

Committee for Return of  
Confiscated Property

10AP

Box 21

"Studiengesellschaft" file

**STUDIENGESELLSCHAFT FÜR PRIVATRECHTLICHE AUSLANDSINTERESSEN E.V. BREMEN**

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Bremen, den 5. April 1956  
INF 46/56

Bezug: Unser Rundschreiben INF 34/56 vom 8.3.1956.

Sehr geehrte Herren!

*noted in original copy*

Zu dem Ihnen mit obigem Rundschreiben übersandten Memorandum  
"The Case for Returning Private "Enemy" Property" überreichen  
wir Ihnen anliegend die abgeänderte Seite 26 mit der Bitte,  
diese in dem Ihnen vorliegenden Exemplar auszuwechseln.

Mit verbindlichen Empfehlungen

gez. Dr. E. Schütte

Anlage

*1 copy please*



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This will be all the more true since the possibility of prepayments was envisaged explicitly when framing the Debt Agreement (cf. above III A, 2, b, aa).

It is obvious that the Post-War Economic Assistance Debt can hardly be considered to be an investment from the part of the U.S. in terms of earning interests on it. It can be assumed, therefore, that the U.S. will be quite ready to accept prepayments, if offered. The interest rate of 2 1/2% is hardly high enough to make the U.S. eager to enjoy that interest as long as possible.

3. Not all the money spent from the liquidation proceeds will have to be procured from this source of the Post-War Economic Assistance Debt. The German owners will be ready to contribute their share to the solution of the assets issue by making a sacrifice. They will be ready to waive a certain portion of their claims.

a. This idea is not new. After World War I, 20% of the assets had to be sacrificed by the owners (cf. above I, B, 4). This was meant to be but a temporary sacrifice, it is true, but to be repaid only after a considerable length of time (cf. above). For reasons discussed previously, this sacrifice turned out to be a permanent one.

b. The same idea has been discussed after World War II when people began to look for a solution. To cite but one example, the bill introduced by Senator Chavez 1953 (S.J. Res. 92) provided for the return of the assets, subject to a deduction of 20%.

c. Assuming a sacrifice of 20% from the part of the owners of the assets, valued at about 450 Mio. \$ (cf. above II, A, 2), an amount of about 90 Mio. \$ could be deducted from the total claims of the German owners.

These figures are including, of course, those properties claimed by their owners to be non-German. It is impossible to ascertain beforehand how many of these owners, if any, will be ready to accept the burden of the sacrifice - and the "taint", by implication, to be German. If faced with the alternative either to have back 80% of the property immediately or to fight for the 100% by continuing litigation with all risks, costs and quarrels, it is safe to assume that at least a considerable number of the approximately 23 cases now under litigation will be very glad to choose the 80% return.

Cmte fro Return of  
Cnfscated Property  
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*Please return to*

COMMITTEE FOR RETURN  
OF CONFISCATED GERMAN  
AND JAPANESE PROPERTY  
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WASHINGTON 4, D. C.

~~CONFISCATED PROPERTY~~  
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GERMAN & JAPANESE PROPERTY  
REV. JOHN A. SCHERZER, TRSAS.  
JOHN A. SCHERZER

*Rec'd 3-23-*

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THE CASE FOR RETURNING PRIVATE "ENEMY" PROPERTY

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Bremen, March 1956





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The case for returning private "enemy" property  
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The case for returning private "enemy" property  
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I. Background

A. Treatment of private properties during a war

1. It is common, rightful practice among modern nations to block or seize during a war private properties owned by people who are under the control of the enemy. The purpose is

- a. to prevent these properties being used by the enemy government for its war effort;
- b. to protect the lawful interests of owners who might be forced by the enemy government to put the properties at its disposal against their will. This applies mainly to inhabitants of friendly countries, occupied by the enemy. That is the reason why during World War II the properties of the French, Dutch etc. in the USA were also seized by the US-Government together with the German properties.

The seizure of such properties is but a measure of economic warfare. It is effectuated by appropriate laws, often enacted already in peacetime as a routine matter of a general defense policy corroborating respective military and other economic defense measures (cf. Italian Royal Decree of July 8, 1938, Gazzetta Ufficiale Nr. 1415). Other countries are keeping such laws on the statute books from the time of former wars, having them ready for immediate use in case of emergency (cf. USA, Trading with the Enemy Act, October 6, 1917; 40 Stat. 411).

The character of such seizure is that of trusteeship, not of confiscation. Suffice it to quote three pronouncements which make it clear that this has also been the original intention pursued by the Trading with the Enemy Act of the USA.

Said Congressman Dewalt, one of the sponsors of the bill in 1917, when asked during the debate in Congress: "If the gentleman has studied the bill -- he will see clearly that instead of being confiscatory in its nature, it is in the nature of a requisition of property and a conservation of the property in the hands of the trustee (!), who is to hold it in escrow until the termination of the war, when this property is to be returned to the legal owner thereof...." (55 C.R. p. 4846).

Said the Alien Property Custodian after the bill was enacted into law in a statement issued to the press:

"...There is no thought of confiscation or dissipation of property thus held in trust." (28 Yale Law Journal, p. 481 (1918/19), Article by Borchard).



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Lack of money for:

1. Returning about 180 Mio. \$ worth of German properties
2. Meeting the as yet unsettled American war damage claims.

B. Other problems

1. Intercustodial conflicts
2. Return to owners living under Soviet domination
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      - lc. Further reduction to the benefit of Germany envisaged from the outset
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  - b. German Government blocked by Article 5 of the London Debt Agreement



- c. Payment without further appropriation possible
- d. Quick payment possible
- e. US keeps bargaining position for final settlement of reparations issue
- f. Unilateral US action complies with London Debt Agreement (Article 5)

3. Saving private property of friendly foreigners from being used for payment of debts of a foreign Government

V. The interest of the American investor is asking for a return of the German assets



Even during the second war, the ultimate fate of the properties seized was left open and restitution to the owners was one possible way, even the mind of the Alien Property Custodian:

"It is perhaps necessary to add at this point that the program of converting vested property into cash does in no way prejudice the character of any ultimate settlement which will appear appropriate.....Hence our program ... is not incompatible with a possible decision to provide compensation of the former owner." (Annual Report 1942/43, p. 70).

