

AIDE MEMOIRE

His Majesty's Government in the United Kingdom have had under consideration the proposal made by the United Nations War Crimes Commission (Papers C.50(1) and C.58) that a Convention should be concluded for the establishment of a United Nations War Crimes Court. In submitting this proposal, the War Crimes Commission expressed the hope that His Majesty's Government would take the necessary steps to convene in the near future a diplomatic conference to consider and, if thought fit, conclude a Convention for the establishment of a United Nations War Crimes Court.

2. The views of His Majesty's Government on this proposal are as follows:

His Majesty's Government are strongly opposed to this suggestion. The negotiation and entry into operation of such a convention would take a very long time even supposing that no difficulties arose as to ratification by participating Governments. Moreover, the Soviet Union would have to be brought in from the beginning, and it is not a member of the Commission. The proposal is in any event inconsistent with the Moscow declaration and appears to be quite unnecessary.

Even if an International Convention could be negotiated, there would be great difficulties about finding suitable personnel for the Court, agreeing to procedure and defining rules, evidence, et cetera. It appears from Paragraph 3 of the recommendation in favour of the establishment of inter-Allied Military Tribunals, that the War Crimes Commission recognises that the estab-



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lishment of a United Nations War Crimes Court would lead to delay.

3. Mr. Eden hopes that the views of the United States Government on this matter do not differ substantially from the views of His Majesty's Government as outlined above, and is of the opinion that, if both His Majesty's Government and the United States Government are opposed to the institution of such a court, it would be futile to convoke the proposed conference. If therefore the United States Government agrees with these views, Mr. Eden would propose to communicate them to the Governments represented on the War Crimes Commission and to inform the Commission accordingly. In that case, Mr. Eden hopes that the United States Government would be prepared to take parallel action.

4. His Majesty's Government have also had under consideration the recommendations (Papers C.52 (1) and C.59) of the War Crimes Commission for the establishment of Mixed Military Tribunals for the trial of War Criminals.

5. The present view of His Majesty's Government is that they would wish to try by British military courts persons accused of having committed war crimes against British Subjects or in British territory. There may well, however, be a number of cases where the establishment of mixed tribunals would be useful, for it appears that some of the United Nations might find themselves unable for reasons of constitutional law and procedure to try, in their own courts, persons accused of having committed war crimes. There may also be cases where a person is accused of having committed war crimes against the nationals of several of the United Nations.

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cases which for one reason or another could not be tried in national courts, His Majesty's Government would be prepared to agree and to cooperate in establishing them. The question of how this should be done would, however, require further consideration, but, in the opinion of His Majesty's Government, it seems unlikely that such Tribunals would be required before the occupation of Germany; in which case they could be set up either by joint action of the three Commanders-in-Chief (if the U.S.S.R. agree to this suggestion), or by action by two or one of them, as might be convenient. The Commanders-in-Chief would act in consequence of the agreement between the Allied Governments concerned and in virtue of their powers as military commanders. Questions of procedure et cetera, could be settled by the Commanders-in-Chief when establishing the Tribunals.

7. If the United States Government agrees with the views of His Majesty's Government as expressed above, Mr. Eden would propose to communicate them to the Governments represented on the War Crimes Commission and to inform the Commission accordingly. In that event, Mr. Eden hopes that the United States Government would be prepared to take parallel action and to concert with His Majesty's Government as to the arrangements to be made for establishing the Mixed Military Tribunals.

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