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By 15 NAPA Date 8/11/48

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EE - Mr. Elbrick

EP - Mr. Kiefer

Conference between Mr. Saltman and the Polish Ambassador 7/13/48.
Re restitution and non-monetary gold.

A. Breeding Horses. This matter would appear to require no comment from us at this time.

B. This Division has previously prepared a statement re Polish dissatisfaction with the termination date for filing of claims. It is thought that CE sent this to Germany, together with other material, for USPOLAD's comment.

C. Printing presses. This does not appear to involve a policy question, and the items themselves are hardly of significance. Under the circumstances the Poles should be advised that the Department would prefer not to take this matter up, inasmuch as it is our policy not to intercede in the details of restitution operations in the field.

D. Non-monetary gold. This matter is one which the Poles have taken up with General Clay also, though in a somewhat different form. The difficulty with the Polish request is that we are bound by the Paris Agreement on Reparations and the later Five-Power agreements on the disposition of non-monetary gold, to make the kind of disposition which we are now making. Article 8 of the Final Act of the Paris Conference on Reparations provides that "A share of reparation consisting of all the non-monetary gold found by the Allied Armed Forces in Germany - - - - shall be allocated (to the ICRR - now the IRO) for the rehabilitation and resettlement of non-repatriable victims of German action." This provision was adopted "in recognition of the fact that large numbers of persons have suffered heavily at the hands of the Nazis and now stand in dire need of aid to promote their rehabilitation but will be unable to claim the assistance of any Government receiving reparation from Germany". It may be useful to point out to the Poles that among the non-repatriable victims of Nazi action who are being assisted under the non-monetary gold program there are countless Jews and other persecutees, who, if they are not technically Polish citizens, do come from Polish territory. Furthermore, the Poles are also aware that, as far as straight reparations is concerned, the question of Polish participation in reparations from Germany was settled at Potsdam. If the reason for the present Polish request is a desire to give some reparation to Polish victims of Nazism who are now in Poland, it might be pointed out to the Poles that in this regard Poland is at no disadvantage relative to other European countries, such as France, which

Likewise

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likewise have no access to the non-monetary gold fund for purposes of compensating their own concentration camp victims.

In any event, the total value of non-monetary gold found in Germany is so small compared to the total of all possible individual claims that any distribution on the basis suggested by the Ambassador would be meaningless.

cc: O - Hemmendinger
CE - Lightner

EP:AFKiefer:cmh

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DEPARTMENT OF STATE

Confidential

Memorandum of Conversation

DATE:

March 8, 1948

SUBJECT:

MEETING IN MR. SALTZMAN'S OFFICE ON MARCH 3, 1948 at 9:30 A.M.
Successor Organization to Heirless Jewish Property in U.S. Zone, Germany

PARTICIPANTS:

A-S Mr. F. Wainer, CE J. Beam, Le F. Oppenheimer, A-S N. Hammendinger,
 Messrs. Warburg, President Jewish Restitution Commission, Bokstein of the
 Jewish Agency for Palestine, Leavitt of the American Joint Distribution
 and Robinson of the American Jewish Conference Committee.

COPIES TO:

A-S Mr. F. G. Wisner
 EUR - Mr. J. Hickerson
 CE - Mr. J. Beam
 OB - Mr. H. Karasik
 AS - Mr. N. Hammendinger
 Le - Mr. F. E. Oppenheimer

1-1493

It was explained to the representatives of the Jewish organizations that there are strong political and also legal objections to the designation of the New York membership corporation as the successor organization for heirless Jewish property in Germany with authority to operate directly, to file and pursue claims for restitution in German tribunals and to acquire and hold title to real estate in Germany. The political objections were based mainly on the consideration that to authorize a foreign corporation to function in Germany would create a precedent which would be held against us by the Soviets in our attempts to deny to Soviets trusts in the Eastern Zone of Germany and to German assets in the Eastern Zone of Austria any special privileges and rights which are not available under German or Austrian law. In addition, it was emphasized that under German law as it applies today, a foreign corporation cannot be registered as the owner of real estate in the appropriate German registers kept by the Courts. It is recognized that Military Government will have to grant the successor organization certain limited privileges such as exemption from payment of German taxes and the right to take movable property out of Germany, but such privileges would not place the designated successor organization above the German law except as it will be modified by Military Government law for the purpose of accomplishing the objectives of the restitution law. It is not the intention of the Department of State to impede the efforts of Jewish organization to obtain justice for the wrongs committed under the Hitler regime; indeed both the Army and State strongly support the motives and purposes of internal restitution as reflected in the Military Government law. The State Department believes

that it

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that it would be an acceptable solution if similar to the method used by American corporations doing business in Germany, the American membership corporation jointly with German Jewish committees and organizations create a German legal entity to perform the functions of the Jewish successor organization under the Military Government Law. Whether the American corporation may have complete control over the management and operations of the German legal entity or be in the position of merely a majority shareholder is a matter of detail which need not be discussed now. It is essential, however, that not the American Commission but only the German corporation be designated as the successor organization for heirless Jewish property.

The reaction of the representatives of the Jewish organization to this proposal was unreservedly negative. They maintained that

(1) to authorize the American corporation to exercise the powers and to discharge the responsibilities under the law, cannot create a precedent which would embarrass the State Department in dealing with the problems involved in Soviet trusts and in German assets in Austria; the Soviets actually operate under the legal cloak of German or Austrian corporations and remove capital goods and profits in complete disregard of German law whereas the American corporation would operate wholly in accordance with Military Government law, licences and German law. The two situations are therefore not comparable.

(2) The method followed by American corporations in Germany is no pertinent guide for the operations under the Military Government law. American business goes into Germany to develop a long-term profitable investment while the successor organization merely aims at recovering assets of which Jews had been wrongfully deprived and at transferring the property, if re-acquired, abroad.

(3) They would be unable to accomplish their objectives in Germany unless they are accorded a special standing which by virtue of Military Government places them on a level above that of purely German corporations. It is necessary to emphasize to the Germans that they operate in Germany not by license of the Germans but by authority of Military Government. That is why they believe it to be absolutely essential that the American Restitution Commission be designated as successor organization. The only concession they consider acceptable is to agree to the condition that any real estate which is restituted to the successor organization must be held and preserved in the name of a German corporation.

A compromise proposal which would designate as successor organization the American Restitution Commission and a German corporation as the operating agent in Germany was mentioned but in view of the resistance shown by the representatives of Jewish organizations to consider anything but an American corporation as the instrument for exercising the rights under the law and recovering the dispossessed Jewish heirless property (except for title to real estate which could be vested in a German legal entity) it was held that it would not serve any useful purpose to continue the discussion.

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The next step is to formulate a Department of State position supported jointly by A-S and EUR and to coordinate this position with the Army.

Leg FEOppenheimer:lml

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January 22, 1948

(Resolution)

A-S Mr. Wisner

A-S Mr. Hemmendinger

Successor Organization to Heirless Jewish Property in U. S. Zone, Germany.

I should like to make two comments upon Mr. Lightner's memorandum of January 15 on the above subject. In November 1946 representatives of Jewish organizations conferred with General Clay in New York. The results of that conference were put by the Jewish organizations into a memorandum addressed to the Department of State, which was revised somewhat after discussions which they had with the Department. The first point of the memorandum read as follows: "Military Government and not the German authorities should designate the successors to heirless and unclaimed Jewish interests in corporations and unincorporated bodies and to Jewish communities and foundations; the successors to the claims of Jews who died leaving no heirs; and the persons who may claim on behalf of the aforementioned Jews and Jewish bodies before the tribunals provided in the law. Military Government should recognize a Jewish organization, representative of Jews throughout the world, including Jews now in Germany, as trustee for such Jewish interests. The property or its proceeds acquired by such trustee should be used exclusively for the purpose of rehabilitation and resettlement of Jews. Appropriate provision should be made for the protection of the interests of surviving members in Germany of persecuted religious communities. These principles should be expressed in the letter of approval of the draft law or in appropriate Military Government legislation."**

The memorandum in question was transmitted to General Echols, Chief of the Civil Affairs Division by letter of December 2, 1946 signed by General Hilldring. The first sentence of the letter read as follows: "The Department of State has carefully considered the annexed memorandum dated November 27, 1946 by the American Joint Distribution Committee, The Jewish Agency for Palestine, the American Jewish Committee, the World Jewish Congress and the American Jewish Conference, and concurs in the comments and suggestions made therein with respect to the draft German restitution law of October 18, 1946, with the following qualifications: With respect to the revised sections 6, 11, 23, 38a and 50 set forth in the memorandum, the Department's concurrence is in the principles expressed therein; it recognizes that the exact wording of the law must be worked out by the authorities in Germany. None of the qualifications referred to related to the appointment of a successor organization.

It is believed that the letter was handed to General Clay by the Civil Affairs Division before General Clay left for Germany. The letter was drafted in AB and cleared by Mr. Robinson for ESP, Mr. Oliver for GA, Mr. Harris for CE, and Mr. Oppenheimer for LE.

Given this background I do not think it would be correct for the Department to emphasize subsequent commitments which may have been made on this subject by General Clay, because he has undoubtedly acted in the belief that he has been carrying out the instructions of this Government. Now that General Clay has specifically asked

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the State and Army Departments whether the proposed successor organizations for Jewish property is appropriate, the Department should accept full responsibility for the reply made to him. It is true that since a year ago December any discussion of which I am aware of the appropriateness of the organization has turned on whether it is sufficiently representative of Jewish interests. Since other issues have now been raised, they should be met on the merits. The extent to which we are already committed is important, but the commitment is rather that of the Department of State than of General Clay.

I believe that there is justification for the decision that the title to heirless Jewish property in Germany be taken by a non-German organization. This is indeed one of the points about which the Jewish organizations have, from the beginning, been deeply concerned, because on both emotional and practical grounds they consider that the successor organization can not function effectively as a local German organization. They have pointed out that the Jews remaining in Germany are a weak and insignificant minority compared with those now outside Germany. Of 600,000 German Jews, they say, 300,000 survive and of these only 15,000 are in Germany. There are many more in the United States than there are in Germany. It is fitting, therefore, they maintain that the organization representing their interest should be a foreign organization in Germany—not a local organization.