The same is true to the vast majority of the other countries having been at war on both sides in 1914-1918 and 1939-1945. In the Western World, there are only one or two countries which, as exceptions to the rule, meant to confiscate the assets when seizing them (cf. Netherlands, Decree E 133, October 20, 1944).

2. In the United States, confiscation of private enemy assets seized in time of war was requiring a second, additional decision of Congress.

a. After World War I, Congress choose not to confiscate but to return the assets.

When Congress had refused to ratify the Versailles Treaty, the Knox-Porter Resolution signed by the President on July 2, 1921, proclaimed the end of the state of war. Section 5 of that Joint Resolution provided that the vested assets were to be retained by the United States until Germany should have made "suitable provisions" for the satisfaction of all claims of US-nationals against Germany. After difficult and protracted negotiations between the two governments, including representatives of the owners, this satisfaction was finally provided for in the Settlement of War Claims Act, 1928 (Congressional Record, 70th Congress, 1st Session, p. 5185).

The main idea of that settlement was to pay the American war claimants out of the payments made by the German Government on the Dawes-Reparation-Loan, out of certain other smaller funds, out of 20% of the liquidation proceeds of the German private property, and out of the 50% of the sum destined by the US-Government to indemnify German shipping companies, radio-stations, and patent owners. This sacrifice of the German owners of 20%, resp. 50%, though was not meant to be a permanent one.

They were supposed to have this share of their property returned after all American war damage claims were met. On December 31, 1954, this complicated but satisfactory plan would have ended. 32 days after this date, a German delegation headed by Mr. Abs left Europe to begin talks with the American Government on the settlement of the German property issue and the American war damage claims resulting from World War II. -



That plan was not fully carried through, because in the course of the world wide financial crisis, Germany defaulted on the payment of her external debt, including the Dawes Loan. As a result, not all American war damage claims could be paid and the 20%, resp. 50% of the German properties could not be returned.

b. After World War II, Congress took a different course. The War Claims Act, 1948, inserted into the Trading with the Enemy Act a section 39, reading as follows: "No property...shall be returned to former owners...or their successors in interest, and the United States shall not pay compensation for any such property or interest therein." (Sec. 12, War Claims Act, 1948).

This was the confiscation of the heretofore merely seized private property.

aa. This Act did not comply with the American legislative practice as evolved in the course of 170 years of history. It did not comply either with the opinions of the overwhelming majority of American statesmen and jurists, who have stated their position on this subject.

bb. It would fill a book to quote all these eminent men. It has been done before on various occasions, so that their words are readily available to any one interested in the subject. The span goes from Hamilton to Hull and Baruch, and from Th.B. Moore to the American Bar Association and to Jessup.

In discussing the confiscation of the property of the United Fruit Co. by the Government of Guatemala, the State Department had this to say on the subject of confiscating foreign properties: (Aide-Memoire of August 28, 1953, published with Press Release No. 464) "The obligation of a state imposed by international law to pay just or fair compensation at the time of taking of property of foreigners cannot be abrogated from the international standpoint by local legislation. If the contrary were true, states seeking to avoid the necessity of making payment for property expropriated from foreign nationals could avoid all pecuniary responsibility simply by changing their local law. Every international obligation could thus be wiped off the books. But international law cannot thus be flouted. Membership in the family of nations imposes international obligations. Violation of the basic norms of justice cannot fail to undermine mutual confidence without which economic progress retarded."

B. Settlement of War Damage Claims after a War.

War damage claims are distinct from reparations.

1. In more recent times, a custom has developed to charge the vanquished with the payment of what the war is supposed to have cost to the victor. Involved methods have been applied to evaluate such costs as accurately as desirable. In more ancient times, this sum payable by the vanquished was fixed more arbitrarily in compliance with the ability of the vanquished to pay and the poli-



tical aim pursued by levying the tribute against the vanquished, as e.g. annihilation ("Carthagian Peace", 201 B.C.) or future alliance (Bismarck's Peace of Nickolsburg with Austria, 1866) or any other shade of political aim in between.

Reparations, therefore, are political claims, levied by one Government against another Government. Their amount is usually determined by overall policy considerations. If the attempt is made, as it was done in Versailles, to evaluate the actual costs of war to a country, a tendency is prevalent to arrive at unlimited, astronomic figures.

2. War damage claims are wholly different.

They are claims of individual civilian citizens of one belligerent country against the Government of the former enemy country for loss of life, personal injury, or for loss of property caused by the conduct of military activities by that government: sunken ships, bombed houses, maltreatment of prisoners and civilian internees etc. According to some authorities, only damages caused by "Exceptional war measures" are to be indemnified. Suffice it here to make it clear that and why war damage claims are different from reparation claims.

It follows that there exist two kinds of war damage claims:

- a. Personal damage
- b. Property damage.

It follows further that war damage claims are operating both ways between the countries. It is irrelevant to know which is the victor or vanquished. There is a tendency, though, of course to give more consideration to the war damage claims of the citizens of the victor country.

Being individual claims for specific damages, war damage claims are open to being ascertained by a procedure of evaluation in which the other party may have a part (Mixed Claims Commission). Experience shows a marked tendency of scaling down the usually much inflated claims, as filed by the claimants, to a much lower level so that workable figures may be arrived at. After World War I, as to the American war claims, this level was about 10% of the amount originally claimed.

