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Entry ~~Lot 170 122~~ 202
File ~~Property Rights~~ 5.19F
Box 76

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E 230
Reparation 11
December 10, 1943

SECRET

COMMENTS ON REPARATION AND PROPERTY ARTICLES
TO BE INCLUDED IN TERMS TO BE IMPOSED
ON GERMANY AT THE TIME OF SURRENDER

The attached document prepared as a part of surrender terms for Germany includes two sets of provisions, Article 16 covering the provisions affecting property and Article 17 covering provisions for German reparation.

The paragraphs are based on the assumption that during the period of the armistice a) machinery will be brought into existence under the control commission to locate, safeguard, and maintain property potentially subject to ~~potential~~ restitution or reparation; b) acts of restitution will be initiated through such machinery; c) a beginning will be made in determining the extent of Germany's responsibility and capacity to make reparation; and d) initial payments on reparation account will antedate the final determination of the amount of reparation and its allocation.

It is further assumed that the extent of Germany's responsibility for reparation and restitution, and the extent to which credits of any kind for early deliveries are allowed against this account, will be finally determined in the peace treaty or in some other instrument.

Since it is the purpose of the United Nations to deal with Germany in general through a control comission, it is assumed that during the period of its operations demands on Germany for money, goods, or services will be presented ~~to it~~ for the most part through this commission. It is understood that indiscriminate looting of Germany will be prevented by such coordinated action and control.

It is believed that the surrender terms should be general, inclusive, and brief in order to reserve full powers of action. It is also desirable to leave specific aspects of Germany's obligations to later documents which can be more detailed and more definitive.

Article 16

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353 ~~EC DEFP~~
Entry ~~Lot File 122~~ 70
File ~~Property Rights~~ 5.19F
Box 76

Article 16 has been drafted primarily to implement reparation and restitution and does not cover all controls of property which may have to be instituted in Germany. It places on Germany the positive obligation, without further directive from the United Nations to safeguard and maintain three broad categories of property; a) that taken physically from occupied territory to Germany; b) property in Germany, owned by governments or nationals of the United Nations or of countries whose territories have been occupied whether this property has been transferred by sales or other devices with an appearance of legitimacy in which there is an element of compulsion; and c) such other property to be listed later by the appropriate authority. It is recognized that (a) and (b) are not mutually exclusive. The last category (c) is intended to allow the establishment of controls over the property of refugees, Jews, and nationals of neutral or of states not otherwise included as well as the property of German war criminals.

The phrase "safeguard, maintain and prevent the dissipation of" property is intended to cover protection from looting, neglect, further alienation or other action which would impair the value of property.

It was concluded that such protection could not be applied to property generally without immobilizing the German economy. It was also recognized that too inclusive a provision would be impossible of fulfillment by Germany. It is contemplated that specific measures of implementation will be taken promptly.

Article 16 further requires that Germany shall comply with specific requests of the control commission with regard to the disposition of property in any of the three categories listed. This provision, designed primarily to permit restitution, is extremely broad but would be made effective only on specific requests of the control commission.

The provision that Germany shall not dispose or allow the disposal of property abroad is intended to cover possible action taken by the government or residents within Germany over whom Germany is assumed to exercise some control. It assumes German jurisdiction over their rights in property abroad and

prohibits

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DECLASSIFIED
Authority NND 760089
By TJ NARA Date 2/8/00

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Entry ~~Lot File 120~~ 202
File ~~Property Rights~~ 5.29 F
Box 76

prohibits its exercise to the detriment of the interests of the United Nations; but it does not carry an obligation to protect or safeguard which would be based on physical control over things beyond her borders. The word "property" is used here in a broad generic sense and is not intended to convey the idea of legal ownership.

The terms impose on Germany a general requirement intended to implement the other provisions regarding reparation, restitution, and control to supply information concerning property. It was considered necessary to extend this power of securing information to all property in order to permit the tracing and identification of property subject to reparation or restitution. The phrase "property, rights and interests" is taken from the Treaty of Versailles and is intended to be as inclusive as possible.

Article 17 refers to reparation and restitution. In keeping with the general concept discussed above it is kept broad and inclusive. It is meant to reserve all rights and to include all possible types of reclamations.

Consideration was given to the possibility of providing in the surrender terms some limitation on Germany's obligation as a means of excluding extreme demands from the peace deliberations. While it appears certain that the terms finally imposed will fall short of the desires of most of the claimant states, particularly those overrun by Germany, no attempt should be made to preclude a full discussion of the issues; the question should not be predetermined. It is believed, however, that the controversial issues involved should not be opened up for debate in the discussion of surrender terms.

Consideration was also given to specifying the form of payment. In this case also it was thought desirable to avoid detailed statements. The draft permits any form of payment. While the government

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315121

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

of the United States would wish to reserve its position on the question of form of payment, no strong objection is felt to including terminology on this point similar to that in the Italian armistice, i.e. money, goods, or services.

It may be urged that to provide some limitation on Germany's obligation in the surrender terms may narrow ~~down~~ at the outset the areas of controversy and reduce the amount of disagreement among states. The plausibility of this argument may be admitted but it does not seem to apply to the surrender terms. It applies rather to work which will presumably follow shortly on the agreement as to these terms and which would be as envisaged under these recommendations as the responsibility of a special commission.

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry 702
File 5.19F
Box 76

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Reparation 7
L 76
December 2, 1943

ECONOMIC ASPECTS OF GERMAN REPARATIONS
Interim Draft
by Howard S. Ellis
Federal Reserve Board of Governors

1. Any attempt to guarantee political security by reparations of such character as to undermine the German economy would:

a) prove economically very costly to the rest of Europe;

b) limit the total of reparations to be got from Germany;

c) contribute to political extremist movements within Germany;

d) ultimately provide no political security.

2. Reparations have their economic justification to the degree that they are forward - not backward - looking, that is, to the degree that they contribute to reconstruction.

a) The material and other damage done by German aggression far exceeds any monetary measure and cannot in any real sense ever be made good.

b) Germany can substantially contribute, however, to the restoration of productive capacity in the victim economies. The real reparation problem is how to maximize this contribution without substantially lowering the standard of living in Germany.

c) The substitution of any other principle than reconstruction involves economic loss.

3. The logical counterpart of an economically benevolent peace is the imposition of rigorous political controls during the period of political reconstruction within and reparation paying by Germany.

a) Continuous

315123

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

a) Continuous controls will be required to enforce not only the prohibition of armament production, but probably also the suppression of aircraft production and the limitation of stocks of strategic war materials.

b) Political security requires the dismantling of armament plants, and they could be handed over to reparation claimants.

c) The economic disarmament of Germany, her ultimate economic well-being, and the prosperity of Balkan countries would be greatly aided by scaling down the German agricultural protective system and thus her autonomy in foodstuffs. This reform could be accompanied by a breaking up of the Junker estates.

d) The rapid paying off of reparations requires foreign controls within Germany. Concerning these economic controls, see below point 10.

4. Germany will prospectively emerge from the war with a capacity to contribute substantially to economic reconstruction.

a) Immediate restitution can be made of property rights transferred to Germans by force from occupied countries and of physical capital - plant and equipment, rolling stock, objets d'art, libraries, gold - taken from vanquished nations. Furthermore, German plant already transferred to these territories can be accepted on reparation account.

b) No extensive incursions should be or can be made, however, on the normal German productive equipment, because of the reasons set forth under 1 above, without "killing the goose that lays the golden egg".

c) A

* Obviously the concept of normal needs careful elaboration.

315124

REPRODUCED AT THE NATIONAL ARCHIVES

DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

c) A rough indication of German capacity to raise sums for reparation purposes is given by the annual amount the German economy devoted to military preparations before the War.

1. In 1938-39 this was approximately 25.7 billion marks including sums raised by domestic borrowing and semi-compulsory levies outside taxation, or 10.2 billion marks without these sums. Which of the two should be taken as significant will be discussed later, see point 10 below.

2. These sums are respectively ten and four times the size of the maximum reparation annuity under the Young Plan.

3. Due reduction would, of course, have to be made for war losses of plant and manpower.

5. The prime lesson of the German reparation experience following the last war was that unwillingness to receive on the part of the Allies set lower limits upon actual payments than German capacity to raise the sums internally.

a) Domestic investment within Germany exceeded reparations by four to ten fold in all but one of the reparation years (1919-1932); and the reparations ran between 1.8% and 3.2% of the German national income. Even allowing for the lower level of employment over these years, the reparation annuities are absurdly small in comparison with the 31.1% of national income devoted to armaments in 1938-39.

b) Reparations were impeded and both debtor and creditor nations frustrated by an obligation to pay in foreign currency coupled with the reducing of foreign markets for German goods by high protective duties.

c) Whether reparations are levied in money or "in kind", the only way in which Germany can pay is through sales or deliveries of her own goods and services in excess of what she purchases from foreign countries.

d) To

315125

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
76

d) To avoid the monstrosity of (at one and the same time) demanding and refusing German goods and services, the reparation obligation must this time be made explicitly to lapse if the creditor country does not accept German goods and services. Nothing in this generalization precludes advance agreement as to the character of German goods or services which the creditor is prepared to accept.

e) With a clear acceptance of the principle of the preceding paragraph, reparations can successfully be transferred either in money or "in kind". The merits and drawbacks of both in other respects will be discussed briefly later, points 8-16.

6. The transfer of reparations requires, as stated under 5c above, the development of a German export surplus approximately equalling the magnitude of the reparations. The process is much easier if German exports increase sufficiently to give the export surplus than if German imports decrease to reach the same surplus.

a) German imports are largely raw materials and foodstuff. The latter are "naturally" inelastic in demand because they include virtually indispensible fats, and the former are also probably somewhat inelastic in demand without a fairly complete reorganization of German production toward a higher labor and domestic raw material ratio in its production for home and foreign markets.

b) If German exports can expand to develop the reparation export surplus, the tendency in world trade generally will be upward instead of downward, and a reduction of the German standard of living through a fall in the mark rate of exchange can be avoided.

c) The sine qua non of expanding German exports is a reduction of protective tariffs impinging on German export goods.

7. Whether

315126

REPRODUCED AT THE NATIONAL ARCHIVES

DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry ~~Lot File 82~~ 202
File ~~Property Rights~~ 5-18F
Box 76

7. Whether the transfer of reparations is arranged to take place initially in money or "in kind", the statement of the obligation must, for purposes of aggregating the total and of allocation between receivers, be put in monetary terms.

a) If the obligation is stated in a currency foreign to Germany, and if - conceivably through no "fault" of Germany - the foreign currency appreciates relatively to the mark, the real value of reparations automatically increases; but this is an injustice to Germany, the reparations debtor.

b) If the obligation is stated in marks, and if Germany permits a price inflation, the real value of reparations declines; but this is an injustice to the reparations creditors.

c) This dilemma could be solved in one of two ways:

1. Stating reparations as a list with quantities of physical things, but this entails disadvantages which are too great:

a. It would exclude a single aggregative figure, but this is necessary for determining how much Germany is paying relatively to her own output and consumption.

b. On the assumption that receiving countries would not elect to take exactly the same German goods and services, it would render impossible a comparison of how much one reparation claimant receives relatively to another.

2. Stating reparations in a stable money measure: if in a foreign currency, the sum would be made to vary inversely as the price of that currency in marks; if in marks, the sum would be made to vary directly with an agreed-upon index of German domestic prices.

315127

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry 702
File 5.19F
Box 76

8. Reparations payable in money have the advantages of a free price system.

a) They permit the receiving governments to choose freely and purchase whatever can be bought for money in the German economy.

b) They permit also a part or conceivably all of the German reparation to be taken in buying goods and services produced elsewhere than in Germany.

c) In this second alternative (under b), it is obvious that Germany will have to develop its export balance with the "other" countries. But in the first case, the mere purchase of German goods on reparation account will not per se assure a German export surplus; the reparation receiving country has to take more German goods in total.

d) The implication of the foregoing paragraph (c) is plainly that the successful transferring of reparations is conditioned primarily by the lowering of tariffs and maintaining full employment (with its strong demand for foreign goods) in the potential reparation receiver, but also secondarily by the same situation in third countries.

9. Reparations payable in money have, however, certain disadvantages.

a) If Germany should be a "controlled" economy after the war, then, unless that control is in foreign hands, the German authorities could take steps to prevent foreign purchases of certain things (direct prohibition, high taxes, monopoly prices, delays in delivery, suppressing production, etc.).

b) Since reparation receivers could shift their lines of purchase within Germany and even to outside of that country, it might be less easy for German producers (or the German authorities) to plan production for future demands, than if a schedule of "deliveries in kind" were agreed upon. But, in part or wholly offsetting this advantage is its inflexibility for the reparation receiver.

315128

REPRODUCED AT THE NATIONAL ARCHIVES

DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

10. Reparations payable in kind have the advantages and disadvantages of "planned economy".

a) The very meaning of the scheme of payments in kind is the advance stipulation of categories of goods or services which the reparation creditor will take. This does permit "planning" in the German economy, but does not permit freedom of choice, once the stipulation is made, to the receiving economies.

b) To a certain degree the scheme may have a too beguiling simplicity, since it may seem to solve the transfer problem completely though it does not necessarily do so. In fact if the receiving governments simply take what they otherwise would have paid for and no more, the scheme makes no contribution toward developing a German favorable balance of trade which is necessary if the reparations are not to produce a disastrous decline in the mark rate of exchange.

c) But if coupled with a tariff lowering on non-reparation goods, the specification of reparations in certain definite physical categories may in particular cases offer net advantages on balance.

1. Since Germany will also be prospectively a "scarcity"-economy after the war, but since the very idea of reparations is to give a certain volume of foreign claims priority, it may be wise to limit the range of this priority by stipulating certain goods which aid most directly in foreign reconstruction and which, at the same time, Germany can supply without economic disaster at home. A detailed study of German Trade with the probable reparation claimants is now going forward in order to illuminate this question.

2. The same things could of course be purchased with money under a monetary reparation system, but stipulation in kind permits greater certainty in planning and articulates with extensive economic controls in Germany whether foreign or indigenous.

11. The

315129

REPRODUCED AT THE NATIONAL ARCHIVES

DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353 ~~EC~~
Entry ~~Lot File 122~~ 207
File ~~Property Rights~~ 5.19F
Box 76

11. The use of German labor battalions is promising in some cases.

a) The disadvantages are the political and sociological complications of a large body of foreigners (racial hatred, sabotage, acts of violence) and the economic fact that German labor is probably more efficient when employed within Germany producing the exports in which Germany historically has excelled. It would be an unwelcome form of reparations in an economy suffering from unemployment.

b) But the advantages are great. The prospects are that labor will be, relatively to capital equipment, less scarce in Germany. Moreover, it is immediately available as some exports would not be. Furthermore, the impact upon private competitive profits would be less than any other form of reparations.

c) Russia has indicated, probably because of the second advantage, that it would take large amounts of reparations in this form. Certain Western European countries might be convinced of the importance of the third advantage, though in densely populated centers the first and third disadvantages are strong.

12. Definite assignments of physical plant reconstruction also have advantages.

a) Since German labor would presumably be used, the drawbacks noted under 11a above would appear. There is an added disadvantage in the necessity of minute specification as to the character and quality of the reconstruction in each individual case. The problem would have in each case to be settled as to whether reconstruction should mean the replacement of an identical unit or one of equal efficiency under the best available techniques. The latter is surely the more economical, but it involves questions of technical judgment. Finally, this system by itself makes no provision for countries which succeed in

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353 ~~E~~
Entry ~~Lot File 122~~ 202
File ~~Property Rights~~ 5.19F
Box 76

securing reparation awards on other grounds than reparable physical destruction, for example, for occupation costs, seizures of securities, irreparable physical damages such as exhaustion of coal deposits, etc.

b) Outstanding advantages of such a plan are the direct linking of reparations to reconstruction, which has a moral value on the side of both victim and aggressor, and which furthermore helps to define the magnitude and duration of reparations.

13. In some cases the stipulation of definite import items, such as the German coal deliveries after the last war, have a clear justification on the basis of 10,c,1 above.

14. Some reparation claimants would be adequately served only by money reparations. If the country in question desires to take payment in the products of other countries, reparations in kind would seem to be pointless.

15. If the reparation obligation is stated in money terms, both in total and for each claimant as it should be (point above), there seems to be good reason to adapt the method of payment (money, reconstruction assignment, labor, specific exports) to the convenience of particular receivers.

a) This implies a careful appraisal of the composite result, so far as it effects Germany internally and world trade in general.

b) It implies especial concern as to whether the composite result promises to develop an adequate export surplus from Germany. Tariff reductions continue to be the primary conditioning factor.

16. It would be possible to make reparations payable in non-transferable mark accounts applicable to purchases of any or stipulated German products, services, or property, but not to gold, foreign exchange, foreign money, foreign securities. Unutilized balances at the end of prescribed intervals would revert to the German Treasury.

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry 70
File 519F
Box 76

a) The purpose of such a "reparation mark" would be to induce potential reparation receivers to take a volume of additional German exports approximately equal to the sums to be transferred.

b) Governments could use the marks themselves or sell them to importers for what they would bring. If the governments did not utilize the marks they disappear as reparation claims and revert to the German Treasury as an anti-deflationary force. If the marks are sold, the market would presumably clear away all of them for each reparation interval at a price sufficiently low to bring in the goods over tariff walls.

c) This would aid but not guarantee the development of additional demand equal to reparations. Tariff reductions would still be important.

d) The disadvantage of such a schome is its condoning of differential exchange rates such as the Keynes and White currency stabilization schemes would suppress.

17. Although the economic raison d'etre of reparations is reconstruction, it will be necessary to make some provision for reparations outside this category.

a) Damage to economic resources is sometimes irreparable.

1. Coal, oil, and to some extent timber resources cannot literally be reconstructed. An equivalent value in kind or money would be in order as reparation.

2. Manpower loss is similarly irreparable. This consideration will justify "reasonable" claims for the support of veterans, etc.

b) Loss

315132

REPRODUCED AT THE NATIONAL ARCHIVES

DECLASSIFIED
NND Authority 760089
By TJ NARA Date 3/8/00

RG 353
Entry
File
Box 76

b) Loss of income, though literally impossible of later restitution (e.g. starvation cannot be later be "made good") will inevitably be regarded as a just ground for claims, - for example French contributions to German occupation costs.

c) Such claims will have to be admitted in any general apportionment in order to justify what appears to be "fair" on some general basis of calculation.

d) This matter bears more upon the apportionment of reparations than upon their total or the method of payment, which can still be regarded almost exclusively from the angle of reconstruction.

18. The duration and timing of reparations are largely determined by three factors: a) the economic and political condition of Germany at the end of the war; b) whether reparations are regarded as a means of undermining German economic and military strength, or as an instrument of reconstruction; c) whether extensive economic controls exist in paying and receiving economies.

a) Gold, objets d'art, libraries, securities, rolling stock and plant seized by Germany and still extant can be returned regardless of productive capacity. German labor can be used immediately. Otherwise, however, it is obvious that the advent of the first substantial reparations would be postponed by extensive damage to plant, by civil disorder, and by extreme inflation.

b) If reparations are punitive or employed to weaken the German economy there is no limit to their duration other than successful German revolt or sabotage or weariness on the part of the victors.

c) There are several good grounds for a relatively short reparation period, a decade, say, rather than 60 years, such as was contemplated in the Young Plan.