Nevertheless, if a solution like that proposed by Mr. Lightner, that the commission operate in Germany through a subsidiary incorporated in Germany, can be worked out technically it may help overcome opposition both in Washington and in Germany to the operation of a foreign corporation. I believe that the legal aspects of the proposal require careful study before it can be accepted and that there may be alternative courses along the same line which would be more practical. For instance, the regulation or order by which the successor organization is to be recognized by military government could be so drafted as to constitute a charter.

The propriety of a successor organization which is not German is supported by a proposal which is now under discussion between the Department of State and the Alien Property Custodian to allow an appropriate successor organization to be designated by the President to claim under the Trading With the Enemy Act heirless assets in the United States seized by the Alien Property Custodian which, under the Act, are subject to return to members of racial or religious groups who were persecuted. ^AI recommend: that if the Department is satisfied with its previous position in this matter, it be discussed with the Department of the Army, its endeavor to satisfy them that the position is right; that if the Department is not satisfied, or can not persuade the Army, the proposal made by Mr. Lightner be discussed with representatives of the Jewish Restitution Commission to see if such a solution can be worked out.

cc: Mr. Oliver, GE
Mr. Lightner, GE
Mr. Oppenheimer, LE

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CE

File G: Restitution

EUR - Mr. J. D. Nickerson

January 27, 1948

CE - E. A. Lightner, Jr.

Successor Organization to Heirless Jewish Property
in U. S. Zone, Germany.

The Problem: To determine the Department's position in connection with the Army Department's objection to our draft telegram to General Clay in reply to his question whether the Jewish Restitution Commission (incorporated in New York) is an appropriate organization to take over heirless Jewish property in the U. S. zone of Germany. Ref: CG 2119, October 26, 1947.

Background: The Army takes the view that no organization incorporated in the United States, however international in character, should be appointed as the successor to heirless property of Jews in Germany. The Department in its draft reply to General Clay's inquiry assumed that there was no objection to the appointment of an organization incorporated outside Germany and that the only question to be answered was whether the New York organization was a truly representative body. After some correspondence with the Jewish organizations they widened the membership of the Jewish Restitution Commission to include Jewish organizations in Germany and the Department expressed itself as satisfied that it was sufficiently representative. In its draft reply to Clay it indicated that this organization was therefore an appropriate body to take over the heirless property in Germany.

Discussion: General Clay told Frank Wiener a few days ago that he felt that any decision at this late date to adopt the principle that a non-German agency should not be allowed to receive direct title to heirless property should be made by the State Department; that any commitments he had made to the American Jewish organizations were based on his understanding that the State Department had previously made similar commitments to turn this property over to those organizations; therefore, a change which would limit the powers and responsibilities of the Jewish organizations was a matter for the State Department to arrange.

While the exact nature of the State Department's alleged commitments to the Jewish organizations remains obscure (we are looking into General Hilldring's files in an effort to throw light on this question), it is believed we should welcome the opportunity afforded by the position now (belatedly) taken by

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the Army in order to reexamine the question. The Department, supported by the Army Department, should not hesitate to assume responsibility vis-a-vis the Jewish organizations and should make clear to them that they will not be permitted to take direct title to heirless Jewish property in Germany. It is possible that the Jewish organizations can be convinced that this is fundamentally in their own interests and that it is definitely in the interests of this Government's policies.

The Jewish organizations are not likely to succeed in the long run in operating these properties in Germany above German law. Therefore it may be in their interests to start from the beginning to operate under German law and through a German organization, over which they would be permitted to exercise majority control.

As a matter of U.S. policy it would be a mistake to permit an American organization to take over direct title to this heirless property in Germany; the property is not a negligible factor in the German economy and includes moveable property such as valuable works of art, which presumably would be promptly removed from Germany; to give title to a non-German organization would be inconsistent with our objections to Soviet extraterritorial claims to properties in eastern Austria and to German (Soviet) corporations (AGs) in eastern Germany. It is important that whoever has title should be subject to German law or not above German law.

Recommendations:

1. The Department should agree to inform the President of the Jewish Restitution Commission that it is ready to recommend that his organization participate in the administration of heirless Jewish properties in Germany provided it does so indirectly; that title to these properties must be given to a German organization, but that the Jewish Restitution Commission will be permitted to have a controlling interest in the German organization; that Jewish organizations in Germany will have minority representation.

2. The Army Department's concurrence should be obtained in the above proposal and Army representatives should be present when the question is discussed with the President of the Jewish Restitution Commission.

3. As soon as Army concurrence has been given a telegram should be sent to General Clay informing him of State-Army views and the fact that the matter is being taken up with the Jewish organizations at this end.

GE:Ballinger, Jr:cal

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STANDARD FORM NO. 64

Office Memorandum ~~UNITED STATES GOVERNMENT~~

CC - Mr. Lightner ✓ DATE: 1-30-48
LB - Mr. Oppenheimer
TO : A-S - Mr. Wisner

FROM : OE - Covey T. Oliver

SUBJECT:

I attach a draft inspired by our meeting in Mr. Hickerson's office Thursday afternoon.

After the four of us agree on a version we can either attempt to get final Department clearance before talking to the Army or can discuss the matter with them as a tentative proposition. Mr. Oppenheimer prefers the latter course.

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RESTRICTEDMEMORANDUMTHE NATURE AND PRIVILEGES OF THE SUCCESSOR ORGANIZATION TO
HEIRLESS JEWISH PROPERTY IN THE U.S. ZONE OF GERMANY

This memorandum is based upon the discussion at a meeting held in Mr. Hickerson's office on January 29, at which Mr. Lightner's memoranda of January 15 and January 27 and Mr. Hemmendinger's memorandum of January 22, were considered. Messrs. Hickerson, Wisner, Oppenheimer, Lightner and Oliver participated. The following positions were tentatively agreed:

1. Nationality and Control of the Successor Organization.

Considering the Army's objection to permitting the New York membership corporation organized by the Jewish groups to take title to the heirless Jewish assets in Germany and General Clay's disclaimer of a personal commitment to the Jewish groups in this regard, a German legal entity or association would have to be formed to take title to the property. There would be no objection to the Jewish Restitution Commission having a controlling voice in the German organization, relegating the Jewish organizations in Germany to a minority position.

Discussion: Political and legal objections exist to permitting a foreign corporation or association to take title to property in Germany, which, except as otherwise provided by special laws, would escheat to German governmental units. On the other hand, the argument of the Jewish Restitution Commission, that only 15,000 Jews remain in Germany and the group is weak and disorganized, must be taken into account.

2. Privileges of the Successor Organization.

The successor organization should be given the taxation and other privileges of a charitable or religious association under German law. Moreover, the association should be given the privilege of taking removable property out of Germany, for sale or use abroad. This privilege would be granted as an exception to the present Military Government policy which forbids the removal of property from Germany except on export account. The privilege would be limited, however, in these regards:

(a) It would not extend to movable property consisting of national art treasures, as distinguished from religious artefacts, the export of which was not permitted under German laws relating to the preservation of the national cultural heritage.

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(b) The organization would not be permitted to acquire movable property for removal from Germany by the sale of immovable property.

Discussion: Because of the present currency situation in Germany it would not be possible for the successor organization to use the heirless property for the benefit of any Jews outside of Germany, unless the organization were given the privilege to remove the property for sale elsewhere. The general rule in Germany today is that no property may be taken out of the country except on export account. A precedent exists, however, for an exception with respect to property which is to be devoted to the rehabilitation and resettlement of the non-repayable victims of Nazi persecution. The International Refugee Organization was permitted to remove from Germany for disposal abroad the non-monetary gold recovered from German concentration camps. Admittedly, there is a possible distinction between removal by an international body and removal by the German subsidiary of an organization created by the private law of another government. It is not believed, however, that the distinction is material in the present situation. Should the Office of Alien Property in this country agree to turn over to the Jewish Reconstruction Commission the heirless assets of persecutees vested as German here, such action might also be cited as indicating a trend, if not an exact precedent. No precedents exist in our negotiations with the neutrals regarding heirless assets, because the negotiations, unfortunately, have not advanced that far. It has been contemplated that the Jewish heirless assets in neutral countries would be generally available for the rehabilitation of Jews outside of the neutral countries. In the case of the neutrals it would not be as necessary as in the case of Germany to obtain agreement that the assets themselves could be taken out, as the currencies of several neutral countries are sufficiently strong to permit liquidation of the assets within the countries. The two restrictions on the privilege of removal are necessary for obvious reasons.

3. The Definition of Jewish Heirless Property.

As only Jewish heirless property should be devoted exclusively to the rehabilitation and resettlement of Jews and as the racial laws of the Hitler regime defined as Jewish many people which were not of the Jewish faith, it is necessary to adopt a more restricted definition of Jewish property than that which would be inferred from the Nuremberg Laws. The most practicable criterion appeared to be to regard as Jewish heirless property that property which was formerly owned by persons who were registered members of the Jewish religious communities in Germany and which were taxed for the support of the Jewish religious establishments.

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4. Action to be Taken:

- (a) An agreed position embodying the foregoing is to be sought with the Army at working level consultations.
- (b) After an agreed State-Army position is reached, representatives of the Department are to consult with the Jewish Restitution Commission at which conference all of the points in 1 and 2 above should be made.
- (c) Thereafter, a directive would be issued to the theatre embodying point 3 as well as 1 and 2.

OE:CTOliver:adsc
1-30-48

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Oefiles

February 2, 1948

Re - Mr. Oppenheimer

Subject: Mr. Oliver's Memorandum on the Nature and Privileges of the Successor Organization to Heirless Jewish Property in U. S. zone, Germany.

I talked to Mr. Oliver about one point in his memorandum, the recommendation that we discuss with the Jewish Restitution Commission only points one and two of his memorandum. He agreed that there was no special reason for not wishing to discuss point three as well, on the understanding that the responsibility for defining the Jewish property to be turned over to the successor organization clearly belonged to OEGUS. Since we plan to go into the whole subject in some detail with the Jewish Restitution Commission, I suggest we also indicate to them our interest in seeing that only Jewish property is turned over to the successor organization for Jewish property.

I gathered from the meeting in Mr. Hickerson's office on January 29 that specific clearances for the Department's proposed position should be obtained from the Legal Advisor in person. I believe Mr. Oliver's memorandum points out the legal problems involved and the possibility that a precedent may be established. I therefore suggest, and Mr. Oliver agrees, that you present the problem to Ernie Gross and obtain his concurrence to the suggested course of action, as summarized in Mr. Oliver's memorandum. As soon as that has been done I assume it will be possible to arrange to meet with representatives of the Department of the Army.

cc: A-S - Mr. Wisner
OE - Mr. Oliver

CE: EALightner, Jr:cal

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LH

Mr. Saltzman

10/7/47

Cc File

Mr. Hemmendinger

Internal Restitution in Germany

The following is for your information in case the matter is raised by General Clay or Draper.

