

Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

WHORM Subject File Code: CO054-02
(Countries: Germany, Federal Republic of (West))
Case file Number(s): 127000-127999
Box: 76

To see more digitized collections visit:

<https://www.reaganlibrary.gov/archives/digitized-textual-material>

To see all Ronald Reagan Presidential Library inventories visit:

<https://www.reaganlibrary.gov/archives/white-house-inventories>

Contact a reference archivist at: **reagan.library@nara.gov**

Citation Guidelines: <https://reaganlibrary.gov/archives/research-support/citation-guide>

National Archives Catalogue: <https://catalog.archives.gov/>

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name WHITE HOUSE OFFICE OF RECORDS MANAGEMENT
(WHORM): SUBJECT FILE

Withdrawer

DLB 3/22/2010

File Folder CO054-02 (GERMANY, WEST) (127000-127999)

FOIA

S10-306

Box Number 76

SYSTEMATIC

418

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
88271	MEMO	JAMES RENTSCHLER TO WILLIAM CLARK, RE: HIGH-LEVEL GERMANS IN TOWN	1	7/1/1982	B1
		R 11/17/2022 NSC/DEPT. OF STATE WAIVERS			

The above documents were not referred for declassification review at time of processing

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

B-3 Release would violate a Federal statute [(b)(3) of the FOIA]

B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]

B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]

B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]

B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

127479

ID # _____

00054-02

WHITE HOUSE COUNSELLOR'S OFFICE TRACKING WORKSHEET

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD) 83/02/28

Name of Correspondent: Frank W. Kuehl

CN Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Winter suggests that the United States initiate efforts to have Rudolph Hess released from Spandau prison.

ROUTE TO:

ACTION

DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>DOS</u>	<u>CNHAMM</u>	<u>O</u>	<u>83/02/19</u>	<u>EM</u>	<u>A</u>	<u>83/03/17</u>

Referral Note: _____

Referral Note: for signature of Ed Maese

Referral Note: _____

Referral Note: _____

Referral Note: _____

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

RECORDS MANAGEMENT ONLY

CLASSIFICATION SECTION

No. of Additional Correspondents: _____ Media: L Individual Codes: 4000 _____
Prime Subject Code: CD 25412 Secondary Subject Codes: JL 113 _____
EG 22601 _____

PRESIDENTIAL REPLY

Code	Date	Comment	Form
C		Time: _____	P- _____
DSP		Time: _____	Media: _____

SIGNATURE CODES:

CPn - Presidential Correspondence
n - 0 - Unknown
n - 1 - Ronald Wilson Reagan
n - 2 - Ronald Reagan
n - 3 - Ron
n - 4 - Dutch
n - 5 - Ron Reagan
n - 6 - Ronald
n - 7 - Ronnie

CLn - First Lady's Correspondence
n - 0 - Unknown
n - 1 - Nancy Reagan
n - 2 - Nancy
n - 3 - Mrs. Ronald Reagan

CBn - Presidential & First Lady's Correspondence
n - 1 - Ronald Reagan - Nancy Reagan
n - 2 - Ron - Nancy

MEDIA CODES:

B - Box/package
C - Copy
D - Official document
G - Message
H - Handcarried
L - Letter
M - Mailgram
O - Memo
P - Photo
R - Report
S - Sealed
T - Telegram
V - Telephone
X - Miscellaneous
Y - Study

17 March 1983

Dear Mr. Kuehl:

Thank you for your letter of 17 February 1983.

The United States Government believes, as do the British and French, that Mr. Hess should be released for humanitarian reasons. He is now well over 80 years old and has been imprisoned for more than 30 years. As you know, over the past several decades, we have made repeated representations to the Soviet Union asking them to agree to Mr. Hess's release. Each time the Soviet reply has been negative.

It is not possible for the United States, or even the three Western powers acting together, to free Mr. Hess without Soviet concurrence. The international agreements governing his confinement were signed by all four governments and unanimous agreement is required to change them.

Although we have so far been unsuccessful in obtaining Soviet consent to the release of Mr. Hess, we will persist in our efforts. In the meantime, we will continue to take appropriate measures to ensure that Mr. Hess is as comfortable as possible and has proper medical attention.

With best wishes,

Sincerely,

EDWIN MEESE III
Counsellor to the President

Mr. Frank W. Kuehl
3717 Ingomar Street, N.W.
Washington, D.C. 20015

EM:DOS:jfc--

SUGGESTED REPLY

Dear Mr. Kuehl:

Thank you for your letter of 17 February 1983.
The United States Government believes, as do the British and French, that Mr. Hess should be released for humanitarian reasons. He is now well over 80 years old and has been imprisoned for more than 30 years. As you know, over the past several decades, we have made repeated representations to the Soviet Union asking them to agree to Mr. Hess's release. Each time the Soviet reply has been negative.

It is not possible for the United States, or even the three Western powers acting together, to free Mr. Hess without Soviet concurrence. The international agreements governing his confinement were signed by all four governments and unanimous agreement is required to change them.

Although we have so far been unsuccessful in obtaining Soviet consent to the release of Mr. Hess, we will persist in our efforts. In the meantime, we will continue to take appropriate measures to ensure that Mr. Hess is as comfortable as possible and has proper medical attention.

With best wishes,

Sincerely,

Edwin Meese III

Mr. Frank W. Kuehl
3717 Ingomar Street, NW
Washington, DC

EM: DAS.



DEPARTMENT OF STATE
EXECUTIVE SECRETARIAT
TRANSMITTAL FORM

S/S 8306101

Date March 10, 1983

For: Mr. William P. Clark
National Security Council
The White House

Reference:

To: Edwin Meese From: Frank W. Kuehl
Date: February 17, 1983 Subject: Rudolf Hess

WH Referral Dated: March 3 NSC ID # 127479
(if any)

 The attached item was sent directly to the Department of State.

Action Taken:

- XX A draft reply is attached.
- A draft reply will be forwarded.
- A translation is attached.
- An information copy of a direct reply is attached.
- We believe no response is necessary for the reason cited below.
- The Department of State has no objection to the proposed travel.
- Other.

Remarks:

L. Paul Bremer, III
L. Paul Bremer, III
Executive Secretary

SUGGESTED REPLY

Dear Mr. Kuehl:

The United States Government believes, as do the British and French, that Mr. Hess should be released for humanitarian reasons. He is now well over 80 years old and has been imprisoned for more than 30 years. As you know, over the past several decades, we have made repeated representations to the Soviet Union asking them to agree to Mr. Hess's release. Each time the Soviet reply has been negative.

It is not possible for the United States, or even the three Western powers acting together, to free Mr. Hess without Soviet concurrence. The international agreements governing his confinement were signed by all four governments and unanimous agreement is required to change them.

Although we have so far been unsuccessful in obtaining Soviet consent to the release of Mr. Hess, we will persist in our efforts. In the meantime, we will continue to take appropriate measures to ensure that Mr. Hess is as comfortable as possible and has proper medical attention.

Sincerely,

Edwin Meese

Mr. Frank W. Kuehl
3717 Ingomar Street, NW
Washington, DC

8306101

T H E W H I T E H O U S E O F F I C E

REFERRAL

MARCH 3, 1983

TO: DEPARTMENT OF STATE

ACTION REQUESTED:

DRAFT REPLY FOR SIGNATURE OF EDWIN MEESE

DESCRIPTION OF INCOMING:

ID: 127479

MEDIA: LETTER, DATED FEBRUARY 17, 1983

TO: EDWIN MEESE

FROM: MR. FRANK W. KUEHL
3717 INGOMAR STREET, NW
WASHINGTON DC 20015

SUBJECT: WRITER SUGGESTS THAT THE UNITED STATES
INITIATE EFFORTS TO HAVE RUDOLPH HESS
RELEASED FROM SPANAU PRISON

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN
TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, PLEASE TELEPHONE THE
UNDERSIGNED AT 456-7486.

RETURN CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE
(OR DRAFT) TO:
AGENCY LIAISON, ROOM 91, THE WHITE HOUSE

SALLY KELLEY
DIRECTOR OF AGENCY LIAISON
PRESIDENTIAL CORRESPONDENCE

*Received in 5/5-1
3/2 at 3:46 PM
(20)*

CNHAMM



DEPARTMENT OF STATE
EXECUTIVE SECRETARIAT
TRANSMITTAL FORM

S/S 8306101
Date March 10, 1983

For: Mr. William P. Clark
National Security Council
The White House

Reference:

To: Edwin Meese From: Frank W. Kuehl
Date: February 17, 1983 Subject: Rudolf Hess

WH Referral Dated: March 3 NSC ID # 127479
(if any)

 The attached item was sent directly to the Department of State.

Action Taken:

- XX A draft reply is attached.
- A draft reply will be forwarded.
- A translation is attached.
- An information copy of a direct reply is attached.
- We believe no response is necessary for the reason cited below.
- The Department of State has no objection to the proposed travel.
- Other.