3. In American policy dealing with the problems of seized enemy private property and private war damage claims, a tendency has developed to link both problems. This tendency stems from the matter of fact approach to look upon the seized private enemy property as a sort of lien held in custody until a settlement for the war damage claims of one's own nationals has been arrived at.

This attitude finds no basis in international law, it is true. It is nevertheless an attitude which is understandable, especially in terms of internal policies.



It would be unrealistic to assume that this attitude does not prevail anymore, especially since it won a full victory after World War I, as expressed by the Settlement of War Claims Act, 1928.

This discussion of the property problem, therefore, starts from the assumption that for all practical purposes it will be advisable to look for a simultaneous, suitable solution of the war damage claims.

4. Starting from the same assumption, after World War I, a solution meeting these requirements was agreed upon between the two governments including representatives of the private interests involved, and embodied in the War Claims Settlement Act of March 10, 1928: (For further details see Dr. H. Janssen, The return of seized private property to German, Austrian and Hungarian Nationals in 1928, Düsseldorf, 1955. Translation from a book on the subject by the same author, published in 1928).

a. A German Special Deposit Account was created. This Account was to be made up of the following cash deposits:

- aa. 20% of the German private property becoming available for the purposes of the Account through the written consent of the German owner (cf. below 4, b)
- bb. The German share in the so-called unallocated interest fund, earned by the Alien Property Custodian from the assets vested in him under the Trading with the Enemy Act.
- cc. 50% of the amounts appropriated by the U.S. for the payment of certain German war damage claims (cf. below 4, d, ee)
- dd. The amounts received from Germany for the payment of the awards of the Mixed Claims Commission. This Commission had been agreed upon on August 10, 1922, to ascertain the total of the German financial liabilities under the Peace Treaty of Berlin, concluded between the U.S. and Germany on August 25, 1921.

These amounts were to be equal to 2 1/4% of Germany's annual reparations payments under the London Agreement on the Dawes Plan, distributable among the Allies according to the Paris Agreement.

b. 80% of the vested property was to be returned to the owner on condition that he consented to the temporary retention of 20% of the property for the benefit of the German Special Deposit Account (cf. above 4, a, aa).

c. All patents, trademarks, registered patterns, and similar rights vested but not sold by the Alien Property Custodian were returned unconditionally.



d. Out of the German Special Deposit Account the following payments were to be made:

- aa. Administrative expenses for arbitration proceedings and similar purposes, incurred by the US.
- bb. American private creditors of the awards of the Mixed Claims Commission in a certain order of priority, up to a total of 80% of their gross awards on the death and personal injury awards, provided that no creditor shall receive more than \$100,000,-.
- cc. 5% interest to the German owners who had consented to the retention of 20% of their property (cf. above 4, a, aa)
- dd. In equal order of priority:
  - (1) American creditors for such awards as had not been paid pursuant to previous provisions;
  - (2) 5% interest to  
German owners of ships, radio-stations and patents, due to them on the gross amounts of their awards.
- ee. In equal order of priority:
  - (1) German owners for the 20% of their property, temporarily retained for the benefit of the German Special Deposit Account (cf. 4, a, aa).
  - (2) German owners of ships, radio-stations, and patents, for the 50% of their awards against the US-Government (cf. 4, a, aa).
  - (3) American creditors of awards still unpaid.
- ff. German creditors of the unallocated interest fund (cf. above 4, a, bb).
- gg. American Government for its own claims.

5. It is obvious that the underlying principles of this seemingly involved solution have been:

a. Payment of war claims of American nationals and of the American Government (mainly occupation costs) against the German Government.

b. Payment of certain war claims of German nationals against the American Government.



c. Full return of the vested private enemy property.

d. Speedy payment of the war claims by making available for that purpose certain temporary sacrifices of the German owners.

It was appropriate therefore that the original bill drafted by the Treasury and introduced into the House of Representatives by Mr. Mills was headed: "A Bill to provide for the payments of the Awards of the Mixed Claims Commission, the payment of certain claims of German nationals against the U.S., and the return to German nationals of property held by the Alien Property Custodian." (69th Congress, H.R. 10820).

II. The Facts.

A. Factual situation of the assets.

(Most of the following figures were taken or derived either from the latest published Annual Report of the Office of Alien Property for the fiscal year ending June 30, 1953).

1. The total value of all enemy assets vested by the OAP is 555 Mio. \$.

2. Of these, 453 Mio. \$, i.e. 81% of the total value, were vested as German assets. This amount is including those assets whose owners claim to be non-German and who have filed a title claim in order to have their assets returned by the courts (Sec. 9 a of the Trading with the Enemy Act). As of January 1955, there were 23 title claims filed, involving assets of an estimated total value of 165 Mio. \$. The most valuable and best known asset of this group is, of course, the General Aniline & Film Corporation, owned by Interhandel of Basel, Switzerland.

3. Of all assets vested as German-owned, as of January 1955,

285 Mio. \$ were liquidated, whereas assets estimated at 165 Mio. \$ were not yet liquidated because title claims were pending. According to the present legal situation, these assets in litigation cannot be sold unless the 450 Mio. \$ claim has been decided upon. There have been repeated efforts to have bills enacted permitting

the sale of such assets in spite of pending litigation. These bills have been fought on the ground of being unconstitutional. This argument was intended to be met by the latest bill of that group, introduced by Senator Clements in the House on March 11, 1955 (H.R.S. 1405) providing for the sale of such assets only for which a title claim by a non-American claimant is pending. This bill obviously aims at the sale of GAF.