The New York Times reports this morning that General Hayes has announced to the Laenderrat at Stuttgart that the U. S. is promulgating a restitution law unilaterally in the U. S. Zone along the lines of the draft previously approved by the Laenderrat.

About a week ago I learned that General Clay had told his advisor on Jewish Affairs, Judge Leventhal, that he was prepared to proceed unilaterally in accordance with his commitments but that to do so was against his better judgment. Judge Leventhal referred the matter to Jewish Organizations in New York who replied in substance that they were concerned about the text of a bi-lateral draft under discussion with the British and would like to see copies of it for discussion with General Clay; that if General Clay proceeded unilaterally they would entirely approve. Bernard Bernstein discussed the matter with me at that time and I urged emphatically that they inform Judge Leventhal that if agreement with the British was at all possible in the near future, they preferred biconal action. I had the impression that I had won my point, but apparently when the group met in N. Y. to draft a message they decided otherwise.

The matter was not officially referred to the War or State Departments in this phase.

I understand that the Jewish Groups are gratified by the action announced in this morning's paper.

CC Mr. Oppenheimer, LE
Mr. Lightner, CE
Mr. Fassburg, CE

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July 21, 1947

Restitution

TO : EUR - Mr. Matthews

FROM : CE - E. Allen Lightner, Jr.

SUBJECT: Restitution from Germany and Austria

At a meeting week-before-last, to which CE was regrettably unable to send a representative as invited, the question was raised whether recent developments made desirable any changes in our existing restitution policy; and a memorandum has been received, prepared by Mr. Todd, of GA, recommending that the existing policy be reaffirmed. We are informed that at Mr. Lovett's staff conference last week it was decided that existing directives should be followed for the time being.

We should like to enquire whether it would be compatible with the decision reached, for EUR, as the State member of the European Sub-committee, to propose the appointment of a SWNCC working party to make a study of past restitution directives with a view to ascertaining whether any might with advantage be modified and in what respect.

This suggestion is made for the following reasons:

(1) The restitution directives are rigid, but patently sketchy, with ambiguities that have been a frequent source of disagreement. They were prepared in 1945 and early 1946, since when there have been changes in policy and great changes in the situation.

(2) The implementation of the restitution program has rarely met with an undivided opinion in the Department: CE, EE, and TMC in particular thinking that it did not make sufficient allowance for political realities.

(3) Disagreement between Washington and the field has been constant, giving rise to a running pin-prick battle with OMBUS on the subject of restitution, which CE would be glad to eschew unless it is unavoidable.

(4) The word "commitments" is so freely used that the question might well be examined whether the treaties with the ex-Satellite countries affect or supersede such prior undertakings. In many cases

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the treaties call for less liberal restitution than our own earlier formulated directives.

The basic argument made for the restitution directives in the past has been: (a) that our purpose is to prevent any enrichment of the German or Austrian economies by properties taken from other states by force or duress or acquiescence on the part of collaborationist governments; and (b) that failure to make restitution puts us as one of the occupying powers in the position of a "receiver of stolen goods". It is no longer true that our efforts are bent at all costs towards prevention of the enrichment of the German and Austrian economies. We are engaged in a great effort to put these economies on their feet. Yet it has become almost universally true that we are handing over goods needed in Germany to countries of Eastern Europe which are practiced receivers of other people's goods. We are confronted with the paradox of taking away property from its individual owner, who is grateful to find it in an American occupied area, to return it to representatives of Communist governments who have nationalized it or are willing to hand it over to the Soviet authorities. This hardly seems consistent with our policy of aiding Western Europe and seeking to contain Soviet expansion. The most recent case, of which I have been informed by TNE, is of 14 Danube barges claimed to be owned by Greek nationals. It is as yet unknown whether the bona fide registration was Greek or Rumanian. ONGUS has informed the Department that in the event of Greek ownership and Rumanian registry, the Greeks will be advised that the barges will be restored to Rumania. The Greeks can then expect recourse only from Rumanian courts. The proposed GA cable states that there is no thought being given to a change in the directions requiring restitution to the country of registry.

CE is of opinion that the whole matter should now be re-examined by a SWNCC Working Party, if this should appear desirable to Mr. Lovett's staff. Mr. Todd, of GA, should no doubt be the steering member, with the assistance of a representative from EUR.

including some
of recipient areas
HFM



CR:C.Kidd:mrb
(7-21-47)

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MEMORANDUM

October 14, 1947

TO: SE - Mr. Barbour
CE - Mr. Trivers
LE - Mr. Brown
A-S - Mr. Hemmendinger

FROM: OK - A. F. Kiefer

DECLASSIFIED
Authority AND 811018
By Soc NARA Date 8/25/99

A recent draft cable, copy of which is attached, requested OMGUS to give sympathetic consideration to restitution to Italy of certain materials which are allegedly considered necessary to the German economy by OMGUS. The War Department has now raised the question of the relevance of the Peace Treaty and SWNCC Directive (204/5) to the question involved.

It is recommended that paragraph 2 of the draft cable be revised as follows:

"In its role as an occupying power this Government regards para 2 Art 77 Italian Treaty and analogous articles other Peace Treaties to require restitution in every case. Accordingly, para 6, WARK 99226, has been superseded in regard to property looted within the Treaty dates. If Italian materials this case were looted outside Treaty dates, para 6 curad is, of course, applicable. However, in view policy this govt assist Italy in every way possible, request you give urgent sympathetic consideration Italian request and effect restitution if possible. Pls advise action taken, quantities and types of property involved, and dates and circumstances removal fr Italy. US Embassy Rome being requested wire USPOLAD any further info available re property involved".

Kindly advise Mr. Kiefer (Extension 3517) of your views as soon as possible.

Enclosure:

Copy of draft cable to OMGUS

CK
OE:AFKiefer:mig

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Authority AND 8/10/81
By S.A. NARA Date 8/25/81

DRAFT CABLE TO OMGUS

CONFIDENTIAL
PRIORITY

Ital Emb Wash has requested assistance State Dept re
 restitution certain non-ferrous metals and other materials
 which your command is stated to be retaining as necessary
 to German economy. Understood these materials urgently needed
 Italy but that Ital Govt wld be prepared exchange these
 materials for other products as last resort.

In view policy this Govt assist Italy in every way
 possible, request you give urgent sympathetic consideration
 Italian request and advise action taken. Request you also
 advise quantities and types of property involved and dates
 and circumstances of removal from Italy. US Embassy Rome
 being requested wire USPOLAD any further info available
 re property involved.

CE:AFKiefer:ms
9/29/47

SE

CE

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By 1B KARA Date 8/11/47

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July 28, 1947

SECRETMEMORANDUM

To: A-H - Mr. Rudlin
 GA - Mr. de Wilde
 Le - Mr. Oppenheimer

From: CE - E. Allan Lightner, Jr.

Subject: Status of Internal Restitution Law

Since drafting the suggested War Department telegram to OMGUS on July 25 to give instructions that the internal restitution law should not be enacted unilaterally in the U.S. zone without reference to Washington, we have received from the British Embassy a report of a conversation between Generals Clay and Robertson which took place apparently on July 25 or 26. The British Government has been informed by Robertson that General Clay himself was reluctant to issue the law unilaterally and that General Clay's advisers are personally opposed to the U.S. proposal regarding the successor organizations (the one remaining disagreed provision). Robertson understands that General Clay has firm instructions from the State Department to take unilateral action on this point as the State Department has promised the American Jewish societies that they would be named the successor organizations. General Clay indicated that he was aware of the political difficulties which the British face in accepting the U.S. proposal and he therefore has agreed to hold his hand for a few days.

The draft message to OMGUS referred to above informed Clay that we still desire quadripartite, tripartite, or bipartite solution and that no unilateral law in the U.S. zone should be announced without further reference back to Washington. The telegram did not discuss the question of resolving the one outstanding point of disagreement (regarding the successor organizations). Since the War Department has not yet dispatched this telegram, it is

suggested

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suggested that an additional paragraph along the following lines be added:

"Would appreciate having your ideas on successor organizations which would enable you to reach quadripartite agreement or agreement with British and French. Be glad discuss your proposal with Jewish organizations here".

I gather that, as this matter has been handled, it is necessary to consult the Jewish organizations before agreeing to any compromise on the successor organizations in Germany. Apparently General Clay (not the State Department) committed himself at a meeting in New York last winter to appoint the American Jewish organizations as the so-called successor organizations. This seems to be the main reason why he is so reluctant to negotiate the point. If he will now suggest the possible compromise solution, the whole question can be put to the Jewish organizations, through Mr. Lowenthal, in an effort to obtain their consent to such compromise and thus to relieve General Clay of his commitment.

CE:EALightner,Jr.:AMR

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This is the peace
Todd/Riggs doctrine

A-G - Mr. Thorne
A-H - General Hilldring
BUR - Mr. Matthews
ESP - Mr. Martin

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July 11, 1947

Restitution from Germany and Austria of Property Looted from Other Nations.

It is anticipated that this question will be raised at Mr. Lovett's staff conference on Monday, July 16. The background facts and views of ESP are set forth below and are being distributed for consideration in advance.

Restitution from Germany and Austria of property looted from United Nations, including Yugoslavia, Czechoslovakia, and Poland was directed by SWNCC decision in November 1945 and quadripartitely for Germany by the Allied Control Council, Berlin, in January 1946. Restitution of property looted from ex-enemy countries and Austria was directed by decision of SWNCC in March 1946, at which time the governments of these countries were informed of this decision and invited to assign restitution missions to the American Zones of Germany and Austria and submit claims for restitution. Restitution to ex-enemies was, however, opposed by General Clay on the ground that a quadripartite decision of March 1946 precluded unilateral action. The SWNCC decision on restitution to ex-enemies was nevertheless affirmed in June 1946. Implementation thereof commenced soon thereafter in Austria, but in Germany General Clay's desire to proceed only pursuant to quadripartite agreement precluded such action.

