

DECLASSIFIED  
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Dept. of State letter, Aug. 10, 1972  
1/22/73 HAZU DOWNSIDE-HK

DEPARTMENT OF STATE  
THE LEGAL ADVISER

January 17, 1945.


S-E-C-R-E-T

MEMORANDUM TO JUDGE SAMUEL I. ROSENMAN,  
The White House.

Colonel Bernays informs me that you would like copies of the underlying papers regarding the creation of the United Nations War Crimes Commission.

Attached is a brief memorandum, together with copies of the pertinent papers.

A Sub-Commission has been established in Chungking on which we are represented by our Ambassador and a military official whom we understand to be the Judge Advocate for the China theater.

  
Green H. Hackworth

Attachments:

1. Memorandum of January 17, 1945.
2. To Mr. Gallman, United States Embassy, November 18, 1942, with enclosure.
3. Airgram no. A-967, September 1, 1943, from London.
4. Airgram no. A-1291, to London, September 25, 1943.
5. Excerpts from statement by Lord Chancellor in the House of Lords, October 7, 1942.

Department of State

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DIVISION |

ENCLOSURE

TO

Letter drafted \_\_\_\_\_

ADDRESSED TO

Judge Samuel I. Rosenman

White House.

DEPARTMENT OF STATE

THE LEGAL ADVISER

January 17, 1945.

In 1942 the British Government inquired whether this Government would go along with it in the establishment of a United Nations Commission for the Investigation of War Crimes. We indicated our assent, and simultaneous statements regarding the proposed Commission were issued on October 7, 1943 by President Roosevelt and the Lord Chancellor. The latter's statement (in the House of Lords) outlined the British proposal in some detail. (Annex O.)

On October 29, 1943 the Foreign Office addressed a note to various of the Allied Governments in amplification of the Lord Chancellor's statement, setting forth its views on the constitution and function of the proposed Commission (Annex A ).

The Foreign Office on August 30, 1943 invited the various governments to attend a diplomatic meeting in London to take the necessary steps to set up the Commission (Annex B). It proposed inter alia that the Commission sit in London, that it be empowered to set up "panels" or arrange otherwise for local investigations, that it be left to the Commission to decide upon the Chairmanship of the Commission and upon whether the Chairmanship be held in rotation, as proposed by the Soviet Government, by the British, the American and the Soviet representatives. The Foreign Office also proposed that the Commission be entitled to settle its own procedure. It stated that the primary task of the Commission would be to collect and record evidence, and suggested that a "technical committee" be set up to work concurrently with the Commission, which would be composed of legal experts to study questions such as the sort of tribunals to be employed, the procedure to be adopted, etc.

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This Government indicated its assent on September 25, 1943 (Annex C). It agreed that the question of the Chairmanship be left to the Commission, but indicated its desire to be consulted before the conferring of the Chairmanship upon the American representative.

The proposed diplomatic meeting was held on October 20, 1943, and the Commission held its first unofficial meeting on October 26.

The Soviet Government has not been represented on the Commission, owing to the failure to come to an agreement in respect to its desire that each of its constituent republics be represented on the Commission.

Shortly after the Commission was established, agitation commenced for the abandonment of the proposed Technical Committee and the entrusting of its functions to the Commission itself. The British Government in February 1944 withdrew its proposal for such a committee and this Government and the other governments concerned agreed that the Commission should be entrusted with the functions which it was originally suggested the Committee should exercise.



11/11

A  
Copy

Enclosure No. 1 to despatch No. 6393 dated November 21,  
1942 from the American Embassy at London

FOREIGN OFFICE, S.W.I.

No. C 10710/81/18

18th November, 1942.

Dear Mr. Gallman,

I enclose a copy of a further note which we addressed on the 29th October to the Soviet Ambassador, the Chinese Chargé d'Affaires and the representatives of the Allied Governments established in London on the subject of war criminals. A semi-official communication on similar lines was addressed to the French National Committee and we are of course also in touch with the Dominions Governments and the Government of India.

I regret the delay in communicating a copy of this note to you. You will see that it follows closely the lines of the two documents which Mr. Winant communicated in July last at the request of the War Cabinet Committee on War Criminals to the United States Government, who signified their general approval before the statements made by President Roosevelt and Lord Simon, on the 7th October. Owing to an oversight arising out of the fact that your Government had already agreed to these proposals, we failed to send a copy of this note of 29th October to the Allied Representatives in London to Mr. Winant at the time.

Yours sincerely

(Signed) F. K. Roberts

Mr. Waldemar J. Gallman  
United States Embassy,  
1, Grosvenor Square,  
W.I.

