

PARTIES

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1. 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.

2. 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.

3. 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".

POLICY AND PURPOSE.

4. The United Nations have on various occasions pledged themselves that those responsible for the atrocities and crimes committed by the Axis Powers or any officer or agent thereof shall not escape punishment. These atrocities and crimes include those which will be charged as provided in Article 6 of this Agreement.

5. 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 erected therein"; and

(2) that the above declaration was "without prejudicial 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".

This Agreement is entered into in order to establish the necessary measures for bringing to justice the major criminals referred to above, their principal agents and accessories, and all other offenders who are not sent back for trial to the countries in which their atrocities and crimes were committed.

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DECLARATION REGARDING THE
CRIMINAL ACTS TO BE CHARGED

6. The parties to this Agreement agree to bring to trial before an International Military Tribunal in the names of their respective peoples, the major criminals, including the principal organizations which participated in the commission of crimes and in the execution of criminal plans.

DECLARATION OF JURISDICTION
AND LEGAL PRINCIPLES

7. Any International Military Tribunal created pursuant to Article 18 of this Agreement shall have jurisdiction to hear and decide any charges of criminality based upon the following:

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 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.

DECLARATION REGARDING
ACCESSORIAL LIABILITY

8. In any trial before an International Military Tribunal, the tribunal shall apply the general rule of liability 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.

DECLARATION REGARDING DEFENSES

9. No indictment, statement of charges, or other document of arraignment shall be deemed legally insufficient which charges violation of law as set forth in this Agreement.

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10. The parties to this Agreement declare that 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 by any tribunal before which charges brought pursuant to this Agreement are tried.

11. 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 before which the charges are being tried determines that justice so requires.

DUE PROCESS FOR DEFENDANTS

12. 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. Any tribunal before which charges are tried pursuant to this Agreement shall have the right to determine what constitutes reasonable notice in any given instance.

b. The defendants physically present before the 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 pursuant to this Agreement 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.

d. 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. Such findings and judgment shall be given full faith and credit with respect to the criminal purposes and activities of the organization in any subsequent trial hereunder of a person charged with criminal liability through membership in such organization. Upon proof of such membership 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.

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EVIDENCE AND PROCEDURE

13. Tribunals established pursuant to this Agreement shall adopt and apply, to the greatest extent possible expeditious and non-technical procedures.

14. Such tribunals shall (a) admit any evidence which in their opinion has probative value, (b) confine trials strictly to an expeditious hearing of the issues raised by the charges, (c) disallow action by defendants the effect of which will be to 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 or proof; taking judicial notice of facts of common knowledge; and utilizing reasonable presumptions.

TRIBUNALS

15. There shall be set up one or more military tribunals, hereinafter referred to for convenience as "International Military Tribunal," which shall have jurisdiction to try the leaders of the European Axis powers and their principal agents and accessories. Each 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 of 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.

16. In the event of the death or incapacity of any member of an International Military Tribunal, his alternate shall sit in his stead, and the nation of which he is a citizen shall forthwith appoint another alternate. Three members of the Tribunal shall constitute a quorum, and all actions and decisions shall be taken by majority vote of the members of the Tribunal at any time sitting, except that sentence of death shall not be imposed on the vote of less than three members.

17. 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.

18. 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.

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19. Occupation courts or other tribunals may be set up by the Signatories or any of them for the trial of offenders other than those tried before an International Military Tribunal who are not sent back for trial to the countries in which their atrocities and crimes were committed, including offenders charged with criminal liability through membership in any group or organization as provided in Article 12 (d) of this Agreement.

PROPOSED NEW ARTICLE

19¹. This Agreement shall not prejudice the right of any Party to bring to trial before its own tribunal or to transfer for trial to any other Party any person in its custody who is not held for trial before an International Military Tribunal pursuant to Article 22.

PUNISHMENT

20. 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.

21. 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.

PREPARATION OF CHARGES AND PROSECUTION

22. At the earliest possible time the Soviet Union, the United States, the United Kingdom and France shall each designate a representative. Such representatives, acting by majority vote, shall determine the persons and organizations to be brought to trial pursuant to Article 6 hereof and, acting as a group, they shall prepare the charges and institute and conduct the prosecution. Such representatives shall also prepare and recommend to the Control Council plans for the prosecution and trial of persons charged with liability pursuant to Article 12 (d) through membership in organizations found criminal by an International Military Tribunal.

23. The representatives 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.

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EMOLUMENTS AND EXPENSES

24. The emoluments and expenses of those members of the International Military Tribunal designated by the respective Signatories as provided in Article 15 of this Agreement and of the representatives provided for in Article 22 of this Agreement, shall be borne by the respective Signatories by whom they have been appointed.

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

26. The emoluments and expenses of those occupation courts and tribunals established as provided in Article 19 of this Agreement shall be justly apportioned between the Signatories concerned and any participating Adherents as may be agreed between them.

Done at _____ this the _____ day of _____, 1945.