Finally, in March 1947, after the visit to this country of the present Hungarian Finance Minister, Kyaradi, the Secretary of War directed that restitution to Hungary and to other ex-enemies proceed without delay. This arose out of the desire of this government at that time to support the tottering Hungarian Government but was not meant to favor Hungary over other ex-enemies in regard to restitution. Restitution to Hungary, Italy, and Austria has since been proceeding. It is known that claims by Rumania are being considered, but it is not known whether any property has yet been returned to Rumania. Other countries eligible to receive restitution under this program are Finland, Bulgaria, and Albania.

The Peace Treaties with the satellites provide for restitution to them from Germany. However, the periods during which renewals must have taken place to render property eligible for restitution are narrower than those in the SWNCC Directives.

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The Allied Control Authority, Berlin, now has before it the problem of implementation of the treaties so far as necessary by quadripartite decision and General Clay desires instructions. Also, political developments in Hungary have prompted General Keyes in Vienna to request instructions in regard to restitution to Hungary, and Ambassador Murphy in Berlin has requested instructions on the same matter for General Clay.

It is the established practice in restitution matters that restitutable property is transferred to authorized representatives of the government of the country from which the property was originally removed. This principle has been laid down in the SWHCC Directives on restitution and, in regard to restitution to United Nations from Germany, in decisions of the Allied Control Authority, Berlin. On a number of occasions, however, the Department has had for decision the question of transferring restitutable property to private owners who oppose restitution of their property to the country from which it was removed. Because of existing international commitments in this regard and because of the impracticability of administering restitution to private individuals, the Department has refused to sanction such a departure from existing practice.

The Department of State has previously made the following decisions:

1. Looted property will be returned to the country from which removed in accordance with existing Directives and without awaiting quadripartite action or ratification of Peace Treaties, notwithstanding that the government of the country involved is Communist or under Soviet domination. The fact that some governments which are friendly to us are ex-enemy whereas others which are not friendly are United Nations makes it impractical to distinguish between them.

2. Restitution will continue to be made to the present government of the territory from which the property was taken, if otherwise eligible, and private owners must look to that government for recovery of their property or compensation, even if the owners have left that country and do not desire to return.

I recommend that the Department of State reaffirm these principles.

SA: JATodd
APK: efer: mlg
8/11/67

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G. 400 - Restitution

DEPARTMENT OF STATE

CONFIDENTIAL

Memorandum of Conversation

DATE:

December 5, 1947

SUBJECT:

PARTICIPANTS:

Mr. De Keyserlingk, Chief, Restitution Branch, Office
of Military Government (US), Berlin.
Mr. Kiefer - OE

COPIES TO:

A-S - Mr. Hemmendinger
WE - Mr. O'Shaughnessy
CE - Mr. Kidd
SE - Mr. McKisson

600 1-1493

Mr. De Keyserlingk used the occasion of his leave in this country to discuss with the Department, on a confidential and personal basis, various restitution problems of mutual concern. Considerable attention was given to the problems arising from the OMGUS rule that property taken by the Germans from occupied UN without the use of force would be subject to restitution only to the extent that restitution would not be prejudicial to the German economy. This rule is objected to by all UN claimants and is not in use in the three other zones. Mr. De Keyserlingk pointed out that the rule had been the source of considerable difficulty, particularly between his Branch and the Economics Division, which had the final authority in determining whether a particular item was required in Germany. Mr. De Keyserlingk stated his view that a real possibility of solution lay in adoption of the rule in the British Zone that all property would be returned except for any acquired by Germans as a result of normal commercial transactions. He thought that this would not involve an increase in potential restitution, but that it would get us on a much more defensible ground legally as well as simplifying the whole restitution procedure considerably, to the advantage of both the claimant countries and OMGUS. Mr. De Keyserlingk stated that a suggestion from Washington that the rule in the British Zone be adopted would be most welcome. He was advised that such a step was in fact being contemplated.

There was some discussion of the situation of the various restitution missions. Mr. De Keyserlingk expressed the feeling that the Dutch

mission

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mission was probably the most intelligent and cooperative in its general approach. The Dutch very early had decided to concentrate their claims on the more essential items and have them cleared up as rapidly as possible. Consequently they are now in a position to proceed with conclusion of their restitution efforts, on the theory that returns hereafter would be so marginal as not to justify the trouble and expense of maintaining a staff. The French, on the other hand, present almost the contrary situation. They had recently submitted a catalogue of some 60,000 machines alleged to have been looted from France, and while there was every appreciation of the special restitution problems of France, Mr. De Keyserlingk had been forced to indicate to Mr. Glasser, the Chief of the French Mission, that there was little practical possibility of acting on this general claim. Mr. De Keyserlingk also indicated his distrust of Dr. Hahn, of the Hungarian Mission, and Budapest's telegram 1923 to the Dept (Dec 5, 1947) indicates that there may be a valid basis for this.

Mr. De Keyserlingk was able to say that substantial progress had been achieved in the restitution of Belgian and French barges, a matter which had received extensive consideration in the Department at various times. Arrangements had been made by OMGUS with both Belgium and France for restitution of barges which were not serviceable, provided the two countries bore the expense of conditioning these craft for return. This arrangement had apparently taken care of most of the remaining Belgian and French craft in the American Zone.

The securities problem was also discussed at some length. Mr. De Keyserlingk was told that a cable had just gone to OMGUS suggesting non-acceptance of the latest CORC paper on restitution of securities if it was not quite clear that the Soviets really accepted our view that removal by force did not have to be proved by the claimant nation as a precondition to restitution. Mr. De Keyserlingk admitted that the paper, in view of the past history of the question, was not clear on this point, but he thought that it should have been agreed to anyway, as the best that could be obtained, and in the interest of quadripartite agreement.

OE:AFKiefer:mlg

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GA - Mr Oliver

CE - Coburn Kidd

Restitution Policy in Austria

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A. Restitution

J.W. Apr. 18/47

Date?

1947

I am returning herewith two draft cables prepared by Mr Kiefer, which have not been cleared, together with an alternative draft, until further consideration may be given to the matter within the Department. If you feel that there is a legitimate difference of opinion, but that our respective positions are not so wide apart that they could not be reconciled, I should be glad to participate in a conference for this purpose; otherwise the matter could be referred to the GA Secretariat or to A-H. If novel points are involved there might be occasion for further SWNCC action. If, however, the difficulty lies in any misconception on my part, I should be glad to receive the additional information or advice which would clear the matter up.

CE's interest is, briefly, that the restitution policy should conform to the over-all policy in Austrian matters. The actual implementation of specific restitution policies in the field has definite political implications as well as economic. The US authorities are put in the position of being for or against such and such measures in which not only restitution commissions but the local population and, in certain instances, US citizens may have the strongest personal interests.

The premises which, I thought, were generally accepted, are that this Government is "for":

- (a) Protection of private property;
- (b) Protection of any American interests;
- (c) Measures that will reduce the US burden in support and rehabilitation of the economy of Austria;
- (d) Implementation of any commitments to other governments --- with sufficient notice, however, that all of the Soviet sphere governments are supporting an economic system antagonistic to our own, from which American interests have already greatly suffered, and that these governments have been instruments of a sustained policy aimed toward frustrating US objectives in Europe and increasing the difficulties of our occupation.

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The conclusions drawn were (a) that restitution directives might well be liberally interpreted so far as the west is concerned, since private property would be no less well protected, American citizens could freely look to their interests, and these governments were in general cooperative. (b) That they would be strictly construed toward the east, so that while doing whatever we had promised, we should not go out of our way or beyond what was required, in view of the indifference to private property in the east, the difficulties of protecting American interests, the increased burden of support required for the Austrian economy to compensate for what is removed to the east, and the fact that what is given away is to the material advantage of Communist governments that desire to see us weakened. These premises and conclusions also appear to have been those which occurred to the US military authorities in Austria and have been acted upon for the past year or so. They conform to our policy, for example, in the DP question and on requests for repatriation of alleged "war criminals", which has been greatly changed since the days of automatic compliance with any request from Communist repatriation commissions.

The policy laid down in Mr. Kiefer's two draft cables, if I read them correctly, requires most of the property removed from any territory in the east to be returned forthwith to the respective Communist controlled governments asserting claims, regardless of the considerations mentioned above and regardless of important qualifications contained in the restitution directives themselves. If it is necessary to advise USFA at this time, I feel that we should be able to back our position by citing chapter and verse, as I have attempted to do in the alternative draft, rather than by edging forward here and there, ignoring some points and explaining others away, and in general extending the restitution program considerably beyond what is required by SWNCC 204/2 and /5. The sole effect of this that I can see will be to have Yugoslav, Hungarian, and Roumanian property commissions a little more in USFA's hair, with the DP's deprived of the last boxes of machinery they had managed to get out, though we would not send them back and intend to settle them in Austria.

CE:CKidd

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347406

CE draft

PRIORITY
CONFIDENTIAL

Draft cable to USFA

State Dept has received from Vienna comprehensive report on restitution up to 31 Dec 1946 which your office prepared for AMlegation. Following points brought to your attention.

1. Currencies. Pls advise earliest total amounts all foreign currencies (paper and coins) impounded by you under MG decree No. 4 or otherwise and disposition these currencies.

2. Securities. Directive restitution looted securities is contemplated. It would provide for restitution of identifiable securities looted from UN while occupied and from ex-enemies during periods in which German looting took place. Has Austrian inventory of foreign securities been completed (mentioned Urad P. 4748 Oct 1946)? Can inventory provide adequate basis for purposes restitution? Wld appreciate receiving from you soonest any suggestions on terms of contemplated Directive, the object of which will be as expeditiously as possible to return to countries from which removed identifiable looted securities including those of foreign, German, and Austrian issue. Your suggestion also requested re possibility meeting any unsatisfied claims from pool of unidentifiable securities presumed to be looted. You may find SWNCC 204/22 useful as a guide for this problem, although this Directive was addressed only to the Commander in Germany.