1. Physical reconstruction need not require a long period. Germany, it is said,

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File

beginning upon reconstruction only slightly before 1924, reached pre-war industrial output by 1927 or 1928. A recent League of Nations publication puts the term of agricultural reconstruction something less than a decade after the end of the war.

2. The political atmosphere favorable to reparations cannot be counted upon to endure.

3. Reparations extending past a genuine period of reconstruction are apt to displace rather than supplement production in the receiving economies, causing unemployment and the demand for their termination.

19. If reparations are spread over a "longer" period (20 or more years, for example) a larger aggregate can be paid, and, with necessary tariff adjustments, reliance can be put upon the price system to transfer the annuities. But if reparations are to be raised when they are most beneficial economically, i.e. during a decade of reconstruction, it would appear to be necessary to have definite economic controls, at least for this purpose, in both paying and receiving economies. Since the control may be necessary to supervise disarmament within Germany, and possibly also merely to prevent economic and political chaos, the additional control might be relatively small, consisting primarily in the establishment and enforcing of priorities for reparation claims. With firm controls established in Germany, the larger of the two limits on German paying capacity, given under point 4 above, becomes relevant. In the receiving economies the control would take an accustomed form in public works, for reconstruction purposes.

20. The question arises as to whether a commercialization of the reparation sums (following the pattern of the Dawes and Young plans) should be contemplated.

a) To the degree to which reparations are put explicitly upon a basis of reconstruction, it is anomalous to sell reparation bonds to the nationals of reparation - receiving economies.

REPRODUCED AT THE NATIONAL ARCHIVES

DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry ~~Lot File 192~~ 202
File ~~Reports 1945~~ 5.19F
Box 76

economies. The ultimate justification of the reparation under this philosophy is the need of outside resources to accomplish or expedite the recovery.

b) The sale of reparation bonds to nationals in countries not receiving reparations does not involve an economic paradox. Thus the American loans to Germany (aside from the question of their economic employment) in the twenties were, despite the contrary view of Schacht, an entirely innocuous and indeed beneficial process, by which the reparation payments were expedited over the rate which might have been possible otherwise.

21. There seems to be no valid argument against the employment of an index of prosperity (as in the Dawes plan) in adjusting the amount of annual reparation charges to German capacity to raise the sums.

a) The alternative, to set the annual charge at a level equal to capacity on the most adverse assumptions, would quite justly be rejected by reparation claimants.

b) The index was "unpopular" in Germany, but 1) so were reparations, and 2) the opposition to the index specifically was irrational.

22. As in the Dawes and Young Plans, there is warrant for tapering into and tapering out of reparation payments in order to cushion the impact of the beginning and end of the process.

23. Probable components of reparation claims.

I. Physical damage to capital

A. Public and private property within the country, including natural resources.

B. Goods removed to Germany or transferred elsewhere.

C. Damages inflicted by military operations against Germany by other country.

II. Confiscations

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry Lot File 202
File 5.19F
Box 76

II. Confiscations of or inadequate remuneration for property rights.

III. Loss of earning power: pensions of war veterans, widows, orphans, civilian injured, etc.

IV. Loss of foreign assets: confiscated foreign securities, etc.

V. Reimbursements for services rendered under compulsion.

A. Forced labor within or without the borders of the claimant country.

B. Use of commandeered rolling stock, ships, plant, etc.

VI. Contributions to occupation costs, and other forced levies.

VII. Clearing debts, prewar and war.

VIII. Commercial debts, prewar and war.

IX. Long term debts, prewar and war.

A. Balances on the prewar reparation account.

B. Indebtedness under the Moratorium.

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

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Reparation 6
E 221
L 75
December 2, 1943

DEFINITION OF 1) REPARATION; 2) REPARATION PAYMENTS; 3) RESTITUTION; 4) REPLACEMENT; 5) "PUNITIVE REPARATION"

[PRELIMINARY DRAFT]

1. REPARATION

This term is used to apply to the whole problem being considered by the Committee. It refers to the endeavor by the United Nations as claimants to secure compensation for injuries suffered as a result of German [Japanese, Italian, other enemies] aggression.

The term is intended to be inclusive even though in the end the policy may be taken to exclude some types of compensation or to omit some classes of injuries from practical consideration.

This definition aims to include (or at least not to exclude at the outset) (a) claims of those states which have participated in the war against Germany; (b) damages inflicted by Germany before as well as after a technical state of belligerency existed.

The use of the term "United Nations" is convenient, but is not to be interpreted to exclude other states that might be associated with

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

with them in the peace settlement. It is assumed that the word Japanese, Italian, or any other enemy nation could be substituted for "German". The term "enemy" is not used because it might exclude action taken by an aggressor country prior to the beginning of hostilities.

2. REPARATION PAYMENTS

This phrase is used to apply to a segment of the reparation problem being considered by the Committee. It refers to that series of payments in cash, in kind, or in other valuable considerations or privileges, made under a system agreed upon by claimant governments.

These payments might be annual, or periodic on some other basis, or perhaps irregularly spaced. For practical purposes it is here assumed that the creditor states will not ask for a single payment. The word "payment" is intended to be broadly construed and is definitely more inclusive than money payments. Restitution is here considered to be the restoration of identical items and to be essentially different from "payments". The transfer of equivalents

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315138

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry ~~Lot File 193~~ 210
File ~~Property Rights~~ 5.19F
Box 76

by way of replacement is properly a part of the system of reparation payments. It is only separated here because of special administrative considerations which might make it desirable to have a separate category. Reparation payments may or may not include restoring property rights, according to the nature of the return involved. Typically, reparation payments would include annual transfers in cash or kind by the enemy to the claimant states but the category must be somewhat broader in order not to exclude by definition from the Committee's consideration some of the serious proposals which may be brought forward.

3. RESTITUTION

Restitution is a part of the broad problem of reparation, and is susceptible of two types of definition. The choice between these two is dependent on policy and there is considerable use of both the broad and the narrow definition.

Restitution is restoration to individual claimants or to governments, of identifiable objects which have been removed from the ownership or control of the owners by the

315139

REPRODUCED AT THE NATIONAL ARCHIVES

DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

5.19F

by the enemy, or by third persons at the instigation of, or on behalf of, the enemy, and which are in existence in substantially the original form at the time when the claim is made.

Certain persons have used the term in a much narrower sense, that is to denote the restoration of unique and valuable items. They would include for instance objects of art, scientific equipment, books, and in some cases household effects such as heirlooms and especially valuable industrial equipment. They would not include those industrial instruments, machines, agricultural equipment, trucks, livestock, or other items which though identifiable, would not be unique. Under this narrower use of the term it could not be applied to those categories of goods looted for which payment in similar goods or in cash is reasonable compensation. For instance, an automobile could be substituted for the one lost, or one locomotive for another.

The main argument urged in favor of adopting this narrow and somewhat artificial definition is the avoidance of undue complication of a program involving a large number of specific claims

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

claims and attempts to find and identify property which is not unique.

The argument for the broader definition, closer to the dictionary meaning, is usually that it may prove advisable to have no reparation in addition to restitution and in this case some may insist upon the replacement of objects looted even though they may not wish to demand compensation for less specific injuries.

The definition of a restitution program could have a time limit -- beyond which the restitution of looted items might be considered to be outside the scope of the question of reparation.

Unless specifically excluded for practical reasons, restitution could include a) real estate and b) securities.

4. REPLACEMENT

Replacement is the restoration to claimant states of items which are similar to, or in some measure the equivalent of, specific goods taken away. The word "replacement" does not imply earmarking by the claimant states for particular individuals of goods received in this category. Replacement is essentially a part of reparation.

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry 302
File 570
Box 76

reparation, and, because it is based on value equivalents rather than on identical items, it is distinct from restitution. It is possible to divide the problem of reparation into two categories: (1) restitution; (2) reparation, without making a third category "replacement". Some have considered it useful, however, to differentiate this category on pragmatic grounds. It might be desirable for instance to set up a program for replacement prior to the determination of policy with respect to reparation as a whole.

The decision to have a replacement program might involve drawing a somewhat arbitrary line between such a program and transfers in kind under reparation payments. Replacement usually is used to refer to deliveries during the reconstruction period.

5. "PUNITIVE REPARATION"

Punitive reparation consists of measures and claims on a conquered country which are made in order to inflict harm but not designed to yield any significant economic or political benefit to the claimant states separately, or as a group.

Thus stated, punitive reparation is a contradiction in terms. The phrase needs to be examined,

315142

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NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry 702
File 5.19F
Box 76

examined, however, because viewed from one angle, all reparation has a punitive aspect. Some might hold that the statement of principle that there shall be no punitive reparation implies that reparation cannot be exacted since it is bound to have a deleterious effect on the country making reparation.

The "significant benefits" which are considered an essential aspect of reparation must be broadly construed. They might include for instance the redressing of a series of wrongs without obvious direct advantage but designed to place claimant states in a better competitive situation than if there were no such readjustment. For example, the dismantling of German factories might in some cases be of little immediate advantage to claimant states and yet might be deemed essential to their prompt economic recovery. Non-punitive reparation then might include the reorganization of the economic system built up by Germany as a part of her war effort, if such a reorganization results in a "significant benefit" either to particular claimants, to the claimants as a group, or to the world economy. In fact the desire to gain "significant indirect benefits" might carry more weight in a final decision than the more obvious direct benefits.

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

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SUMMARY OF CURRENT PROPOSALS AND DISCUSSIONS ON RESTITUTION, REPARATIONS, AND ENEMY PROPERTY

INTRODUCTION

The memorandum on Current Proposals and Discussions on Restitution, Reparations, and Enemy Property, of which this paper is a summary, is a collection of official declarations and unofficial suggestions for the settlement of certain phases of economic warfare, chiefly enemy spoliation of occupied territories and the future treatment of enemy property in belligerent countries. No reference is made here to the aims or proposals of Axis countries since this study is based on the assumption that the victory of the United Nations will be so complete that their policies will prevail.

Since the release or liquidation of enemy property may depend on whether property seized in occupied territories is restored and whether reparations are imposed, the treatment of enemy property cannot be kept entirely distinct from the question of property in occupied territories in formulating the post-war settlement. Proposals for restitution and reparations and suggestions as to the disposition of enemy property are, therefore, grouped together under national headings in the memorandum for whatever light they may shed on national policy.

For the purpose of study, however, a distinction between the redress of grievances of the United Nations affecting property, especially in occupied countries, and the disposition of enemy property by the United Nations may be useful. This summary, therefore, reviews separately the proposals for reclamation for personal and property damages, which may involve demands for restitution, replacement or reparations, and proposals for the treatment of enemy property.

RECLAMATIONS

Demands for redress of property losses by nationals of the United Nations may be grouped in three categories--demands for restitution, replacement, and reparation.

Demands

315144

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NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

Demands for Restitution

Although all the statements on restitution are not clear, the principle is that individuals should receive the property taken from them and presumably that state property should also be restored.

Declaration on Forced Transfers.--On January 5, 1943, the governments of the United Nations whose territory has been invaded by Axis nations issued a Declaration regarding Forced Transfers of Property in Enemy-Controlled Territory. The following states were original parties to this Declaration: South Africa, the United States of America, Australia, Belgium, Canada, China, Czechoslovakia, the United Kingdom, Greece, India, Luxembourg, the Netherlands, New Zealand, Norway, Poland, the Union of Soviet Socialist Republics, and Yugoslavia, and the French National Committee. The Commonwealth of the Philippines adhered on January 19, 1943.

The Declaration was a formal warning particularly to persons in neutral territory that the signatories intended to do their utmost to defeat acts of dispossession by the enemy in occupied territories. The states reserved their right to declare invalid any transfer of property, rights, and interests situated in enemy-controlled territory or belonging to persons resident in those territories. This warning applies to all transfers whether in the form of looting or plunder or of transactions apparently legal in form even when they purport to be voluntarily effected.

The parties agreed to establish a committee of experts to consider the scope and sufficiency of existing legislation for the nullification of transfers and to collect information on Axis methods of dispossession. This committee has already prepared an interim report on acts of dispossession in which it summarized the relevant legislation of many of the countries concerned.

The most comprehensive analysis of the nature and scope of the Declaration is contained in Lester H. Woolsey's editorial comment on "The Forced Transfer of Property in Enemy-Occupied Territories" in the American Journal of International Law for April 1943. He calls attention to the scope of the warning which applies to any transfers or dealings in property situated in the territories in question or belonging to persons resident in

such

315145

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 3/8/00
RG 353
Entry
File
Box 76

such territories. He points out, however, that the Declaration simply reserves the right to declare such dealings invalid and says nothing about reparation for wrongs which cannot thus be corrected. Woolsey also noted that the right to nullify presumably rests in the legitimate governments of the occupied or controlled territories and that these countries are now represented by refugee governments whose authority may be doubtful. The Declaration is not made in the name of the United Nations and does not apply to non-party countries, among which are Denmark, Estonia, Latvia, and Lithuania. Woolsey believes that the parties intend to test dealings in the occupied territories by the Hague rules and to apply the principles of international law in cases which these rules do not cover. To do this, he considers that it will be necessary to set up, under the peace treaty, tribunals to which violations could be referred for adjudication.

An article in the Financial News (London) on "Gold from Germany" calls attention to the fact that, under the terms of the Declaration, neutral central banks may be called upon to restore to its rightful owners the gold they have acquired from Germany during the war. Since the Reichsbank's gold reserve has remained almost unchanged since the outbreak of the war, the assumption is that any gold acquired from Germany by neutral banks since September 1939 is looted gold. Such gold will have to be restored without compensation. This is further justified by the fact that a neutral can only have acquired gold from Germany by selling to her more goods than it bought and thus contributing to Germany's war effort.

Governmental Actions to Obtain Restitution.--The work of the investigating committee, set up by the signatories to the Declaration, in surveying the legislative acts of dispossession shows that the states intend to take action to obtain restitution of property taken by the enemy. The Inter-Allied Armistice Study Commission, created by the continental countries with headquarters in London, registers the demand of the European governments-in-exile for recovery of property taken by the enemy. Belgium, China, Czechoslovakia, Luxembourg, Norway, Poland, the U.S.S.R., and Yugoslavia have already issued decrees or declarations declaring measures of transfer invalid and laying the groundwork for restitution. The creation of the American Commission for the

Protection

315146

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry 702
File 5.19F
Box 76

Protection and Salvage of Artistic and Historic Monuments in Europe indicates that the United States intends to cooperate in at least one phase of the problem of restitution.

Official Statements in Favor of Restitution.--Many leaders of governments have stated their determination to press for restitution of property. These include members of the British Cabinet, the Belgian Minister of Justice, the Foreign Minister of the Netherlands, the President of the Norwegian Parliament, the Auditor-General of the Philippines, and the Polish Ministers of Finance and of the Interior, and the Polish Ambassador to the United States.

Unofficial Statements in Favor of Restitution.--In the United States, the question of restitution has not been a subject of popular debate. In Great Britain, certain private members of Parliament have exhibited a lively interest in the question and a committee on Conservative members of Parliament has favored the return of all loot seized by Germany. A British Committee on Post-War University Education has demanded the restoration of universities in occupied countries. Unofficial representatives of Czechoslovakia have mentioned restitution among the peace aims of that country. An Australian economist also urged restitution.

Criticism of Principle.--An American journalist, Donald Bell, reporting on the work of the inter-allied investigating committee, said that the committee had run into serious difficulties, for the problem of restitution was almost insoluble. He declared that the principle of restitution was false because Hitler had so changed the economic face of Europe that a return to the status quo ante was impossible. Instead of demanding restitution to individuals, he advocated the establishment of a cartel of the plundered to make possible a sensible exploitation of the Nazi liquidation.

Demand for Replacement

The fact that stolen property may be destroyed or unidentifiable has led many who have studied the problem of restitution to go further and demand replacement where restitution is impossible.

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353 ~~EC DEF~~
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File ~~Property Rights~~ 5.29F
Box 76

Official Statements.--The United States, Great Britain, the Soviet Union, and China have not apparently committed themselves on the question of replacement although the British Lord Privy Seal said, when pressed on the point in the House of Lords, that he did not rule out the possibility of replacement where it was possible or proper.

The Inter-Allied Armistice Study Commission representing the European governments-in-exile, however, has gone on record in favor of replacement declaring that the principle of restitution is meaningless without it.

On the other hand, the Danish Minister to the United States, speaking necessarily without instruction, has declared that in the case of Denmark restitution will not be possible because the goods have already been consumed, but has entered no demand for replacement or compensation.

Unofficial Statements.--Unofficial statements in favor of reparations in kind may amount to no more than a demand for replacement, but, since this is not clear, they are treated below.

Reparations

A demand for reparations may include no more than a demand for restitution of stolen property or for compensation where restitution is impossible, but it may reach astronomical proportions in claims for the whole cost of the war.

General Analysis.--Demands for reparations at the close of this war apparently have been influenced by the failure to extract any substantial reparations payments from Germany after the last war. The transfer problem is much better understood by statesmen of the present day than by those of the past generation and has led to stress upon reparations in kind. Nevertheless, there is some demand, especially in unofficial circles, for "scientific looting" of Germany to teach her that "aggression does not pay" or to make aggression by her impossible. The Chatham House Studies on the European Settlement show that in a series of informal discussions with representatives of Allied governments, "All reject punitive economic terms, though an undefined

proposal

315148

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

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Entry ~~[illegible]~~ 202
File ~~Property Rights~~ 5.19F
76

proposal for "reparations" was made. Throughout the discussions it was evident that those consulted were in a dilemma between the desire to disable Germany and the fear of consequences of drastic treatment of her." There has been little or no mention made of reparations from Japan.

Official Statements.--It may be said, in general, that no government has categorically ruled out the possibility of reparations but that few have made specific formal demands for them. The United States and Great Britain, which have the least direct interest in reparations, have not set forth any policy in the matter. It is interesting to note that when British subjects demanded compensation for war damage from their own Government, the latter promised whatever assistance its resources permitted without hinting that reparations would be sought. The Soviet commission to determine the size of possible compensation for personal damage and damage to the Soviet State and its property might give rise to demand for reparations. The position of China is unknown.

The Inter-Allied Armistice Study Commission has separated the question of war damages from that of recovery of property and has reserved the question of reparations for later study, considering it a problem of interest to all the Allied countries. Certain officials of governments-in-exile have indicated that reparations would be sought. The Czechoslovak Minister of Finance favored reparations in kind. The Greek Minister to the United States thought that Greece would not make a serious effort to collect reparations, but the Minister of Merchant Marine thought that reparations in kind might be demanded and secured. The Dutch Foreign Minister thought that the Netherlands had every right to demand full compensation for war damage but that money reparations were out of the question. He believed, moreover, that reparations in kind should be restricted to materials for reconstruction which the Netherlands itself did not produce. The Dutch Ambassador to the United States advocated an international trusteeship in which the majority of capital stock of Axis corporations would be vested. This organization would market German, Japanese, and Italian industrial products abroad, and its profits could be applied to relief in stricken areas. Its object, however, would be the supervision of Axis war industry rather than profits. The

President

315149

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

President of the Norwegian Parliament thought that no reparations would be imposed, but the Financial Attaché of the Norwegian Legation in Washington believed that reparations could be obtained if taken in kind and at once. The Polish Ministers of Finance and of Interior both demand reparations in kind. They seem to hope for large reparations although they recognize that the destruction already caused by the Germans in Poland exceeds all possibility of immediate reparation by Germany. The Polish Ambassador said that if Poland had to choose large reparations or an economically weakened Germany, Poland would prefer the latter. The Polish Secretary-General of the Central and Eastern European Planning Board also entered a claim for full compensation for Polish citizens and indemnity for public property.

