

## GREEN HAYWOOD HACKWORTH

1883–1973

Judge Green Haywood Hackworth, long-time resident of Chevy Chase, D.C., died of a heart attack at the Sibley Memorial Hospital in Washington, D.C., on June 24, 1973. He was in his 91st year.

Born at Prestonsburg, Kentucky, on January 23, 1883, his youth was spent in the area of the Big Sandy River. He received a B.A. degree from Valparaiso University and an L.L.B. degree from George Washington University. He also held Doctor of Law degrees from the Universities of Kentucky and Valparaiso. He was a member of the Bars of the District of Columbia and of the Supreme Court of the United States. In 1937 he became a member of the American Panel of Judges of the Permanent Court of Arbitration at The Hague, succeeding the late Elihu Root. Active in the American Society of International Law, he served on the Executive Council of the Society for some years. He attended the Society's April 1973 Session as an Honorary Vice President.

Mr. Hackworth joined the Department of State in 1916 as a law clerk in the Office of the Solicitor. Two years later he became an Assistant Solicitor. A Democrat from Kentucky, he was chosen in 1925 by that arch Republican Charles Evans Hughes, then Secretary of State, for appointment by the President and confirmation by the U.S. Senate to the position of Solicitor of the Department of State, succeeding Charles Cheney Hyde, who had resigned. As Solicitor and later as Legal Adviser of that Department, when the name of that Office was changed to that of Legal Adviser, he was relied upon by five successive Secretaries of State, Charles Evans Hughes, Frank B. Kellogg, Henry L. Stimson, Cordell Hull, and Edward R. Stettinius. He held the position from August 1925 until March 1946, the longest tenure in history as the head of that Office. He resigned to become Judge of the International Court of Justice at The Hague.

His Office in the Department of State through the years, located on the east side on the second floor of Old State Building (now the West Executive Office Building), overlooked the Executive Office of the President in the West Wing of the White House. Thus, he was directly across the street from the President and on the same floor of "Old State" as the Secretary of State and the Under Secretary.

Hackworth was a tireless worker. He was a skilled legal draftsman, particularly in the matter of treaty provisions and appropriate implementing legislation. He seldom dashed off anything! Even his small "chits"—usually in longhand—exchanged between officers of the Department and attached as informal notes to memoranda or other documents circulated for approval to concerned officers throughout the Department were carefully worded. His writing, sifted of chaff, reflected painstaking care. He

was aided in his conduct of the Office by an amazingly accurate memory of U.S. Government precedents, particularly as to persons and steps involved in their origins. His memoranda and comments, drafts of instructions, briefs, addressed to or prepared for the President, the Secretary of State, other officers of the Department, or members of Congress consisted of advice based on his best information as to the law and policy. Courageous in his recommendations, he was soft-spoken in their presentation. Small wonder that his advice, whether oral or written, was sought from so many quarters, even by other Departments and Agencies of the Government. He was perforce in the center of things involving the United States and its foreign relations from the period of U.S. neutrality prior to U.S. entry into World War I through World War II.

Along with his regular office work, for 20 years, Mr. Hackworth represented the U.S. Government before the International Joint Commission formed by the United States and Canada under the Boundary Waters Treaty of 1909. In 1923 he was sent on Special Mission to Lausanne and Madrid. He was a U.S. delegate in 1930 to the First Conference for the Codification of International Law, held at The Hague under the auspices of the League of Nations. He participated in 1938 in the 8th Conference of American States held in Lima, and in 1940 in the 8th Scientific Congress of American States held in Washington, and in the Inter-American Maritime Conference also held in Washington. He was Adviser to Secretary of State Hull at the 2nd Meeting of Foreign Ministers of the American Republics held at Habana in 1940, following the outbreak of war in Europe in 1939. In 1943 he accompanied Secretary of State Hull to the Moscow Conference.

He was an active participant in discussions within the Department of State and with representatives of foreign governments leading to the formulation of the Charter of the United Nations. He was a member of the U.S. Delegation to the Dumbarton Oaks Conference on International Organization, held August 21–October 7, 1944. Early in 1945 he was Adviser to Secretary of State Stettinius at the Conference of American States on Problems of War and Peace held in Mexico City. He was Chairman of the Committee of Jurists convened in Washington in April 1945 to prepare an initial draft of the Statute for an international court under the United Nations. He was Adviser to the U.S. Delegation at the UN Conference on International Organization held at San Francisco in April–June 1945. There, he served on Committee IV/1 which was charged with the subject of the International Court of Justice. That Committee took as the basis of its consideration the drafts on the Court previously prepared by the Committee of Jurists. As adopted by the Conference as a whole, the work prepared by Committee IV/1 became the Statute of the International Court of Justice and the articles in the Charter pertaining to the Court (contained in Chapter XIV). Later that year Mr. Hackworth was named Senior Adviser in the U.S. Delegation to the First Part of the First Session of the General Assembly of the United Nations meeting in London. It is not possible by the mere listing of international conferences participated

in by Mr. Hackworth to convey the extent to which the respective delegations and countries there represented were beneficiaries of his wise counsel.