(A true copy of the signed original  
HJS)

copy

No. C 10375/61/18

FOREIGN OFFICE, S.W.1  
29th October, 1942

Your Excellency,

I transmitted to Your Excellency under cover of my note of the 9th October the text of the statement by the Lord Chancellor in the House of Lords on the 7th October in which *inter alia* he outlined the proposals of His Majesty's Government in the United Kingdom with regard to the establishment of a United Nations Commission for the investigation of war crimes. I now have the honour to transmit herewith a memorandum setting forth, in amplification of the Lord Chancellor's statement, the views of His Majesty's Government on the constitution and functions of the proposed Commission.

2. His Majesty's Government propose that the United Nations Commission should be a fact-finding body. As stated by the Parliamentary Under-Secretary for Foreign Affairs in the House of Commons on the 14th October, its functions will be to record the evidence submitted to it by the Governments concerned against all individuals responsible, whether as ring-leaders or as actual perpetrators, for the commission of atrocities. It will be open to the Governments concerned to submit to the Commission any such evidence against the persons so responsible, whoever they may be. The aim should be to collect material about the principal war crimes, especially those which have been or are being systematically committed. Every effort should be made to obtain the names of those responsible for the perpetration of particular crimes in addition to verifying the occurrence. It is proposed that the reports of the Commission should be available for publication. These reports might also contain material upon which decisions might be taken regarding the treatment of war criminals.

3. His Majesty's Government consider that membership of the Commission should be confined to nationals of the United Nations, and that in the first place the Governments of the following countries might be invited to appoint representatives:-

The United Kingdom, the United States of America, the Union of Soviet Socialist Republics, China, Belgium, Czechoslovakia, Greece, Luxemburg, the Netherlands, Norway, Poland and Yugoslavia.

His

His Excellency  
Monsieur Jean Maisky,  
etc. etc. etc.  
Harrington House,  
13, Kensington Palace Gardens,  
W.3.

(Similar note sent to Chinese Chargé d'Affaires)

His Majesty's Government also consider that war crimes committed by Germany in occupied France should be regarded as coming within the scope of the Commission's investigations, and that for this reason special provision should be made for French representation on the Commission.

4. In the opinion of His Majesty's Government, it would be preferable to constitute a single Commission which might if this were thought desirable sit from time to time in two or more panels in different countries. The whole Commission should examine the conclusions of the panels before reporting to the Governments of the United Nations.

5. His Majesty's Government would welcome any observations which Your Excellency's Government may have to offer on the foregoing proposals which are also being communicated to the other Governments concerned.

I have the honor to be, with the highest consideration,

Your Excellency's obedient Servant,  
(for the Secretary of State)

(Sd.) F. K. Roberts.

A true copy of the signed original. HJS)

AIRGRAM

From: London

Dated: September 1, 1943

Rec'd: September 6, 4 p.m.

Secretary of State  
Washington

A-967, September 1, 5 p.m.

Embassy's 5177, August 7, 5 p.m.

The following note, dated August 30, 1943, has just been received from the Foreign Office:

"I have the honour to refer to Mr. Roberts' letter of the 18th November 1942, enclosing a copy of a note addressed to the Soviet Ambassador, Chinese Charge d'Affaires and Representatives of the Allied Governments in London on the subject of the proposed United Nations Commission for the Investigation of War Crimes.

"2. The replies now received from all the Governments concerned, including Your Excellency's Government, indicate that a sufficient basis of agreement exists to enable further progress to be made. I am impressed by the urgency of setting up the Commission without further delay and to this end would propose that a meeting of the Diplomatic Representatives in London of the Allied Governments concerned should be held towards the end of September in order to take the necessary steps to set up the Commission and to settle its constitution and functions. As a basis for discussion at the meeting I have the honour to enclose a memorandum setting out the views of His Majesty's Government in the United Kingdom upon the various points which have been raised in previous correspondence by the Allied Governments concerned.

"3. I have the honour to express the hope that you will be able to attend such a meeting on behalf of your Government.

"4. I would also enquire whether your Government wish to suggest the name of a legal expert to participate in the work of the proposed small technical committee, referred to

in



in paragraph 9 of the attached memorandum. An early reply on this last point would be appreciated."

The memorandum enclosed with the Foreign Office note quoted above reads as follows:

"1. Headquarters of the Commission

There appears to be general agreement that the headquarters of the Commission might most suitably be established in London.

"2. Panels

Machinery will, of course, be required for the collecting and recording of evidence in places where the main body of the Commission could not conveniently operate. The Chinese Government, for instance, are understood to favour the establishment of a 'panel' in Chungking. The Soviet Government, on the other hand, do not consider that the circumstances call for the establishment of a 'panel' in the Union of Soviet Socialist Republics, and the United States Government would prefer to leave this sort of question over for consideration by the Commission itself after it has met. His Majesty's Government in the United Kingdom would, therefore, propose that the Commission should be empowered to set up 'panels', or arrange otherwise in the light of the wishes of the Governments most closely concerned, for local investigations on its behalf so far as these seem appropriate.