The view of the Danish Ambassador on reparations has already been cited. The Latvian Minister to the United States demands reparation for all losses from Soviet Russia and Germany. No official statements from the British Dominions have been discovered.

Unofficial Views.--In the United States and probably in other countries, there is a sharp cleavage between the general public's views on reparations and those of leaders and writers. Two public opinion polls taken in 1942 reveal that from 35 to 43 percent of the American people believe that the Allies should try to make Germany, Italy, and Japan pay Allied war costs even if it breaks them, while 38 to 49 percent believe these countries should pay as much as they can afford within a fixed period. Only 7 to 9 percent think that the enemy should pay none of the Allied war costs. These views differ sharply from those expressed in published articles or by specialists. Frank Altschul, investment banker, and economists as divergent in their views as Alvin H. Hansen and Jacob Viner agree that the possibility of collecting substantial reparations from Germany is remote. Herbert Hoover and Hugh Gibson say that there can be no real reparations but that the Allied nations might take a few billions over a few years to give as a bonus to their widows, orphans, and maimed and perhaps a few art objects as mementoes of the war.

The most comprehensive American proposal for reparations from Germany is that made by the Economic and Financial Group of the Council on Foreign Relations, dated

March 18,

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

March 18, 1943. The Group considers that there is justice in the claim of the occupied countries of Europe that Germany should be required to restore the wealth she has taken away but that there are serious economic and political dangers in such a policy. It recommends that the purpose of reparations should be the speeding of recovery and the achieving of the economic peace aims of the United Nations. This program involves the imposition of reparations only to the extent and in the form which will contribute to the strengthening of the economic and political order. There should be recognition that there are limitations on the amount of reparations that are economically desirable. There should be no financial reparations but rather the amount should be stated in terms of goods and services that the creditor nations are willing to accept. The period of payment should be limited roughly to the period of basic European reconstruction, and reparations should not be relied upon as a major instrument of control over Germany's military power.

The Group urges immediate action by the United States to reach an agreement with the other United Nations and to issue a declaration of principles governing reparations policy. It also advocates the early establishment of a United Nations Reparations Commission to study the problem, to collect information, and to administer the reparations program when it is put into effect. A country eligible for reparations should apply to the Commission which would decide whether the goods could be supplied from Germany.

A member of the Economic and Financial Group has suggested a special reparations tax to be imposed in Germany and used to pay expenses incurred there by the United Nations. Such a tax might satisfy demands for cash reparations and would be useful for the adjustment of the German internal economy and for reconstruction purposes.

In Great Britain there has been Parliamentary discussion of restitution and replacement rather than reparations. Arnold J. Toynbee, who has been connected with British post-war planning, declared that the democracies would not be in as good a position as Russia to receive reparations in kind but that Great Britain

could

315151

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

could use a few ships. Lord Vansittart who is of course a champion of punitive reparations, insists that Germany must be de-looted and taught that aggression does not pay.

Two unofficial Chinese spokesmen have voiced a demand for extensive reparations in kind.

Among the governments-in-exile, non-official views exhibit considerable divergence. The Belgian economist, Paul van Zeeland, has no hope of reparations. Antonin Bosch, a Czech banking expert, hopes for modest reparations in kind, while G. Borsky is an advocate of punitive reparations. Michael A. Heilperin, a Polish economist, hopes for reparations in kind for a short period, while Jozo Tomasevitch, formerly an economic expert of the Yugoslav National Bank, declared that Yugoslavia had a moral right to demand reparations but that the mistakes of the 1920's should be avoided.

André Istel, a French banking expert, advocated the systematic looting of Germany by the issuance of special marks for use in occupied German territory, thus turning upon Germany the policy she had invented. The former Foreign Minister of Estonia has demanded reparations from Soviet Russia. J. B. Condliffe, Australian economist, calls for restitution and collection of a substantial share of Allied costs of reconstruction.

It is clear, therefore, that opinion on reparations has not yet crystallized and that a repetition of the "khaki election" of 1918 is not impossible though informed persons are aware of the hazards of intemperate demands for reparations.

ENEMY PROPERTY IN THE UNITED NATIONS

United States

Control of Enemy Property.--The foreign funds control of the United States, which was initiated on April 10, 1940, was strengthened by the First War Powers Act of December 18, 1941. After this, the United States forced the liquidation of many business enterprises which were controlled by enemies or which acted in behalf of enemies where such enterprises were not essential to the war effort or necessary in the public interest. The

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 3/8/00
RG 353
Entry
File
5.29F

Treasury explained that such enterprises were blocked and were licensed only to engage in transactions that facilitated liquidation. The intention was to eliminate financial and commercial activity within the United States by individuals or companies whose influence or activity was deemed inimical to the defense of the Western Hemisphere.

Where the liquidation of enemy enterprises detrimental to the security of the Western Hemisphere was not feasible, they were vested in the Alien Property Custodian.

Use of Enemy Patents.--On April 21, 1942, the President directed the seizure of all patents controlled by the enemy, even if ostensibly owned by neutrals or American citizens. He also indicated that patents would not be returned to enemy aliens after the war. On April 27, 1942, the Alien Property Custodian declared before the Senate Committee on Patents that he proposed to take over enemy patents to break any restrictive holds which these patents imposed on American industry and to make them freely available to American manufacturers. He also stated that he would take over the patents of persons in enemy-occupied territory and make them available for war work. He said that the Custodian did not contemplate selling any of these patents and that he would take no steps to interfere with their ultimate disposition as Congress might direct.

These patents are now being licensed to American industry. Enemy patents on which American interests did not have exclusive licenses before their seizure are now licensed on a non-exclusive, non-royalty basis. Patents formerly owned by persons in enemy-occupied territory, on which exclusive licenses are not already outstanding to American industry, are licensed on a non-exclusive basis, royalty free for the duration of the war and six months thereafter. In the case of vested patents on which non-exclusive licenses were issued before seizure, the Custodian now issues licenses on similar terms. Patents already exclusively licensed to American industry, in general, are not disturbed unless they curb production. Royalties on outstanding licenses are paid to the Office of Alien Property Custodian.

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REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry 207
File 5:09 P
Box 76

The General Counsel and the Assistant General Counsel of the Office of the Alien Property Custodian indicate that the policy of the Government is opposed to the return of enemy patents to their former owners but that no such policy has been formulated with respect to the patents taken from persons in enemy-occupied territory. They deny that permanent seizure of enemy patents is contrary to international law but recognize that Congress controls their ultimate disposition.

Criticism of Patent Policy.--A Special Committee of the American Bar Association on the Custody and Management of Alien Property rendered a report, which was approved by the House of Delegates of the Association on March 29, 1943. This committee declared that the policy of free licensing of enemy patents and those of persons in enemy-occupied territory amounted to "outright confiscation or commercial destruction". The committee expressed opposition to confiscation as contrary to the principles of law and feared that it would provoke retaliatory confiscation of American property abroad. It also protested against the free licensing of patents belonging to persons in enemy-occupied territory with the legal government of which the United States maintained diplomatic relations.

Disposition of Enemy Property.--The First Report of the Alien Property Custodian, covering the period from March 11, 1942 to June 30, 1943 declares the policy of the Office to be to sell all vested property except patents before the end of the war. It stresses, however, "that the program of converting vested property into cash does not in any way prejudice the character of any ultimate settlement which will appear appropriate in the light of conditions and policies prevailing after the war". The program, the Report declares, "is not incompatible with a possible future decision to provide full compensation of the former owners". The Custodian, in his letter transmitting the report to the President, points out that Congress is the authority "to determine the ultimate disposition of enemy property subjected to the control of this Office".

Opposition to the confiscation of enemy property was expressed by the National Chamber of Commerce at its annual meeting in 1942. The Foreign Commerce

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

Department of the Chamber, in September 1943, emphasized the importance of immunity because confiscation might be detrimental not only to American property in enemy countries but because a policy of confiscation might be taken as a guide in neutral countries now or in the future.

Edwin Borchard and Otto C. Sommerich writing in the American Journal of International Law for January 1943, opposed confiscation, Borchard on the ground that it would be contrary to international law, Sommerich on the ground of intelligent self-interest. Edgar Turlington insisted in the July 1942 issue of the same journal that Congress had the right, under international law, to confiscate enemy property but did not advocate it. Another lawyer, John Dickinson, declared in Foreign Affairs for October 1943 that confiscation would interfere with the establishing of a desirable peace because it would be a prolongation of economic warfare. He also opposed the retention of enemy property in this country to pay for unlawful acts of the German Government. Jacob Viner, an economist, writing on reparations in Foreign Affairs for July 1943, said that German holdings abroad were of modest proportions and that a substantial portion of them were owned by refugees who had already suffered sufficiently. If German assets outside Germany were taken, he indicated a preference for using them to pay private claims. The editors of Fortune, in an article of September 1942, stressed the development of German cartels and their restrictive influence upon the American economy and opposed any return of German patents.

Latin America

Inter-American Conference.—At the Inter-American Conference on Systems of Economic and Financial Control of June 30 to July 10, 1942, the United States Treasury took the lead in advocating a policy of cutting off economic and financial transactions with nations that had committed acts of aggression against the American Continent or nations dominated by them, as well as transactions for the benefit of those nations. In addition, it advocated the elimination of all financial and commercial activity by real or juridical persons whose influence or activity was deemed inimical to the defense of the Western Hemisphere. This program was approved in a series of recommendations adopted by the Conference.

Brazil

315155

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry 702
File 5.19F
Box 76

Brazil and Mexico.--Indications are found in Mexican and Brazilian decrees that these states are undertaking to eliminate hostile influence by confiscating enemy property.

Territory Occupied by United Nations

Enemy Interests in Italy.--On September 21, 1943, the United States and Great Britain issued a warning to neutrals that their acquisition of enemy property in Italy might be regarded as invalid.

Comment

It is interesting to note that while restitution and reparations have been the object of international attention, the treatment of alien enemy property has not except in so far as the United States has encouraged action by Latin American countries to eliminate Axis interests from the Western Hemisphere. One of the reasons undoubtedly is that restitution or reparation cannot be obtained without international action while a sovereign state may dispose of the enemy property within its control

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry 207
File S.1.9F
Box 76

CURRENT PROPOSALS AND DISCUSSIONS
ON RESTITUTION, REPARATION, AND
ENEMY PROPERTY

		Pages
I.	UNITED STATES	
	A. Official	1
	B. Important Organizations	20
	C. Important Individuals	35
	D. Public Opinion Polls	55
II.	GREAT BRITAIN	
	A. Official	56
	B. Political Parties	60
	C. Important Organizations	60
	D. Important Individuals	61
	E. Estimate of Public Opinion	67
III.	SOVIET UNION	
	A. Official	68
IV.	CHINA	
	A. Official	69
	B. Unofficial	69
V.	GOVERNMENTS-IN-EXILE	
	A. Inter-Allied Armistice Study Committee	71
	B. Belgium	75
	C. Czechoslovakia	77
	D. Greece	89
	E. Luxembourg	90
	F. The Netherlands	90
	G. Norway	92
	H. The Philippines	94
	I. Poland	95
	J. Yugoslavia	96
VI.	OTHER OCCUPIED COUNTRIES	
	A. France	100
	B. Denmark	100
	C. Estonia	101
	D. Latvia	101
VII.	LATIN-AMERICA	

315157

REPRODUCED AT THE NATIONAL ARCHIVES

DECLASSIFIED
NND Numbers 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

		Pages
VII.	LATIN AMERICA	
	A. Declaration of January 5, 1943	103
	B. Inter-American Conference	103
	C. Decrees	106
VIII.	BRITISH DOMINIONS	
	A. Official	107
	B. Unofficial	107

315158

REPRODUCED AT THE NATIONAL ARCHIVES

DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry ~~Lot File 122~~ 202
File ~~Property Rights~~ 5-19F
Box 76

Confidential November 19, 1943.

CURRENT PROPOSALS AND DISCUSSIONS
ON RESTITUTION, REPARATIONS, AND ENEMY PROPERTY

I. UNITED STATES

A. Official

1. Declaration of January 5, 1943

The following declaration by the United States and certain others of the United Nations regarding forced transfers of property in enemy-controlled territory was released to the press on January 5, 1943:

[The United States, certain of the United Nations, and the French National Committee]
"Hereby issue a formal warning to all concerned, and in particular to persons in neutral countries, that they intend to do their utmost to defeat the methods of dispossession practiced by the governments with which they are at war against the countries and peoples who have been so wantonly assaulted and despoiled.

"Accordingly the governments making this declaration and the French National Committee reserve all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the governments with which they are at war or which belong or have belonged, to persons, including juridical persons, resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected."

An explanatory memorandum was drafted by the parties to the Declaration to prevent the different governments from issuing divergent interpretations. The Department of State did not publish the memorandum with the Declaration.

The signatory governments agreed to set up a committee of experts with which the United States is cooperating:

"To consider the scope of existing legislation of Allied countries under which transfers

and dealings

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353 ~~[illegible]~~
Entry ~~Lot File 192~~ 702
File ~~Property Rights~~ 5119P
Box 76

and dealings of the kinds referred to in the declaration would or could be invalidated; and in this connection to receive and collate information as to the methods adopted by the Axis powers and their associates to secure control of property, rights and interests in Allied territory or belonging to residents in such territory; and to report to the committee as quickly as possible."

2. American Commission for Protection and Salvage of Artistic and Historic Monuments in Europe

On August 20, 1943, the appointment of an American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe by the President was announced, in a State Department press release, which stated:

"The Commission will function under the auspices of the United States Government and in conjunction with similar groups in other countries for the protection and conservation of works of art and of artistic and historic records in Europe, and to aid in salvaging and restoring to the lawful owners such objects as have been appropriated by the Axis Powers or individuals acting under their authority or consent.

. . . . . .

"It is ... evidence of the Government's intention that, when military operations have been concluded, there shall be restitution of public property appropriated by the Axis Powers. It is expected that the Commission will use its good offices toward this end and will advocate also that, where it is not possible to restore such property, either because it has been destroyed or cannot be found, restitution in kind should be made by the Axis Powers to the countries from which property has been taken. The Commission, it is anticipated, will also urge that restitution be made of private property appropriated by the Axis Nations."

3. Announcement

REPRODUCED AT THE NATIONAL ARCHIVES

DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

3. Announcement of September 21, 1943

On September 21, 1943 the United States and Great Britain issued a warning which was sent to the neutral governments in Europe and to Argentina regarding enemy interests in Italy. The text of the announcement is as follows:

"It has come to the knowledge of the governments of the United States of America and the United Kingdom that certain concerns in neutral countries, in anticipation of the early occupation of Italy by Allied forces, contemplate acquiring or purporting to acquire enemy-owned shares in Italian companies, and other enemy assets in Italy. The two governments reserve the right to treat as invalid any transfer to neutral ownership of any enemy-owned rights or interests in property in Italy. Nationals, or firms in neutral countries, acquiring or purporting to acquire such rights or interests render themselves liable to all sanctions at the disposal of the governments of the United States of America and the United Kingdom."

4. President's Views on Enemy Patents

On April 21, 1942, President Roosevelt announced that he had directed the Alien Property Custodian to seize all patents controlled by the enemy, even if ostensibly owned by neutrals or American citizens. The Department of State's Radio Bulletin of April 21, 1942 reported:

"The President indicated that where valuable patents are actually controlled by enemy aliens though not registered in their names, these patents would be made available to the war effort.

"Correspondent asked if patents would be allowed to return to possession of enemy aliens following war as was case in last World War.

"President Roosevelt said that after last war U.S. took no steps to keep patents from sliding back into enemy hands but that Government will not follow same procedure after this war."

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REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

The New York Times, April 22, 1942, reported on the Presidential press conference:

"The first thing to be done, the President declared, was to win the war and what patents were necessary to that end would be taken if they could be found. What was more, he added, they would be kept.

"Seized patents, in other words, would not be returned to the enemy after the war as was done after World War I, he said, asserting that experience had shown that patents seized in 1917 had been allowed to slide back into foreign hands."

The New York Times also reported:

"President Roosevelt, in announcing today his order to seize any useful enemy-owned or enemy-controlled patents, said that any technical legal obstacles were to be disregarded. By defining patent rights as property, he could act under his wartime emergency powers.

. . . . . .

"The President's statement also was taken to imply that the patents might become public property under government control after the war."

5. Alien Property Custodian

On April 27, 1942, the Alien Property Custodian, Leo T. Crowley, made a statement before the Senate Committee on Patents. The significant portions of this statement are as follows:

"In order to understand the problem with which we are faced, it is necessary to go beyond the mere term 'patents' and to give consideration to various classes of patents. For the moment I should like to distinguish:

"A. Patents which have been made available for war use by consent decree, or by other action independent of or in addition to the vesting power of the Custodian.

"B. Patents

315162

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Number 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

"B. Patents held by domestic corporations which are enemy-owned or controlled and consequently subject to seizure by the Custodian as a part of the assets of such corporations.

"C. Enemy-owned patents which are neither assigned nor licensed.

"D. Enemy-owned patents which have been licensed.

"E. Patents granted to enemies and subsequently transferred to American owners.

"In some of these cases we may have to exercise power beyond that which is acquired in merely taking over the rights of the enemy owner. Enemy-controlled domestic corporations may have licensed their patents in a manner so prejudicial to the public interest that these licenses must be wholly or partially abrogated. The same, of course, may be true of patents owned directly by enemy interests.

"In the case of patents granted to enemies and subsequently transferred to an American holder we must also go behind surface appearances. In the normal case, when such a transfer has been made in good faith for value and in a manner not contrary to the public interest, the patent has ceased to be enemy-owned and is as much a domestic patent as though it had been originally invented by an American and had never been held by any foreign interest. In such a case the Custodian clearly has no role to play. But there are many instances in which enemy-controlled patents have been assigned to American holders with understandings that these patents will be held or used in a manner inconsistent with the general welfare of this nation. In such cases we conceive it to be the duty of the Custodian to investigate and, if need be, proceed with such action as may be necessary.

"In this statement of the problem I have referred only to enemy-owned or controlled patents and American-owned patents. Certainly when we refer to enemy-owned or controlled patents we include patents which are ostensibly

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315163

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Memory 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

owned by neutrals but which actually are held for the benefit of enemy interests. There will be a great many instances in which neutrals appear to be patentees, assignees or licensees, but in which the Custodian must act. When citizens of neutral countries are licensees of enemy-owned patents they must be treated in no more lenient fashion than are licensees of enemy-owned patents who are American citizens.

"The problem with which we are concerned is not only that of patents but also of copyrights and trade-marks. We have already received requests to take action to permit the translation of works of which the copyrights are held by enemy aliens in order that these works may be available in English for use in war work. We propose to take action in such cases if for no other reason than that the holder of the copyright is not in a physical position to exercise control over it.