3. Voluntary Removals, Nationalization, Proof of ownership, Restitutability of Property. In order to clarify situation involving those points, your attention direct^{ed} to following:

a. Basic in consideration of restitution problems is the QUOTE general policy of the United States that property looted by the enemy should be restored to its rightful owners UNQUOTE (SWNCC 204/5). The political objective of this

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policy was to defeat the Nazi design to enrich the German economy at the expense of the economy of surrounding countries by acquisition through an act of force (SWNCC 204/5, para 7 (a)). This objective is pursued by returning to the countries which suffered German occupation all property of specified categories, with certain qualifications, which was removed therefrom by looting and can be found in Germany or Austria.

b. Existing directives WARX 85965 Nov 1945 and WARX 99226 Mar 1946 have defined basis and procedure of restitution. Basic test of restitutability is removal of property from territory of claimant country by QUOTE actual forcible seizure or without compensation UNQUOTE (WARX 99226 para 4, SWNCC 204/5, para 7 (d)). Depending on the type of property and its origin this test is qualified by such factors as circumstances of removal, certification of necessity for economy of claimant country etc. On the assumption that the claimant govt, if not itself the rightful owner, represents the former rightful owners of property that had been situate within its territory, neither directive requires proof of ownership before making restitution. WX 99226 requires restitution to govt. missions upon mere identification and proof of acquisition by Germans through force or without compensation, except for categories restitution of which would jeopardize minimum requirements Austrian economy etc. (WARX 99226, para 6), and makes no provision for any alternative procedure of restitution to individuals.

c. In case of voluntary removals, it is not perceived how this meets restitution requirement of acquisition by Germans by act of force or without compensation, and in view

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general policy to restore to rightful owner, your practice of releasing to individuals achieves substantial justice and conforms to general purpose restitution program.

d. In case of looted property which would be subject to restitution program, but owner does not desire property to return to country of origin because of nationalization, restitution should be made to claimant govt. Although this does not achieve purpose of restoring to former rightful owner, it is not within capacity occupation authorities to decide who is present rightful owner or intervene in question between nationalizing state and its own nationals or former residents. You are therefore directed to cease practice of restitution to individuals in this type of case.

Handwritten notes:
dr Smith
W.H.

 e. Problem of restitution to owners or delays or suspension of restitution at request of persons claiming ownership has arisen several times in Germany. Firm rule there is to reject personal restitution of looted property individuals regardless of citizenship to non-US citizens or naturalized citizen holding shares in corporation of country of claimant government. This principle well established and only way to bring restitution program to early end without undue international friction.
Your attention also directed to fact that determination of ownership rights and adjudication of possible claims is legal function which Mil Govt not in general equipped to handle and should not undertake in case of looted property.

4. Despite the foregoing you are directed to defer restitution of the Manfred Weiss properties until further notice. This property is involved in question of German assets in Hungary which has not been closed so far.

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Authority E.O.10501

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5. Cut-off date for receiving claims. It is noted that you plan set such date, probably 30 June 1947. Although it is recognized that restitution situation in Germany and Austria is dissimilar, in regard to Germany State Dept has opposed setting cut-off date at the present time. Setting termination date in Austria also considered at present undesirable. [It is expected that Austrian Treaty will have some provision on termination dates, and it would be undesirable for you to set date which might conflict therewith.]

6. ADA agreements and regulations on restitution. Pls transmit earliest complete summary all ADA action re restitution, including document references.

7. Your report on restitution progress in Austria very informative and greatly appreciated. Similar reports in future wld be welcomed.

347409

GA:AKiefer:dm

CE:CKidd:vlk

April 18, 1947

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March 15, 1949

Memorandum

To: EP - Mr. Oliver

From: L/E - Mr. Maurer

Subject: Comments on Position Papers on Allied-Swiss Accord Meeting in London March 14.

I have the following comments to make on the memoranda which were transmitted to me showing the position that the United States representatives would take on the various issues at the London meeting with the British and the French on the Allied-Swiss Accord.

1. Memorandum on Assurances to the Swiss Regarding Arrangements for Compensation.

A. On page one there is a statement that it is no concern of the Swiss what provisions the Allies make for the compensation for the 50 per cent which is to go to IARA. I mentioned once before to Mr. Adams and I think the point was incorporated in a telegram which he sent that, on a technical contractual basis, the Swiss may very well say that they have a real interest in knowing what arrangements are ultimately made as to compensating the Germans for the 50 per cent which is to go to IARA. I think, however, we have a valid point that the payment of compensation for this 50 per cent is not a condition precedent to action by the Swiss.

B. On page two of this memorandum there is a statement that the fund for payment of compensation to the Germans may be charged to occupation costs. I understand that this has now been dropped out, and I think desirably so.

C. On page three there is the statement that with regard to compensation to German owners residing in the Soviet Zone, the only possibility is to make administrative arrangements to provide for the setting aside in Western Germany of some fund for these Germans. It seems wrong in principle to have Western Germany pay compensation to the Germans in Eastern Germany for their assets which have been liquidated by the Swiss.

2. Memorandum on Intercustodial Conflicts.

A. On page one there is a statement that the United States has no objection to bilateral agreements between the United Kingdom and France, respectively, with

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Switzerland to settle their own questions involving conflicting custodial claims by arbitration or negotiation. In making any such statement to the United Kingdom or French representatives, it should be clearly indicated that if the United Kingdom and the French desire to proceed to arbitration with the Swiss on intercustodial matters, they should not only employ a different arbitral tribunal than is provided in the Allied-Swiss Accord but they must also clearly provide that the tribunal shall judge the merits of any particular conflict without, in any way, bringing in or interpreting the Allied-Swiss Accord. Only in this way will there be no precedent established which would be detrimental to the interests of the United States.

B. On page one the statement is made that the United States would give serious consideration to any Swiss efforts to bring specific cases involving disputes between the two Governments on questions such as I. G. Chemie and similar cases before an international tribunal. I think the United States representatives should go very slow on this as the Office of Alien Property has a distinct and fixed antipathy to having any of their cases decided by any but a United States Court of law. I think if any statement of this type is to venture, it would be desirable to obtain clearance from the Office of Alien Property. My own personal reaction is that it would only exacerbate relations with the Office of Alien Property if we took up with them the thought that some of their cases might be thrown into international arbitration.

C. In the enclosure to this memorandum you have included the memorandum that I wrote on intercustodial conflicts and the Swiss-Allied Accord. In numbered paragraph 5 of this enclosure, I tried to answer the point of the Swiss that they cannot proceed to liquidation unless the intercustodial conflicts questions are ironed out, and I have given certain alternatives that may be followed. I think it should be emphasized, in addition, that the argument should not be permitted that the differences involving intercustodial conflicts prevent the implementation of the whole Accord. They are differences which arise in particular cases under the Accord and can be handled on a case by case basis.

3. Memorandum on Lump Sum Settlement

I think it is well to keep in mind that the idea of a lump sum settlement has an illusive simplicity. I do not believe it is possible for the United States and the other governments to make a simple contract with the

Swiss

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Authority E.O.10501

By 15 IARA Date 8/11/61

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Swiss for 150,000,000 Swiss francs for IARA while the Swiss are to liquidate "German assets". It seems to me that a lump sum settlement must be more detailed. It can omit the procedure of a joint commission or any authority of review. However, it seems to me that if we are not to be subject to considerable criticism, it must define the German assets which the Swiss are to seize and it must contain some provisions on the security problem. In terms of defining German assets, it seems to me it would be desirable to spell out that the assets of certain non-hostile Germans, for example persecutees or the assets of German corporations which are beneficially non-enemy owned should not be seized. In this connection the clauses of Article I of the Accord and Article IV of the Annex might very well be retained even in a lump sum settlement.

CC: CE - Mr. Macoldson

PM -

L:L/E:EMaurer:nlc

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Authority E.O.10501

By 15 NARA Date 8/11/01

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Entry

Rec's Central Euro.

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HICOMI N D E XINTERNAL RESTITUTION

(Annex 7(c) to Report, Pages 54 - 55)

ReferenceDate

- | | |
|--|---------------|
| 1. Finance Committee Report to Special Committee | 30 April 1951 |
| 2. Special Committee Discussion | 12 July 1951 |
| 3. Special Committee Discussion with German Delegation | 18 July 1951 |
| 4. Allied Statement | 3 August 1951 |
| 5. Special Committee Discussion with German Delegation | 3 August 1951 |
| 6. Special Committee Instructions to Finance Committee | 6 August 1951 |
| 7. Report to Governments | 9 August 1951 |

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U.S. Position

U.S. Position

French Position

German Position

SECRET

1. This problem was considered by the International Study Group. The Study Group reached agreement on all points excepting the requirements which the contractual arrangements should place upon the Germans in the field of compensation for victims of Nazi persecution. It will not be possible to conclude any contractual agreement until Germany is freed from the Delta. The French Commission's conclusions on all other questions arising in this connection are based on the relevant decisions of the Study Group's Technical/R(E)I Committee.
2. To throw the negotiations, when the above difficulty has been resolved, this subject can be concluded by a contract. Aside from provisions relating to compensation for victims of Nazi persecution, the contract should provide, in respect to restitution of identifiable property, etc.:
- (a) application of Allied legislation and regulations in force at the time of the contractual arrangement;
 - (b) maintenance of established administrative procedures, including procedures with respect to records;
 - (c) maintenance of a more fully established German judicial and administrative system, swiftly and effectively to realize the Allied objectives stated in the sovereign restitution laws;
 - (d) maintenance and continued binding effect of established interpretations of existing Allied laws;
 - (e) the maintenance of procedures for the blocking of properties subject to restitution claims and submission of periodic reports;
 - (f) undertaking by the Federal Government to accept the responsibility for the payment of relief pursuant to judgments or orders issued against the German Reich by restitution courts or restitution agencies;
 - (g) an undertaking by the Federal Government to take all necessary steps and provide all necessary authority to endeavor, to the greatest possible extent, completion of the process of internal restitution;
 - (h) an undertaking by the Federal Government to facilitate, by Allied authorities, of all aspects of restitution of identifiable property. (See next page.)

Annex 7(c)

To German legislation has been taken no position on leases or picnics that it will not be able to do so soon in the coming months. This will not be completed until the 31st October. This is likely to be done in the course of the discussions now proceeding in the law committee of the Diet.

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By 115 NAPA Date 3/11/01

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SECRET

Annex 7(c)

German Position

French Position

U.S. Position

U.K. Position
See French Position.

The U.S. and French Movants agree that at or before the effective date of the contract, all local legislation should be enacted to protect civilian contractors from loss of profit to the full extent of all non-compliance.