Remarks:

L. Paul Bremer, III
L. Paul Bremer, III
Executive Secretary

FRANK W. KUEHL
3717 INGOMAR STREET, N. W.
WASHINGTON, D.C. 20015

8306101

Feb. 17, 1983

Hon. Edwin Meese
Counselor to the President
White House
Washington, D. C.

127479

Dear Sir:

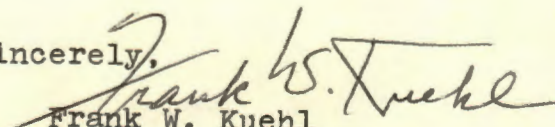
Congratulations on your lucid talk - also on the "question and answer" phase at the Jan. 19th U. S. Chamber of Commerce luncheon - 500 present.

Pursuant to your personal request, I am submitting the attached Rudolph HESS matter to you personally. Perhaps it is not too much to hope that this President can get Russia to join in releasing HESS and closing the expensive Spandau.

I would appreciate an acknowledgment. I didn't tell you that the Hess matter I submitted to White House Security before Judge Clark's incumbency was never acknowledged and became a dead White House file.

Thank you for your warm and friendly and personal interest in Hess. I got into this matter by accident.

In His Grace, Sincerely,


Frank W. Kuehl

P.S. The last 20 pages of Prof. Blumenwitz's (Chair for International Law - General Government - German and Bavaria Law & Political Sciences, Wurzburg University) analysis of United Nations handling of Rudolph Hess case - in english translation - - please return to me or a Xerox copy. I have a copy of the earlier pages. I am filing this matter with the Wisconsin State Historical Society. *FWK*

My telephone: (202) 363-0078.

8306101

Dr. Alfred
Seidl

Dr. Axel
Heublein
Rechtsanwälte

Neuhauser Straße 3
8000 München 2
Tel. (089) 2 60 47 75

To the
Secretary General
of the United Nations
United Nations
New York, N.Y. 10017

July 16, 1979

Dr. S|F

Dear Mr. Secretary General,

As the defense counsel of the former Reichsminister Rudolf H e s s in the trial before the International Military Tribunal (IMT) in Nuremberg I had occasion to speak with my client in the Spandau Allied Prison in Berlin and take notice of his steadily deteriorating state of health. Let me take this opportunity on behalf of my client to invite your attention to the following facts and circumstances and ask you at the same time to submit this case to the U.N. Commission on Human Rights:

I.

It must be re-emphasized time and again that the IMT in Nuremberg cleared Rudolf Hess of the charge of having committed war crimes and crimes against humanity. Of course, it is also of importance in this context that his flight to Great Britain took place as early as May 10, 1941, i.e. prior to the outbreak of the war with the USSR.

Rudolf Hess was sentenced to life imprisonment on the grounds of having participated in the planning for and preparation of a war of aggression. The evidence presented at the MIT did not show any facts justifying the conclusion that Hess exercised any decisive influence on Hitler's political and military decisions. He had not attended any of the conferences the minutes of which were submitted by the prosecution in Nuremberg in evidence of

Telefonische Auskünfte sind ohne schriftliche Bestätigung unverbindlich.
Sprechstunden nach Vereinbarung.

Geschäftskonten:
Hypo-Bank
München 6870 118404
Postscheckkonto
München 645 23-801
Fremdgeldkonto
Hypo-Bank
München 6870 121065

Hitler's aggressive intentions, and the IMT verdict quoted these in detail. These were the conferences of November 5, 1937, May 23, 1939, August 22, 1939, and November 23, 1939, during which Hitler expressed his ideas in front of the Foreign Affairs Minister, the Minister of War and/or the Chief of the Supreme Command of the Armed Forces, and the Commanders-in-Chief of the Army, Air Force and Navy. In the decision of the International Military Tribunal Rudolf Hess had primarily been charged with the following main points:

The signing of the Law Concerning the Introduction of the Universal Compulsory Military Service, dated March 16, 1935;

The call upon the German people to make sacrifices for military armament ('guns instead of butter');

The alleged knowledge of Hitler's plans of aggressions;

The presence in Austria and the co-signature of the Law Concerning the Reunification of Austria with the German Reich on March 13, 1938;

The signing of the Regulation for the Installation of a Government of the Sudetenland on April 14, 1939;

The support of a proposal of the German government to Poland in a public speech on August 27, 1939;

The signing of a Regulation Concerning the Incorporation of Danzig into Germany and the Establishment of the Polish 'Generalgouvernement'.

None of these acts is punishable under the provisions of Crimes against the Peace.

In fact there was no valid provision which made a head of State, minister, general or other leader personally responsible under criminal law at the outbreak of World War II on September 1, 1939. The community of States bound by International Law as well as the League of Nations have always condemned violence as an act of the State against International Law, but never thought of accusing persons in an official capacity of an aggressor State, let alone of charging such persons before an international criminal court.

Such a provision still does not exist in International Law. All efforts to codify the principles applied by the victorious powers at Nuremberg within the framework of the United Nations failed because of the resistance by the big powers.

Also the practice of the powers since the end of World War II is quite clear on this issue. For none of the various wars waged since 1945 it was even considered to charge the responsible leaders personally with crimes and put them on trial in an international court. The Korean War, the Vietnam War, the two wars between India and Pakistan, and the wars that took place since 1949 in the Middle East between Israel and the Arab countries might be mentioned in this context. Also on the occasion of involvement of British and French troops in the attack on Egypt in October of 1956, nobody ever thought of having Sir Anthony Eden, the British Prime Minister, and Guy Mollet, the French Premier, stand trial to face criminal charges. Remarkable in this connection is also the manner in which the United Nations Security Council handled the case of Cambodia. On January 12, 1979, Prince Sihanouk asked the Security Council to condemn Vietnam for an act of aggression and to refuse recognition of the new government, and to urge Vietnam to withdraw its troops from Cambodia and to consider "appropriate action" against Vietnam if such appeal should fail. These demands are also contained in a resolution of the People's Republic of China to the Security Council. The Chinese draft resolution is based on the assumption that 'the Vietnamese aggression against Cambodia is a threat against international peace and security'. Neither Prince Sihanouk nor the People's Republic of China asked that any leader of Vietnam be personally be charged for crimes. The resolutions are directed against the State of Vietnam. Also the seven non-aligned countries, in their draft resolution, had only called for measures against the State of Vietnam and not against any of its leaders.

The same applies to a draft resolution presented by the ASEAN States that only called for measures against the warring States, but not against individual leaders.

This legal position is incidentally also being shared by the government of the Federal Republic of Germany. They are also convinced that neither at the outbreak of World War II on September 1, 1939, did we have, nor have we now any clause of International Law providing for a personal

criminal prosecution of any national leaders for charges of participation in the planning for, the preparation and waging of a war. On March 14, 1979, members of the German Bundestag posed seven questions to the federal government regarding the case of Rudolf Hess (Federal Paper 8/2660).

The first question read as follows:

"How does the federal government assess the prospects of success for a codification of the principles applied by the International Military Tribunal of the victorious powers in Nuremberg, especially the legally defined "Crime against Peace", within the framework of the United Nations?"

The federal government replied as follows:

"In the fifties, the U.N. International Law Commission - a body of experts appointed pursuant to Article 13 (a) of the U.N. Charter - had submitted a "Draft Code of Offences against the Peace and Security of Mankind" upon a request of the U.N. General Assembly. The debate on this text was interrupted in 1957. The discussion about the draft of the International Law Commission received a new impetus upon the passing of a definition of the term aggression (Res. 3314/XXIV of the U.N. General Assembly) in 1974. For the time being, the member countries of the U.N. were given an opportunity for commenting on this draft and the further proceeding in preparation of the XXXV General Assembly (1980).

Predictions on the probable further proceeding and the results of the debate at the U.N. cannot be made at this stage."

The second question submitted to the federal government read as follows:

"Is it correct to the best of the knowledge of the federal government that the community of the U.N. member States bound by International Law, as well as in former times the League of Nations, have always condemned the use of force as a State's violation of International Law, but have always refused to charge specific leaders of the States exercising such force or to try them before an international court?"

The federal government replied as follows:

"The rising importance of human rights underlines the issue of the role and position of the individual and of individual responsibility within the scope of the discussion on International Law. Also in the past there had been mandatory reprisals under International Law against violators of certain rules pertaining to an illegal use of force (e.g. after the 1948 Convention on Genocide and the 1949 Geneva Red Cross Convention. Also the War Crimes Trials of Nuremberg and Tokyo were founded on the view that the common law practice applicable at the time of commitment provided for individual punishment of "Crimes against Peace".

The Third World has recently moved closer to the concept of individual punishment for violations of rules of International Law, above all in light of the Apartheid policy.