"We must act not only with respect to patents which are owned or controlled either directly or indirectly by the enemy but also with respect to the patents of persons who are not in a position to exercise control over their property. The citizens of occupied countries are, in some cases, unable to make the patents available for the use which the public interest of this country demands, and it is clearly the duty of the Custodian to vest these patents and make them available for war work wherever and whenever needed.

. . . . . .

"The Office of the Alien Property Custodian is, of course, only now being organized. While as we go along and become more familiar with the problems involved we may want to make changes, the policy which we propose to follow in regard to patents, including also in that term trade-marks and copyrights, is along the following lines:

"1. As rapidly as possible, we will take possession of all enemy-owned or controlled patents and all interests of enemies under

patents

315164

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry Lot File 122
File Property Rights
Box 76

patents where such patents or interests appear to have any substantial value.

"2. We believe that the primary purpose of vesting and administering foreign-owned patents is to break any restrictive holds which these patents may have on American industry, particularly restrictions which may operate to impede war production. We propose to seek out such restrictions, with the aid of the Department of Justice, the Board of Economic Warfare, and others, and to break them wherever we find them, by whatever means may be available.

"3. In order to secure the maximum utilization of patents which may come into our possession, we propose to make them freely available to American industry. We cannot, at this time, state exactly the terms under which they will be made available, since the terms will necessarily vary from one patent or type of patent to another. In general, however, no patents will be sold at this time. Licenses will be issued, on a non-exclusive basis, to any qualified applicant. Where exclusive rights are sought, it will be our policy to put upon the applicant the burden of proving that the exclusive grant would be in the public interest. It seems to me that we must feel our way with respect to our policy on making charges for the use of enemy patents. It may be that some patents should be thrown into the public domain. In other cases where licenses are sought in order to manufacture material for the government, they will be made available at a low rate on the condition that any benefit thus obtained shall accrue to the government, not to any individual or private corporation. In some cases, this may necessitate a scaling down of existing contracts. In determining upon royalties, it must be borne in mind that as a general principle the lower the royalties the more widespread will be the use of the invention and the greater the public benefit. On the other hand, there may be cases in which a low royalty would only result in an unreasonable profit to the licensees.

"4. In

315165

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry [illegible]
File [illegible]
Box 76

"4. In regard to patents which are owned by corporations which have or which will come into my control, as distinguished from patents which are seized directly from an enemy owner, the general policy will be to permit the corporation, as an operating unit, to retain and continue to manage those patents which are necessary and useful to its business; any other patents which the corporation may own will be administered directly by the Alien Property Custodian.

"5. For the present, the administration of patents which are seized directly from enemy owners will also be under the immediate control of the Office of the Alien Property Custodian. It may eventually be desirable to turn those patents over to a government-owned and operated corporation which could not only administer the patents, but which could also conduct the necessary technological research to maintain and improve their value.

"6. The income which accrues from patents in our control, both in the form of royalties from licenses already outstanding and from licenses hereafter granted may be used to defray the expenses of discovering the patents, appraising their value, making them usable and available to licensees, administering the licenses, and in such research projects as may be necessary to obtain the greatest possible use of the patents.

. . . . . .

"The policies which I have outlined were discussed with the President and I believe that they constitute a program which follows very closely the President's statement on the subject at a recent press conference. . . .

"Beyond the administration of patents in a manner designed to maximize war production, the Office of the Custodian will await a statement of Congressional policy concerning their ultimate disposition. No steps will be taken which will in any way interfere with the ultimate disposal of these patents in the public interest as Congress may direct. We

propose

315166

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

proposo to advise Congress of any major changes of policy which we may make in order that, if these changes are not in accord with its wishes, we can be directed accordingly."

On December 7, 1942, the Alien Property Custodian submitted to the President a comprehensive report on patents, in which he stated:

"You have directed the Office of Alien Property Custodian to seize all patents controlled by the enemy, regardless of nominal ownership, and to make these patents freely available to American industry, first for war purposes of the United Nations, and second for general use in the national interest.

"Today I can report satisfactory progress in this pro ram . . .

"From the beginning we have immediately seized every enemy patent recognized as of importance to the war and licensed it to American business. We will continue to do this. In addition, we are now ready to announce a general patent program in conformity with the policy you outlined to me: To make these patents readily and freely available forever to American industry, and to encourage the research necessary to develop these patents."

The Custodian also stated:

"We feel a great measure of responsibility toward the nationals of enemy-occupied countries. These people are now unable to prosecute the patent applications they have pending or to manage the patents which they own. With a view to safeguarding their interests and to making these patents a working part of the war machinery, title to these patents and pending applications for patents is being vested, and the pending applications are being prosecuted.

"We believe, however, that our friends in the occupied countries would have us turn their patent rights into an active weapon of warfare for the defeat of their oppressors. Hence, if

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315167

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 3/8/00
RG 353
Entry
File
Box 76

no license is already outstanding, we shall grant non-exclusive licenses under these patents, good for the life of the patents, royalty-free for the duration of the war and six months thereafter. Under these licenses reasonable royalties will be charged after the termination of the war emergency."

In January 1943, the Alien Property Custodian issued a pamphlet called Patents at Work, a Statement of Policy, which was prefaced by extracts from the report of December 7, 1942. The text of the pamphlet stated:

"For our part we pledge, first, that the patents directly controlled by this agency of Government will be available readily and immediately to serve all American industry, and that active use of the store of technical knowledge which these patents represent will be fostered; second, we pledge that we shall encourage further research on these inventions for the lasting benefit of American industry, American labor, and the consuming public; and third, we shall take all steps within our power to make certain that vested enemy patents are made available forever to American industry."

Referring to the third of these points, the pamphlet states:

"Our third responsibility is undertaken on the specific instruction of the President. We shall refuse to sell or to release title to the enemy patents. The inventions covered by these patents will be made a permanent possession of the American people and, through freely granted licenses, they will be incorporated in our national industrial machinery. The ultimate disposition of the patents vested from nationals of enemy-occupied countries will be the subject of discussion with the governments in exile."

The licensing policy of the Alien Property Custodian as outlined distinguishes between patents belonging to enemies and patents belonging to non-enemies residing in enemy-occupied countries, and not exclusively licensed to Americans. Enemy patents are licensed royalty-free for the duration of the

315168

REPRODUCED AT THE NATIONAL ARCHIVES

DECLASSIFIED
Authority NND 760089
By TJ NARA Date 2/8/00

RG 353
Entry ~~Lot File 122~~ 202
File ~~Property Rights~~ S.19F
Box 76

of the patent, while patents belonging to persons in enemy-occupied territory are royalty free only for the duration of the war and six months thereafter though the license runs for the life of the patent. The Custodian explained that "the patent licensing policy ... has been designed to further two major objectives--the winning of the war and the permanent enlargement of our national production in the post-war period."

In the Alien Property Custodian's letter transmitting to the President his forthcoming Annual Report of the Office of the Alien Property Custodian, March 11, 1942 to June 30, 1943, Mr. Crowley states:

"It remains for Congress to determine the ultimate disposition of enemy property subjected to the control of this Office. In the meantime, the functions of the Custodian are twofold--to search out and seize enemy property and property interests, and to administ these and supervised properties in such a way that the American economy and the American war effort will derive the maximum benefits of control.

"As a point of national policy it will probably become advisable to dispose ultimately of most or all of the vested properties that are maintained as going concerns. A desirable sales policy must foster continued existence of these enterprises as strong and economically independent producing entities; it must also be designed to prevent return of these properties to their erstwhile enemy owners."

In the Annual Report itself, it is stated that the policy of the Office of Alien Property Custodian is

"to transfer to private enterprise all vested properties except patents and copyrights, as soon as appropriate measures are taken to remove the influences of enemy control and as soon as satisfactory terms of sale can be arranged."

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

With regard to the ultimate disposition of vested property, the Report states:

"In the light of conflicting opinions which now obtain regarding the ultimate disposition of controlled property, ranging from approval of outright confiscation to complete compensation of the former owners, it is perhaps necessary to add at this point that the program of converting vested property into cash does not in any way prejudice the character of any ultimate settlement which will appear appropriate in the light of conditions and policies prevailing after the war. The original owners are in general interested not in specific pieces of property but in the economic value of their property as a source of income. The current market price of any property represents the best estimate of its economic value. The vested properties are in general to be sold at the best prices which can be obtained under current market conditions. Hence our program of selling vested property is not incompatible with a possible future decision to provide full compensation of the former owners."

6. General Counsel, Office of Alien Property Custodian

On January 16, 1943, the General Counsel of the Office of Alien Property Custodian, A. Matt Werner, in an address before the Wisconsin Bar Association described the legislative measures for the return of enemy property after the last war and said:

"The determination whether similar provisions should be made after this war will rest with the Congress in the light of the experience we are now gaining.

"From the point of view of economic warfare, perhaps the most important of enemy properties are patents, which are monopolies created and protected by our own laws. As such, they clearly should not be permitted to create restrictions upon our war production or upon the reestablishment of a sound economy after the war."

7. Assistant

315170

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

7. Assistant General Counsel, Office of Alien Property Custodian

On April 26, 1943, John Ernest Roe, Assistant General Counsel, made a speech on "War Measures, the Alien Property Custodian, and Patents" before the Practicing Law Institute in New York City. Important extracts from this speech are as follows:

> "We may sum up the experiences of the last war by saying that the policy of licensing without seizure, apart from a small number of patents of special importance, failed to accomplish any large scale utilization of inventions covered by enemy patents and the policy of seizure followed by sale failed to achieve its primary purpose--the protection of the independence of American industry after the war."

After describing Nazi dominance through cartels, he said:

> "In view of all these considerations, it was generally recognized by the outbreak of the present war that the methods employed by the Alien Property Custodian in the last war had become outmoded, that flexible powers were needed and that the proper function of the Office of Alien Property Custodian went far beyond acting as a mere conservator of enemy property during the period of the war."

On the question of royalties, he declared:

> "The seizure of a patent by the Custodian alters the desirability and necessity for royalty charges because the Custodian as the owner of a patent has no interest in restricting its use as a means of increasing his income. The national interest in the immediate widespread use of the patents which have been seized and in the future improvements which will result from such use are of greater consequence than the amount of income that might be obtained out of royalties."

On the subject of non-exclusive licenses, he remarked:

> "If the Custodian does not offer your clients exclusive rights under patents held by him, he does

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 3/8/00
RG 353
Entry 202
File 5.19F
Box 76

he does offer to all the opportunity to develop and obtain patents on exclusive improvements without the obstacle an exclusively licensed dominant patent would create. Where an exclusive license is given, no one but the licensee has much incentive to devise improvements. By granting non-exclusive licenses we enable all comers to use the patent and we enable each licensee to improve the patent art in his own way without his improvement being dominated by the vested patent."

With reference to patents vested as the property of nationals of enemy occupied countries he said:

"In regard to these patents we do not have the same reasons to believe that an ultimate return of the patents themselves will be against the national interest. Accordingly, under such patents, outstanding licenses will be continued in effect and where royalties are provided for, the collection of these royalties will be continued. Where the licenses are exclusive their terms will be respected and where they are non-exclusive the patented inventions will be made available to other licensees on the same terms. Where no licenses were previously issued, however, the patents are offered to all applicants on a royalty free basis for the duration of the war and six months thereafter. After this period such patents will be subject to reasonable commercial royalties."

He also stated:

"It is the announced policy of the Government that enemy patents are not to be restored to their former owners after the war. No such policy has been formulated with respect to patents taken from persons in enemy-occupied countries, many of whom are not enemies at all except in a technical sense.

"Accordingly, while we feel it important to put such patents to work immediately, on such terms as will obtain from them the maximum benefit to the United Nations war effort, we want to be sure that after the war the patents will be in such a state that they can be returned to the former owners without undesired encumbrances."

On the

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry Lot File #82 207
File [illegible] 5.19F
Box 76

On the compatibility of permanent seizure with international law, the remarks of the Assistant General Counsel are here quoted in full:

"In this connection, the argument is also sometimes made that the policy of permanent seizure of patents conflicts with principles of international law hitherto practiced by this country.

"I think such an argument rests upon a confusion. The consistent war time policy of this Government has supported seizure of enemy property. This was practiced in the Revolutionary War. It was authorized, after the adoption of the Constitution, by the first trading with the enemy act of 1812 (2 Stat. 778). The constitutionality of such action was sustained in Brown v. United States, 8 Cranch (12 U. S.) 155 (1814) and statutory seizures were upheld in the prize cases, The Rapid, The Julia and The Sally also in 8 Cranch (12 U. S.) at 155, 181 and 382 (1814), and others. In like manner, Congress ordered seizure of enemy property during the Civil War, (12 Stat. 255), and this was squarely upheld by the Supreme Court in Miller v. U. S., 11 Wall. (78 U. S.) 268 (1870).

"The Trading with the Enemy Act of 1917 again authorized seizure of enemy property. The effect of such a seizure was a complete divestiture of the enemy interest. The cases are familiar. An interesting discussion of this question with a review of some of the authorities will be found in a New York case wherein an attempt was made to attach the interest of the enemy in property held by the Custodian. The attachment was vacated upon application of the United States Attorney. Anglo-Continentale Trust Maatschapji v. A. E. G., 12 N. Y. Supp. (2d) 964 (1939). When the policy of seizure was extended to patents, the Supreme Court squarely held that by such seizure the enemy was wholly denuded of ownership, and noted in the Chemical Foundation case, that he had no further legal interest in the terms of the disposition made of such patents.

"It should be remembered that when provision was made after the last war for return of

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REPRODUCED AT THE NATIONAL ARCHIVES

DECLASSIFIED
Authority NND 760089
By TJ NARA Date 2/8/00

RG 353
Entry ~~Lot File 192~~ 202
File ~~Property Rights~~ #5119F
Box 76

seized patents, outstanding sales and licenses were confirmed, returns being permitted only subject to all licenses, contracts, liens and encumbrances created by action of the Alien Property Custodian. You will find the provision in Section 9(j) of the Trading with the Enemy Act, as amended first by the Winslow Act of 1923 and then by the Settlement of War Claims Act of 1928. Only an insignificant number of patents, some 130 in all out of over 12,000, remained to be returned free and clear. Although partial compensation was provided after the war for the use of such patents, that was not done by virtue of any provision in the original statute, nor did it affect the validity of the seizures made nor of the disposition of the seized patents, nor did it operate to interfere with American investments made in connection with seized patents. Incidentally, no compensation was paid to the former owners of the patents assigned to the Chemical Foundation. They were not even given a distribution of the $266,401 paid by the Foundation. I am advised that this sum is still held in the United States Treasury in Alien Property Custodian Trust Account #46542.

"Congress has now provided for the seizure of enemy patents, among other properties, and for their disposition in the interest of and for the benefit of the United States. It has again made no present provision for compensation. This seems to me to be plainly in accord with our precedents. Whatever course the Congress may adopt after the war, I see no reason to suppose that it will seek adversely to affect the validity of action taken by the Custodian pursuant to his statutory mandate, nor any reason to assume that enemy patents themselves will ever be returned. Nor do I see any reason to believe that the Congress in making post-war arrangements will disturb, in favor of former enemies, American interests acquired in good faith pursuant to government action.

"The novelty of the policy deliberately announced by the President is not in that patents are not to be returned to their former enemy owners, for this was equally the policy originally announced by the Custodian and

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REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

approved by the Congress in the last war. The novelty of the new program lies in the fact that this time patents are not to be sold, even to American industry. By this means we hope to be more successful in preventing a surreptitious restoration of hostile controls."

8. Assistant to the Alien Property Custodian

On August 24, 1943, Francis J. McNamara, Assistant to the Alien Property Custodian, delivered an address before the General Sessions of the Real Property, Probate and Trust Law Section of the American Bar Association on "Enemy Interests in Estates and Trusts and Other Court or Administrative Actions or Proceedings". In his conclusion, he said of the Alien Property Custodian:

"It is his province to take the property of our enemies, to protect the property of our friends, to destroy the economic resources of the Axis powers, to conserve the assets of the victims of aggression to the end that the injustices and iniquities of war may be settled at the peace."

9. Elimination of Axis economic influence

In June 1942, the Treasury Department prepared a document entitled Administration of the War-Time Financial and Property Controls of the United States Government especially for the Inter-American Conference on Systems of Economic and Financial Control which convened in Washington on June 30, 1942. (This document was published by the Treasury in December 1942.)

The introduction to this pamphlet stated:

"The germs of Axis infiltration must be eradicated from every free country or, like any other malignant germs, they will seize upon any moment of weakness in the body which harbors them to spread the disease they represent."

The pamphlet explained United States measures of foreign funds control which had the following objectives:

"(a) The

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

"(a) The complete severance of all financial and commercial intercourse, trade and communication, direct or indirect, between the United States and the Axis and Axis-dominated countries.

"(b) The prevention of all financial and commercial intercourse and trade between the United States and any country outside the Western Hemisphere which directly or indirectly benefits the Axis.

"(c) The prevention of all financial, commercial and trade transactions between the United States and any other American Republic which directly or indirectly benefits the Axis including all transactions which benefit real or juridical persons within the American Republics whose influence or activity is deemed inimical to the security of the Western Hemisphere.

"(d) The elimination of all financial and commercial activities engaged in by real or juridical persons within the United States whose influence or activity is deemed inimical to the security of the Western Hemisphere."

The Treasury further explained:

"The United States Government has forced the liquidation of many business enterprises whose activities were found to be inimical to the defense of the Western Hemisphere, where such business enterprises were not essential to the war effort and where their continued operation was not deemed necessary in the public interest. Included among the types of enterprises which have been so liquidated are:

"(1) Business enterprises which were controlled, directly or indirectly, by Germany, Italy, or Japan or persons within such countries, irrespective of the technical legal ownership of the enterprises.

"(2) Business enterprises which were acting on behalf of or for the benefit of Germany, Italy or Japan or persons within such

315176

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

such countries, irrespective of the technical legal ownership of the enterprises, including business enterprises which were attempting to hold foreign markets for such countries or persons.

"Such business enterprises are forced to liquidate through the following procedure: In view of the fact that such a business enterprise is a blocked national, any and all property of such business enterprise is blocked and may not be dealt in without a license and such business enterprise may not engage in any financial or commercial transactions except pursuant to license. When it is determined that such business enterprise is to be liquidated, any operating license which may be outstanding in connection with such enterprise is revoked and a license is issued which permits only those transactions which are designed for the speedy liquidation of the enterprise and the distribution of its assets to desirable individuals and concerns ...

"In certain cases it has been found that the liquidation of business enterprises whose activities are detrimental to the security of the Western Hemisphere is not feasible, because the continuation of the business enterprises is in the public interest. In such cases, the interests held or controlled by undesirable influences in the particular business enterprise or in related enterprises have been vested in the Alien Property Custodian under the authority granted by the First War Powers Act, 1941."

The pamphlet also stated:

"In any particular industry, the country imposing the control program must keep in mind its basic purpose with reference to that industry and shape its policy in order to best achieve its ends. A trade-mark belonging to an Axis business enterprise represents an investment in good will, and is part of that enterprise's enduring roots in the country. Disposition of an enterprise should include the disposition of the trade-mark as well. Destruction of a trade-mark might be the best method of disposition.