An attempt to ascertain the eventual total value of the German assets involved in the present dispute on their return must not overlook that this group of unliquidated assets introduces an unknown factor into the picture for two reasons:



a. Their real value will be known only after their sale. Estimates alone as to the selling value of the greatest of these assets, GAF, vary by tens of millions Dollars.

b. It is impossible to ascertain which and how many of the 23 disputed assets will eventually be permitted to be sold after the courts have passed their decision or, in case a bill like that introduced by Senator Clements (cf. above) becomes law which portion of their liquidation proceeds can be considered as "German".

4. The liquidation proceeds, amounting so far to 285 Mio. \$, have been disposed of as follows:

a. 225 Mio. \$ have been transferred to the War Claims Fund, created by the War Claims Act, 1948. From this fund, certain categories of personal war damage claims of American citizens (as distinct from property claims) are being paid.

Of this amount, 165 Mio. \$ have actually been spent so far. How much of the remainder of 60 Mio. \$ will have to be used for the same purpose will be known only in autumn 1956 after the passing of the deadline for ascertaining the claims filed under the War Claims Act, 1948 (August 30, 1956).

b. 60 Mio. \$ of the liquidation proceeds from German assets are still available.

It must be borne in mind, though, that the administrative costs of the OAP are to be paid from the earnings or liquidation proceeds of the vested assets. The total costs, as of June 30, 1953, were more than 40 Mio. \$. It is estimated that about 32 Mio. \$ are chargeable against the German assets.

5. A closer look at the amount of 225 Mio. \$ transferred to the War Claims Fund (cf. above 4, a) reveals interesting details.

a. By far the most important group of claimants entitled to payments from the War Claims Fund are American prisoners of war and civil internees on the ground that all of them were during the entire period of their internment intentionally not fed according to the rules of the Geneva Convention, and that many of them had to suffer ill-treatment from the hands of the guards.

b. It is obvious that the majority of such claims must originate in the Pacific Theatre since the number of American prisoners in Japanese hands has been greater, and since they were kept a greater period of time. - VJ was half a year later than VE, and substantial numbers were taken prisoner in the first months of the war in the Pacific.

c. It was apparent from the Hearings, called for the enactment of the War Claims Act that charges of ill-treatment were levied exclusively against Japanese camp administrations. Of more than 60 cases, testified upon in the Hearings, all happened in Japanese camps, with one exception which occurred in a Bulgarian camp.



It may be, of course, that amongst the claims filed later with the War Claims Commission, actual cases of ill-treatment which occurred in German camps will be found also. It is obvious though that most of such ill-treatment claims are claims against Japan.

d. It is most doubtful as to whether the assumption will stand closer scrutiny that all prisoners in all German camps for all the time of their internment were intentionally not fed according to the rules of the Geneva Convention. It is on this assumption that every prisoner of war is entitled to receive a per day payment of \$ 1,-. Even during the Hearings, no attempt has been made to bear out evidence for this assumption which was merely based on a respective statement of the State Department, referring to undisclosed evidence in its possession.

Facts known about a number of German camps and extracts from reports of the International Committee of the Red Cross, charged with routine inspection of all camps in all belligerent countries show that there are obviously very many exceptions to that generalizing assumption, at least for the time prior to the beginning collapse of the German economy.

e. From these observations it follows that

aa. of all the claims filed under the War Claims Act 1948 the vast majority is directed against Japan;

bb. many of such claims, especially those charged against Germany, are filed on the basis of an assumption which is questionable as to the facts.

Since 81% of all the vested assets are of German origin, and since only 12% are of Japanese origin, it turns out that, roughly, German private properties are being used to pay debts of the Japanese Government. - In this factual discussion, no observations are being made as to the legality or advisability of the principle of using private property for paying governments debts.

f. This inequity of the settlement as provided by the War Claims Act, 1948, has been partially acknowledged by the U.S. Government during the recent intergovernmental talks of February/March 1955. The joint statement issued on March 4, 1955, says "that proposals will ... be submitted to the Congress for the settlement of war claims held by U.S. nationals against Germany up to \$10,000,-. This program would be financed by the use of \$100 Mio. from the payments to be made by the Federal Republic on its debt to the U.S. on account of post-war economic assistance. This represents the estimated amount of German vested assets used in the past for the payment of war claims not attributable to Germany."

That means that of the 165 Mio. \$ so far paid to claimants under the War Claims Act, 65 Mio. \$, e.g. about 40% of the total, are supposed to be attributable to Germany.



No figures are available to ascertain the equity of this ratio announced by the statement of the U.S. Government.

In the light of the facts discussed above (5 b - d) and in view of the further fact that some of the eligible claims are by their nature attributable only to Japan (f.i. claims of religious organizations on the Phillipines), this sum of 100 Mio. \$ seems to be a minimum.

g. Nothing can be said yet on the fate of the 60 Mio. \$ not yet spent from the War Claims Fund. - The sum of 100 Mio. \$ "not attributable to Germany" specifically is referred to only such German vested assets "used in the past" for the payment of war claims.

It is possible that not all the remainder will be necessary for paying further war claims (cf. above 4 a).

It is certain that not all of that money which will be paid will be versed for claims attributable to Germany. If applying the same ratio of 40%, used for the amount of 165 Mio. \$ "used in the past" and under the assumption that all the remaining 60 Mio. \$ will be spent, 24 Mio. \$ may have to be considered as attributable to Germany, whereas 36 Mio. \$, though coming from German assets, would not be attributable to Germany.

B. Factual situation of the war damage claims.

1. The War Claims Act of 1948 provides for the settlement of a number of war claims, mainly claims for personal injury and death.

It is estimated that practically all the personal damage claims are being taken care of by this Act.

The time for filing further claims elapses in 1955. The claims filed will have to be ascertained until August 30, 1956. At this date, it will be possible to say if and what money will be left available after paying the claims under this program.