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By <u>15 NAPA Date 3/11/01</u>	Div. <u>1944-53</u>
	File <u>III-13 Internal Restitution</u>
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Entries 381 A, B, C

30 April 1951FIN/Sec(51)32

ALLIED HIGH COMMISSION FOR GERMANY
FINANCE AND FOREIGN INTERESTS COMMITTEE

To: Chairman,
Special Committee.
(Attention : Duty Secretary)

Subject: Study of Problems in relation to the Brussels Decisions

1. At its meeting on 20 April 1951 the Finance and Foreign Interests Committee considered draft reports on the problems referred to it in accordance with HICOM/P(51)20.

2. In accordance with the decisions reached on 20 April 1951, the Secretariat of the Finance and Foreign Interests Committee reports to the Special Committee as follows:

(a) Disposal of Property under Allied Control

A paper suitable for presentation to the Special Committee was approved and is circulated as FIN/P(51)14;

(b) Foreign Interests in Germany (including Industrial Property Rights); Claims against Germany

The Committee agreed that no report should be submitted on this subject as it is being dealt with by the Inter-governmental Study Group;

(c) Internal and External Restitution

The Committee agreed that no report should be submitted on this subject as it is being dealt with by the Inter-governmental Study Group.

E.M. MOULTON
Duty Secretary

347416

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Authority E.O.10501	59
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Extract from SPOM/A(51)12, 12 July 1951:

157. PAPERS OF THE INTERGOVERNMENTAL STUDY GROUP SUBMITTED TO GOVERNMENT

The Committee considered IGO/P(51)89 Final, IGO/P(51)1112 Final, IGO/P(51)99 Final, IGO/P(51)91 Final, IGO/P(51)41 (2nd Revision) and IGO/P(51)103 Final.

THE COMMITTEE

- (157) (a) noted that the US Government had approved the above paper and wished the High Commission to make preparations to enter into discussions with the German delegation on the subjects of all these papers, including IGO/P(51)41 (2nd Revision) in the case of which it was proposed that discussions would be instituted on the basis of a formula which would not prejudice decision on the disagreed paragraphs;
- (b) agreed that each Delegation would study the questions as listed below -

Restitutions - UK Delegation

Reparations and Possible Claims by Germans - French Delegation

Foreign Internals in Germany - US Delegation

and prepare

- (i) a draft of a statement to be made to the German Delegation;
- (ii) an outline statement of action which it was necessary to take in Germany.

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Authority E.O.10501

By 1B NARA Date 3/11/01

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C O N F I D E N T I A L

Extract from SPOUN/PED/M(51)2, 19 July 1951:

CS. DISPENSAL OF PROPERTY UNDER ALLIED CONTROL AND INTERNAL RESTITUTION

(a) PROFESSOR GRIMM said that the deliberations of the German Delegation had not yet reached the stage at which they could hope to present a formal written statement on these subjects. He wished to ask, however, whether Disposal of Property under Allied Control was a heading intended to cover the application of Military Government Law 52. He said it appeared to the German Delegation that the controls over property mentioned in Article 1, paragraph 1, of that law had, except as regards property in respect of which restitution proceedings were pending, already become purposeless or would become purposeless to a very large extent in the immediate future.

(b) He could make no statement on the subject of Restitution until the Legal Committee of the Bundestag had concluded its deliberations on the indemnification of victims of racism, deliberations whose conclusion was not expected before the parliamentary recess was ended. For this reason the German Delegation did not propose for some time to make statements on these two subjects.

(c) THE CHAIRMAN said that the Allied Delegation would note this statement but hoped to be able itself to make statements on both these subjects, possibly at the next meeting.

C O N F I D E N T I A L

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~~CONFIDENTIAL~~PROPERTY UNDER ALLIED CONTROLALLIED STATEMENT TO GERMAN DELEGATIONAppendix "C" to
SPCOM/FED/1(51)9

1. Law 52 represents an instrument for preventing the dissipation of assets which are or may be subject to transfer of ownership in accordance with established programmes, Allied or German. Representing a means of conservation, it is in itself wholly neutral in character. Its purpose will have been served only when the programmes for which it caters have been completed.
2. The uses to which Law 52 is at present put, and for which no alternative instrument at present exists, are as follows:-

(a) Deconcentration

Conservation of the assets of I.G. Farben A.G. in liquidation

(Law 35, Article 2);

(b) Restitution

Conservation of assets subject to suits in respect of duress, wrongful confiscation etc., or which may be subject to restitution to foreign owners; also Reich and NSDAP property restitutable to trade unions and other corporate bodies;

(c) Reparations

Conservation of residual items of capital equipment, of merchant ships, and securities;

(d) Protection of Foreign Interests

Conservation of property of foreign owners. This property is in the main held by curators appointed by German courts: but Law 52 provides the standard by which it should be administered;

(e) Denazification and War Criminals

Conservation of property belonging to persons subject to sanctions on account of denazification, and to war criminals is carried out by the German authorities on the basis of Law 52;

(f) Residual Reich Property

Conservation of Reich property subject to German disposal in accordance with the Basic Law.

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Appendix "C" to
SPCOM/FED/M(51)9

3. In the view of the Allied delegation it will be necessary to retain the essential portions of Law 52 in force until the programmes, in respect of which the Law is utilized are complete. The Allied High Commission will in principle be prepared, if all or parts of Law 52 are required for a period of time beyond the date of the conclusion of contracts, to enter into arrangements for the preservation of the Law in whole or in part, or of German legislation enacted in replacement thereof.

C O N F I D E N T I A L

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DECLASSIFIED

Authority E.O.10501

By 15 NARA Date 3/11/04

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R E S T R I C T E D

ALLIED HIGH COMMISSION FOR GERMANY

SPECIAL COMMITTEE

6 August 1951

SPCOM/Sec(51)6

To: Chairman,
 Finance and Foreign Interests Committee
 (Attention: Duty Secretary)

Subject: Internal Restitution

1. At its meeting on 2 August 1951 the Special Committee agreed upon the text of a statement to be made to the German delegation on the subject of Internal Restitution, a copy of which is attached hereto.
2. The Committee at the same time agreed to request the Finance and Foreign Interests Committee to forward recommendations as soon as possible to the Council with regard to the extension of the German legislation on compensation to the victims of Nazism to broader classes of such victims.

F. T. SILLETT
 Duty Secretary

Incl: To addressee only

347421

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Authority E.O.10501
By 15 NAPA Date 3/11/01

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S E C R E T

Extract from SPCOM/FED/M(51)10, 3 August 1951.

83. INTERNAL RESTITUTION

- (a) THE CHAIRMAN presented the statement which is attached as Appendix 'E' to this record.
- (b) PROFESSOR GREWE stated that his position was the same as that expressed on 18 July (SPCOM/FED/M(51)8, Minute 68) but that he fully recognised the urgency of the problem and for their part, the German authorities would do their best to find an early solution.
- (c) THE CHAIRMAN stated that the Allies attached importance to an early settlement of this problem.
- (d) PROFESSOR GREWE asked whether paragraph 2-a(4) of the paper, on the maintenance and continued binding effect of established interpretations of existing Allied courts, implied that the existing Allied courts would continue to operate or whether the mixed tribunals referred to in the German proposal of 11 July (SPCOM/FED/Memo(51)17) could handle these problems.
- (e) THE CHAIRMAN stated that although the Allies had not reached a final decision as to the type of tribunals which would handle these cases in the future, the statement was intended to ensure the maintenance in the future of the validity of decisions taken by the existing courts.

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Authority E.O.10501
By 15 MARA Date 8/11/01

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APPENDIX "E" to
SPCOM/FID/M(51)10

C O N F I D E N T I A L

1 August 1951

INTERNAL RESTITUTION (III - 13)

1. We consider that relations in the field of internal restitution, i.e., restitution of identifiable property and compensation for victims of Nazi persecution, may be placed on a contractual basis.

2. With respect to restitution of identifiable property, it is our view that the following must be taken into consideration:

A. The Federal Republic should undertake to ensure the following:

- (1) maintenance of Allied legislation, and regulations in force at the time of the contractual arrangements;
- (2) maintenance of established administrative procedures, including procedures with respect to reports;
- (3) maintenance of a more fully staffed German Judicial and Administrative system, swiftly and effectively to reach the Allied objectives stated in the several restitution laws;
- (4) maintenance and continued binding effect of established interpretations of existing Allied courts;
- (5) the maintenance of procedures for the blocking of properties subject to restitution claims and submission of periodic reports thereon.

B. The Federal Republic should

- (1) accept responsibility for the payment of money pursuant to judgments or orders issued against the German Reich by Restitution Courts or Restitution Agencies;
- (2) The Federal Government should undertake to take all necessary steps and provide all necessary machinery to expedite, to the greatest possible extent, completion of the process of Internal Restitution;
- (3) facilitate observation by Allied authorities of all aspects of restitution of identifiable property.

3. With respect to compensation under the General Claims Laws, we hope that by the time a contractual arrangement comes into force there will be in

C O N F I D E N T I A L

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Authority E.O.10501

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C O N F I D E N T I A L

(III - 13, 1 August 1951)

effect in the British Zone compensation laws comparable to those existing in the Laender of the other Zones. Furthermore, we desire to see the German compensation legislation improved to embrace broader classes of victims of Nazi persecution, and that the Federal Republic should undertake to maintain in force compensation legislation and to carry forward the benefits thereof with diligence. In connection with Allied observation of progress under the Compensation Laws, the Federal Republic should agree to facilitate such observation substantially as outlined in Paragraph 2. (2) (3) above.

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HICOMI N D E XEXTERNAL RESTITUTION

(Annex 7(d) to Report, Page 56)

ReferenceDate

- | | |
|--|---------------|
| 1. Finance Committee Report to Political Affairs Committee | 30 April 1951 |
| 2. German Statement | 11 July 1951 |
| 3. Special Committee Discussion with German Delegation | 11 July 1951 |
| 4. Special Committee Discussion | 12 July 1951 |
| 5. Allied Statement | 3 August 1951 |
| 6. Special Committee Discussion with German Delegation | 3 August 1951 |
| 7. Report to Governments | 9 August 1951 |

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EXTERNAL RESTITUTION (OCCUPATION STATUTE, PARA. 2(b))

Annex 7(d)

Allied Position

This problem was considered by the Intergovernmental Study Group. The High Commission's views are based on the relevant paragraphs of the Study Group's reports IGG/P(51)89 Final and IGG/P(51)103 Final.

