

DEPARTMENT OF STATE

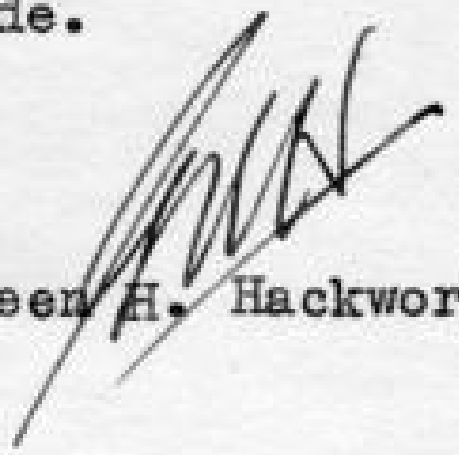
THE LEGAL ADVISER

December 15, 1944.

MEMORANDUM FOR JUDGE ROSENMAN:

Referring to our conversation this morning, I attach a copy of a communication dated August 19, 1944 from the British Embassy, together with a copy of the Department's reply dated October 4.

The Articles of War are set forth in Title 10, beginning with Section 1472, of the United States Code.


Green H. Hackworth



Attachments:

1. From British Embassy,
August 19, 1944.
2. To British Embassy,
October 4, 1944.

C O P Y

Ref: 152/96/44

No. 525.



His Majesty's Ambassador presents his compliments to the Secretary of State and has the honour to refer to previous correspondence regarding the scope of the activities of the United Nations' War Crimes Commission.

2. Lord Halifax has now been informed that on May 30, 1944, Sir Cecil Hurst, the United Kingdom representative on the Commission, and concurrently its Chairman, addressed a formal letter to His Majesty's Principal Secretary of State for Foreign Affairs drawing attention to public demand that some machinery should be established for dealing with atrocities committed on racial, political, or religious grounds in enemy territory. The letter stated that if machinery for this purpose already exists the Commission feels that a public announcement to this effect would be helpful. If, on the other hand, the Governments of the United Nations have no plan in view for bringing authors of such crimes to justice, the Commission is prepared to undertake the task if desired. Sir Cecil Hurst suggests that Mr. Eden should take the initiative in promoting any further discussion that may be required on the subject between the Governments of the United Nations.

3. His Majesty's Government have considered this question and have decided that in their view the War Crimes Commission should confine itself to collecting evidence of atrocities of this nature, e.g. those against Jews, only when perpetrated in occupied countries. It is felt that a clear distinction exists between offences in regard to which the United Nations have jurisdiction under International Law, i.e. war crimes, and those in regard to which they had not. Atrocities committed on racial, political or religious grounds in enemy territory fell within the latter category. The United Nations should, therefore, in the opinion of His Majesty's Government in the United Kingdom, not themselves assume any formal obligation in regard to the punishment of those responsible for such atrocities. Any attempt on their part to do so or to attempt to enforce specific provisions for the prosecution of offenders by enemy authorities would give rise to serious difficulties of practice and principle.

4. On the other hand successor Governments in enemy countries after the war will have jurisdiction in such cases and the United Nations will be in a strong position to exert pressure upon them to exercise it. There would appear to be a strong case for leaving the door open for the exercise of such pressure.

5. His Majesty's Government accordingly propose that their attitude in this question should be as follows:

(A) Sir Cecil Hurst should be informed that His Majesty's

Government

Government cannot agree to any extension of the terms of reference of the United Nations War Crimes Commission to enable it to deal with atrocities committed on racial, political or religious grounds in enemy territory.

(B) The United Nations should not assume any formal commitment to ensure the trial of those responsible for such atrocities; nor should they impose upon the enemy any formal obligation to try them or surrender them for trial. The United Nations should, however, be prepared to bring pressure to bear upon successor Governments in enemy countries to ensure that criminals are brought to justice. The War Crimes Commission should be informed of the general intentions of the United Nations in this respect.

6. Lord Halifax has been instructed to enquire whether the United States Government concur in the foregoing conclusions and, if so, whether they approve the lines of the proposed reply to Sir Cecil Hurst's letter.

7. It is not the intention of His Majesty's Government to consult the other Allied Governments in this matter.



BRITISH EMBASSY,

WASHINGTON, D.C.

19th August, 1944

The Secretary of State presents his compliments to His Excellency the British Ambassador and has the honor to refer to the Ambassador's note no. 525 of August 19, 1944, regarding a letter addressed by the Chairman of the United Nations War Crimes Commission to His Majesty's Principal Secretary of State for Foreign Affairs stating that if the Governments of the United Nations do not have in view some plan for bringing to justice the authors of atrocities committed on racial, political or religious grounds in enemy territory, the Commission is prepared to undertake the task. It is stated that His Majesty's Government has decided that in its view the Commission should confine itself to collecting evidence of atrocities only when perpetrated in occupied countries.



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It is noted that in paragraph 5(A) of the Ambassador's note it is proposed to reply to Sir Cecil Hurst that His Majesty's Government cannot agree to any extension of the terms of reference of the United Nations War Crimes Commission to enable it to deal with atrocities committed on racial, political or religious grounds in enemy territory.

The interested Departments of this Government, including the Department of State, are of the opinion that inasmuch as the statement just referred to would exclude from the jurisdiction of the Commission atrocities committed against non-nationals of the enemy country as well as nationals, it is too broad in scope. It is believed that atrocities committed against non-enemy nationals in enemy territory should be regarded as falling within the jurisdiction of the War Crimes Commission.



The conclusion is expressed in paragraph 5(B) of the Ambassador's note that the United Nations should not assume any formal commitment to insure the trial
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of those responsible for atrocities committed on racial, political or religious grounds in enemy territory, nor impose on the enemy any formal obligation to try them or surrender them for trial, but that they should be prepared to bring pressure on successor Governments in enemy countries to insure that criminals are brought to trial. It is proposed that the War Crimes Commission should be informed of the general intentions of the United Nations in this respect.

The Department of State agrees that pressure should be brought to bear on successor Governments in enemy countries to insure that nationals of those countries guilty of atrocities, who cannot be reached through procedures relating to war criminals, should, nevertheless, be brought to justice. Declarations by members of the United Nations must, in the opinion of the Department, be kept in mind and be made effective to the fullest extent possible. Particular reference

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is made to statements by President Roosevelt on March 24, 1944 and by Mr. Eden on March 30, 1944 relating to Axis atrocities against the Jews of Europe, which were without reference to nationality or the country where the atrocities have occurred. President Roosevelt stated "The United Nations have made it clear that they will pursue the guilty and deliver them up in order that Justice be done." Mr. Eden said "On this [the persecution of the Jews] His Majesty's Government in common with their Allies . . . can only repeat their detestation of Germany's crimes and their determination that all those guilty of them shall be brought to justice". Therefore, while agreeing with the British Government that political pressure on successor Governments in enemy countries should be brought to bear to see to it that persons guilty of atrocities in enemy territory on racial, political or religious grounds ~~xxxxx~~ be required to atone for their misdeeds, the Department of State suggests that this whole matter deserves most careful consideration from both the political and the juridical points



points of view. Specifically, it feels that an effort should be made to determine whether political pressure can not be implemented by more direct methods for dealing with perpetrators of atrocities who may not be classifiable as war criminals in the strict sense of that term, but who nevertheless represent elements and philosophies in enemy territory that will need to be dealt with if respect for law and order is to be established in those countries. It is believed that considerable disappointment would result if diplomatic pressure should fail and other ways were not found for dealing with these elements.



Department of State,

Washington, October 4, 1944.

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(Initialed by C.H.)