No provisions have been made yet for settling the bulk of the property damage claims.

The War Claims Commission, charged with administrating the War Claims Fund, was directed by Congress to study the problem of paying further war claims and to evaluate the possible amount of such claims.

Questionnaires have been distributed by various channels to obtain figures as reliable as possible under the circumstances.

a. In view of the unavoidable, preliminary character of such figures, it would be premature to use them here. It can be said, though, that so far they are surprisingly low especially if compared with the claims filed after World War I.



bb. On the other hand it was agreed that both parties may mutually determine "that it would be in their common interest, because of adverse economic conditions or for any other reasons ... to alter the provisions of this Agreement."

When formulating this safety valve, both parties apparently had in mind the disastrous results of the all too stringent debt policy pursued by some creditor nations after World War I.

They might also have borne in mind the fact that the other free nations of Europe had received a far greater reduction of the debt arising from the post-war economic assistance rendered to them by the U.S. Finally, the eventual burden of rearming already envisaged for Germany at the time of the London Debt Conference might have motivated the U.S. to think of some further alteration when things have matured.

c. Why should the U.S. use money due to her from Germany to return the liquidation proceeds from German assets inasfar as they have already been spent? Which are the merits of such proposal for the American side?

aa. It is obvious by now that the policy of non-return and confiscation is a dangerously irritating burden on the otherwise cordial and close relations between the U.S. and one of her most vital allies. This burden tends to become constantly more irritating with the beginning implementation of the policy of rearmament in Germany, making millions of Germans on a basis of personal day-by-day experience military allies of the American Forces.

It seems to be the opinion of the overwhelming majority of the leaders of public opinion in the U.S. and of the leaders on the field of American foreign policy that this source of constant, dangerous, and unnecessary irritation should be removed as soon as feasible.

The envisaged solution seems to be the only practicable way to render this service to the foreign and military policy of the U.S.

In the Fiscal Year 1955/1956, 80 Mio. \$ have been spent for "Cold War Propaganda" (New York Herald Tribune, June 1, 1955). It would be the most convincing kind of propaganda to stick to the principles of western civilization as opposed to those of the cold war enemy denying private property.



It is evident, though, that they are incomplete. This is borne out by the fact that f.i. one single group of claims amounting to some hundred millions of Dollars was apparently not included in the figures produced so far.

It is apparent, furthermore, that a number of claimants does not seem to be particularly interested in filing claims, because any payment to them would largely be taken from them for taxes.

3. There seems to be certain one thing, though: even the total value of all vested assets, including those in litigation (cf. above II A 2) will not be sufficient to pay all of the war claims still unsettled.

III. The Problems in finding a simultaneous solution for the property as well as the war claims issue.

A. The two principal problems:

It has become apparent from the previous discussion that, assuming a return of the confiscated properties were envisaged, substantial amounts of money will be lacking for two purposes:

1. Of the liquidation proceeds of all enemy assets, 225 Mio. \$ have been transferred to the War Claims Fund to be spent under the War Claims Act program (cf. II A 4, a).

Of this money, about 180 Mio. \$ may be considered as coming from German properties. (The exact share of the German properties in relation to all vested assets excluding the Italian assets which have been mostly returned under the Lombardo Agreement of 1947, is 84%).

It may be possible that of the sum of 60 Mio. \$ not yet spent out of this transferred amount of 225 Mio. \$, a certain share may be still available after the winding up of the program of the War Claims Act, 1948 (cf. II, A, 4, b). Furthermore, an amount of about 36 Mio. \$ of this money should, if spent, be considered to have not been attributable against Germany (cf. above II, A, 5, e). It is nevertheless safe to assume that approximately 180 Mio. \$ will be lacking out of the German properties in case of return.

2. For meeting the as yet unsettled war damage claims of American citizens, an unknown amount of money will be required (cf. II, B, 2, a).

We shall discuss later possible solutions to these two dominant problems.

B. There are a great number of more problems, some of them quite intricate by nature, but none of them as difficult to meet as the two previous ones. We will, therefore, not devote much space to discussing possible solutions for this type of problems especially since there is in most cases more than one solution available. We



will confine ourselves to stating briefly the overall aim any solution should attain to be equitable.

1. Some properties, and often the more important ones, are subject to so-called intercustodial conflicts. Such conflict arises when the same asset is also being claimed by the Enemy Property Custodian of another country as coming under his jurisdiction as for instance securities of a German owner, being held for him by a Dutch bank in the United States; shares of a company in the U.S. being owned by a Danish holding company which itself is controlled by a German owner.

In some such cases, the U.S. have come to an agreement with the other country which of these assets are to come under U.S. jurisdiction.

In some cases, notably those claimed by Switzerland, no such agreement has as yet been reached.

In all these cases, the owner of record or legal owner is a person, natural or juridical, in another country outside Germany. The beneficial owner is German. That is, why such property comes under the vesting program.

Since many of the countries involved have enacted national laws providing for control, seizure, partial or total confiscation of German private properties, such property would be vested by the Government of that particular country if the property were to be returned by the U.S. directly to the owner of record or legal owner.

If Congress resolves to return the German assets, it does so to improve the relations of the U.S. with the German people and not with the Dutch or British or Belgian Governments which might in these cases become the actual beneficiaries of an American legislation.

To make sure that the German owner will be the beneficiary instead, provisions should be formulated to give such properties directly to the beneficial (German) owner or to keep them in American custody and trusteeship for the German owner, or to make sure, that the other Government will not in its turn confiscate that asset, if returned to the record owner.

2. A number of German owners entitled for return will be living under Soviet domination in the Soviet zone of Germany, in the Oder-Neisse territories of Germany under temporary Polish or Russian administration, or somewhere else in the Soviet realm.