The three elements agree that this subject might be regulated by contract. The contract would provide for:-

- (a) enactment and maintenance by the Federal Government of legislation establishing suitable machinery (i) for receiving and processing governmental claims for the restitution of cultural property, (ii) for processing claims already received from governments by the Allies for jewellery, silver-ware or antique furniture of substantial value;
- (b) for the enactment and maintenance by the Federal Government of legislation, whether enacted previously or to be enacted at the time of the contractual arrangements, for removal of all legal obstacles to recovery under German law of looted property and for ensuring that the period of prescription in German law for acquiring good title to stolen property should apply to looted property and should run to 8 May, 1955;
- (c) certain further undertakings by the Federal Government which may be required in relation to programmes of the Occupying Powers now nearing completion but which may not have been terminated at the time the contractual arrangements are concluded;
- (d) compensation by the Federal Government of claimants for restitution when the property claimed was consumed in Germany, destroyed, stolen, or otherwise disposed of after identification and before return to the claimant;
- (e) the establishment of arbitration tribunals to decide disputes arising from claims under the above procedures.

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The three elements agree that the suggestions contained in the third paragraph of the German position are unacceptable.

German Position

The German delegation has not commented on the specific Allied proposals mentioned oprosito.

The German delegation appears willing to contemplate some form of contractual arrangements providing for an arbitration tribunal to decide disputes arising from restitution procedures.

The German delegation has suggested that certain of the restitution proceedings already completed by the Allies should be reviewed as they maintain that they are illegal. They have also suggested that where restitution has been or shall be effected a claim can be said to exist on the part of the restitutor for the refund of any price which he may have paid to the claimant at the time when the property was transferred.

The German delegation holds that where property has been consumed or destroyed or is no longer identifiable, the claim for restitution should be treated as a claim for reparations and thus barred under the Final Act of the Paris Conference on Reparations.

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30 April 1951

FIN/Sec(51)32

ALLIED HIGH COMMISSION FOR GERMANYFINANCE AND FOREIGN INTERESTS COMMITTEE

To: Chairman,
 Special Committee.
 (Attention : Duty Secretary)

Subject: Study of Problems in relation to the Brussels Decisions

1. At its meeting on 20 April 1951 the Finance and Foreign Interests Committee considered draft reports on the problems referred to it in accordance with HICOM/P(51)20.

2. In accordance with the decisions reached on 20 April 1951, the Secretariat of the Finance and Foreign Interests Committee reports to the Special Committee as follows:

(a) Disposal of Property under Allied Control

A paper suitable for presentation to the Special Committee was approved and is circulated as FIN/P(51)14;

(b) Foreign Interests in Germany (including Industrial Property Rights); Claims against Germany

The Committee agreed that no report should be submitted on this subject as it is being dealt with by the Inter-governmental Study Group;

(c) Internal and External Restitution

The Committee agreed that no report should be submitted on this subject as it is being dealt with by the Inter-governmental Study Group.

E.M. MOULTON
 Duty Secretary

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Authority
by 15 NAPA Date 8/11/01

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Entry Rec's Central Euro.

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SECRET

16 May 1951

SPCOM/Sec(51)2

ALLIED HIGH COMMISSION FOR GERMANYSPECIAL COMMITTEE

To: Chairman,
 Finance and Foreign Interests Committee
 (Attention Duty Secretary)

Subject: Disposal of Property under Allied Control

The Special Committee at its meeting on 16 May 1951 noted RIV/P(51)11 and agreed to request the Finance and Foreign Interests Committee to examine the present scope of MG Law No. 52, and to inform the Special Committee of its views as to whether it can be reduced so as to retain control over property only to the extent necessary to complete programmes.

H. ELEGANT
 Duty Secretary

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Authority E.O.10501

By 15 NARA Date 3/11/04

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~~RESTRICTED~~ALLIED HIGH COMMISSION FOR GERMANYSPECIAL COMMITTEE31 May 1951SPCOM/Sec(51)5

To: Chairman,
Finance Committee,
(Attention: Duty Secretary).

Subject: Disposal of Property under Allied Control

The Special Committee, at its meeting on 30 May 1951, agreed to request the Finance Committee to take into account the ISG Reports on Restitution and Reparations in its consideration of SPCOM/Sec(51)2.

H. ELEGANT

Duty Secretary

~~RESTRICTED~~

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E.O.10501

Authority
By 15 MAR 1949 8/11/51

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Entry Rec's Central Euro.

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RESTRICTED

14 June 1951

FIN/FIC/Memo(51) 23

ALLIED HIGH COMMISSIONFINANCE AND FOREIGN INTERESTS COMMITTEEFOREIGN INTERESTS AND CLAIMS SUB-COMMITTEE

To:- Special Committee
 (attn. Duty Secretary)
 through Finance and Foreign Interests Committee

Subject:- Survey of Property in Western Germany subject to Allied Control or Restrictions

1.- In accordance with instructions issued by the Council of the Allied High Commission (HICOM/I(51)8, para 1820), the Foreign Interests and Claims Sub-Committee herewith submits its report on the above-mentioned subject.

2.- PROPERTIES SUBJECT TO CONTROL OR RESTRICTION UNDER LAW NO. 52

a) In the first report submitted to the Allied High Commission (HICOM/P(51)27), it was stated that 124,444 properties in Western Germany and in the Western Sectors of Berlin were subject to control pursuant to the provisions of Law No. 52. Of this figure, 41,265 properties have since been released from control. The detail of this number is as follows:

French Zone and French Sector of Berlin:	29,363
U.S. Zone and U.S. Sector of Berlin:	3,975
U.K. Zone and U.K. Sector of Berlin:	7,927
	41,265

b) Property still remaining under control pursuant to Law No. 52 would be progressively released after the settlement of restriction proceedings and of claims in respect of property of the former NSDAP. It would not be possible to forecast a date by which the gradual release from control of those properties will come to an end as this release from control rests on the decision of German agencies, on the Courts or on Commissions designated for this purpose.

3.- The properties mentioned in HICOM/P(51)27 as being subject to Allied High Commission Laws No. 27, 32 and 35 would be released from control when the programmes of the Tripartite Groups responsible for the enforcement of these Laws had been completed. As stated in HICOM/P(51)27, these Groups are of the opinion that the control thus exercised is of such a nature that it does not interfere with the normal conduct of business by the undertakings.

4.- The Foreign Interests and Claims Sub-Committee has not considered it necessary to make fresh contacts with Allied Requisitioning Authorities in regard to the number of properties at present subject to requisition.

I. TCHEGLOFF
 Duty Secretary

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Authority E.O.10501

By 1B KAPA Date 3/11/ou

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Box S

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C O N F I D E N T I A L

Extract from SPCOM/FED/M(51)7, 11 July 1951.

57. EXTERNAL RESTITUTION

(a) PROFESSOR GREWE presented the statement which will be circulated as SPCOM/FED/Memo(51)17.

(b) THE CHAIRMAN said that the Allied Delegation would study this statement. However, he would remark immediately that the fact that no comment would be made on this occasion should not be taken as implying that the Allies were prepared to admit that part of the German statement which suggested that, in some cases, restitution had been made unjustly. He asked whether it was the German proposal that the arrangements suggested should be brought about by the conclusion of the contract.

(c) PROFESSOR GREWE said that that possibility had not yet been considered, but would be.

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Authority
By 15 NAPA Date 3/1/01

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Entry Rec's Central Euro.

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~~CONFIDENTIAL~~

11 July 1951

SPCOM/FED/Memo(51)12

ALLIED HIGH COMMISSION FOR GERMANYSPECIAL COMMITTEEEXTERNAL RESTITUTION (IV, 79)Statement submitted by the German
Delegation on 11 July 1951

1. The attached statement was submitted by the German Delegation for the meeting with the Special Committee on 11 July 1951.
2. This memorandum is circulated for information.

P.A.R. SPEARMAN

R.A. WAKEFIELD

C. ROTTEMBOURG

Secretariat

~~CONFIDENTIAL~~

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E.O.10501

Authority
By 115 NARA Date 8/11/01

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Entry Rec's Central Euro.

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File IX. External

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C O N F I D E N T I A L

11 July 1951

SFCCOM/EED/Memo(51)17

EXTERNAL RESTITUTION

(Chapter IV - Item 9)

1) Pending proceedings

The measures still being carried out today under the title of restitutions consist only of the winding-up of proceedings now pending. The German Delegation is of the opinion that the winding-up of these proceedings should be carried out on the basis of the principles generally accepted in international law.

According to these principles, which also form the basis of the Allied declaration of 5 January 1943 and of the peace treaties between the Allied and Associated Powers and the former allies of the German Reich, justified restitution claims can only be raised if objects, identifiable in Germany, have, during the war, been transferred from Allied ownership, or from the possession of inhabitants of a territory occupied by the German armed forces, into German possession and been transported to Germany, and if the object was taken away under compulsion or threat, or was handed over as a result of a legal transaction which the former owner was compelled to conclude under coercion or threat, even though this legal transaction may appear to have come about voluntarily and in legal form.

If the property of which these persons were divested can no longer be restituted because it has been consumed or destroyed or is no longer identifiable, the restitution claim is replaced by a claim for reparation which falls under the Paris Reparations Agreement.

If the restitutee received countervalue for the property to be restituted, such countervalue is to be credited to the reparations account.

According to the rule of law, the restitutions should take place within the framework of judicial proceedings, with the German acquirer and the Federal Republic represented. These proceedings should, in particular, assure a just apportionment of the burden of proof, the presumption of spoliation, which often can not even be refuted, being abolished.

C O N F I D E N T I A L

DECLASSIFIED

Authority E.O.10501

By 15 KAPA Date 8/11/ou

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C O N F I D E N T I A L

11 July 1951

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SPCOM/FED/Memo (51) 17

The German Delegation would consider a safeguarding of these principles appropriate in restitution proceedings now pending. It proposes to set up mixed commissions composed of German and Allied representatives for the purpose of winding up these proceedings, as has been provided for in the Peace Treaties of 1947.

2) Proceedings that have been concluded

In cases in which restitution proceedings have been carried out without the prerequisites for restitution having existed, restitution has been made wrongly. In such cases, persons affected could file a refund claim which, however, can not be realized in practical application. This would result in a situation of continuous legal insecurity. In order to settle these cases, which in substance constitute not restitutions but reparations taken out of the property of individuals, the German Delegation proposes that the Federal Republic be credited with a corresponding countervalue in favor of the reparations account; simultaneously, the Federal Republic should be enabled to reimburse persons called upon to pay "non-genuine restitutions" in an appropriate form.