With

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NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry Lot File 122 702
File Property Rights 5.191
Box 76

With reference to patents, on the other hand, since they represent not an investment in good will but an accrued investment in research, they should be used for the benefit of the local economy. In a problem of this type, production facilities and research facilities must either be developed in the individual country or relationships must be fostered between the local enterprise and an enterprise in another country of this Hemisphere having such production and research facilities."

The General Counsel of the Treasury Department was chairman of the Inter-American Conference, and its recommendations correspond closely to the objectives the Treasury outlined above.

B. Important Organizations

1. American Bar Association

On February 26, 1943, a Special Committee of the American Bar Association on the Custody and Management of Alien Property rendered a report with recommendations, which was approved by the House of Delegates of the Bar Association on March 29, 1943. According to a report of the committee to the meeting of the Association, August 23-26, 1943, the committee's report was sent to the Departments of Justice, Treasury, and State, and the Alien Property Custodian. The committee has conferred with the Alien Property Custodian on the need for clarifying legislation on the necessity of judicial review of wrongful seizures by the Custodian. The salient points of the committee's report are as follows:

"Despite denials, this policy [of free licensing] stated by the Alien Property Custodian is considered by your Committee to be outright confiscation or commercial destruction, which is an indistinguishable equivalent.

"A statement of propositions bearing upon the treatment of patents by the Alien Property Custodian prepared by John A. Dienner, Esq., of Chicago, is appended hereto, and from it the following propositions are stated and adopted on this point:

"1. Patents

315178

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

"1. Patents are property. They should be subject to the same burdens and to the same treatment as other forms of property.....

"2. In a patent the property consists essentially in the right to exclude others from making, using, and selling the invention of the rights to produce the article. He has that right by common law.

"3. The ownership or use of property of any kind by aliens--patents or any other form of property--should not be permitted to interfere with the war effort.

"4. The principle of seizing or, if necessary, of destroying the enemy owned property for the purpose of excluding the enemy from the use or enjoyment thereof in war time is well established.

"5. Seizure of alien owned patents would deprive the enemy alien of the use of the property therein. Destruction of that property is not necessary to keep it from falling again into enemy hands.

"6. The granting of free licenses to any United States citizen who applies is in effect a destruction of the property right, since the right to exclude is destroyed.

"7. Granting of free licenses to U.S. citizens for the full terms of the patent is of no more benefit than would be revocation of the patent, that is, tearing up the patent. Granting of free licenses to U.S. citizens for the duration of the war of enemy dominated alien owned patents appears to be a destruction of a part of the life of the property which appears to lack legal sanction.

"8. A great part of the patent resides in giving protection to the development and marketing expense of the enterpriser who undertakes to put the patented device on the market. This protection pro tanto will be destroyed.

"9. In the

315179

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

"9. In the post-war period, the need for business enterprise is apparent. Patents afford an inducement to start an enterprise on private capital. If the patent is freely licensed to anyone, then the inducement to risk capital in the starting of an enterprise is destroyed. Free licensing therefore is destructive to the stimulus of post-war enterprise.

"10. Publication of the pending alien-owned applications is beneficial to the extent that it reveals the solution of a problem, that is, given engineering knowledge which was not previously available, but such publication per se confers no right on anyone."

"Your committee is advised and believes that the interests of U.S. nationals and residents in patents issued by enemy countries may be as great in money or commercial value as or greater than, the corresponding interest of nationals and residents of enemy countries in U.S. patents. It is impressed by the very great and quite needless hazard of retaliatory confiscation of U.S. property abroad if a policy of confiscation--open or scarcely concealed in the form of commercial destruction--is pursued by our country.

"Your committee is unanimously opposed to confiscation, in any form or by any device, of property of any kind, including patent, copyright and trade-mark, i.e., artistic and industrial property, so long as alternative methods of war and post-war use and control are equally available and equally adapted to the successful completion of the war effort and our victory.

"Confiscation is contrary to the principles of law. It is contrary to our constitutional law principles, and to the principles of international law. When the reign of law for which we are fighting returns, parties injured by confiscations may be expected to seek just redress; and a just administration of law may be expected to award such redress. It has been so in the past; and if the basic traditional concepts of justice have meaning, it will be so again.

"Effective

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DECLASSIFIED
NND Agmomy 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

"Effective and adequate alternatives to confiscation and commercial destruction of patents are available. They are stated in the proposed resolutions.

"Your committee fully realizes that its views are quite at variance with the patent policy of the present Administration as announced from the White House and from the office of the Alien Property Custodian. The Administration's policy has only recently been officially formulated; it has not yet been translated into irremediable action. Your committee believes that an effort to alter the policy is timely, although the time is short. Eventually, peace treaties must provide in some way for determination of the rights of owners of property, including patent property. The fact of confiscation or commercial destruction will not alter the presentation or legal justice of these claims; but it may and will transfer the burden of just compensation from that section of the public which is interested in, uses and benefits by the patent, to the general treasury and the general public. These propositions are stated as follows by Mr. Dienner, and the committee adopts his statements as its own:

"11. The theory of the U.S. Patent System is to gather from the public which is interested in the invention--not from the general public--the necessary funds for rewarding the inventor and enterpriser for the cost of the invention and development and marketing.

"12. The payment of reasonable compensation for the seizure of alien property, which payment will undoubtedly be demanded after the war, must, under the A.P.C. method of administering the seized property, come out of the general treasury, that is, must be paid by the general public.

"13. Hence, throwing open these patents for general free licensing is contrary to the basic theory that only that part of public which chooses to use the benefit of the invention covered by the patent should pay the premium which constitutes

the reward

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Authority NND 760089
By TJ NARA Date 2/8/00

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File ~~Property Rights~~ 5.19R
Box 76

the reward of the inventor who invents it and the manufacturer who develops and makes it.

"14. The seizure and free licensing of 50,000 United States patents have so great an impact upon the working of the U.S. patent system that it would appear to be wise for the Alien Property Custodian, before embarking upon any fixed program, to seek a directive from Congress and authorization for the course which it is intended to pursue."

The committee next discussed the policy of the Alien Property Custodian toward patents owned by nationals of occupied countries and said:

"Your committee does not accept these policies.

"It has been stated that the reason for seizing the patents of the nationals of friendly but occupied countries is that in many cases no one is available to grant licenses under these patents and that they should be put to work during the war period. On this excuse, the Alien Property Custodian proposes to grant licenses for the life of the patents which are to be free for the war period. This obviously places the allied nations at a disadvantage as compared to neutral nations and should not be done. By vesting title to the patents of such countries, the Alien Property Custodian is in a position to grant licenses but these licenses should not be granted unless approved by the agent or diplomatic representative of the owner of the patent. There can be no presumption of a desire to have the licenses granted in the face of an absolute protest.

"The Alien Property Custodian has taken title to pending applications of friendly but occupied countries and whereas it is the usual rule that patent applications will be maintained secret, he has announced that he will make these accessible to competitors contrary to the International Convention and assumes to take the prosecution of the applications away from the attorney of record to be handled on a mass basis.

"In any

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry ~~Lot File 122~~ 202
File ~~Property Rights~~ 5129F
Box 76

"In any case where the attorney of record is unwilling to continue the prosecution of an application because of doubt about his fees, prosecution by the Alien Property Custodian is proper, but where the attorney of record is willing to continue the prosecution, he should be permitted to do so. The application of nationals of friendly but occupied countries should not be laid open to inspection.

"It is believed that the resolutions are in harmony with the view of the Embassies and Ministries of the occupied countries as currently presented by these diplomatic officials to the U.S. State Department. These views appear to your committee to be eminently just and fair; and it may be assumed that they are becoming the basis of a just policy now being outlined.

"Occupied countries with which the United States currently has no diplomatic relations--at this writing, significantly, France--should in your committee's judgment, for patent purposes, be treated like enemy countries.

Other Foreign-Owned Patents

"The Alien Property Custodian's policy presently lumps all foreigners who are non-enemies into one group. Your committee feels that a suitable discussion should at least distinguish between the occupied countries with which the U.S. has diplomatic relations and the countries which are free of German occupation. A thorough discussion would distinguish between free countries which maintain strict neutrality --as Sweden, Switzerland and Spain; the neutrals which grant us belligerent rights; and those openly fighting our enemies and on our side.

"Our officials may feel current uncertainty about the adequate interlocking of their procedures for controlling the enemy with ours; and these uncertainties may for a time be mutual. It would seem that common understandings with our good neighbors and military allies should shortly clear up such uncertainties, and do away with the thought that we and

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NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File Property Rights
Box 76

our fellow-fighters should, even by the implication of a legislative authorization of which no actual use is made, threaten seizure of each other's property, including patents."

2. Chamber of Commerce of the United States

At a meeting on September 17-18, 1943, the Board of Directors of the Chamber of Commerce of the United States approved a report of the Foreign Commerce Department Committee, which read as follows:

"The membership of the National Chamber, at its 30th Annual Meeting in 1942, made the following declaration with regard to 'Private Property in War':

'The historic policy of the United States has been to hold immune from confiscation enemy private property in time of war. During World War I our government endeavored to provide for the retention of the assets of enemy nationals until their governments made provision for the satisfaction of claims of our citizens who suffered loss and injury through aggression. Those considerations should underlie our policy in the treatment of the property of enemy nationals in the present war.'

"It is significant that a recent statement by the Office of Alien Property Custodian of the United States declares:

'The Office of Alien Property Custodian takes title to or supervision over enemy property in order to prevent it from being useful to the enemy and in order to administer it in the interest of the United States.'

"The Foreign Commerce Department Committee wishes to emphasize the importance of the policy of keeping enemy private property in time of war immune from confiscation as a precedent in relation to enemy treatment of United States property overseas. Any attacks on the

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By TJ NARA Date 2/8/00

RG 353
Entry ~~Lot F70-122~~ 202
File ~~Property Rights~~ 5.19F
Box 76

on the rights of enemy private property in the United States would create an example that might be highly detrimental, not only to the treatment of United States property in enemy countries but also to the attitudes of neutral countries where, now or in the future, our policy might be taken as a guide.

"United States property in enemy and enemy-occupied countries exceeds in value enemy property in the United States. The policy of non-confiscation is thus not only a sound moral principle, but in this instance, is a course of enlightened self-interest.

"It is particularly important that our government take every possible step to resist any forced disposal of United States property abroad, especially where such forced sale would involve compensation in foreign currencies or compensation based on mere book or inventory values, without consideration of future earning power.

"As enemy or enemy-occupied territory is conquered or liberated, United States properties should be restored to their owners at the earliest possible moment and not subjected to a lengthy interim period of governmental operation and control--American or otherwise. To this end the appropriate branches of our government should be urged to facilitate at once the access to liberated or conquered countries of representatives of American interests owning properties in those countries, for the purpose of inspection and rehabilitation and for the entry into those countries of personnel having special technical knowledge for placing these properties again upon an operating basis.

"The United Nations should adopt a common basic policy with regard to rehabilitation of properties and entry of personnel for their management and operation, in order that no nation may have undue advantage, nor the appearance of undue advantage, in the economic rehabilitation of conquered or liberated areas.

"The Foreign

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry ~~1 of File 122~~ 702
File ~~Property Rights~~ 5.19F
Box 76

"The Foreign Commerce Department Committee is working in coordination with the Foreign Property Holders Committee of the National Foreign Trade Council and with the departments of the government that are concerned in this matter. The Foreign Commerce Department Committee recommends that, as information from government or private sources, become available, widespread publicity be given to such data through the National Chamber's available channels, for the benefit of its members and for the information of the general public."

3. Council on Foreign Relations

The Economic and Financial Group of the Council on Foreign Relations of which Alvin H. Hanson and Jacob Viner are Joint-Rapporteurs formulated a series of recommendations on reparations policy toward Germany based on a memorandum of March 18, 1943 by William Diebold, Jr. The text of these recommendations follows:

"A. Recommendations

"There is justice in the claim of the occupied European countries that Germany should be required to restore to them the wealth she has taken in the course of the war. However, there are serious dangers not only to the future Germany but to the receiving countries and the world economy at large in reparations settlements. Only under certain conditions and with careful management can things be taken from Germany with sure benefit to the rest of the world. Careful handling is therefore crucial if a workable system is to be devised. A bad system is likely to break down, causing dangerous friction between the United Nations and creating barriers to the development of a workable world economic order and reconciliation between peoples.

"Therefore, the Group makes the following recommendations:

"Principles

315186

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 3/8/00
RG 353
Entry 202
File
Box 76

"Principles

"1. The purpose of reparations

"Reparations should be regarded primarily as a means of speeding recovery and achieving the economic peace aims of the United Nations. Germany should be required to contribute goods and services to the recovery of other countries without direct return to herself, insofar as that (a) is desired by the other countries, (b) does not injure third countries, and (c) can be done without so affecting Germany's living standards and productive plant as to create economic and political problems for the rest of the world. Reparations should be considered as one of a series of measures of economic reconstruction and so should be judged by the contribution they can make toward establishing the kind of world economy envisaged in the peace aims of the United Nations.

"2. Elements of policy

"In order to achieve the purpose set out above, a United Nations reparations policy should conform to the following principles:

"a) Reparations should be imposed only to the extent that, and in the form that, they may reasonably be expected to contribute to the strengthening of the post-war world economic and political order.

"b) There should be no financial reparations; all reparations obligations placed on Germany should be dischargeable only through the export of goods and services, except for the return of currency and evidences of ownership of the victor and liberated countries. This principle would not be infringed if it should prove convenient to state certain of Germany's reparations obligations in terms of sums of money expendable by the creditor countries only within Germany for specific kinds of goods.

"c) Whether

315187

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

"c) Whether reparations should be imposed for moral or political reasons is not a matter on which the Group wishes to express an opinion. However, whatever it may be thought wise to do on those grounds, the Group wishes to point out that there are limitations on the amount of goods and services which it is economically desirable to take as reparations from Germany.

"d) Germany's reparations obligations should be stated in terms of specific amounts of goods or services of specific types that the creditor countries are willing to accept, and not as a total monetary sum.

"e) The period of Germany's reparations obligation should be limited to a few years after the cessation of hostilities, coinciding roughly with the time required for basic European reconstruction.

"f) Reparations should not be relied on as a major instrument of control over Germany's military power.

"Program"

"1. Immediate American action

"The United States should endeavor to reach an agreement with the other United Nations as soon as possible on a program that will embody the above principles. Two factors make such action urgent:

"a) The experience of the last war shows that delay is almost certain to make it more difficult to arrive at a reasonable settlement, and to provoke friction among the allies. Up to the present, public discussion of reparations has been vague, so the field is open for the formulation of a concrete program on an enlightened basis.

"b) European

315188

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

"b) European peoples are likely to want a more stringent reparations policy than it will prove practicable or desirable to carry out. Governments-in-exile may be reluctant to commit themselves to a moderate program now. Therefore, leadership by the United States (and probably Great Britain) in preparing a reasonable reparations program and urging the other United Nations to accept it may be crucial.

"2. United Nations declaration

"Negotiations among the United Nations should aim at the early issuance of a public declaration stating that the above principles will govern their reparations policy. Such a declaration would crystallize present thinking in favor of reparations in kind and against financial reparations; it would tend to check a drift toward an undesirable policy. The announcement would also have propaganda value within Germany for the United Nations cause.

"3. A United Nations Reparations Commission

"At an early date a United Nations Reparations Commission should be created. Its duties should be to:

"a) study the reparations problem and elaborate a program for carrying into effect the principles agreed on by the United Nations;

"b) collect information and prepare machinery in detail for carrying out the program as soon as hostilities cease;

"c) become the operating agency to carry out the program at the cessation of hostilities or whenever the United Nations think it desirable to levy reparations;

"d) coordinate its work with that of the occupying authorities.

"4. The

315189

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
NND Automy 760089
By TJ NARA Date 2/8/00
RG 353
Entry 702
File S.19F
Box 76

4. The reparations program

"The program to be developed by the Reparations Commission should follow these lines:

"a) After the war, national governments eligible to receive reparations would apply to the Commission for specific amounts of goods to be delivered immediately or within a short time; they would be obligated to accept such goods or forfeit some of their rights under the reparations arrangement.

"b) The Commission should decide whether or not such goods could be supplied from Germany without

"i) impairing the efficiency of the German productive plant beyond a certain point, or

"ii) reducing German living standards below a certain level.

The point beyond which the efficiency of Germany's productive plant should not be reduced, and the level below which the country's living standards should not be reduced would be decided upon by the United Nations according to what seemed

"i) in conformity with the basic political principles of the peace settlement;

"ii) most likely to prevent injury to the economy of the rest of the world.

If the request for reparations met these tests, the Commission would arrange for the delivery of the goods to the creditor country; if it did not meet them, the request would be modified or rejected.

"c) The Commission should decide between conflicting claims of creditor countries

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry Lot File 207
File 5.19F
Box 76

countries according to the principles of policy approved by the United Nations; it should also entertain protests and hear the viewpoints of any interested nation as to the justice or effect of proposed action; it should be specifically charged with avoiding damage to legitimate economic interests of third countries.

"d) The Commission should coordinate its work so far as possible with that of national and international agencies concerned with European relief, rehabilitation, and reconstruction; United Nations agencies charged with these functions should be eligible to apply for reparations from Germany to be used wherever necessary in Europe (including Germany).

4. Council on Foreign Relations, Political Group

The Political Group of the Council on Foreign Relations, in a memorandum of May 25, 1943, raised the following questions concerning Paragraphs 5 and 6 of the explanatory memorandum appended to the Declaration of January 5, 1943 on forced transfers, but not published with it:

"(1) Did the United States associate itself with the argument of this explanatory note, or does it represent no more than the view of the British Foreign Office?

"(2) Does the language of paragraph 5 imply that the Government in exile which signed the declaration is to be the "legitimate Government" which will return to the occupied country?

"(3) Is it desirable at the present juncture to suggest that future Governments of the now occupied territories can adopt policies "without derogation to their national sovereignty"?

"(4) Specifically

315191

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 3/8/00
RG 353
Entry Lot File 202
File ~~Property Rights~~ S-19F
Box 76

"(4) Specifically, in respect of dispossession, may it not appear advisable later to insist that restitution everywhere in Europe be determined by the same criteria or, to put it differently, that the same criteria determine what property is to be taken away from present German owners, wherever it may be located? Is not this question bound up with the future of German industry, which is a problem of security as well as of individual or national ownership or restitution? In a great many cases it will be impossible to make restitution to those who were expropriated. Will title then be vested in a government? Or will it appear wise to have title to some forms of property vested in an international body? Is not the language in paragraphs 5 and 6 so broad as to warrant 'the legitimate Governments' in arguing that the discussion of these questions has been foreclosed?"

5. American Jewish Committee

The Research Institute on Peace and Post-War Problems of the American Jewish Committee in its study course on Jewish Post-War Problems, Unit VII, Relief Reconstruction and Migration observed with regard to reconstruction in Western Europe:

"There are, however, some particular problems pertaining to economic reconstruction which are likely to affect Jews more than the general population. For example, Jews have suffered most from Nazi confiscatory legislation. This matter has already inspired statements on the restoration of Jewish equality by various Governments-in-Exile, as well as legislation by some of them. Some of these same governments have declared themselves in favor of returning property to the rightful owners,

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

owners, who of course, include Jews. We can assume that these official acts reflect the attitudes of the majority of the peoples in the land represented by the Governments-in-Exile. Since measures providing for compensation and the restoration of property will be carried out within a democratic framework, it is expected that the economic readjustment of the Jews will be facilitated. As we have seen, those who are studying post-war Jewish problems do not visualize any special difficulties for Jews in these areas, whic will require specific, major international cooperation to overcome."