Therefore, one cannot speak of a clearcut statement of International Law with respect of the second question."

It follows from this that the conviction of Rudolf Hess for 'crimes against the peace' is a violation of human rights. Article 11, Section 2 of the Human Rights Declaration of December 10, 1948, Article 7, Section 1 of the International Covenant on Civil and Political Rights of December 6, 1966, are based on the principle that no person may be convicted for an act or omission which took place at a time when that act or omission was not punishable under national or international law.

II.

Obviously also the Soviet Union did not consider the achievement of national objectives of interest by military means as a violation of international law by an individual government leader. On March 21, 1939, i.e. a few days after the invasion of Czechoslovakia by German troops and the establishment of the "Protectorate of Bohemia and Moravia", the British government proposed in Paris, Moscow and Warsaw to issue a joint "formal declaration" announcing the immediate initiation of talks on measures of joint resistance against any threat to the independence of any European country. The negotiations which were then started in Moscow for the purpose of signing a treaty of alliance extended over several months and did not take the course desired by the west European powers because of deepseated political disagreement. All the greater was the worldwide surprise about the signing of a nonaggression pact between Germany and the USSR that was announced in Berlin and Moscow on August 24, 1939. Sir Neville Henderson, the last British ambassador in Berlin, commented on this in his book, "Failure of a Mission", that was published in 1940:

"...On the other hand, a successful conclusion of the negotiations among London, Paris, and Moscow appeared further removed than ever. It is true that the British and French Military Missions had packed their baggage

for their trip to Moscow. When they actually arrived there, on August 11, it would have been natural to assume that Stalin - even though he wanted to achieve the greatest possible benefits for Russia - had finally determined to co-operate with the Western powers in one way or another to prevent further German aggression. However, one had to bear in mind the disturbing development that Moscow was quite brazenly showing its cloven foot by demanding a free hand in the Baltic countries.

Russia's true objective thus became evident and, since the German Reich was interested in secret, the scale was tipped against the Western powers. They were unable to barter the honour and liberty of small, but independent countries, while Germany did so. It only remained to be hoped for that some day the question would be answered whether Stalin had been in cahoots with Hitler from the very start with the intention of extending the negotiations until such time as the German army was ready to strike or whether he had been playing at cat and mouse with Germany as well as with us. I am inclined to accept the latter view. But I, too, can only guess, and I am biased anyway. From the very onset on I had considered the Russian talks as something that simply had to be attempted, but also as something that was lacking in a sense of reality. I have never believed in an effective and unselfish help extended to the Poles by Russia.

It had been my fondest hope that if the USSR joined the peace front - even if only halfheartedly - Hitler would act according to the rule that precaution was the mother of wisdom and would submit to peaceful arrangements. I have always felt, however, that it was Moscow's main objective to involve Germany in a war with the Western powers, with the result of an overall ruin, in order to come out of this conflict among them as the lucky survivor."

(Note: In lieu of the original text, the above had to be translated from the German edition of the book.)

Soon after publication of the Nonaggression Pact between Germany and the USSR of August 23, 1939, there was speculation as to secret political agreements made in addition to the published text of the pact. The further developments made such a surmise appear very likely. On September 17, 1939, Red Army troops crossed the Soviet border to the west and occupied eastern Poland. On November 30, 1939, the armed forces of the Soviet Union attacked Finland, the Soviet government having severed diplomatic relations with Finland on the day before, terminating the Nonaggression Pact it had concluded with Finland. On June 15, 1940, followed the occupation of Lithuania by the Red Army. On June 17, Latvia and Estonia were occupied. On June 28, 1940, Soviet troops invaded Bessarabia and the northern Bukovina.

In spite of these facts, both the German and the Soviet governments emphatically denied having concluded any secret political agreements apart from the Nonaggression Pact concluded between the two States on August 23, 1939, and the Border and Friendship Pact signed on September 28, 1939.

During the trial at the IMT it was possible to shed some light on this issue. I am enclosing a copy of the affidavit of Ambassador Dr. Friedrich Gaus dated March 15, 1946, which I submitted to the IMT as "Exhibit Hess No.16". Ambassador Dr. Gaus had accompanied the Ministers of Foreign Affairs on his flight to Moscow on August 23, 1939. In his capacity of chief of the Foreign Office's Legal Department, Dr. Gaus had advised the Minister of Foreign Affairs during the negotiations and had assisted in the wording of the agreements. The affidavit is contained in the document volume XL on the IMT proceedings as an official document. During the trial, a number of other prominent witnesses, among them von Weizsäcker as the former State Secretary of the Foreign Office, Colonel General Jodl as Army Chief of Staff, and of course also the former Minister of Foreign Affairs, von Ribbentrop, made statements regarding the secret additional protocol. The Secret Additional Protocol to the Nonaggression Pact signed by Soviet Foreign Affairs Minister V. Molotov and the German Minister of Foreign Affairs von Ribbentrop reads as follows:

"On the occasion of the signature of the Nonaggression Pact between the German Reich and the USSR the undersigned plenipotentiaries of each of the two parties discussed in strictly confidential conversations the question of the boundary of their respective spheres of influence in Eastern Europe. These conversations led to the following conclusions:

1. In the event of a territorial and political rearrangement in the areas belonging to the Baltic States (Finland, Estonia, Latvia, Lithuania), the northern boundary of Lithuania shall represent the boundary of the spheres of influence of Germany and the USSR. In this connection the interest of Lithuania and in the Vilna area is recognized by each party.
2. In the event of a territorial and political rearrangement of the areas belonging to the Polish State the spheres of influence of Germany and the USSR shall be bounded approximately by the line of the rivers Narev, Vistula, and San. The question of whether the interests of both parties make desirable the maintenance of an independent Polish State and how such a State should be bounded can only be definitely determined in the course of further political developments.
In any event both governments will resolve this question by means of a friendly agreement.
3. With regard to Southeastern Europe attention is called by the Soviet side to its interest in Bessarabia. The German side declares its complete political disinterestedness in these areas.
4. This protocol shall be treated by both parties as strictly secret."

Enclosed are copies of the treaties concluded between Germany and the USSR on August 23, 1939, and September 28, 1939, both in German and Russian.

As early as in 1948, when tensions between the US and the USSR approached a first peak (Korean War, Berlin Blockade) the US State Department published 260 documents from the archives of the German Foreign Office under the title of "Nazi-Soviet Relations 1939-1941". These documents also included the secret German-Soviet agreements of August 23, 1939, and September 28, 1939. These documents should be on hand at the UN library. Otherwise the US State Department will surely be ready to provide them. Enclosed are copies from this collection of documents with the aforementioned secret German-Soviet agreements as well as copies of the "Analytical List of Documents".

The presentation of the Secret Additional Protocols of August 23 and September 28, 1939, proved that Stalin and

Hitler had knowingly and intentionally connived in the planning of and preparation for the aggression against Poland. It has already been mentioned that in execution of the joint plan and upon coordination between the Supreme Command of the German Armed Forces and the Red Army General Staff, the USSR occupied the territories of the Polish State east of the line of demarkation formed by the rivers Narev, Vistula, and San on September 17, 1939. Colonel General Jodl made detailed statements on this at the trial at the IMT. In other words: During the trial at the IMT, the Soviet Union has not only acted as legislator - the Soviet judge, Major General I.T. Nikichenko signed the London Four Power Agreement on the Prosecution and Punishment of Major War Criminals of the European Axis Powers and thus the statutes of the IMT as an essential element of this agreement - but also as prosecutor and judge in its own cause. It should not be ignored in this context that the Western powers too, i.e. the government of the U.K., the government of the U.S.A. and the provisional government of the French Republic knew the contents of the secret German-Soviet agreements prior to the conclusion of the London Agreement of August 8, 1945. An official of the German Foreign Office had turned over to the occupation authorities of the Western powers microfilms with the most important secret documents on May 19, 1945, among them a copy of the Secret Additional Protocol of August 23, 1939. The signatory powers of the London Agreement of August 8, 1945, were thus aware of the fact that at least one of the signatory powers was going to act as a legislator, prosecutor and judge in its own cause.

Just a few days after the announcement of the verdict of the International Military Tribunal, i.e. on October 5, 1946, the London weekly, THE ECONOMIST, summarized the legal conclusions to be drawn therefrom as follows:

"During the trial the defence lawyer Seidl produced witnesses, including Baron von Weizsäcker, permanent Secretary of State in the German Foreign Office from 1938 to 1943, who testified about a secret treaty attached to the Nonaggression Pact and providing for territorial partition of six European states between Germany and the Soviet Union. The prosecution made no attempt to disprove this evidence; nevertheless, the judgement completely ignores it. Such silence unfortunately shows that the Nuremberg Tribunal is only within certain limits

an independent judiciary. In ordinary criminal law it would certainly be a remarkable case if a judge, summing up on a charge of murder, were to avoid mentioning evidence on the part played by an accomplice in the murder because the evidence revealed that the judge himself had been that accomplice. That nobody thinks such reticence extraordinary in the case of Nuremberg merely demonstrates how far we still really are from anything that can be called a "reign of law" in international affairs. Both Britain and France are on record as having concurred in the expulsion of the Soviet Union from the League of Nations for its unprovoked attack on Finland in 1939; this verdict still stands and is not modified by anything which has happened since.