These people will be forced under local foreign currency control regulations to report their properties and to "sell" them to their local Soviet authorities against payment in depreciated local currency, thus losing the benefit of the return and strengthening, against their will, the economic power of the local Soviet government.



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These properties, therefore, should be kept in American trusteeship until the owner has been able to make his home in a free country where he can receive property returned to him by intent of Congress.

3. No property should be returned to war criminals.

The problem is that quite often people arraigned as war criminals in the heated times after the war are obviously not being considered anymore belonging to that category. It will be necessary, therefore, to formulate a definition of a war criminal which is in accordance with present-day opinion without requiring re-opening cases or going into new procedures.

4. Some properties may be considered by the US-Government as being of vital interest to national security because of their magnitude or the place they are holding in specific essential branches of production or for other reasons. In such cases, a desire may develop to have such properties "americanized", so as to exclude foreign control or even foreign partnership.

Provision should be made for the sale of such properties and the return to the owner of the price yielded in lieu of the property.

It may be important to make clear who is going to sell the property: the OAP or the owner, after the asset had been returned to him with the provision to sell it within a certain period of time.

5. Patents have been given on a royalty-free basis to anyone having applied for the use of the patent. It will be difficult to return the patent to the owner so as to put it again at his exclusive disposal and control. Provision should be made though to have the licensee pay at least a certain license fee to him. It may be advisable to apply a gradually rising scale for the license fee in order to enable the licensee to adapt his calculations and prices to this new factor of cost of production.

To find an equitable solution for the owner of patents is all the more necessary since the actual loss suffered by the owner from the making his patent available to everybody cannot be undone anyhow.

Patents (and copyrights, for that matter) seem to be the most sublime of all property rights developed by the legal mind in the community of the Western World. A patent very often is representing the essence of the life work of some bright brain, attained at by years and decades of research and work. No effort should be spared to provide at least some sort of a consideration to the owners of patents, since the right itself cannot be returned anymore by the force of facts.

6. The same applies to those trademarks which have been sold. Though, fortunately, this is the exception, these trademarks used to belong to the most valuable ones.



C. Objections.

There is hardly one man to be found anymore willing to defend confiscation of private property as a matter of principle. Even those who might wish to do so are reasonable mindful of the suspicious and embarrassing vicinity into which the defense of that principle would put them with Communism.

There are, though, a number of objections which are offering a welcome shelter for the opponents of return and which seemingly are not ill-founded. These objections seem to have made some impression at times with a number of people who as a matter of principle would prefer full return.

1. It is said that the US are bound by international agreements not to return any of the vested properties. This objection apparently refers to the Paris Reparation Agreement of January 1946, Article 6, reading as follows: "Each signatory Government shall, under such procedures as it may choose, hold or dispose of German enemy assets within its jurisdiction in manners designed to preclude their return to German ownership or control."

a. Apparently this article does not constitute a formally legal obligation for the signatory government to exclude all possibility of a return.

As a matter of fact, a number of member states of the Paris Reparation Agreement have shown by their actions that they do feel free to dispose of the assets as they seem fit:

Great Britain has distributed all German assets in its jurisdiction to pay British pre-war creditors of German debts. Under British law (German Enemy Distribution Law, December 25, 1949) the creditor is not obliged to book these payments against the debts of his debtor. This is left to the creditor. The largest group of creditors, the British banks, have unanimously decided to discharge their debtors for the amounts paid. The result will be that the German owner gets at least part of this loss paid by the German debtor, if and as far as he has been discharged.

Denmark has restored, upon individual application, about half of the vested properties (as to total value) to individual owners.

Belgium and Luxemburg have inofficially and against certain payments returned a number of assets, the future economic development of which was dependent upon the restoration of the rights of the German owner. Belgium also permitted the German owner to bid in the sale of his property.

Greece is ready to return the majority of the assets, subject to certain conditions.

Holland has restored the claims from social insurance contracts and general insurance contracts entered into on a basis of employment.



The Union of South Africa is returning the assets to owners who are willing to immigrate into the country or to contribute to the economic development.

b. Constitutionally the Paris Reparation Agreement is not binding upon Congress because it is but an Executive Agreement.

Secretary of State Dulles has said (Hearings before the Dirksen Sub-Committee on July 2, 1954, p. 161):

"In my opinion, the agreement, whatever its intent may have been as an executive agreement, was without authority whatever to bind the Congress of the United States in this matter. The property had been vested by action of Congress. I believe Congress has the right to decide what to do about the matter. I do not believe that the freedom of Congress in this matter has been curtailed in any way by this executive agreement. I am not a believer in the power of the President through executive agreements to cut across the normal legislative powers of Congress.

I may say that, as a matter of interpretation of that agreement, it can be argued that it was not intended to operate in perpetuity but was designed as a temporary measure perhaps to assure against a revival of German militarism and the use of German important commercial assets possibly as an instrument of German militarism. I think that that danger has passed and that if the agreement be given that interpretation - which I think is a reasonable one - then the action which you contemplate is not only compatible with the powers of Congress but also is compatible with the executive agreement itself."

This statement of the leading authority for the interpretation of the international obligations of the U.S. should suffice to do away with that objection.

2. It is also said that Germany's reparation burden was light after World War II as compared with the admittedly unbearable and disastrous burden put on her after World War I. The conclusion is that there is little reason to make the reparation creditors return that little value which they might after all have been able to obtain for the heavy losses suffered by the war.