For the rest, it would be just to enter a credit in the reparations account also for "genuine restitutions" which have been concluded, in so far as the restitutors have in fact made payment.

In order to establish which Germans concerned in restitution proceedings can make claim to refunds and what amounts are to be credited to the reparations account, it might be appropriate if the proceedings already concluded were reviewed by the above-mentioned mixed commissions upon application.

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C O N F I D E N T I A L

Extract from SPCOM/M(51)12, 12 July 1951:

157. PAPERS OF THE INTERGOVERNMENTAL STUDY GROUP SUBMITTED TO GOVERNMENTS

The Committee considered IGG/P(51)89 Final, IGG/P(51)112 Final, IGG/P(51)99 Final, IGG/P(51)91 Final, IGG/P(51)41 (2nd Revision) and IGG/P(51)103 Final.

THE COMMITTEE

(157) (a) noted that the US Government had approved the above paper and wished the High Commission to make preparations to enter into discussions with the German Delegation on the subjects of all these papers, including IGG/P(51)41 (2nd Revision), in the case of which it was proposed that discussions would be instituted on the basis of a formula which would not prejudice decision on the disagreed paragraph.

(b) agreed that each Delegation would study the questions as listed below:-

Restitutions - UK Delegation

Reparations and Possible Claims by Germans - French Delegation

Foreign Interests in Germany - US Delegation

and prepare

- (i) a draft of a statement to be made to the German Delegation;
- (ii) an outline statement of action which it was necessary to take in Germany.

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File III-10, DISPOSAL

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RESTRICTED

16 July 1951

FIN/P(51)25

ALLIED HIGH COMMISSION FOR GERMANYFINANCE AND FOREIGN INTERESTS COMMITTEEDISPOSAL OF PROPERTY UNDER ALLIED CONTROL

(Note by Secretariat)

1. In accordance with SPCOM/Sec(51)2 and SPCOM/Sec(51)5, the Foreign Interests and Claims Sub-Committee has made a study of the present scope of Military Government Law 52 from the point of view of its reduction so as to retain control over property only to the extent necessary to complete programmes. In making this study, account has been taken of the ISG Reports on Restitution and Reparations.
2. This study, which has been approved by the Financial Advisers, is attached hereto and is circulated for the information of all concerned.

E. M. MOULTONJ. M. McFARLANDR. JOIN

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In the opinion of the Sub-Committee, Article I, para 1(f) of Law 52 (property of absent-owners) should be retained at least until the Report of the Foreign Interests Sub-Committee has been acted upon, or other appropriate contractual agreements entered into.

2. Use of Law 52 unconnected with A.H.C. programmes

- (i) Denazification and Property of War Criminals: As will be seen from para 4(ii) of HICO/P(51)27, which covers property of individual Nazis as well as property of the NSDAP itself, a considerable amount of property is still controlled by the German authorities either pursuant to Control Council Directive No. 50 or for reasons of denazification. Control of war criminals' property and property subject to sanctions under the denazification procedures is entirely in German hands, but the Germans depend upon Law 52 for their legal powers (Article I, para 1(c) and para 1(g)). These paragraphs of Law 52 and relevant parts of other Articles should be maintained unless repeal is requested by the German authorities, which would presumably entail replacement by suitable German legislation.
- (ii) Residual Reich Property: Although Occupation Legislation regarding Reich property has been repealed by A.H.C. Law A-16, and this property is now subject to German disposal under the provisions of the Basic Law, it is not believed that all arrangements for transfer and control of the property affected have yet been completed by the Germans. To ensure an orderly handling of this matter, and avoid the risk of a hiatus in control, the Sub-Committee considers that Article I, para 1(a) of Law 52 should not be repealed until this is requested by the German authorities.

In addition, certain types of property are excluded by Article 2 of A.H.C. Law A-16, for which the control powers given by Article I, para 1(a) of Law 52 are still necessary.

3. Obsolete parts of Law 52

Article I, paras 1(b), (d) and (e) are obsolete and could be repealed. No use is now made of these provisions, and repeal would have no practical effect.

To the extent that Article II, para 3(d) is still required it is a duplication in part of Article I, para 2. Branches responsible for restitution have always maintained, however, that it provides valuable clarification and should stay.

Article VIII - the death penalty is inappropriate.

4. Recommendation

In the opinion of the Sub-Committee the Law should NOT be repealed in whole or in part by the Allied Authorities in advance of negotiations regarding contractual arrangements. The Allied High Commission should await an approach from the German authorities requesting particular amendments.

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C O N F I D E N T I A L

Extract from SPCOM/FED/M(51)8, 18 July 1951:

68. DISPOSAL OF PROPERTY UNDER ALLIED CONTROL AND INTERNAL RESTITUTION

(a) PROFESSOR GREWE said that the deliberations of the German Delegation had not yet reached the stage at which they could hope to present a formal written statement on these subjects. He wished to ask, however, whether Disposal of Property under Allied Control was a heading intended to cover the application of Military Government Law 52. He said it appeared to the German Delegation that the controls over property mentioned in Article 1, paragraph 1, of that Law had, except as regards property in respect of which restitution proceedings were pending, already become purposeless or would become purposeless to a very large extent in the immediate future.

(b) He could make no statement on the subject of Restitution until the Legal Committee of the Bundestag had concluded its deliberations on the indemnification of victims of Nazism, deliberations whose conclusion ^{not} was expected before the parliamentary recess was ended. For this reason the German Delegation did not propose for some time to make statements on these two subjects.

(c) THE CHAIRMAN said that the Allied Delegation would note this statement but hoped to be able itself to make statements on both these subjects, possibly at the next meeting.

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S E C R E T

Extract from SPOOM/FED/M(51)10, 3 August 1951:

84. EXTERNAL RESTITUTION

- (a) THE CHAIRMAN presented the statement which is attached as Appendix 'F' to this record.
- (b) PROFESSOR GREWE said it would be inadvisable for the question of restitution to remain unsettled until the peace treaty and that every effort should be made to settle the problem before that time. He asked as to the composition and nature of the arbitration tribunals to be established and also stated that it was important psychologically to attempt to overcome doubts which existed in the minds of the Germans as to the legal validity of some of the restitution proceedings carried out in the past and that it would be very helpful if some impartial clarification of this problem could be made.
- (c) THE CHAIRMAN said that he took note of Professor GREWE's statement regarding settlement of the problems in advance of the peace treaty but that he could add nothing further to the Allied statement. The composition of the tribunals was still under study and would probably be discussed at a later date. In general, however, the composition of such tribunals as might be decided upon should not vary greatly from the basic structure of the general arbitration tribunals. With regard to Professor GREWE's third point concerning the doubts in the German mind as to the validity of certain restitution proceedings, he stated that the Allies could not agree that any such proceedings could be considered as illegal but would be glad to have details of the cases which Professor GREWE had in mind.

- (d) PROFESSOR GREWE replied that his comments were not based upon the idea that illegal actions were involved but were concerned only with the psychological reactions among the German people. He agreed to furnish the specific data requested.

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CONFIDENTIALAppendix F
to SPCOM/FED/M(51)10EXTERNAL RESTITUTION

(IV, 9)

1. We have noted your statement of 11th July. We share your view that the process of restitution of identifiable property removed by the German Reich, or by individual Germans, from other countries during the war, which was set in train in implementation of the Inter-Allied Declaration of 5th January, 1945, is not yet by any means complete. Indeed the ultimate right of governments to restitution cannot be extinguished until a peace treaty.

2. The Occupying Powers have hitherto themselves accepted claims for restitution of such property from the governments concerned. We consider that the Federal Government should now undertake this responsibility. We are, however, prepared for it to be exercised within a restricted sphere so that the Federal Government will not be required to entertain fresh claims from governments, with the exception of claims for the restitution of cultural property. Such property is the national heritage of the claimant countries and therefore although the vendor may have sold willingly, his government, which might in normal circumstances have been able to prevent the sale, ought to have an opportunity to retrieve the property. Nor will the Federal Government be required to pursue claims which have already been presented by governments for other property which has hitherto proved untraceable except where the property concerned is jewellery, silverware, or antique furniture of substantial value. We consider that the Federal Government should enact and agree to maintain legislation and should establish suitable machinery for the search, recovery and restitution to claimant governments of looted property. The machinery established should not entail any suit by the claimant governments in German courts.

3. We consider moreover that the Federal Government should enact and agree to maintain legislation for the removal of all legal obstacles to recovery under German law, of looted property, and should ensure that the period of prescription in German law for acquiring good title to stolen property should apply to looted property and should run to 8th May, 1955.

4. We agree with you that claims under such continuing restitution procedures, where they result in disputes, should be subject to permanent arbitration tribunals composed of German and Allied representatives. However, we would not wish in this context to discuss the composition of those tribunals which we prefer to consider upon the separate heading of "foreign interests".

5. We are not able to agree to the suggestion made in the second part of your statement that any of the restitution proceedings which have been completed by the Occupation Powers can be considered illegal. We are not prepared to accept that any past proceedings should be the subject of review.

6. Equally we are unable to accept any suggestion that where restitution has been or shall be effected a claim can be said to exist on the part of the restitutor for the refund of any price which he may have paid to the claimant at the time when the property was transferred. We should like to point out that the currency in which the restitutor would have paid would in almost every case have been acquired by the German Reich compulsorily and without compensation for the government of the claimant.

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7. You will be aware that the Occupying Powers at present have in hand or under supervision programmes for the restitution of certain looted securities of foreign and German issue and of rolling stock. Furthermore, in the U.S. and French Zones there exist collecting centres which contain cultural property known to have been looted from other countries, but not yet disposed of. There are also a very small number of claims in which the High Commission is interested outside the classes mentioned above. It will not be possible precisely to define them until near the date of the contract as many are in process of settlement. Insofar as Allied programmes in these respects have not been completed at the time when contractual arrangements become effective we may wish to ask the Federal Government to give certain further undertakings in respect of them.

8. With regard to the third paragraph of Part I of your statement we should like to draw your attention to an exchange of correspondence between the High Commission and the Federal Government (c.f. AGSECS(50)1664 and (51)629) in which we made clear our view that the Federal Government should compensate claimants when the property claimed was consumed in Germany, destroyed, stolen, or otherwise disposed of after identification and before return to the claimant.

9. We should be grateful if, in the light of these comments, you would reconsider the question of external restitution and let us have your further views.

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