[In 1939 Moscow openly gloried in military co-operation with Germany for the destruction of Poland, "that ugly offspring of the Versailles treaty," and Ribbentrop in his last pleas quoted a cable of congratulation from Stalin as proof that the Soviet Union had not then regarded the war against Poland as an aggression. The contrast between 1939 and 1946 is indeed fantastic, and it is too much to expect that either historians in the future or Germans in the present will share in the current United Nations convention of not seeing it.]

The foregoing shows that the IMT was no "competent court" in accordance with Article 5 of the European Convention for the Protection of Human Rights and Basic Liberties dated November 4, 1950. But above all, it was no "independent, impartial court founded on law" in the terms of Art.14 of the International Pact on Civil and Political Rights (Human Rights Convention of the United Nations dated December 16, 1966).

All of this also shows that the IMT trial was no trial in strict terms of law and that the verdict of that tribunal too was no verdict within the legal definition.

III.

Notwithstanding the existence of these basic legal considerations the continuation of the execution of the court sentence violates basic provisions of International Law for reasons of health and practice of imprisonment.

Rudolf Hess was 85 years old on April 26, 1979. Since May 10, 1941, i.e. 38 years, he has been imprisoned, for over 12 years in solitary confinement. His state of health is alarming and his death must be expected soon. On December 28/29, 1978, he suffered a stroke which practically destroyed the optic centre of the brain. It is also possible that he has suffered light strokes previously, in any case, a latent danger exists also in the conviction of

the physician of the British military hospital. According to the same source, Rudolf Hess suffers from a damaged heart, a distorted stomach and circulation problems. Furthermore he suffers from an enlarged prostate and other physical problems which, in the physician's opinion, may at any time produce a critical situation.

Under these circumstances, the continuation of the execution of the sentence of the MIT violates Article 5 of the Human Rights Declaration of December 10, 1948, Article 3 of the Convention for the Protection of Human Rights and Basic Liberties of November 4, 1950, and Article 7 of the International Covenant on Civil Rights of December 19, 1966.

IV.

On May 28, 1975, the European Commission on Human Rights (Complaint No.6231/72 Ilse Hess versus the U.K., in Europäische Grundrechte-Zeitschrift 1975, pp.482ff.) decided indeed that the execution of the sentence of Rudolf Hess was a matter within the sole competency of the Four Powers. The Four Power Regime covering the Spandau Prison was correctly characterized as a joint competency that defied any realistic splitting up into four separate competencies. This may well prevent the control bodies appointed by the European Human Rights Convention from investigating the specific responsibility of one of the responsible four powers, but it does not mean that the Four Powers may absolve one another from observing these human rights within the sphere of their one-sidedly created reservations. The rules of imprisonment, especially inasmuch as they directly affect the health and lives of prisoners, are elements of an international minimum standard of human rights which today is part of the rules of the general and universal International Law.

Cf. Art.1 No.3, 13 para. 1 lit. 6, 55 lit. c., 56, 62 para.2 UN Charta; also the General Declaration of Human Rights of the U.N. General Assembly of December 10, 1948, and the Convention on Political and Civil Rights of December 16, 1966, which was also ratified by the USSR.

No member of the United Nations can ignore these human rights minimum standards and its special responsibilities for their execution by making its own decisions and further actions depending on the concurrence of other States.

The UN Charta and the International Law of Treaties contain specific rules for the safeguarding of human rights, even though formal treaties may be opposed to this. Article 103 of the UN Charta provides for the preference of this Charta above any other treaty obligations:

"In the event of a conflict between the obligations of the members of the United Nations under the present Charta and their obligations under any other international agreement, their obligations under the present Charta shall prevail."

Art. 53 of the Vienna Convention on the Law of Treaties of May 23, 1969, (which is, however, not yet ratified) governs conflicts between provisions of treaties and a peremptory rule of general international law (*ius cogens*):

"A treaty is void if at the time of its conclusion it conflicts with a peremptory norm of general international law. For the purpose of the present Convention a peremptory norm of the general international law is a norm accepted and recognized by the international community of states as a whole, as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

If the human rights principles which are applied to the Execution of the sentence of Rudolf Hess today have become valid after the coming into force of the London Agreement of August 8, 1945, governing the execution of sentence in the Spandau Prison, the Article 64 of the Vienna Convention on the Law of Treaties would be applicable:

"If a new peremptory norm of general international law originates, every existing treaty which is in contradiction to this Standard becomes null and ceases to exist."

The execution of the sentence on Rudolf Hess cannot be based on the Enemy State Clause of Article 107 of the UN Charta according to which measures adopted or approved by the governments concerned as a consequence of World War II with respect of a State that was an enemy of the signatory of the UN Charta, are neither voided nor forbidden by the UN Charta. Art.107 of the UN Charta specifically only applies "with respect of States". Violations of human rights cannot be justified by the so-called enemy States clauses.

None of the powers responsible for the execution of the sentence can plead that the safeguarding of the human rights of the imprisoned Rudolf Hess was essentially a matter falling within the internal competency of the State concerned pursuant to Art.2 No.7 of the UN Charta. The responsible powers assumed the sentencing of the so-called

major war criminals as an international commitment, and the control of the execution thus remains entirely a matter of international concern.

V.

The Human Rights Commission of the UN should, in evaluating the competencies adopted by the victorious four powers of World War II also consider the principle of equality and reciprocity of International Law and duly apply this in the negotiations with the custodial powers. The punishment of crimes against peace, of crimes against humanity and of war crimes in 1945 has been turned into a one-sided punishment of the vanquished and a one-sided reservation of amnesty for the relatives and supporters of the victors. This is a violation of the principle of equality and reciprocity of International Law (so-called tu quoque principle); this finally also poses the threat of only a lost war being a crime, and in every case at that.

What doubts have been voiced even in America after the Nuremberg sentence can be demonstrated by a speech of US Senator Robert A. Taft held between the passing of the sentence and their execution at a meeting in Ohio:

"The trial of the vanquished by the victors cannot be impartial no matter how it is hedged about with the forms of justice. I question whether the hanging of those who, however despicable, were the leaders of the German people, will ever discourage the making of aggressive war, for no one makes aggressive war unless he expects to win. About this whole judgement there is the spirit of vengeance, and vengeance is seldom justice. The hanging of the eleven men convicted will be a blot on the American record which we shall long regret. In these trials we have accepted the Russian idea of the purpose of the trials - government policy and not justice - with little relation to Anglo-Saxon heritage. By clothing policy in the forms of legal procedure, we may discredit the whole idea of justice in Europe for years to come."

These remarks by Senator Robert A. Taft obviously applied to those of the defendants who were not only sentenced and executed for crimes against peace, but primarily also for war crimes and crimes against humanity. The question must be permitted as to what Senator Robert A. Taft would have to say today with respect of the case of the former Minister of the Reich, Rudolf Hess, who was cleared of the charges of war crimes and crimes against humanity and has been kept imprisoned for well over 32 years for an act that has never been punishable by law.

In 1953, Pope Pius XII on addressing the participants of a congress on international criminal law in Rome, stated:

An uninvolved party is shocked at seeing how the victor sentences the vanquished for war crimes after the cessation of hostilities, while the victor has been guilty of similar offenses against the vanquished."

This papal statement obviously also applied to war crimes and crimes against humanity, i.e. charges of which Rudolf Hess had been cleared.

VI.

According to the Preamble of the General Declaration of Human Rights of December 10, 1948, it is an important commitment of the United Nations to protect human rights by the rule of law and to enforce general support for and implementation of human rights and basic liberties. According to Art.9 of this Declaration, as quoted above, nobody may be kept in arbitrary confinement. Also in the Preamble to the UN Convention on Human Rights of December 16, 1966, (B. International part on Civil and Political Rights) the United Nations undertake to promote human rights and basic liberties and to uphold the rights recognized in this Pact. This applies in particular, as aforesaid, to the right of personal freedom (Art.9). This right has been denied to the former Minister of the Reich, Rudolf Hess, since October 1, 1946, i.e. for more than 32 years. Since that date he has been kept imprisoned without legal cause, i.e. has been deprived of his freedom. Presumably there has rarely been a case with such a clearcut legal status as in the case of Rudolf Hess.

Let me therefore, dear Mr. Secretary General, urge you to kindly submit this case at your earliest convenience to the United Nations Commission on Human Rights and arrange for the most expeditious handling and decision possible.