This comparison is without foundation on the facts.

a. After World War I, Germany was in possession of her agrarian provinces of East Prussia, Silesia, and East Pomerania, including the industrial district of Upper-Silesia. These territories are now under "Polish administration", resp. "Soviet administration" (Region of Koenigsberg) and wholly separated from the rest of Germany.

b. After World War I, Germany was, with the exception of a few counties (Kreise) east of Koenigsberg, completely untouched by any military action or war destruction.



c. After World War I, Germany had to absorb about 150,000 expellees from the provinces ceded to Poland and France. After World War II, the Federal Republic, comprising only one third of the Germany of 1920, had to absorb 11 millions expellees.

d. Reparations, as agreed upon at the Potsdam Conference (August 2, 1945) were levied against Germany on the assumption that she would be an economic entity (III, B, 14).

This assumption failed to come true.

e. The reparations levied against Germany at Potsdam were calculated on the basis of a totally disarmed Germany. Germany is now expected to rearm substantially.

The value of the assets in the U.S. is equal to the costs of about one division of which Germany is scheduled to put up twelve.

f. The burden of rearmament, not considered at Potsdam, has virtually been shouldered by Germany already since several years; Germany has been paying to the allies heavy occupation costs on an average of 10 billions DM a year (2,5 billion \$). Since a number of years, these payments virtually were German contributions to the common defense burden of the West. To occupy and to police the totally disarmed and politically allied Western Germany, a much smaller occupation force would have been sufficient. The famous Kaiserslautern military establishment f.i. has been paid solely out of occupation costs provided from Germany.

g. The return of the liquidation proceeds of the assets will be far from returning all economic advantages which the U.S. have attained from the reparation program. A number of such advantages are unreturnable:

- aa. It is technically impossible to return the patents vested by the OAP (cf. III, B, 5). By making the vested patents available on a royalty free basis to any applicant, American economy gained full gratuitous advantage of the money invested by the patent holder in developing his patents. It also gained full gratuitous advantage of the time factor involved by saving months, years, and even decades of development. The competitive favourable situation of the patent holder has been permanently destroyed to the advantage of his competitors.
- bb. The same applies to the immense quantity of technical knowledge of all description (patents, know-how, blue-prints) which the Allies, including the U.S., have assembled within Germany under the reparation program. These assets, too, cannot be "returned". The gain to the Allies is as permanent as the loss to the German owner. The value of this knowledge cannot be assessed by the nature of it. American estimates as to the value of the advantages embodied in this particular kind of reparation run very high indeed (many billions of \$).



cc. Trademarks, as far as they are sold, are in the same position as patents: they, too, cannot be returned by the Government. - If they are "returned" by the new owner, the former owner will have to pay for it.

Trademarks constitute a permanent competitive improvement for the holder. He is in the position to close the national market to the former owner and even may compete with him on foreign markets.

dd. After World II, reparations were, to the Western Allies, a by-product of the over-all policy of disarming Germany militarily and economically. This leads to two conclusions:

1. Having learned the lesson of the reparation policy of the Versailles settlement, the Allies realized that it is well-nigh impossible to extract really substantial reparations from an important partner of World trade without upsetting the international structure of commerce and endangering the economy of even the recipient countries. From this lesson, the endeavour to obtain substantial reparations has been far less acute with the Western Allies who were ready to subordinate reparations to long-term policy considerations.

This is true above all for the U.S., which for obvious reasons were less eager than many of the minor allies to profit economically from reparations. It should not be too hard to the U.S. to move one step further on this general line of caring little for reparations by renouncing to one more portion of reparation obtained "incidentally" by persuing not a rigid policy of reparations but a rigid policy of economic disarmament, now reversed to the contrary: a policy of rearmament.

2. The policy of demilitarizing Germany economically rather than obtaining valuable reparations has afflicted exceedingly consequential losses to the German economy. To many branches of industry, the real destructions came only after the shooting war was over (steel, shipyards, machine tools, synthetic gasoline, rolling balls etc.) For years, and even up to now, various restrictions are posed on German industry (atom-reactors). The dismantling of factories has been done much more for the elimination and destruction of key places of production and research rather than the taking of means of production to be used by the recipient.



Here is one more decisive difference to the situation after World War I, which makes it indisputable to call the reparation burden lighter this time. After World War I, no such economic demilitarization took place. A German government was in charge to procure the reparations in kind and in money so as to do the least damage to the economy as a whole. - The French attempt of procuring reparations directly by occupying the Ruhr has been a short and for that matter fruitless interlude.

3. Some owners are said to earn an unjustified "windfall" in case of return. The most famous of these cases is Schering Corporation. The shares were sold by the OAP for 29 Mio. \$ whereas the capital of the firm, according to the balance at the time it was vested, amounted to only 1,3 Mio. \$ and, at the time of the selling, to only 11,5 Mio. \$.

This comparison is unfair. The real value of a firm is never indicated by its capital as shown in the balance sheet, but by its earning power. Besides, the purchasing power of the Dollar of 1952, the time of the sale, is roughly about half of the time before the war.

In the case of Schering A.G., Berlin, the spectacular development of the American subsidiary, Schering Corporation, is largely due to the fact that Schering Corporation was in the position to use gratuitously the know-how and the patents of Schering, Berlin.

Furthermore, the "windfalls", that is the increase in nominal Dollar value in some cases, are accompanied by a great number of cases of "windlosses", where a decrease in value took place. This is especially true for all assets consisting in money accounts (bank accounts, trusts, royalties) which, because of the devaluation of the Dollar, have decreased in value. They constitute almost half of the total value of the vested assets.

4. The envisaged return of \$10,000.- to each individual owner is said to give full return to 90% of all cases, thereby virtually solving the problem. -- This is far from being true. --

Only 10% to 15% of the total value of the assets will thus be returned. It is impossible to call it a "virtual" solution of the problem when for the vast majority of the total value involved nothing changes. Such solution rather constitutes a virtual aggravation of the problem since it is applying a discrimination against larger assets. Such discrimination against "kigness" used to be foreign to the American mind.