The Research Institute anticipated more difficulty in Eastern Europe:

"All these factors /territorial grievances/ are likely to produce internal difficulties for some time and without doubt will be largely expressed in inter-group strife and anti-Semitism, which will interfere with Jewish economic reconstruction. The strains produced by the return of Nazi- and Quisling-confiscated properties to their rightful owners and by such far-reaching measures as agrarian reform and socialization will further impede smooth adjustment."

C. Important Individuals

1. Frank Altschul

Frank Altschul, well-known investment banker, said at a meeting of the Peace Aims Group of the Council on Foreign Relations that "to ask for reparations would be useless. The United States would not again be willing to furnish money to Germany for the payment of reparations. Provision should be made for the return of stolen property, but not for reparations."

2. Donald

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry LOT FILE 82-202
File Property Rights 5.PAP
Box 76

2. Donald Bell

On June 25, 1943, Donald Bell, a journalist, telegraphed from London to the Overseas News Agency in New York an article entitled "A Cartel of the Plundered". Important extracts from this article follow:

> "In London there is an inter-allied committee of experts occupied with the question of how the countries plundered by the Nazis are to regain possession of their stolen property. This committee, it is reported, has run into serious difficulties; for the problem of returning the looted possessions to their rightful owners after Hitler's defeat seems to be almost insoluble."

After mentioning the practical difficulties of restitution, he continued:

> "Consequently, it is proposed that not only stolen property be restored, but that it be replaced by other machinery which is undoubtedly German property. Nobody wants to go back to the old methods which were tried after the Treaty of Versailles: reparations in money. That proved unfeasible after the first World War and is not to be repeated."

After discussing the difficulties of replacement arising because the goods are insufficient or the former owners dead, he concluded:

> "The procedure to date has been to collect individual claims of those damaged and then, filing them by nationalities, to look into the matter of restitution or replacement. This procedure is based on the idea that it is possible to return to a kind of economic status quo in Europe. And at this point the inter-allied committee is stuck, and will continue to be stuck. For the premise is false. Europe's economy has been so thoroughly changed by the Hitler economy that it cannot be restored to the old condition by careful, individual inquiries. A different plan is necessary to restore at least a certain measure of justice. And at least as important as justice is the need to provide new
>
> opportunities

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Authority NND 760089
By TJ NARA Date 2/8/00

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Entry ~~Lot File 122~~ 202
File ~~Property Rights~~ 5.19R
Box 76

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AGENDA FOR GERMAN STUDY

COMMENTARY

PART ONE
DEFINITION OF THE PROBLEM AND OF MAJOR POLICIES AND OBJECTIVES

I. THE SCOPE OF THE PROBLEM AND THE USE OF TERMS

The problem is essentially one of attempting to make good some of the injuries suffered as the result of German aggression. It becomes inevitably, however, a part of a complex of economic and political measures designed to enhance the prospects of peace and raise the world's standard of living. A preliminary statement to define the terms of reference may be needed to eliminate confusions in the use of terms and may serve as an introduction to the studies and questions to follow. It is notable for example that the term Reparation is used generically to cover the whole problem and also more narrowly for a segment distinguished from restitution and other aspects of the problem.

Reparation cannot properly refer to measures designed primarily to inflict suffering or loss on the conquered country but not calculated to yield any significant wealth or income to the victors. It would, rather, take the form of transfers of wealth and income by the conquered nations to governments or individuals included in the terms of settlement. Security and purely punitive action would thus fall in other categories.

II. OBJECTIVES WITH RESPECT TO ALL THE MEASURES TO BE TAKEN

Before substantial progress can be made in

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NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

outlining possible reparation programs and formulating the choices which will have to be considered, some attention needs to be turned to the four major lines of policy outlined below. All four are areas of policy to which the heads of states and many responsible governmental bodies are giving consideration now.

A. The Preservation of the Peace

There is no doubt that the major aim of this country in the formulation of any aspect of the post-war settlement is to assure the maintenance of peace. There are, however, a number of aspects of the question as it relates to reparation which give rise to differences of opinion. There are, for example, those who think that peace can be maintained best if Germany is made to feel the consequences of her acts; others who urge that a policy designed to exact a tribute from Germany would make it easier for the United Nations to maintain a dominant position. Similarly, they urge that the sudden seizure or gradual drain of wealth from Germany might weaken her aggressive potentialities. Moreover, some stress the importance of quick aid to the devastated United Nations to facilitate future international collaboration.

In contrast to this, there are those who say that heavy reparation burdens would lay the basis for future wars, in that hate and bitterness engendered by the imposition of large burdens make it difficult to create an atmosphere of constructive collaboration. There are others who stress industrial rather than psychological factors and who point to the possibility that measures to force Germany to develop an export surplus would make her powerful later when conversion to war production might be considered possible.

There are clearly controversial elements and conflicts of policy implicit in this question. In view of the importance of determining high policy with regard to maintaining the peace, the matter calls for searching discussion and early clarification of aspects of the question which have already been considered at length.

B. Compensation for Losses

The most direct and obvious aim of reparation

policy

315196

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NND Authority 760089
By TJ NARA Date 3/8/00

RG 353
Entry
File
Box 76

policy is to transfer wealth from those who are deemed responsible for loss to those who have suffered the injury. There is no doubt that this objective comes in conflict at some points not only with the major objective of maintaining the peace but also with those related to the recovery of Germany and those growing out of particular policies as to economic conditions in the post-war world. The situation is all the more complex because of the diversity of interest of claimant governments and the extent to which the direct gain to these governments of collecting reparation is offset by other interests which are best furthered, perhaps, by not collecting reparation, for example, the aim of maintaining full employment. Moreover, there is a conflict in the interests of individuals as claimants, on the one hand, and as citizens with broader interests, on the other. While they may gain as claimants, they may lose through the general effects on the economy of collecting reparation.

This government in particular, in reviewing its interests, is almost certain to place general economic and political considerations above the specific interests of claimants.

An initial choice will have to be made by those determining broad policy as to whether they wish to permit and even assist a development of German capacity to produce in such a manner that a large export surplus arises and Germany pays with goods and exchange.

If this situation is not desired, then the manner in which a Germany kept weak as far as war potential is concerned, can supply goods, services, and funds, takes on another aspect. Questions of the extent of restitution, replacement, and forced labor need to be examined among the basic policy questions, rather than as minor aspects of a reparation program.

C. The Development of a Viable Plan for Post-War Germany

It may not be possible at the outset to determine the aim of the United States with regard to post-war Germany. It is at least possible to exclude the more extreme types of solutions. Here, more than in some other

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NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry Lot File 122
File ~~Property Rights~~ SWNCC
Box 76

other connections, choices are likely to be based not on fact or on precedent but on judgments of the situation as a whole. The aims of victor nations with regard to Germany will in any case be designed to permit economic health and political security to those nations. The manner in which reparation can aid in these broad objectives through restriction or reform, tribute or collaboration will be the key to the solution of the reparation question.

To some, the condition of Germany may seem an end in itself, but the fallacy of ideas of this sort becomes evident if one recognizes the impossibility of isolating Germany from surrounding countries or in fact from any country of the world. There are questions in this area which call for early answers if progress on the specific provisions of the treaty is to be made. The main issue can be briefly stated in the question as to whether it is desirable to have a weak or a strong Germany. It is possible to envisage various types of development in post-war Germany which would accompany different reparation programs. It is conceivable, for example, that Germany could be crushed by the weight of the burden imposed. It is possible to imagine heavy tribute which would continue to draw off a substantial portion of German production over a long period and thus delay or prevent full recovery. Another line of policy would combine measures to prevent a quick recovery of industry and yet provide for a fairly diversified production with a relatively prosperous agriculture. A Germany of this type would hardly develop a large export surplus. Thus, the immediate interests of creditors might be subordinated to the effort to accomplish special purposes with respect to Germany as a potential producer of armaments or as a competitor in world markets.

Still another approach to the problem would lay on Germany substantial burdens and permit or even encourage the recovery of industry and particularly those lines of production out of which Germany could pay tribute. A more extreme case would aim to make Germany the greatest possible producer and exporter and would yield a large return to her creditors with all the accompanying competition and forced development which would go with a successful intensified development

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry Lot File 122
File ~~Property Rights~~ 5729F
Box 76

of Germany's trade. This latter line of policy brings with it such obvious dangers that it is not likely to receive serious consideration. Since there is considerable leeway with regard to the choices which are to be made, the conflict of interest needs to be emphasized at the outset so that the separate elements in the programs under consideration can be kept in a clear and understandable relation to each other. When the complex psychological factors are considered, other aspects of the question come to the foreground, and the urgency of arriving at a choice of policy becomes evident. It has been urged by some that a nation with a high standard of living may be more eager to become a member of the society of peace-loving nations. These and related questions call for study and clarification.

B. The Peace Settlement and the Development of a System of International Economic Relations

Many of the more important policy decisions which will have to be taken as given in outlining alternative reparation programs, will grow out of decisions made in other fields. For example, the interpretation of Articles IV, V, and VI of the Atlantic Charter as applied to Germany will have a direct bearing on the nature of the policy this government will adopt. Similarly the economic clauses which are likely to be embodied in a treaty may impose a commercial policy on Germany which is irreconcilable with large scale collection of annual reparation from Germany. These clauses might be designed to destroy Germany's war potential or to make Germany vulnerable to blockade as a security measure. They might also be directed to weakening the power of the Junker class and a drastic modification of its economic role. There might, however, be clauses in the treaty designed to facilitate the collection of reparation.

If a definite policy with regard to currency stabilization and the relaxation of exchange restrictions can be set forth at this time, it will undoubtedly influence the nature of the reparation settlement. Attention will have to be given for example to the question as to how far restitution,

replacement

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By TJ NARA Date 2/8/00

RG 353
Entry Lot File 122
File Property Rights 76
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replacement and the settlement of property rights are likely to deprive Germany of earning assets and trade connections thus affecting her balance of payments in a drastic manner. Measures under the heading of reparation might actually make it difficult for Germany to develop an export surplus and thus limit the extent of the annual tribute which might otherwise be exacted. In considering the size of German payments it is obvious that the whole question of policy with regard to post-war lending to Germany is brought into the foreground. The question is raised as to whether again the creditors will lend money out of which reparation will be paid. Similarly if large international loans for reconstruction or stabilization are made available, the question of net reparation payments would take on a somewhat different form this time, from that raised last time. In this connection policies with regard to the financing of UNRRA, loans for rehabilitation, and international developmental projects are likely to affect decisions.

Lend-Lease settlements have a bearing on the problem both in that they affect Germany's capacity to pay indirectly because they influence the urgency of the needs of claimants and because there may be some techniques in the Lend-Lease arrangements which might be carried over into the field of reparation.

It is impossible, moreover, to consider any large demands on Germany without taking account of the accepted policy with regard to currency stabilization, investment, international trade, cartels, special arrangements with regard to power and communication, transportation, airways, labor standards, and various agreements as to commodities, property rights, and cooperative arrangements over a particular field. In regard to some of these matters special committees are outlining alternatives. In regard to some, administration policy is partially crystallized at this time.

Running through the consideration of these interrelated matters is the question as to when and how Germany and Japan can participate in these cooperative arrangements on a basis of equality with other nations.

III. THE

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RG 353
Entry Lot File 122
File Property Rights
Box 76

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III. THE GENERAL FRAMEWORK OF REPARATION POLICY

A. The Maintenance of a United Front in Settlement and Administration

Presumably the decision to maintain a United Front in respect to reparation has been reached. The methods of preventing disunion, however, are not always clear, and controversy is implicit in this type of program. Attention to the firmness of commitment to joint action may be desirable.

B. The Nature of the Responsibility for Losses which Germany is Asked to Assume

Some have thought that the moral and legal basis for German reparation must take the form of some new version of a war guilt clause. The unconditional surrander formula lessens the apparent necessity for this approach, but there are other possible bases on which Germany may be asked to accept, in a general manner, a determined responsibility.

Experience after the last war gives some basis for urging the usefulness of defining overall "responsibility" and establishing broad categories of losses which the allies will use in formulating the claims on Germany. The significance of this step in reparation settlement is not so much the inclusions as the exclusions it makes possible. There is every reason to think for example that the sum of the categories of losses included in the total which Germany is asked to acknowledge as caused by her aggressive action will be found to be many times greater than the amounts which will be used in the bill which she is asked to pay. It is probable, however, that the difficulties of prorating receipts, country by country, are less if the categories are defined in advance and some types of losses definitively excluded.

There is considerable variation in the degree to which

315201

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NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry Lot File 122
File Property Rights
Box 76
5.19F

which admissible losses might be particularized, and I do there is no necessity of developing statistical studies or legal definitions of the items settling this question. It is almost certain, for instance, that losses of life will be considered on a different basis from loss of property, and that loss of property from Allied bombing will be distinguished from loss and injury due to enemy action. Questions such as loss of profits, and cost of pensions need only be discussed in principle at the outset, and decisions are almost certain to be reached on broad general grounds.

There is an additional reason why some urge the importance of this step, namely: it provides a basis for national commissions or agencies who handle the claims of their citizens so that they can define which are properly to be handled under the heading of reparation.

Although there can be no serious thought that an inclusive overall responsibility of the type here discussed could be a reasonable basis for the reparation for which Germany is held in strict accountability, it clarifies issues and defines limits within which the annuities or other reparation can subsequently be assessed on economic and political grounds. The distinction between the overall responsibility and the reparation scheduled to be paid may in fact be essential to clarifying the problem.

C. The Method by which Actual Liability of Germany Should Be Determined

It will probably be easy to clarify the question as to the manner of determining the actual liability of Germany. The use of mixed claims commissions are not likely to be considered seriously for such a large task. The arguments for and against predetermination by the United Nations of a sum, or a formula to be used in determining a sum, call for early consideration.

D. Restitution as a Means of Compensation

Opinion has seemed to endorse the acceptance of restitution

315202

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DECLASSIFIED
NND Number 760089
By TJ NARA Date 2/8/00
RG 353
Entry Lot File 122
File Property Rights
Box 76
5.19F

restitution as a special category under reparation broadly considered. Restitution might be inclusive or narrow. Some decision in principle will need to be made as to what to include. There is apt to be agreement with regard to art objects, libraries, scientific equipment, and other unique identifiable objects.

Questions are likely to be raised with regard to restitution of similar or equivalent objects.

There may also be some doubt as to whether securities should be handled under restitution or in some special category. Similarly, real estate may perhaps be better handled under a separate heading. Then again the question as to how long restitution should run is likely to be important. Tentative decisions on these and related matters would be helpful.

E. Replacement in Kind as a Means of Compensation

It would be possible to consider "replacement" under either restitution or under reparation. From a legal or accounting standpoint it comes closer to what is ordinarily meant by reparation.

There are some reasons for debating the advantages of having a separate category to include transfers of goods to particularly needy countries during a brief period when reconstruction is paramount.

The acceptance of a general plan for replacement in order to permit prompt transfers of useful commodities would influence the scope, timing, administration, and other aspects of restitution and reparation. The different interests of different countries in such a proposal should also be noted as significant in arriving at a decision.

Within the scope of replacement projects, the use of forced labor is almost certain to receive consideration. There are already indications of Russia's interest in this form of reparation. Attention will need to be given, therefore, to the effect

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315203

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NND Agency 760089
By TJ NARA Date 2/8/00
RG 353
Entry Lot File 122
File Property Rights
Box 76

on Germany of drawing away a large amount of labor. The acceptance of measures leading to forced labor would undoubtedly have serious psychological and moral implications.

F. Reparation as a Means of Compensation or an Instrument of Policy

Reparation is here considered in contrast to restitution and replacement. It is, however, a broad category, and would comprise both payments in cash and payments in kind. It might also include the transfer of rights and the extension of privileges by Germany to the Allies. It would also involve various controls and restrictions which might be developed in part to enforce payment, and in part to assure a peaceful Germany.

Thus the reparation program is a broader phase of national or international policy than restitution or replacement. It can be developed mainly for compensation or mainly as an instrument of control. The general questions to consider under this heading, in addition to those already noted under objectives, are those basic issues as to whether there is to be an annual tribute and whether it is to be permitted to have a size and impact which will influence greatly the economic life of debtor and creditor alike. In this connection, it may be taken for granted that the effect of reparation on all parties concerned will be in proportion to the amounts exacted, for example that a reparation bill of 20 billion dollars will influence the countries involved by more than twice as much as a bill of 10 billion dollars. The problem of duration will depend on amounts to be asked but needs to be considered separately also.

In fact, no serious study of the type of reparation program can be undertaken unless tentative hypotheses as to both the total which is to be asked and the period over which settlements are to last can be set forth. If it is only possible to eliminate the more extreme policies at this time, then several different series of programs need to be outlined to clarify the major differences which would result from accepting varying magnitudes.

G. Limiting

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RG 353
Entry Lot File 122
File
Box 76

C. Limiting Factors and Decisions as to Alien Property

It is clear that decisions have been made or may shortly be made with regard to handling alien property which may bear on reparation policy. Commitments made or legislation enacted, may limit freedom of action. Some study will need to be made, therefore, as to the situation in this country and elsewhere to see to what extent freedom of action is already limited.

H. Basic Assumptions as to Non-Reparation Policies

Although the economic and political conditions which will prevail when reparation is imposed cannot be predicted in advance, early decisions with regard to some of the major factors may help to set limits within which reparation policy can be developed. It is important, therefore, to determine whether there have been decisions so far or crystallization of plans with regard to the occupation of Germany, the territorial status of Germany, the probable economic relations of Germany to neighboring countries, whether determined by some plan for regional or other special measures for collaboration.

Some idea is needed also of the possible type of international machinery which may be available and of the extent to which the United States will continue to participate in the consultations, agreements, and administrative efforts to enforce the reparation settlement. Attention to the diversity of interests among governments is desirable at the outset.

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By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

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November 17, 1943

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INTERDIVISIONAL COMM. ON REPARATION, RESTITUTION, AND PROPERTY RIGHTS

AGENDA FOR GERMAN STUDY

315206

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NND Authority 760089
By TJ NARA Date 3/8/00

RG 353
Entry
File
Box 76

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Reparation 1
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November 17, 1943

INTERDIVISIONAL COMMITTEE ON REPARATION, RESTITUTION, AND PROPERTY RIGHTS

AGENDA FOR GERMAN STUDY

PART ONE — DEFINITION OF THE PROBLEM AND OF MAJOR POLICIES AND OBJECTIVES

I. The Scope of the Problem and the Use of Terms

II. Objectives with Respect to all the Measures to be Taken

III. The General Framework of Reparation Policy

PART TWO — THE EXECUTION OR IMPLEMENTATION OF A REPARATION POLICY IN THE BROAD SENSE

I. Restitution of Property of the United Nations Other than that Subjected to War Measures in Germany

II. Replacement as a Means of Compensation

III. Reparation as a Means of Compensation and an Instrument of Policy

IV. Legal Location of Germany's Liability

V. Disposition of Indemnity

VI. Date as of which Restitution and Reparation Should Begin

PART THREE

315207

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RG 353
Entry
File
Box 76

PART THREE ADJUSTMENT OF ENEMY PROPERTY IN GERMANY, PRE-WAR CLAIMS, DEBTS, DISCRIMINATORY TREATMENT OF PROPERTY OF GERMANS IN GERMANY

I. Disposition of Property of any Member of the United Nations Subjected to War Measures in Germany

II. Alternative Solutions for Disposition of Enemy Property in the United Nations

III. Settlement of Pre-War Claims

IV. Settlement of Debts Between Nationals of the United Nations and Enemy States or Their Nationals

V. Measures Concerning Discriminatory Treatment of Property of Germans or Former Germans in Germany on Religious, Racial or Political Grounds

PART FOUR CONSEQUENCES

I. What Political and Economic Consequences are to be Expected from the Proposals for Reparation, Restitution, and Settlement of Property Rights Outlined Above?