Please let me, dear Mr. Secretary, express my highest esteem.

Very truly yours,

Wafiq bin

UNITED NATIONS



NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N. Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

20 NOV 1979

REFERENCE:

7 November 1979

Dear Sir,

We have been in receipt of your letters to the Secretary-General, dated 9 August and 4 October 1979, concerning Mr. Hess and suggesting that his case be brought before the United Nations Commission on Human Rights.

After having studied the matter, I am in a position to inform you that it would not be legally possible to do so as it would run counter to the applicable provisions of the United Nations Charter and relevant decisions of the Organization.

You are no doubt aware that according to Article 107 of the United Nations Charter, nothing in the latter "shall invalidate or preclude action, in relation to any State which during the Second World War has been an enemy of any signatory of the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action". You may also wish to recall that by resolution 95 (I) "Affirmation of the Principles of International Law recognized by the Charter of the Nurnberg Tribunal" the General Assembly of the United Nations took note of the Agreement for the establishment of an International Military Tribunal for the prosecution and punishment of the major war criminals of the European Axis signed in London on 8 August 1948, and affirmed the principles of international law recognized by the Charter of the Nurnberg Tribunal and the judgment of the Tribunal.

Incidentally the European Commission of Human Rights having dealt with an application concerning Mr. Hess decided as early as in 1975 that the carrying out of his sentence is a question concerning the Four Powers.

As to the human rights aspect of his case on which you have placed an emphasis in the letters, your kind attention is drawn to General Assembly resolution 2583 (XXIV) in which the Assembly, *inter alia*, expressed its conviction that punishment of persons responsible for war crimes and crimes against humanity "constitute an important element in the prevention of such crimes, the protection of human rights and fundamental freedoms, the encouragement of confidence, the furtherance of cooperation among peoples and the promotion of international peace and security". Earlier, similar conviction was expressed by the United Nations Commission on Human Rights in its resolution 3(XCI).

Mr. Alfred Seidl
Neuhauser Strasse 3
8000 Munich 2
Federal Republic of Germany



- 2 -

I hope you would appreciate that any arguments against the continued detention of Mr. Hess, which seem to amount to a re-opening of the case, are hardly valid in the light of the above provision of the Charter and the United Nations decisions; virtually there is no ground for bringing his particular case before the Commission on Human Rights.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gamal M. Badr'.

Gamal M. Badr
Deputy Director for Research and Studies
Codification Division



BAYERISCHER LANDTAG

Abgeordneter
DR. ALFRED SEIDL

Maximilianeum
8000 München 85,
Telefon (0 89) 41 26 - 3 07
Kanzlei:
Neuhauser Straße 3
8000 München 2
Telefon (0 89) 2 60 47 75

To the
Secretary General
of the United Nations
United Nations
New York, N.Y. 10017

August 4, 1980

Dear Mr. Secretary General,

By letter dated July 16, 1979, I had requested you in my capacity as counsel for the defense of the former Reichsminister Rudolf Hess before the International Military Tribunal in Nuremberg to bring my client's case before the United Nations Commission on Human Rights. Under the date of November 7, 1979, the Deputy Director for Research and Studies - Codification Division, Mr. Gamal M. Badr, advised me that "virtually there is no ground for bringing this particular case before the Commission on Human Rights".

The substantiation of the advice from the United Nations dated November 7, 1979, is untenable. I have therefore requested Prof. Dr. Dieter Blumenwitz of the Würzburg University to render an expert opinion on the legal issues raised therein. I have the honor of submitting this legal opinion dated July 28, 1980, to you requesting you to kindly have the United Nations' decision of November 7, 1979, reviewed. In support of this request

I respectfully refer to the enclosed constitutional complaint which I filed with the Federal Constitutional Court in Karlsruhe on Jan. 28, 1980, and where the Rudolf Hess case is dealt with in detail both de facto and de jure. The Federal Constitutional Court has set a deadline until October 1, 1980, for the Government of the Federal Republic of Germany to comment.

Please accept my most sincere regards,

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Alfred Seidl".

Dr. Alfred Seidl, MdL

Certified translation from the German language

Professor Dr. Dieter Blumenwitz
Chair for International Law, General
Government, German and Bavarian Law
and Political Sciences
Würzburg University

D-8700 Würzburg, 28th July 1980
Domerschulstrasse 16 (Old
University)
Rooms 201 - 203
Telephone (0931) 31 308
G 12 - 3 - 79

Stamp
Attorney at Law Dr. A. Seidl
Received 4th August 1980
Attorney at Law Dr. Heublein

Ex-State Minister Dr. Alfred Seidl, Member of the State
Legislature, Attorney at Law at Neuhauserstr. 3, 8000 München 2,
has requested from me an expert opinion on the letter of the
United Nations (UN) dated 7th November 1979 in the matter of
the conviction and imprisonment of Rudolf Hess. Handling
of the Rudolf Hess case by the United Nations Commission on
Human Rights was rejected by the letter signed by the Deputy
Director for Research and Studies Codification Division, Gamal
M. Badr (cf. Annex I) for the following reasons:

- (1) Discussion of this case by the Organization of the
United Nations (UNO) is excluded by the so-called
Enemy State Clause of Article 107 of the Charter of
the United Nations (CUN) dated 26th June 1945.
- (2) The UNO is bound by resolution 95 (I) of the UN, in
which it confirmed the principles recognized by the
Charter of the Nürnberg Tribunal.
- (3) The UN has frequently expressed its conviction that
"punishment of persons responsible for war crimes
and crimes against humanity constitute an important
element in the prevention of such crimes..."
(cf. Resolutions 3 (XXI) and 2583 (XXIV)).
- (4) Finally, it is pointed out that the European Commission

Brigitte Marcolla-Robert
Interpreter and Translator
for the European Commission
languages: English, French,
German, Italian, Spanish
committed and sworn
in by German Courts

- 2 -

of Human Rights has refused to deal with the
Rudolf Hess case.

The legal opinion of the UN is not based on currently prevailing
and predominantly recognized international law (IL); in addition,
it is in contradiction to the practice of the UNO exercised
to date in similarly constituted cases as well as to the
objectives and principles of the Charter of the United Nations.

A) Applicability of Art. 107 of the CUN to the Rudolf Hess case.

I. Continued validity of the enemy state clause

1. The provision of Art. 107:

"This charter shall neither invalidate nor preclude
action, in relation to any State which during the
Second World War has been an enemy of any signatory
of the present Charter, taken or authorized as a
result of that war by the Governments having
responsibility for such action."

was intended to pass the peace arrangements for the
Second World War to the victor powers.

The organization to be newly founded was not to assume
responsibility for actions resulting from the war
nor to restrict them.

Cf. Trützscher von Falkenstein, Die sich ändernde
Bedeutung der Feindstaatenartikel für Deutschland,
(Changing significance of the Enemy State Clause
for Germany), 1975, p. 5.

Brigitte Marcella-Robert
Interpreter and translator
for the English and French
languages, duly registered,
commissioned and sworn
in by German Courts.

Although the arrangement was incorporated into the chapter on transition provisions, it must be assumed that the regulation remains in force even today. During negotiations on the draft charter, no agreement was reached on the period of validity. In the final report of the commission appointed to deal with Art. 107, the hope was expressed only "that the Security Council (SC) would take over its full responsibility as soon as possible."

Cf. UNCIO vol. 11, p. 190

Despite various initiatives for changing the charter, Art. 107 has not been deleted up to the present.

2. By virtue of interallied conventions of the four victor powers, USA, USSR, Great Britain and France, these have taken over responsibility for settling the postwar question with respect to Germany.

Cf. London Protocol of 12th September 1944,
Supplement of 14th November 1944,
Accession of France of 26th July 1945,
Berlin statement of 5th June 1945,
Confirmation in the Potsdam Agreement of 2nd August 1945
Accession of France with notes of 7th August 1945.

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages, registered,
commissioned and sworn
in by German Courts

Certified translation from the German language

- 4 -

Responsibility arrangements such as the London Convention on the joint control organs became obsolete with the rupture of the joint control organs and the establishment of states in the East and the West.

Blumenwitz, Feindstaatenklauseln, 1972, p. 51
(Enemy State Clauses)

Despite this, a minimum of overall German responsibility was retained.

For example, the Western Powers in accordance with Art. 2 of the Germany Treaty still hold rights with respect to Germany as a whole; this applies correspondingly for the relations between the USSR and the GDR by virtue of part. 2 of the Statement of Sovereignty of 25th March 1954 and the Preamble of the Moscow Treaty of 20th September 1955.

Jurisdictions and responsibilities of the Four Powers were not affected either by the Treaties with East Bloc States or by the admission of the two German states to the UNO.

In the statement issued on 9th November 1972 on the occasion of the applications for membership of the two German states in the UN, the Four Powers "affirm in this connection that this membership may not in any manner affect the rights and responsibilities of the Four Powers and the corresponding pertinent multilateral agreements, resolutions and practice."