Mr. Hackworth was in the Office of the Secretary of State on that memorable Sunday morning of December 7, 1941, in conclave with the Secretary and other high officials of the Department. Shortly, the Japanese Ambassador had an appointment with the Secretary of State and doubtless these officers were discussing what might be said. Following Secretary Hull's abrupt and historic dismissal of the Japanese Ambassador, and after informing President Roosevelt of what had transpired, the group continued conferring until evening about what needed to be done in the immediate future. Preparation of a proclamation of the existence of a state of war with Japan headed the list. From then on throughout the war period, Mr. Hackworth's advice was in constant demand not only by Secretary Hull but also by President Roosevelt, by Judge Samuel Rosenman, the President's counsel, by officers of the Departments of Justice and Treasury, and by those in other Departments and Agencies of the Government, particularly on matters concerning the respective embassy staffs of the United States and Japan in Washington and Tokyo, alien enemies, trade, reshipment of cargoes, ships in port whether neutral or belligerent, protests to belligerent countries, positions and actions of neutral countries, and a host of other matters. Although not trained as a liberal lawyer and although generally conservative, he probably made more important liberal decisions during the war years than was at that time or subsequently realized. His job was to consider past legal developments in the laws of war, the laws of neutrality and those of belligerency, their effect if strictly construed and followed (then and also as a long-time proposition), and to weigh the effect of his advice not only upon the United States of America but also upon other neutrals or belligerents. Fortunately, he was accustomed to making far-sighted and practical decisions.

Small wonder that this greatly overworked man found no time to read the galleys and page proofs of his *Digest of International Law*, then approaching completion.

The final substantive volume of his *Digest* was published in 1943. For this work—so widely consulted and used at home and abroad—he was paid tribute by leading world figures and jurists. Following the liberation of Paris, Jules Basdevant, Legal Adviser to the French Foreign Ministry, and later French Judge on the International Court of Justice, after learning of the advent of the Hackworth *Digest*, and having inspected it, wrote that the Hackworth *Digest of International Law* was “the most important contribution to come out in the field of international law in the entire period of World War II.”

Following the San Francisco Conference in 1945 and prior to the First Session of the UN General Assembly, three former Secretaries of State, Secretary of State Hughes, Secretary of State Stimson, and Secretary of State Hull, as members of the United States four-man nominating group of the Permanent Court of Arbitration, joined in nominating this highly

regarded and unassuming man with whose legal prowess they were so familiar for the position of U.S. judge on the International Court of Justice. He was elected for a six-year term on February 6, 1946, at the first election of judges for the new Court held by the United Nations. He was reelected to a full nine-year term in 1951. In 1955 he was chosen President of the Court for a three-year term, succeeding Sir Arnold McNair of Great Britain.

Upon installation of the Court at The Hague, members of the Court soon recognized that Judge Hackworth was a skillful draftsman and the task of consolidating views of members of the Court, to the extent possible, was frequently assigned to him. His own separate views were expressed with forthrightness. He was looked upon as an able judge. During the first twelve years of the Court's existence—that is through the end of Judge Hackworth's term as its President—the Court was asked to decide seventeen contentious cases and to give eleven Advisory Opinions, ten of them at the request of the UN General Assembly. "The Court," he said in 1958, "would be glad if it were faced with a full calendar of cases and were thus enabled to play a greater role in the adjustment of international disputes."

Judge Hackworth had a truly notable career, first as the recognized legal hub of "Old State" for some 30 years, and as the distinguished author of his *Digest of International Law*, utilized the world over, and in his later years as an eminent judge on the International Court of Justice.

As an international lawyer, he dwarfed the men in his Office as well as his colleagues in the Department of State and in other Departments of the United States Government. He did not aspire to money or fame. His enormous responsibilities in the U.S. Government, he said, "far outweighed any incentive for a more lucrative position in any large international law firm." Nor did he solicit a position on the World Court. The fact that three strong-willed Secretaries of State under whom he had served sought him out for that position evidenced the measure of their high esteem for the work of this great American.

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#### *Erratum*

In the memorial to Hans Kelsen in the July 1973 issue of the *Journal*,<sup>1</sup> the dates were incorrectly given. Professor Kelsen was born on October 11, 1881 and died on April 19, 1973.

<sup>1</sup> 67 AJIL 491 (1973).