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

November 17, 1943

PART ONE
DEFINITION OF THE PROBLEM AND OF
MAJOR POLICIES AND OBJECTIVES

I. The Scope of the Problem and the Use of Terms

II. Objectives with Respect to all the Measures to be Taken

A. The Preservation of the Peace

1. Manner in which policy with regard to peace and security is related to reparation

a. Peace measures likely to affect German capacity

b. The influence of various reparation programs on the prospects for peace

2. The possibility of a special German financial contribution to the maintenance of peace

a. General considerations

b. The suitability of reparation as a means of securing this contribution

c. Nature and size of potential contribution

3. The problems arising out of German economic penetration in relation to reparation and to the preservation of peaceful relations

a. The present situation

b. Modifications to be considered

4. The

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

4. The deindustrialization of Germany in relation to reparation and to security problems

B. Compensation for Losses

1. The reasons for urging substantial compensation

a. Prompt reconstruction of war damage

b. Aids to financial reconstruction of occupied nations

c. Importance to government indemnification of their nationals

d. Attempt to increase relative strength of victor nations

2. Limits to compensation

a. Revival of foreign trade

b. Desire for post-war economic collaboration

c. Desire to liquidate aftermath of war

d. Importance of monetary and exchange stability

e. Prompt termination of intervention and control

3. Conflict of interest between countries as to desire for compensation

a. The position of the United States as to its claims

b. The objectives of various other countries -- and commitments so far made.

4. Individual

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry 202
File S,I&P
Box 76

4. Individual versus national interests in respect to compensation

C. The Development of a Viable Plan for Post-War Germany

1. The policy directed to prompt recovery of Germany

a. Should measures be based on the assumption that an overriding consideration is to be the early reconstruction of Germany as a free, democratic nation playing a leading role in economy of Europe?

2. The policy of a weak Germany

a. Should measures be based on the assumption that Germany should be kept weak, industrially, financially, politically, or otherwise?

3. The attitude toward prolongation of controls

a. Are economic controls and intervention in Germany desirable?

b. Will Germany's neighbors attempt to protect themselves and restrict German action by controls?

D. The Peace Settlement and the Development of a System of International Economic Relations

1. Interpretation of articles IV, V, and VI of the Atlantic Charter as applied to Germany

2. The

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

2. The prospective economic and commercial clauses in the treaty

a. Bearing on possibility of large scale annual collection of reparation

b. Relation to Germany's economic war potential

c. Germany's future independence or vulnerability--especially as to blockade as a security measure

(1) Dependence on overseas markets

(2) Policy of diminishing the influence of the Junker class

d. Measures likely to facilitate collection of annual reparation

3. Policies with regard to currency stabilization and relaxation of exchange restrictions

a. The bearing of a program for restitution and replacement and property settlements on the possibility of an export surplus or sound balance of payments position

(1) Loss of foreign assets

(2) Seizure of potential exports

4. The prospects for foreign lending

a. The likelihood of financing by creditors of German reparation effort

b. The

315212

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry Lot File 122
File
Box 76

b. The relation to UNRRA finance and rehabilitation

c. Significance of possible joint reconstruction loans to Germany or to creditors of reparation

5. The probable nature and timing of Lend-Lease settlement

a. Effect of settlement on Germany's capacity to pay reparation

b. Can these principles in any form be applied to the collection of reparation from Germany?

6. Major economic policies in other fields as they condition reparation policy, notably the work in the Special Committees

a. Relaxation of trade barriers

b. Cartels

c. Aviation

d. Power

e. Shipping

f. Displaced persons

g. Labor standards and Social Security

h. Other

i. General problem of consistency

III. The

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RG 353
Entry
File
Box 76

III. The General Framework of Reparation Policy

A. The Maintenance of a United Front in Settlement and Administration

1. Policy with regard to apportionment, sanctions, and assistance to Germany

2. United States policy with regard to concessions aimed at assuring a United Front

B. The Nature of the Responsibility for Losses which Germany Is Asked to Assume

1. The usefulness of determining overall responsibility

a. Significance in apportioning shares between states

b. Usefulness in disposition of claims within states

2. Basis for determining total damages

a. Should there be a clause like 231 in the Treaty of Versailles?

b. Other bases

3. Disadvantages

a. Possible confusion between total damages and amount for which Germany held strictly accountable

b. Potential influence of total on claims made

C. The

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RG 353
Entry 202
File Property Rights 5.19F
Box 76

C. The Method by Which Actual Liability of Germany Should be Determined

1. Predetermination

a. Fixed sum

b. Variable by formula or otherwise

2. Determination by mixed claims commission

D. Restitution as a Means of Compensation

1. Aims of providing for restitution of property

2. Scope of such provision

a. Kinds of property to be restored

(1) Unique, identifiable, removable objects (primarily art objects)

(2) Real estate

(3) Securities

(4) Should other property be restored

b. Statute of Limitations

3. Relation to other claims for reparation or property losses

E. Replacement in Kind as a Means of Compensation

1. Meaning

a. Emergency deliveries in kind

b. All deliveries to replace specific objects lost

2. Question

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RG 353
Entry
File
Box 76

2. Question as to treatment as a separate category
   a. Relation to reparation payments
   b. Relation to restitution
   c. Economic reasons for separate treatment
3. Limits to replacement
   a. Quantitative
      (1) With respect to Germany
      (2) With respect to recipient state
   b. Time limits
      (1) Arbitrary -- related to reparation payments
      (2) Based on needs

F. Reparation as a Means of Compensation or an Instrument of Policy

1. Aims -- general and specific
   a. An instrument of policy to help enforce other measures
      (1) Punitive
      (2) To modify German relations with other countries
   b. Aid to victims of aggression
   c. To facilitate international economic collaboration
   d. To modify post-war economic Germany

(See also II, C above)

2. Size

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NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

2. Size and Impact of the Obligation

a. General policy as to order of magnitude of total payments to be exacted,

(1) For example, $6 billion, $10 billion, $30 billion, etc.

(2) No reparation; restitution only

(3) No reparation; restitution and replacement in kind for a short period only

b. Period over which settlement is to run; for example 3 years, 10 years, 15 years, etc.

c. Devices and methods of facilitating payments or transfers

d. The relation of size and duration of the payments to Germany's capacity to collect, to transfer, and to finance.

(See below Part Two, Capacity)

C. Limiting Factors in Decisions as to Alien Property

1. The treatment of enemy property in the United Nations in its effect upon the enemy's ability

a. Confiscation

b. Retention subject to change

c. Limited restoration

d. Priorities

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By TJ NARA Date 2/8/00

RG 353 ~~ECDE~~
Entry ~~Lot File 122~~ 202
File ~~Property Rights~~ 5.19P
Box 76

d. Priorities and discrimination between private and public claimants resulting from methods used

2. Domestic legislation and policy limiting United Nations action

a. Treatment of patents

b. Liquidation of enterprises

c. Incorporation of ships into national patrimony

d. Confiscation

e. Trusteeship

H. Basic Assumptions as to Non-Reparation Policies

(with regard to which early information would greatly assist the study, or regarding which assumptions must be made)

1. The occupation of Germany

a. Responsibility of various governments

b. Duration

c. Methods

2. Territorial Status of Germany

3. Economic relation of Germany to neighboring countries

a. Regionalism

b. Other

4. Promptness and extent of prospective international machinery

5. Extent to which United States will participate in international agreements and in their continued enforcement

6. Diversity of National interests with respect to reparation program

PART TWO

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RG 353
Entry
File
Box 76

Supplement to Reparations I

PART TWO
THE EXECUTION OR IMPLEMENTATION OF A REPARATION POLICY IN THE BROAD SENSE

I. Restitution of Property of the United Nations Other Than That Subjected to War Measures in Germany.

A. Character of restitution to be made

1. The scope of restitution in relation to methods which might be used

a. The minimizing of legal, administrative, and other complications

b. Possibility of prompt settlement

2. If property to be restored exceeds unique objects, securities, and real estate (see Part One, p.7), the following issue arise:

a. Identifiability as a factor in determining restitution

(1) Identifiable objects

(a) Should all identifiable objects be restored?

(b) Criteria for such objects suitable for restitution

i. Undamaged property

ii. Partially damaged property

(2) Unidentifiable objects

(a) Should

315219

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NND Authority 760089
By TJ NARA Date 2/8/00
RG 353
Entry
File
Box 76

(a) Should any unidentifiable objects be restored?

1. Would such restoration be in the nature of reparations in kind rather than restitution?

(b) If unidentifiable objects are to be restored, what criteria should be used in their selection?

B. Methods of deciding what property should be restored

1. Restitutions of all property on the theory that all transfers are void

2. Method of settlement depending on validity of transaction

a. Does legality of taking or transfer affect obligation to make restitution?

(1) Property taken or transferred in accordance with international law

(a) Requisitioned property for which compensation has been paid

i. Adequacy of compensation

ii. Should nationality of final owner affect disposition?

(b) Property voluntarily transferred

i. Proof of "voluntariness"

ii. Should nationality of final owner affect disposition?

(c) Property

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File
Box 76

(c) Property otherwise transferred such as state property subject to confiscation by occupying authority

(2) Property taken in violation of international law, such as looted property

b. Obligation for restitution on the part of states other than Germany

(1) The United Nations

(2) Others including neutrals.

3. Special problems as to various types of property

a. Real estate

b. Movable property

(1) Establishment of authentic claims

(2) Identification

(3) Restitution in original conditions
Meaning and possibility

c. Securities

(1) Problems in clarifying title

(a) Ascertainment of owners

(b) Method of returning to owners

d. Industrial equipment

(1) Should industrial equipment be restored?

(2) Should factory equipment be distinguished from factor?

e. Agricultural

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DECLASSIFIED
NND Authority 760089
By TJ NARA Date 2/8/00

RG 353
Entry
File People's Rights 5.19P
Box 76

e. Agricultural equipment

f. Unique objects, including works of art

(1) Items to be included

(a) Public and private works of art

(b) Works of art proper

(c) Historical and cultural objects

(d) Libraries

(e) Equipment of learned and technical institutions

(f) Other property

(2) Measures of conservation pending restitution

(a) Germany should give all information without demand

(b) German collections of art, private as well as public, should be placed under seal

1. Removal of seal only by authority of above mentioned commission

4. What disposition should be made with respect to claims of owners where restitution is not allowed?

5. What disposition is to be made of damaged objects?

6. Objects that cannot be identified within (three months) from date of entry into force of regulations

7. Choice

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RG 353
Entry 202
File 5.19
Box 76

7. Choice of remedies by claimants

C. Agencies and machinery of settlement

1. Types of problems to be handled

a. Collection

b. Custody of articles

c. Distribution

2. Types of agencies

a. International agencies

(1) Should an international commission be given authority to determine title to property in occupied territories where Germans either acquired title or attempted to hide such acquisition?

(a) Should not such jurisdiction be exercised even if corporate property has not been removed to another country?

(b) Should such commission become the trustee pending final determination of ownership?

b. National agencies

II. Replacement as a Means of Compensation

A. Should replacement in kind be treated as a separate category?

1. Economic

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RG 353
Entry
File Property Rights S&P
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1. Economic reasons: to facilitate reconstruction
2. Political
3. Administrative
4. Limits to usefulness of this category
   a. Germany's own needs
   b. Ability of creditor to receive

B. Types of Goods and Services
1. Materials on hand
2. Current output
3. Other special characteristics

C. Time when replacement should begin and cease
1. Relation to restitution
2. Relation to reparation
3. Other time limits

D. Country interests and priorities
1. Reconstruction
2. Relief needs
3. Commercial needs
4. Other factors

E. Amounts to be transferred
1. Collection and German capacity
2. Apportionment among claimant states
3. Distribution -- priorities

III Reparation

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Entry
File
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III. Reparation as a Means of Compensation and an Instrument of Policy

A. Reparation as an instrument of policy

1. In relation to security of peace

2. In relation to the plan for Germany's reconstruction of reform

3. In relation to systems of world collaboration

B. Capacity of Germany to make reparation

1. The above-mentioned objectives being determined, what factors will govern Germany's financial capacity to raise the necessary funds internally?

a. Probable level of national income and production

(1) Is a rise in income to be permitted?

(2) If so, how much?

b. Minimum necessary government expenditures

c. Level and types of taxation which can be effectively imposed

d. Amount of internal borrowing which might be desirable

C. What volume of reparation can be transferred?

1. Should cash payments be made contingent upon the existence of an export surplus?

2. Probable export surplus and proportion that can be appropriated (Study of alternatives on different

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Entry ~~Lot File 192~~ 202
File ~~Property Rights~~ 5.19R
Box 76

different assumptions as to commercial policy to be imposed on Germany)

3. Relationship of cash reparation to commercial policy of receiving countries

4. Ability and willingness of reparation-receiving countries to take reparation in kind

D. Fixation of a determinate amount of reparation (On the basis of considerations discussed under (Part One).

1. Proportion of total to be:

a. Cash -- Lump-sum or annuities

b. Reparation in kind

c. Services

2. Flexible or rigid plan

a. A variable formula

b. A fixed sum subject to revision

c. A non-variant plan

E. Apportionment of reparation

1. What kinds of losses should be taken into account in calculating the apportionment of reparation among the United Nations?

a. Cost of prosecuting war

b. Military property

c. Pensions and allowances

d. Occupation losses

(1) Cost

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RG 353
Entry 282
File
Box 76

(1) Cost of occupation

(2) Circulation of foreign currency

(3) Business losses due to occupation

(4) Other losses due to occupation, such as levies, fines and other similar exactions

e. Clearing claims against Germany

f. Loss of profits

g. Loss of life and personal injuries

h. Taking of unidentifiable property

i. Physical damage to non-military property

(1) Limited to results of direct enemy action in the course of operations?

(2) Basis of valuation (for accounting purposes)

j. Other damages, such as loss of good will and the like.

2. Should any portion of total compensation be distributed on a basis other than that established by specifically allowed categories of claims?

3. Methods of arriving at total claims of the United Nations (Different possibilities of weighing the kinds of losses taken into account in calculating apportionment of reparation)

4. Priorities

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Entry
File
Box 76

4. Priorities desirable in settling claims

a. Priority as to country

b. Priority as to deliveries of reparation in kind

F. Financial obligation of Germany

1. What kinds of losses should be taken into account in assessing the financial obligation of Germany?

a. Cost of prosecuting war

b. Military property

c. Pensions and allowances

d. Occupation losses

(1) Cost of occupation

(2) Circulation of foreign currency

(3) Business losses due to occupation

(4) Other losses due to occupation, such as levies, fines and similar exactions

e. Clearing claims against Germany

f. Loss of profits

g. Loss of life and personal injuries

h. Taking of unidentifiable property

i. Physical damage to non-military property

(1) Limited to results of direct enemy action in the course of operations?

(2) Basis

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RG 353
Entry ~~Lot File 122~~ 202
File ~~Property Rights~~ 5119F
Box 76

(2) Basis of valuation (for accounting purposes)

j. Other damages, such as loss of good will and the like

2. Extent to which Germany is to be made liable for these kinds of losses.

G. Agencies and Machinery of Settlement

1. Types of problems to be handled

a. Collection; custody of funds; distribution

2. Types of agencies

a. International

b. National

(1) In Germany

(2) In claimant countries

H. Special problems relating to the Payment of Reparation

1. Fixed or variable payments?

a. Rigidly fixed payments

b. Payments fixed in terms of national income, with possible margins for variations

2. Period of payment

a. Advantages and disadvantages of a relatively short payment period

Psychological effects on the German population; relation to long-run security issue; relation to restoration of German economy

b. Length of a suitable period

c. Possible

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Entry
File
Box 76

c. Possible incentives to expedite payments by Germany

3. Guarantees necessary to insure payment

a. Powers necessary to a Reparation Commission

b. Military occupation vs. economic sanctions. Types of economic sanctions to be used

4. Need for a statute of limitations to provide transfer protection (Reparation credits not taken in German exports or in payments in kind might be allowed to accumulate for a maximum of 3 years, then lapse)

5. Possibility of commercialization of some portion of reparation claims

6. Problem of contemporaneous capital imports into Germany. Desirability of permitting such an inflow of capital, or of limiting it as to purpose or amount

7. Should fiscal measures (e.g., types of taxation) be supervised during reparation period to ensure maintenance of desirable social expenditures and an equitable tax system?

I. Problems relating to reparation in kind

1. Free choice of receiving countries, or limitation of goods available within a relatively narrow range

2. Limitations

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Entry
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Box 76

2. Limitations on goods produced because of security considerations

3. Machinery necessary to permit equitable allocation of goods suitable for reparation among the various claimants--reparation-receiving countries, "normal" exports, German domestic economy

4. Effect of reparation in kind in the receiving country

5. Conditions necessary to maximize willingness to receive

J. Problems relating to German labor service for reconstruction

1. Should German labor be used for reconstruction outside Germany? If so, where, and for what specific purposes?

2. Amount of such labor desirable

3. Period of time over which services should be exacted

4. Basis of recruitment

5. Methods of payment, provision of housing, etc.

IV. For whose acts is Germany to be held Liable?

A. Restitution and compensation for losses caused by Germany's own acts only

B. Restitution

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RG 353
Entry 202
File 5.19P
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B. Restitution and compensation for losses caused by (a) Germany's own acts, and (b) acts of her allies, if such acts might have contributed to the loss and if the claimant cannot reasonably determine the national character of the particular forces which may have caused the loss

C. Restitution and compensation for losses caused within fixed territorial limits

(1) Losses caused by whom?

D. Restitution and compensation for losses caused by (a) Germany's own acts, and (b) acts of Germany's allies

E. Restitution and compensation for losses caused by (a) Germany's own acts, (b) acts of Germany's allies, and (c) acts of the United Nations for physical damages directly in consequence of hostilities or of any operations of war

V. Disposition of Indemnity

A. Decision to be left to the recipient state

1. Desirability of stating what losses were taken into account, without earmarking indemnity for the claimants but at the same time excluding claims not taken into account

B. Indemnity to be earmarked for claimants

VI. Date

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Entry
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VI. Date as of Which Restitution and Reparation Should Begin

A. Beginning, with respect to each country concerned, of whichever of the following three events took place first: (a) occupation; (b) hostilities short of war; (c) declaration of war, unilateral or bilateral

1. How is the date to be fixed?

a. In case of a fixed indemnity

b. In other cases

B. Beginning of a formal war only

C. A non-variant date for all losses

D. Hitler's accession to the Chancellorship

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PART THREE
ADJUSTMENT OF ENEMY PROPERTY IN GERMANY, PRE-WAR CLAIMS, DEBTS, DISCRIMINATORY TREATMENT OF PROPERTY OF GERMANS IN GERMANY

I. Disposition of Property of any Member of the United Nations subjected to War Measures in Germany

A. Restitution

1. What property should be restored?

a. Liquidated, as well as unliquidated?

b. What disposition should be made of proceeds of sale?