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages, registered,
committed and sworn
in by German Courts

II. Applicability of the enemy state clauses in the Rudolf Hess case.

1. From its unequivocal wording, Art. 107 of the CUN provides for "actions . . . as consequence of the Second World War with respect to a state." The provision was intended to grant the victors of the Second World War special rights with respect to the vanquished states and to release the governments responsible for settling war consequences from the obligations of the Charter in the execution of war consequence actions.

Blumenwitz, Feindstaatenklauseln (Enemy State Clauses),
1972, p. 14

Accordingly, the conviction of Rudolf Hess by the International Military Tribunal (IMT) in Nürnberg in 1946 and execution of the sentence by the Allied Victor Powers is not a case contemplated by Art. 107, as far as the convicted is affected by the actions. One can only speak of the enemy state clauses insofar as these actions were directed against German territorial sovereignty and jurisdiction, not however insofar as the exercise of foreign jurisdiction violated the inalienable human rights in penal processes and in the execution of the sentence with respect to the defendants and convicted respectively. Even though Art. 107 and 53 of the CUN contain no exceptions expressis verbis, the authorities expressed by them are not without limitation nor can they be arbitrarily expanded. Restrictions, which must

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages, registered,
competent and sworn
in by German Courts

be observed in the corresponding actions, result from the general system of values of the CUN as well as from general international law.

Trützscher von Falkenstein, Die sich ändernde Bedeutung der Feindstaatenartikel für Deutschland, 1975, p. 26.

Human rights may be named primarily as a limit given by the CUN: human rights are individual legal statuses, which are outside the general international law system of state authority subjects. Since the enemy state clauses are concerned only with actions against states, but not against individuals, a delimitation must be made between actions permissible in the state sector and those which are impermissible in the individual sector.

The principles of the Charter must be referred to for the delimitation. Art. 1, par. 3 of the CUN states "the respect for human rights and basic liberties for everyone without discrimination on account of race, sex, language or religion". Similar principles are recorded in Art. 13 (1) b, 55 (c), 56, 6 II, 58 and 76 (c).

Blumenwitz, Feindstaatenklauseln, 1972, p. 64.

The human rights recognized and to be safeguarded by the UNO include rights of liberty and procedural principles,

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages, sworn in and sworn
in by German Courts

which have been expressed in international statements, in particular in the "Declaration of Human Rights", which was proclaimed by the General Assembly of the United Nations on 10th December 1948.

According to Art. 5 of the Declaration of Human Rights, no one may be "subjected to cruel, inhuman or degrading treatment or punishment." According to Art. 7 of the International Pact on Civil and Political Rights dated 19th December 1966, the same is true as applicable.

cf. GAOR 21st Sess., Resolutions, p. 52.

Imprisonment of Rudolf Hess for 34 years, which since the release of the fellow prisoners Albert Speer and Baldur v. Schirach in 1966 constitutes solitary confinement, as well as the isolation from the outside world, appear overall in view of the weakened state of health of the prisoner to be a cruel and inhuman punishment.

The opinion unanimously confirmed by legal theory that the enemy state articles do not substantiate actions against citizens of the enemy states, accordingly do not remove them from the protection of human rights, has also been confirmed by the General Assembly in a number of cases:
(1) Upon application by Bolivia and Australia, the

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages, registered,
commissioned and sworn
in by German Courts

General Assembly resolved to deal with the safeguarding of human rights and basic liberties in Bulgaria and Hungary during the 3rd Session of 1948/49. To the objection that Art. 107 of the CUN precluded discussion of this subject, it was replied that respect for human rights justified a treatment by the UN according to Art 55, 1o of the CUN.

Respect for human rights is also anchored in the Peace Treaties with the mentioned states.

In Resolution 272 (III), the General Assembly reminded the governments of Bulgaria and Hungary of their obligations arising from the treaties.

Cf. Albano-Müller, Die Deutschland-Artikel in der Satzung der VN 1967, p. 24. Repertory of UN Practice, Vol. 5, p. 39o. (The Germany Articles in the Charter of the United Nations)

- (2) A complaint by Australia, Great Britain and the USA was filed in the 5th Session against the USSR with the accusation that it had neither repatriated prisoners of war nor given information about them. In rebuttal of the objection of the USSR that the United Nations had no competence in the matter, it was stated that this involved a breach of international agreements and was therefore a dispute between member states.

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages, duly registered,
commissioned and sworn
in by German Courts

In addition, application of Article 107 of the CUN would mean vengeance against individuals for the acts of states; such an interpretation would completely be in violation of the spirit of the Charter.

. Cf. Repertory of UN Practice, Vol. 5, p. 392.

In Resolution 427 (V), the General Assembly disapproved the way in which prisoners had been handled up to then and called upon the governments, which still had prisoners in their custody, to act in accordance with the recognized international rules.

Cf. Scheuner, EA, 1955, 7264.

Consequently, it can therefore be stated that appeal to the enemy state clauses in the case of Rudolf Hess is not consistent with previous UNO practice, since they had always previously been applied to states, and found their limitation in the principle of respect for human rights.

In international law, the opinion prevails today that there are compulsory standards of international law which have precedence over treaty agreements or unilateral agreements.

Cf. the opinion of the International Law Commission

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages, duly registered,
commissioned and sworn
in by German Courts

of the United Nations expressed in Art. 53 of the Vienna Convention on the Law of Treaties dated 23rd May 1969.

Also Albano-Müller, loc.cit., p. 49

2. One of the most essential principles of the CUN is creation of an international organization on the basis of the "sovereign equality of all its members" (cf. Art. 2, par. 1 CUN).

The principle of "outlawing" of the vanquished aggressor on which the enemy state clauses is based, the maxim "vae victis" on the other hand is not part of the objectives and principles of the Charter of the United Nations. Art. 53 and 107 of the CUN cannot therefore be so interpreted as if they authorized the UNO to actions against the enemy states in violation of the Charter or as if the Charter authorized the responsible victor powers to take such actions. Upon the founding of the UNO, it was stated that the responsible victor powers would for the time being not transfer the responsibility for war consequence actions against enemy states upon their accession to the CUN to the world organizations, but rather would execute them on their own. This does not mean that the UNO from the very start either approved globally all war consequence actions of the victor powers, nor could it relieve the responsible victor powers from observance of the general

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages duly registered,
commissioned and sworn
in by German Courts

rules of international law (binding on both the victors and the vanquished).

The principle of equality of states with respect to international law is generally recognized.

Cf. Albano-Müller, loc. cit., p. 56

This means the requirement for equal treatment and a prohibition of discrimination.

In the system of the CUN, the enemy state clauses are incompatible with the principle of equality (after admission of the last former enemy states or their successor states into the UNO); they are largely in line with imperialistic or hegemonic patterns of thought. An expansion of their scope of effect endangers also the desired universality of the United Nations.

III. Permissibility of opinions on humanitarian aspects of the Rudolf Hess case.

The UNO is free to determine its responsibility within the framework of its tasks defined by the CUN. It has been confirmed several times in the practice of the UNO, that the world organization can handle matters, which *inter alia* are connected with the settlement of consequences of the

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages duly registered,
commissioned and sworn
in by German Courts

Second World War. Thus upon application of France, Great Britain and the USA a commission was appointed by the General Assembly in Resolution 510 (VI), which was to determine whether conditions in Germany would permit free and secret elections in the entire country.

The majority of the members was of the opinion that actions of the victor powers according to the enemy state articles would not basically impair the functional competence of the Security Council and the General Assembly as defined in Chapters IV, VI and VII of the Charter of the United Nations. Art. 107 does not prohibit discussions concerning problems of an enemy state; according to its wording, the competence of the world organization is only restricted to the extent that General Assembly and Security Council may not take any actions which would make a permissible war consequence action of a responsible victor power "ineffective" or "preclude" such an action, this is not the case for the discussion of problems and recommendation of actions with reference to an enemy state.

Cf. Blumenwitz, Feindstaatenklauseln, p. 69;
Albano-Müller, loc.cit., p. 26

Even Berlin, which as is well known is in the core area of four power responsibility and accordingly in the center of the so-called enemy state clause, became subject of discussions

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages, duly registered,
commissioned and sworn
in by German Courts

in the UN. On 29th June 1948, representatives of the communal organs of Berlin submitted to the UN the petition for "Observance of the serious situation which had arisen because of transport and traffic restrictions between the Western Occupation Zones and Berlin unilaterally imposed by the Soviet Union." In rebuttal of the protest of the Soviet Union that Art. 107 of the Charter of the UN precludes the competence of the UN in this question, since the governments responsible for the occupation of Berlin exercised competence, the Western powers countered that the actions of the Soviet Union were not a German problem, but rather concerned the Occupation Powers of the West Zones, even though they took place on the territory of a former enemy state.

