punished. The outstanding offenders are, of course, those leaders of the Nazi Party and German Reich who since January 30, 1933, have been in control of formulating and executing Nazi policies.

In addition, the Nazi leaders created and utilized a numerous organization for carrying out the acts of oppression and terrorism which their program involved. Chief among the instrumentalities used by them are the SS, from the personnel of which the Gestapo is constituted, and the SA. These organizations consist of exactly screened volunteers who are pledged to absolute obedience. The members of these organizations are also the personnel primarily relied upon to carry on postwar guerilla and underground operations.

### IV. DIFFICULTIES OF AN EFFECTIVE WAR CRIMES PROGRAM

Difficulties of identification and proof. The names of the chief German leaders are well known, and the proof of their guilt will not offer great difficulties. However, the crimes to be punished have been committed upon such a large scale that the problem of identification, trial and punishment of their perpetrators presents a situation without parallel in the administration of criminal justice. In thousands of cases, it will be impossible to establish the offender's identity or to connect him with the particular act charged. Witnesses will be dead, otherwise incapacitated and scattered. The gathering of proof will be laborious and costly, and the mechanical problems involved in uncovering and preparing proof of particular

- 2 -  
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offenses one of appalling dimensions. It is evident that only a negligible minority of the offenders will be reached by attempting to try them on the basis of separate prosecutions for their individual offenses. It is not unlikely, in fact, that the Nazis have been counting on just such considerations, together with delay and war weariness, to protect them against punishment for their crimes if they lost the war.

Legal Difficulties. The attempt to punish the Nazi leaders and their associates for all of the atrocities committed by them also involves serious legal difficulties. Many of these atrocities, as noted in your statement on the subject of persecution dated 24 March 1944 (Tab E), were "begun by the Nazis in the days of peace and multiplied by them a hundred times in time of war." These pre-war atrocities are neither "war crimes" in the technical sense, nor offenses against international law; and the extent to which they may have been in violation of German law, as changed by the Nazis, is doubtful. Nevertheless, the declared policy of the United Nations is that these crimes, too, shall be punished; and the interests of postwar security and a necessary rehabilitation of German peoples, as well as the demands of justice, require that this be done.



#### V. RECOMMENDED PROGRAM

After Germany's unconditional surrender the United Nations could, if they elected, put to death the most notorious Nazi criminals, such as Hitler or Himmler, without trial or hearing. We do not favor this method. While it has the advantages of a sure and swift disposition, it would be violative of the most fundamental principles of justice, common to all the United Nations. This would encourage the Germans to turn these criminals into martyrs, and, in any event, only a few individuals could be reached in this way.

We think that the just and effective solution lies in the use of the judicial method. Condemnation of these criminals after a trial, moreover, would command maximum public support in our own times and receive the respect of history. The use of the judicial method will, in addition, make available for all mankind to study in future years an authentic record of Nazi crimes and criminality.

We recommend the following:

The German leaders and the organizations employed by them such as those referred to above (SA, SS, Gestapo), should be charged both 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 to bring them about. The allegation of the criminal enterprise would 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 prewar 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. Such a charge would be firmly founded upon the

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