(1) Paid to owner?

(2) Paid to clearing office? If clearing office system is not adopted by country, then payment to owner would be only solution

B. Discontinuance of exceptional measures and measures of transfers

C. Compensation

II. Alternative Solutions for Disposition of Enemy Property in the United Nations

A. Twofold, solution, consisting of: (1) Optional retention and liquidation by the United Nations of property as security for the payment of, or for payment of, reparation; (2) Obligation of Germany to compensate its nationals for property so retained

1. Disposition

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1. Disposition of any surplus

B. Optional retention and liquidation of property as security for the payment of, or for payment of, reparation

C. (1) Optional retention of all property except as provided in (2); (2) Optional retention and liquidation of (a) property likely to endanger international security or national public interests and (b) patents, as security for the payment of, or for payment, of reparation

1. Should control of the property retained on grounds of security be national or international?

D. Obligatory return of all private property

E. Confiscation of property

F. Should measures of liquidation be continued?

III. Settlement of Pre-war Claims

A. Desirability of action

B. Substantive provisions

1. Pre-war claims of the United Nations: Possible bases of settlement

a. Extent of liability to be determined upon basis of international law

b. Desirable method of settlement in case line of demarcation between pre-war losses is to be fixed at the beginning of a state of formal war only

c. Liability

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Entry
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Box 76

c. Liability to be based not only upon acts violative of international law but also upon acts of war against any member of the United Nations, even though such acts may not be violative of international law, irrespective of where the line of demarcation should be drawn

d. Waiver of pre-war claims except those already presented to appropriate authorities or those regarding which time limits for such presentation have already been fixed

e. Waiver of all pre-war claims

f. Moratorium

g. Each member of the United Nations may choose the method of settlement

2. Claims of Axis states. Possible bases of settlement

a. Presentation of pre-war claims arising out of violations of international law but not out of acts of members of the United Nations undertaken for the purpose of repelling or of preparing to repel, aggression

b. Waiver of pre-war claims except those already presented to appropriate authorities or those regarding

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File
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regarding which time limits have been fixed

(1) Necessary limitations

c. Waiver of all pre-war claims

d. Moratorium

e. Choice of method of settlement to be left to discretion of the several United Nations

C. Methods of settlement

1. International Court of Justice

2. Ad hoc tribunals

IV. Settlement of Debts Between Nationals of the United Nations and Enemy States or their Nationals

A. Mutuality of settlement

1. Optional

2. Obligatory

B. Government liability for private debts

1. Primary liability

2. Surety liability

C. Method of collection

1. Choice between (a) clearing offices and other organs

2. International Court of Justice

V. Measures Concerning Discriminatory Treatment of Property of Germans or Former Germans in Germany on Religious, Racial or Political Grounds

A. Desirability

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A. Desirability of action

1. Resettlement of refugees

a. To be concluded in reparation?

b. What proportion, if any, and criteria for selection?

B. Type of Action

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PART FOUR
CONSEQUENCES

I. What Political and Economic Consequences are to be Expected from the Proposals for Reparation, Restitution, and Settlement of Property Rights Outlined Above

A. the effects of size and duration of obligations on future national and international economic situations

1. The extent to which prospective payments meet the needs and further the policies of claimant nations.

a. compensation of individuals

b. national reconstruction

c. internal economic stabilization

d. economic aspects of national security

2. The degree to which proposed systems of payments supports or conflicts with international economic programs for recovery or control

a. the revival of foreign trade, trade agreements, customs unions

b. the stabilization of exchanges

c. international capital movements and investment

d. shipping and transportation

3. The effects of proposed system of payments on general

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general economic conditions and structure of economic life

a. influence on international prices and competition

b. Changes in the "network" of foreign trade

c. changes in types of goods produced

d. probable influences on fluctuations in depression and prosperity

B. The effect of different proposals in the probable position of Germany in Europe and the world

1. German collaboration with other countries

2. The future of German Foreign Trade

3. Types of production in Germany and probable level of income produced

4. Relative fiscal conditions

5. Monetary conditions

6. Political tendencies

C. The influence of various reparation settlements on security measures, sanctions, disarmament, and controls.

ES:Dulles:Maktos:LB

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LC
EUROPEAN MISSION-LC
Box #34
File Harvard Library

Harvard

2 August 1946

Professor Taylor Starck
21 Holyoke House
Cambridge, Mass

Dear Professor Starck:

Your letter concerning the Max Niemeyer Verlag in Halle and Professor Lüdke, of the firm of De Gruyter in Berlin arrived at an auspicious moment. Heinze is due in Berlin today, and I have telephoned to our representative in Berlin instructing him to question Heinze concerning the Niemeyer Verlag. We have recently been able to acquire books published by this firm during the war; so I assume it is a going concern. It would be difficult to predict just what the financial condition of any German firm is these days.

I am going to Berlin myself tomorrow and will try to look up Dr. Lüdke. You will also be interested to know that within the next two weeks we expect to get into our own hands the first installment of books stored for American universities by Leipzig dealers during the war. I hope personally to make a trip down to Leipzig and supervise the removal of this lot. Harvard has material in this lot, and undoubtedly more will turn up in succeeding lots.

I shall write you further as soon as I amable to turn up any information concerning your problems.

Sincerely yours,

Reuben Peiss
Chief
Library of Congress Mission

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April 24, 1945

To whom it may concern.

The rooms at the ground and first floor of Hauptmannstr. 1 are occupied by the firm Otto Harrassowitz, publisher and bookseller.

The firm is acting as Library agent to the main USA-Libraries and is holding great quantities of books and periodicals, gathered durng war time, by order of its customers.

The rooms at Hauptmannstraße must not be taken for other purposes, as the work of Otto Harrassowitz is of value for the American libraries.

These rooms will not be occupied as billets or offices by military personnel.

BY ORDER OF THE MILITARY COMMANDER

Clarence E. Mitchell

Clarence E. Mitchell, Captain,
Dept. of Religion and Education,
Military Government, Leipzig

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HARVARD UNIVERSITY
SCHOOLS OF MEDICINE AND PUBLIC HEALTH
LIBRARY

25 Shattuck Street
Boston 15, Mass

17 August 1945

Mr Keyes D. Metcalf, Director
Harvard University Library
Cambridge 38, Mass

Dear Mr Metcalf:

Confirming our telephone conversation of this morning over the problem of German agents and publications, here is our situation.

Our agent is OTTO ENSLIN, Karlstrasse 38, Berlin, N.W.7

Soon after the war began between England and Germany, we were informed that all material on order for our Library would be stored in a safe place in Germany until such time as it was possible to send it safely to the United States. The last consignment received here was dated Berlin 20.6.41, and was received by us 8.8.41. Since then there has been no word of any sort from Enslin.

Mr James F. Ballard, Director of the Boston Medical Library is the person through whom the subscriptions were originally placed with Enslin, January 1934. Since then we have received practically all our German subscriptions through this agent. At the time this Library began doing business with Enslin, the New York Academy of Medicine Library, McGill University Medical Library and the Boston Medical Library were in the group of subscribers. The arrangement was entered into for the sake of a special discount procured for us by Mr Ballard.

As Mr Ballard has received no word from Enslin, or has as yet made any attempt to do so, I am writing to you for help in finding out if possible just what the situation is for us.

I shall deeply appreciate anything Mr Peiss can do to get some information to us. If you have room in your note to him, will you kindly send him my best wishes and greetings from Boston.

Sincerely yours,

/s/ ANNA C. HOLT
Librarian

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File GERMAN ASSETS IN COUNTRIES OTHER
Box 95

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U.S. GROUP C.C.
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OUTGOING CLASSIFIED MESSAGE

A.G. 1
U.S. GROUP C.C.

160-1

R E S T R I C T E D
P R I O R I T Y

TO : WARCAD FOR STATE AND TREASURY

TO FOR INFO : USFET (LIAIN)

FROM : US GROUP CC SIGNED CLAY

REF NO : CC-16229 TOO: 151400C SEP

Subject: United States proposal on vesting and marshalling of German external assets.

The United States proposal on vesting and marshalling of German external assets has been redrafted and approved by the Finance Directorate subject to reservation of the British member that the law should not be passed until further consideration had been given to the question of the proper time to pass such law, having regard to effect which it might have on any negotiations which may be in progress with neutral countries. The United States, French and Soviet Union members stated that in their view it was important that the law be passed as soon as possible.

The approved redraft has been now submitted for consideration and appropriate recommendation by the coordinating committee.

The text of the law as redrafted follows:

Control Council Law Number Vesting and Marshalling of German External Assets Introductory Clause.

Whereas the Control Council is determined wherever possible to assume control of all German assets abroad and to divest the said assets of their German ownership with the intention thereby of promoting international peace and collective security by the elimination of German war potentials.

Now therefore the Control Council decrees as follows:

Article 1 There is hereby constituted German External Property Commission (hereafter referred to as "The Commission") composed

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of representatives of the powers occupying Germany.

The Commission is created as an inter-governmental agency with all the attributes, powers and immunities of the Control Council which it represents for the purpose of carrying out the policies and provisions of this decree inside and outside Germany.

Article 2. All rights, titles and interests, legal or equitable, in, or in respect of, any property outside Germany, in whole or in part, which is owned by any person of German nationality in Germany are hereby vested in the commission.

Article 3. All the rights, titles and interests, legal or equitable, in, or with respect of, any property outside Germany, in whole or in part, of any German citizen outside Germany and of any branch of corporation or other legal entity organized under the laws of Germany or having its principal place of business in Germany, are hereby vested in the commission. As used in this article the term "German citizen" means an individual who has had full rights of German citizenship under Reich law at any time since 1st September 1939, and has been within any territory while such territory was under the control of the Reich Government, at any time since 1st September 1939, but not including any citizen of any country annexed or claimed to have been annexed by Germany since 31 December 1937.

Article 4. The commission has power by unanimous agreement from time to time to add to the categories of persons to be affected by Article 2 and 3 of this law unless disapproved by the Control Council within 30 days of agreement by the commission.

Article 5. The question of whether or not any compensation shall be paid to any person whose right, title, or interest in any property has been vested in accordance with this law will be decided at such time and in such manner as the Control Council may in the future determine.

Article 6. The right, title and interest to all property, title to which has been vested in the commission, under this law, or the proceeds of such property, shall be held by the commission and disposed of pursuant to such further directives as the Control Council may issue from time to time.

Article 7. In order to effectuate the policies and provisions of this law and in addition to its general powers under Article 1

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the commission's specific powers shall include the power, acting through any agency it may designate, or otherwise, and under such rules and regulations as may prescribe, by means of instructions, licenses, or otherwise

A. To do all acts which it deems necessary or appropriate to obtain possession or control over all property, the right, title or interest in which is vested in the commission under this law;

B. To operate, control and otherwise exercise complete dominion over all such property, including where this is essential to the preservation of the value represented by the property, the sale, liquidation or other disposal thereof subject to the provisions of Article 6;

C. To require the keeping of full records, and to seize or require the production of any books of account, records, contracts, letters, memoranda, or other papers relating to any property affected by this law and to subpoena witnesses and to require the furnishing of full information regarding such property;

D. To require information, evidence and records with regard to any property outside Germany, in whole or in part, of all persons covered by Articles 2 and 3 hereof.

Article 8 The work within any zone of occupation of marshalling and recording the evidence with respect to Germany's external assets shall be the responsibility of the Commander-in-Chief for that zone.

The commission may request zone commanders to conduct certain investigations either alone or in conjunction with investigations being conducted in other zones, and further may itself conduct joint investigations in cases where the evidence is contained in more than one zone subject to the authority of the Commander-in-Chief in any zone in which such joint investigation is being conducted.

Article 9 Articles 2 and 3 of this law shall not apply to assets subject to the jurisdiction of the United Kingdom, The Union of Soviet Socialist Republics, The United States, France, or any other United Nation determined by the Control Council.

Article 10 For the purpose of this law:

(A) The term "person" shall include any natural person or collective person and any juridical person or entity under public

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or private law having legal capacity to acquire, use, control or dispose of property or interests therein; and any government, including all political subdivisions, public corporations, agencies and instrumentalities thereof. Any juridical person or entity which is organized under the laws of, or has its principal place of business in Germany, shall be deemed to be a person of German nationality within the meaning of Article 2 hereof.

(B) The term "property" shall include all movable and immovable property and all legal, equitable and economic rights and interests in or claims to such property whether matured or not, including all property, rights, interests or claims transferred to or held by third parties as nominees or trustees and all property, rights, interests, or claims transferred by way of gift or otherwise or for consideration express or implied, but not including the rights or interests of third parties to bona fide sale for full consideration and shall include but shall not be limited to buildings and lands, goods, wares and merchandise, chattels, coin, bullion, currency, deposits, accounts or debts, shares, claims, bills of lading, warehouse receipts, all kinds of financial instruments whether expressed in Reichsmarks or in any foreign currency, evidences of indebtedness or ownership of property, contracts, judgments, rights in or with respect to patents, copyrights, trademarks, etc, and in general, property of any nature whatsoever.

Article 11 It shall be an offence:

(A) For any person whose property is affected by this law to do or to attempt to do any act or make any omission in derogation of the title or interest of the commission under Articles 2 and 3, or

(B) To assist or conspire with any other person to do or to attempt to do any such act or make such omissions as are specified in this article.

Article 12 Any person who violates any provision of this law or of any regulations, instructions or directives issued hereunder shall be liable to prosecution in a military government court and on conviction be liable to such penalties not including death as the court may decide.

Article 13 All provisions of laws or decrees or parts thereof which are contradictory to any one of the provisions of this law or any law or decree issued under the provisions of this law are hereby declared null and void.

ORIGINATOR : I. E Assets and Cartels AUTH: B BERNSTEIN
Col

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RG 260
Entry Assistant Secretary
File German Assets in Colombia
Box 95

HEADQUARTERS
U.S. GROUP C.C.
A.G. CABLES
OUTGOING CLASSIFIED MESSAGE

REF NO: CC-16229 -5-

ORIGINATOR : Invest. of Ext. Assets & Cartels AUTH: B. BERNSTEIN Col.

INFORMATION : O/SS
Finance
Legal
Trade & Commerce
Industry
AG Records

REF NO: CC-16229 15 Sep 45 1805C RG/ep

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Patents

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HEADQUARTERS
US GROUP CC
FINANCE DIVISION
APO 742

AUTH: CG, US Gp CC
INIT: mdf
DATE: 5 April 1945

5 April 1945

SUBJECT: Report on Project to Investigate German International Assets

TO : Brigadier General C.W. WICKERSHAM, A/Deputy, US Group CC

I. NEED FOR A PLAN

A quarter of a century ago the defeat of Germany did not prevent a speedy revival of the forces that finally culminated in a second world war. The Germans through corporate alliances with firms in other countries, restrictive cartel policies, barter arrangements, export subsidies and manipulation of currencies, turned a military defeat into an economic victory. These are facts which were verified by investigations conducted by the United States Treasury and Justice Departments and other civilian agencies into the activities of organizations in the United States controlled by German corporations.

The German plans revealed by these investigations led the President to remark, in a letter of 6 September 1944, that "the history of the use of the I G. Farben Trust by the Nazis reads like a detective story". A series of Senate hearings brought out documentary evidence of German use of subterfuges to survive the last war with foreign assets intact. Evidence showed that with the outbreak of this war the Germans had taken elaborate precautions to safeguard their overseas interests. Patents and trademarks had been transferred to citizens of neutral countries. German firms had arranged to have their Latin American distributing outlets supplied with materials from the United States, so that German controlled firms could sell goods at wartime prices and build up financial reserves for any emergency, political or economic.

After the entry of the United States into the present war, reports continued to be received in growing numbers that the Germans were carrying on their program to perpetuate Germany's international financial position and power. Intelligence reports, censorship intercepts and prisoner interrogation began to reveal that the Nazis, in contemplation of defeat and full occupation, were transferring large amounts of property, cash, securities, documents of title and other financial assets to corporations and individuals outside of Germany and also to certain "cloaks" within Germany.

II. INITIAL PREPARATIONS

The Acting Director of the Finance Division, U.S. Group CC, Colonel Bernstein, suggested in the summer of 1944 that the Military Intelligence (G-2) Services adopt a program to investigate Germany's international assets and to uncover and prevent transfers of assets through searching the files and interrogating the personnel of the large German firms. After serious consideration, however, G-2 concluded that the activity was a highly specialized analytic rather than a military intelligence function and that the specialized training of the personnel and the

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TO : WARCAD FOR COL BERNSTEIN

FROM : OMG FOR GERMANY (US) FROM NIXON SIGNED CLAY

REF NO : CC-17475 TOO: 121330B OUT djj

American Embassy Madrid cabled to forward immediately power of attorney several German parent companies in favor American and British Embassies in order overcome legal difficulties in acquiring administering disposing of these companies subsidiaries in Spain. Dissipation of funds feared if not immediate action taken. Tom Blaisdell's emissaries Robbins and Remington were here discussing similar matters and in addition informed us of valuable information in London pertaining to usage German printed Pesetos in favor Germany's preclusive buying during war. Now using same issue to retain and build up German research industrial political organizations in Spain and elsewhere. Operation by former German Embassy members and other Germans or Germanophile Spanish blatently in order impress Spanish of their still existing and future potentialities. United States men felt that United States should take lead and decisive action to correct situation. Our position after conversation with Fahy is Military Government should act as sovereign power of Germany and give power of attorney instead of individual Germans or German companies like DNB, Lufthansa Transocean, Siemens Halske. External Assets Division presently involved should have primary responsibility entire matter. We felt prompt action on highest level necessary to stop present situation. Detail information being forwarded by pouch.

ORIGINATOR : DICEA AUTH: R A NIXON, CIV.

INFORMATION : O/SS DAS Political Aff Legal
Finance T & C AG Records

CC-17475 13 Oct 45 0230B BFS/dwo

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OFFICE OF MILITARY GOVERNMENT FOR GERMANY (U.S.)

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PRIORITY

TO : WARCAD

FROM : OMGUS SIGNED CLAY

REF NO : CC-23480 TOO : 231020A Feb 46/hs

GEPC has presently under consideration the adequacy of the MGAX-1 form. Experience gained from the examination of actual declarations already made by Germans under Law 53 indicates that the present Form MGAX-1 fails to give all the information deemed necessary and required in connection with the marshalling of German external assets. For instance, there is no requirement in the present MGAX-1 form that information be given regarding the following assets in foreign countries:

1. Diamonds
2. German patent rights
3. Indirect investments other than first tier companies.

It is not considered that a complete recensus is either desirable or practicable but it is possible that some form of additional declaration can be called for to cover property not already included under the present form. Recommendations for implementing the present form so as to evoke additional information regarding German external assets are invited by the American member of GEPC from Treasury, Alien Property Custodian, Justice, and Commerce.

ORIGINATOR : FIN AUTH : SUSANNA P TURNER MAJ

INFORMATION : O/SS
ECON
POL AFF
LEGAL
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