On 5th December 1948, the Security Council decided to accept the controversy into the agenda.

Cf. Albano-Müller, loc. cit., p. 26.

In the case of Rudolf Hess it is not prohibited to the UNO either, to make the matter subject of a discussion or an opinion. With the conviction of Rudolf Hess, the victor powers have claimed the right to exercise international jurisdiction. According to Art. 1 of the London Agreement of 8th August 1945, "an international military tribunal" was to be "established". This meant that the responsible victor powers had decided in favor of an international criminal law trial that could only be conducted within the

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages, duly registered,
commissioned and sworn
in by German Courts

framework of law observing inalienable human rights. According to Art. 1, Par. 3 of the Charter of the United Nations, one of the tasks of the UN is to solve international problems of a humanitarian nature; this is all the more true, whenever violations of human rights take place not within the state, but rather in the prosecution of interstate functions.

The individual violations of human rights in connection with the conviction and imprisonment of Rudolf Hess are adequately represented in the petition of the appellant and do not need to be discussed again.

Jescheck protests even against the composition of the court, since a Soviet judge participated in the condemnation of the crime against peace, even though the Soviet Union had taken part in the offensive war against Poland.

Cf. Jescheck, Die Verantwortlichkeit der Staatsorgane nach Völkerstrafrecht, 1952, p. 280 f. (Responsibility of state organs according to International Criminal Law).

B) Resolution 95 (I) of the General Assembly of 11th December 1946

The letter of 7th November 1979 substantiates rejection of the Rudolf Hess petition with Resolution 95 (I) of the General Assembly of the UN, in which the UNO confirmed the principles recognized by the IMT.

The Resolution of 11th December 1946 unanimously passed by the General Assembly has the following wording:

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages (dually registered,
commissioned and sworn
in by German Courts

Text: in Jescheck, p. 154.

A discussion or an opinion on the Rudolf Hess case is not precluded by this declaration of the General Assembly, since it does not constitute a final decree and moreover does not take up questions of execution of punishment either.

1. Resolutions of the General Assembly are binding only if the resolution is covered by law of contract or common law bound by international law, whereby only declaratory effect is accorded to the resolution, however.
The resolution of 11th December 1946 did not elevate the London Agreement and with it the establishment of the IMT to the status of international common law.
The elements of a general legal conviction and a constant practice needed for proof of international common law could not be determined.
A general legal conviction would only be present if the recognizing states had been determined to subject themselves to these standards as well and to make them the guideline for their actions in the future in all similar cases.

Cf. Jescheck, Hans-Heinrich, Die Verantwortlichkeit der Staatsorgane nach Völkerstrafrecht, 1952, p. 154.

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages, duly registered,
commissioned and sworn
in by German Courts

In 1946, the states voting for the Resolution were only willing to apply the listed principles selectively and unilaterally at the expense of the vanquished states. Moreover, it must be doubted whether a binding declaration was intended with the resolution of 11th December 1946, since an application was directed to the Codification Committee in the declaration. It must rather be assumed that a more detailed formulation of such far-reaching legal principles was desired, before an opinion could be formed on the question of their general binding character.

Cf. Jescheck, loc. cit.

The further prerequisite of a long lasting practice is also lacking.

The UNO members could not decide to subject themselves to the statutory offences which they enforced unilaterally against the enemy states. The solely unique enforcement against Germany and Japan was unable to create customary practice.

2. Since the Resolution was unable to attain a legal binding character, it is attributed only political significance; this exists primarily in the fact that the consenting states stated their basic political agreement with the action of the Four Powers in Nürnberg, and desired to investigate more thoroughly the question of the application of the Nürnberg principles.

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages, duly registered,
commissioned and sworn
in by German Courts

Blumenwitz Dieter, Völkerrechtliches Gutachten zum Fall Rudolf Hess (International Law Expert Opinion on the Rudolf Hess case), p. 138, 139. Published by Wolf Rüdiger Hess.

Berber points out additionally that the Resolution did not even politically have the significance of the approval of the international law community, since at that time for the most part only the war opponents of Germany belonged to the United Nations and neither the European neutral states nor the new states in Asia and Africa cast their votes.

Berber, Völkerrecht, Vol. 2, 2nd edition, 1969, p. 255.

C. Resolutions 3 (XXI) and 2583 (XXIV)

The representative of the UNO substantiates rejection of the petition in the Hess case to the Human Rights Commission of the UN further with the repeatedly expressed conviction, "that the punishment of persons responsible for war crimes and crimes against humanity constitute an important element in the prevention of such crimes."

(Cf. 2583 (XXIV))

- I. In this connection reference must be made initially to the verdict of the Military Tribunal of 1st October 1946. Rudolf Hess was acquitted both of the charge that he had committed war crimes and of the charge that he had committed crimes against humanity. Conviction was based solely on the charge of having prepared an offensive war - an

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages, duly registered,
commissioned and sworn
in by German Courts

offence under international law, which up until 1945 was unknown, and which subsequently (despite numerous acts of aggression) was no longer resorted to either.

- II. The establishment of human rights can have a meaning only if it is recognized simultaneously that an unassailable and inalienable status of human life is involved here, to which everyone is entitled by virtue of being human. Not even legitimate penal authority relieves necessity for observance of human rights.

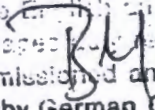
The Charter of the United Nations includes expressly among the objectives of the United Nations cooperation for promotion and encouragement of the respect for human rights and for the basic freedoms.

Cf. Art. 13 (b), 55 (c), 56, 62 II, 68, 76 (c) CUN.

1. It is recognized today that according to the wording and intention of the contracting parties this involves a genuine legal obligation. This legal obligation encompasses at least respect for a minimum of human rights, which are the common property of all of humanity - despite its splitting into antagonistic ideologies.

Cf. Berber Friedrich, Völkerrecht, Vol. 1, 2nd edition, 1975, p. 396.

2. The human rights recorded in the Charter were codified in the General Declaration on Human Rights of 10th December 1948 as well as in the International Pact on Economic, Social and Cultural Rights of 19th December 1966. They can be regarded today as formulation of the principles of an universal international common law.

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages,  registered,
commissioned and sworn
in by German Courts.

As already mentioned, these fundamental human rights also include prohibition of torture and inhuman punishment as well as the right of minimum guarantees before the court and observance of the principle of nulla poena sine lege.

Berber, loc. cit., p. 397.

D) The decision of the European Human Rights Commission in the Rudolf Hess case

The UNO refers finally improperly to the decision of the European Commission for Human Rights (ECHR) dated 28th May 1975 in the case of Rudolf Hess.

Cf. ECHR petition No. 6231/73 in Europäische Grundrechte-Zeitschrift (EuGRZ) 1975, p. 482 ff; further Blumenwitz, Die Hess-Entscheidung der Europäischen Menschenrechtskommission, EuGRZ 1975, p. 497 f.

The ECHR did not concern itself with the imprisonment of Rudolf Hess only because the petition opponent, Great Britain, does not alone bear responsibility for the Allied Military Prison in Berlin-Spandau, and the other responsible powers, in particular the USA and the USSR, are not subject to the jurisdiction of the ECHR. However, with signature of the Charter of the United Nations all powers responsible for execution of the sentence against Rudolf Hess have pledged to the UNO to adhere to the human rights guaranteed in the Charter of the United Nations, as they have been reconfirmed and further developed by the Declaration of Human Rights and the Human Rights Pact.

Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages fully registered,
commissioned and sworn
in by German Courts

Conclusion:

- 1) The UNO is not prevented either by Art. 107 of the Charter of the United Nations or by any other provisions of international law from taking up the case of Rudolf Hess or from investigating it from the point of view of human rights aspects.

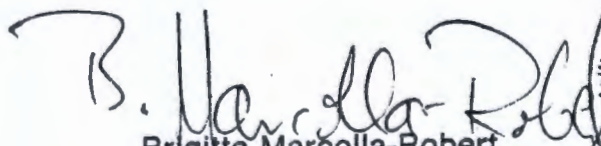
- 2) In the past, it was even a certain practice that the UNO paid particular attention to adherence to human rights with respect to the war consequence actions of the victor powers - primarily concerning the prisoners of war held in their custody; in this connection, it deserves to be mentioned that Rudolf Hess (as the ECHR expressly stated in its decision of 28th May 1975) was initially treated as prisoner of war after his landing in Great Britain on 10th May 1941.

(signature)

(Prof. Dr. D. Blumenwitz)

This is to certify that the above translation of the photocopy of the original document in the German language submitted to me is complete and correct.