"3. Membership

His Majesty's Government in the United Kingdom have appointed Sir Cecil Hurst to be the United Kingdom member of the Commission. The United States Government have similarly appointed Mr. Herbert C. Pell and the Chinese Government Mr. Wellington Koo.

"4. Chairmanship

The United States Government have expressed the view that it would be appropriate that the British representative should be the Chairman of the Commission. The Soviet Government have proposed that the chairmanship might suitably be held in rotation by the representatives of Great Britain, the United States of America, China and the Union of Soviet Socialist Republics. His

Majesty's:

Majesty's Government in the United Kingdom would propose that it should be left to the Commission to settle this question at its first meeting.

"5. Procedure

In general, His Majesty's Government in the United Kingdom would propose that it should be left to the Commission to settle its own procedure.

"6. Secretariat

His Majesty's Government in the United Kingdom would be prepared to find a British Secretary General for the Commission if this was considered appropriate by the other Governments concerned. They would propose that the secretarial staff should be of mixed nationality and would be glad if any of the other Governments who may wish to do so would furnish them with the names of officials and typing and secretarial staff who could be made available for this purpose.

"7. Expenses

His Majesty's Government in the United Kingdom would propose that each member of the Commission and his staff, if any, should be paid by the Government appointing him. The salary of the Secretary General and additional secretarial and administrative expenses should be divided equally between the various Governments represented on the Commission.

"8. Premises

His Majesty's Government in the United Kingdom would be prepared to find accommodation for the Commission.

"9. Technical Committee

The primary task of the Commission will be, as has already been publicly announced, to collect and record evidence, with a view to identifying those responsible for war crimes, and assembling the proof of their guilt. This is a most essential task, and upon its adequate discharge depends the possibility of punishing war criminals who are brought to trial. There are, however, certain other matters of a technical kind which require

consideration

consideration and which would be most appropriately considered by a committee of experts to be appointed by the Governments concerned, who would work concurrently with the Commission and in adequate contact with it. For example, the Governments concerned will require to be advised as to the sort of Tribunals to be employed, and as to the procedure to be adopted and the rules of evidence to be followed. His Majesty's Government share the view held by a number of the other Governments that this work would be most properly entrusted to a separate committee of the kind described. His Majesty's Government in the United Kingdom would propose that such an expert committee would be formed at the earliest possible moment, and if necessary in advance of the establishment of the Commission, and that it should consist of legal experts, the nomination to be made by those of the various Allied Governments participating in the work of the Commission who desire to be represented on the Committee."

Copies of Mr. Robert's letter and of its enclosure, referred to in the first paragraph of the Foreign Office note of August 30, were transmitted to the Department with Embassy's despatch no. 6393 of November 21, 1942.

The Department's attention is called particularly to paragraphs 3 and 4 of the Foreign Office note quoted above.

WINANT

AIRGRAM SENT  
DEPARTMENT OF STATE

September 25, 1943

No. A 1291

Time: 5:00 p.m.

EMBASSY,  
LONDON.

FOR THE AMBASSADOR

Your Airgram A-967, September 1, 5 p.m., regarding War Crimes Commission.

1. The Department authorizes you to attend the meeting of the diplomatic representatives.
2. The Department sees no objection to the British proposal that the Commission be empowered to set up panels or arrange otherwise in the light of the wishes of the Governments most closely concerned for local investigations on its behalf when appropriate.
3. Likewise, the Department has no objection to the proposal by the Soviet Government that the Chairmanship of the Commission might be held in rotation by the representatives of Great Britain, the United States, China, and the Soviet Union, nor does it object to the suggestion of the British Government that this matter might be left to the Commission. The Department would, however, desire to be consulted before the conferring of the Chairmanship upon the American representative.
4. The Department sees no objection to leaving to the Commission settlement of its rules of procedure.
5. The selection of a British Secretary General would be agreeable to the Department. The Department is not now prepared to suggest names for the Secretarial staff. Mr. Pell will take with him an assistant and a secretary, but they would not be members of the Secretarial staff.
6. The British proposal regarding expenses is satisfactory, but we should like to know as soon as possible the estimated amount of our quota.

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7. The Department agrees that a technical committee for the purposes indicated in the British memorandum may be desirable, but it does not see why the setting up of this committee should precede the establishment of the investigating commission. The Department is considering whether this Government should have a representative on the committee and will communicate with you further on this subject.

/s/ CORDELL HULL