Munich, this 18th day of August 1980



Brigitte Marcolla-Robert
Interpreter and translator
for the English and French
languages duly registered,
commissioned and sworn
in by German Courts





105
**United States
Information
Agency**

Washington, D.C. 20547

FRP
Office of the Director



February 7, 1983

Dear Bill:

For your information, attached is a copy of a letter to members of the Inter-Agency Steering Committee on U.S.-German Contacts (Attachment A). I have invited them to meet with FRG Deputy Foreign Minister Berndt von Staden.

127865
1140

0054-02
F6298

On February 16 Mr. von Staden will come here and report to the Steering Committee on the Federal Republic's Tricentennial Year activities and other efforts to increase and enhance bilateral contacts.

This meeting is a follow up to George Shultz's letter of October 12, 1982 (Attachment B), naming me as Chairman of the Inter-Agency Steering Committee.

Sincerely,

Charles Z. Wick
Director

The Honorable
Judge William P. Clark, Jr.
Assistant to the President
for National Security Affairs
The White House

NSC ID 1300960



Dear

I want to thank you again for your Department's important contribution to the November 22 meeting of the Inter-Agency Committee on U.S.-German Contacts.

Our first meeting gave all of us a better appreciation of the great volume and variety of ongoing contacts between the two governments. These existing programs can do much to make the U.S.-German Tricentennial visible to the people of both countries and significant for the U.S.-German relationship. This is one of the main thrusts of our Committee's efforts this year.

The Steering Committee should have another thrust, too. It should also develop ways in which our government can improve relations with the German government over the long term. We have some ideas, and we would appreciate very much the benefit of your Department's ideas as to how to accomplish this.

On February 16, Ambassador Berndt von Staden, the Deputy Foreign Minister of the Federal Republic and my counterpart as Coordinator for U.S.-German Relations, will be our honored guest at the second meeting of the full Steering Committee. The meeting will take place in Room 600, 1750 Pennsylvania Avenue N.W., from 10:00 a.m. to 12:00 noon. It promises to be a major event in U.S.-German relations and in the life of the Committee. I hope you can be present.

Ambassador von Staden will inform us about Tricentennial activities in Germany and about the German Steering Committee's work. We will then have an opportunity to discuss new ideas for increasing and enhancing contacts.

We are off to a good start on a very important project, and our job now is to translate motion into concrete results. I look forward to seeing you on Wednesday the 16th.

Sincerely,

Charles Z. Wick
Director

THE SECRETARY OF STATE
WASHINGTON
October 12, 1982

B

Dear Cap:

Thirty-seven years after the end of the second of two world wars in which the United States and the Federal Republic of Germany were adversaries, the two nations are forged in a close and valued partnership.

In the past several years, however, a public perception, on both sides of the Atlantic, of differences between our countries has emerged. The problem stems in part from changed world circumstances and public and private concerns about the NATO alliance. It is exacerbated by the passing from positions of power and influence of a generation of Germans and Americans bound together by a clear sense of common purpose during the post-war years.

The President has recognized this problem and has taken a strong personal interest in deepening the contacts between the people of the United States and the Federal Republic. The goal is to focus attention on our shared democratic values and common sense of purpose.

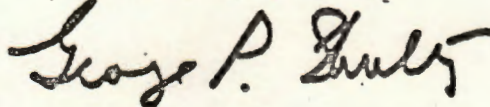
To ensure the fullest possible participation by all interested U.S. Government agencies, we recently established an Inter-Agency Steering Committee to oversee U.S. policy on U.S.-German contacts. The task of the new committee will be to consider current activities, publicize public and private efforts to promote contacts, share information among agencies,

The Honorable
Caspar W. Weinberger,
Secretary of Defense.

consider new ideas for improving and enhancing contacts, coordinate U.S. policy on the program, and help implement projects. In this way, we hope to focus our efforts and to make good use of scarce resources. I would like to invite you to serve on this Committee.

The Chairman of the new Steering Committee will be USIA Director Charles Wick. Mr. Wick will be in touch with you concerning your agency's participation in the Committee's work. I am sure you will cooperate with him to ensure that great effort is given here to increasing and strengthening the ties that bind us together with a crucial ally.

Sincerely yours,

A handwritten signature in cursive script that reads "George P. Shultz". The signature is written in dark ink and is positioned below the typed name.

George P. Shultz

NSC/S PROFILE

UNCLASSIFIED

ID 8300960

RECEIVED 09 FEB 83 12

TO CLARK

FROM WICK, C

DOCDATE 07 FEB 83

KEYWORDS: GERMANY F R

VON STADEN, BERNDT

SUBJECT: FWDS CY OF LTR TO MEMBERS OF INTERAGENCY STEERING COMM ON US - GERMAN CONTACTS INVITING THEM TO MEET W/ DEP FOMIN VON STADEN ON FEB 16

ACTION: FOR RECORD PURPOSES DUE: STATUS C FILES WH

FOR ACTION

FOR CONCURRENCE

FOR INFO

FORTIER

KRAEMER

MYER

COMMENTS

REF# LOG 8300699 8201659 NSCIFID (C / C)

ACTION OFFICER (S)	ASSIGNED	ACTION REQUIRED	DUE	COPIES TO

DISPATCH _____ W/ATTCH FILE _____ (C)

RECEIVED BY THE DIRECTOR OF INVESTIGATION
FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

DATE: FEBRUARY 15, 1954

TO: SAC, NEW YORK
FROM: SAC, PHOENIX
SUBJECT: [Illegible]

RE: [Illegible]

FOR INFORMATION

[Illegible]

[Illegible]

COMMENTS

RE: [Illegible]

ACTION OFFICER (S) [Illegible]

[Illegible]

[Illegible]

DEPT. OF JUSTICE

~~CONFIDENTIAL~~

88271 4618

C.F. MW

MEMORANDUM

NATIONAL SECURITY COUNCIL

~~CONFIDENTIAL~~

July 1, 1982

127918

C0054-02

FG006-12

ACTION

MEMORANDUM FOR WILLIAM P. CLARK

FROM: JAMES M. RENTSCHLER

SUBJECT: High-Level Germans in Town

DECLASSIFIED
Authority NSC/State waivers
By dh 11/17/2022

On the chance -- poor -- that the Germans have not already begun to lobby you independently on these, I alert you to the visits of two high-level FRG officials:

- Deputy Secretary of State Berndt von Staden (July 12-14);
- Federal Minister of Economy Otto Graf Lambsdorff (July 20-21).

It would be useful if you could meet with von Staden, who is close to Schmidt, exceptionally knowledgeable on U.S.-German relations, and probably well-known to you from your earlier incarnation. He will provide a very helpful channel through which to put the sanctions extension and other issues in proper perspective. A contact of this kind appears to me advisable in the wake of the change at State and the general concern felt in Germany over the direction of U.S.-European relationships, particularly in the economic area.

A brief meeting with Lambsdorff would also be useful, but of somewhat less priority than von Staden at this point (he met with the V.P. on his last swing through here a few months ago).

RECOMMENDATIONS:

OK NO

W for WC

W for WC

That you spend a few minutes with von Staden during the period July 12-14.

That you hold Lambsdorff as a last-minute possibility depending on the pressures of your schedule during the period July 20-21.

jacque to talk with Ray.

~~CONFIDENTIAL~~

Review on 7/1/84

NSC# 8204618

~~CONFIDENTIAL~~

National Security Council
The White House

245

Package # 4618

RECEIVED

82 JUL 1 P 6: 19

	SEQUENCE TO	HAS SEEN	ACTION
John Poindexter	<u>1</u>	<u>J</u>	
Bud McFarlane	<u>2</u>	<u>M</u>	
Jacque Hill	<u>3</u>		
Judge Clark	<u>A</u>		
John Poindexter			
Staff Secretary	<u>4</u>		<u>A</u>
Sit Room	<u>3</u>		<u>Accept to JUDGE Done</u>

I-Information A-Action R-Retain D-Dispatch N-No further Action

DISTRIBUTION

cc: VP Meese Baker Deaver Other _____

COMMENTS

Give copy to Kaye. Done

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ENCLOSURE(S)

*abs
3/17/10*

RECEIVED 01 JUL 82 17

TO CLARK

FROM RENTSCHLER

DOCDATE 01 JUL 82

KEYWORDS: GERMANY F R

AC

VON STADEN, BERNDT

LAMBSDORFF, OTTO G

SUBJECT: POSSIBLE CLARK MTGS W/ VISITING GERMAN OFFICIALS 12 - 14 JUL & 20 - 21
JUL

ACTION: FOR DECISION

DUE: 06 JUL 82 STATUS X FILES

FOR ACTION

FOR CONCURRENCE

FOR INFO

CLARK

HILL

COMMENTS

REF# LOG NSCIFID (N /)

ACTION OFFICER (S)	ASSIGNED	ACTION REQUIRED	DUE	COPIES TO
	<i>C 7/7</i>	<i>Ponderexter approved</i>		<i>RE, JH</i>

DISPATCH _____ W/ATTCH FILE *WH (C)*

Cit