It is incompatible with reality to overlook the fact that a corporation is owned by its shareholders. Most companies owning assets in the U.S. are owned by a vast number of shareholders indeed. Schering A.G., Berlin, f.i. has approximately 14.000 shareholders.



There is not one "Mr. Schering" or one "Mr. Zeiss" yearning for his lost wealth but a great number of little investors who are the sociological basis for a functioning democratic structure.

Under modern industrial conditions, the workers and employees, too, may be considered partners of the firm. This changed position of the workers is borne out by the fact that under the new social legislation in Germany the governing boards of all sizeable corporations are obliged to compromise a certain number of members elected from the workers and employees (principle of co-management). The assets lost in the U.S. are not anymore considered by the workers as losses of the "capitalists", but of "their" factory.

5. It is said that Bonn "recognized" the taking of the private property of its citizens in the Paris Agreements of 1955. Article 3 of Chapter VI of the Convention on the Settlement of Matters Arising out of the War and the Occupation reads as follows:

"The Federal Republic shall in the future raise no objections against the measures which have been.....carried out....."

This wording clearly indicates that no waiver of rights was intended nor executed.

This provision of the Paris Agreements is, by the way, the only one which was accompanied with a formal protestation and reservation from the part of the Bundestag when the Paris Agreement was ratified.

Much emphasis is also being laid on the difference between the forced acceptance of the Versailles Treaty of 1919 and the voluntary acceptance of the Paris Agreements, including the above provision.

Mr. Debevoise of New York, who served as a special legal advisor to the US-High Commissioner of Germany when the Paris Agreements were negotiated, said at the Philadelphia meeting of the American Bar Association 1955 that the persons who oppose return because of Germany's "treaty obligations" are making a weak argument. "There is no "treaty". When they were negotiating on the section on reparations, they merely added certain language the purpose of which was to prevent the Germans from thoughtlessly setting particular transfers. The Paris Agreement merely ratified what was by then existing law."

Even the Paris Agreement gives the Federal Republic the right to "negotiate with any country agreements on...questions...concerning German external assets unless the Three Powers specifically object thereto". (Chapter VI, Article 3 (4)). It would make little sense if by the same convention Bonn "recognized" the taking of the properties and was granted the right to negotiate over the return of these properties.



The meaning of the obligation of Bonn to "raise no objections" is that Bonn will have no actual claim for the return but has kept the chance to ask for the return on the basis of negotiations.

6. It is said that return is unnecessary since the Bonn Government is under the obligation to compensate the expropriated owners. This objection refers to the Paris Agreement, Chapter VI, Article 5: "The Federal Republic shall ensure that the former owners of property ... shall be compensated".

Again, Mr. Debevoise has described the money value of this compensation at the Philadelphia meeting of the American Bar Association with candid words: "As to Germany's promise to compensate, you know what that means.... The people whose property you are taking here would be lucky to get back 5 or 10 cents to the dollar. That is what Germans are getting back under the Lastenausgleich Program (Equalization of Burden Law) for other types of war losses. They have inserted very careful language in their constitution which requires them to treat all equally. To try to shift the burden to compensate to the Germans would, in fact, constitute a very real taking on our part."

Relating to the respective provision of the Versailles Treaty (Article 297 (i)), Professor Dr. Edwin Borchard, Professor of Law at the Yale Law School said at the 1933 annual meeting of the American Society of International Law:

"...Of course, substitution of a bad debtor for a good debtor, under Article 297 (i) is a mere subterfuge, doing no credit to the integrity of modern times. It is the tribute vice pays to virtue. It was a subterfuge to avoid the inevitable charge of confiscation."

7. In discussions where all these objections have failed, usually the last, most sweeping one is resorted to: "It is impossible to unscramble an egg."

This is doubtlessly true. It is not true, though, that the property issue is comparable to a dish of scrambled eggs. There are ways to unscramble the results of the confiscation policy at least to a very large extent. These ways will be discussed now.

IV. Suggested Solution.

A. Financing the return of confiscated property.

It has been explained previously (II, A, 3 and 4) that about half of all "enemy" assets obtained in the U.S. have been liquidated and that of the liquidation proceeds 165 million dollars have been spent. Any whatever ardent desire to return the confiscated assets is bound to hit the quite serious obstacle, therefore, that this portion of the assets is not any more available. That much seems to be gone forever.



This amount will increase since the present program of using the liquidation proceeds for paying American war damage claims (cf. II, B) will require some more tens of million dollars before it is to be winded up on August 30, 1956 (cf. II, A,4)

1. For the purpose of our further discussion it is safe to start from the assumption, therefore, that approximately 200 million dollars of the liquidation proceeds of the German confiscated assets will be spent at the time a program of return might eventually be organized.

2. The enigmatic source from which this money of an estimated amount of 200 million dollars could be made to flow are the repayments and, if necessary, prepayments of Western Germany on the Post-War Economic Assistance Debt.

a. The United States have furnished economic assistance to Western Germany since the termination of hostilities until July 1, 1951, amounting to about 3 billion dollars. On February 27, 1953, the London Conference on Germany's External Debt was closed with a number of international and bilateral agreements.

In pursuance of "the policy of the U.S. to adjust such claims so that the obligations of the Federal Republic ... may be reduced and placed on a basis generally similar to that established for the other free nations of Europe", this amount had been reduced to one billion dollars. ("Agreement between the U.S. and the Federal Republic of Germany regarding the settlement of the claim of the U.S. for post-war economic assistance to Germany" of February 27, 1953, in: Message from the President of the U.S. of April 10, 1953, to the Senate, Gvt. Printing Office No. 26115, p. 135-138; Art.I).

On this debt, an interest rate of 2 1/2% is due beginning January 1953. The first interest payment of 12,5 million dollars was due on July 1, 1953, and semi-annually thereafter.

Beginning July 1, 1958, and semi-annually thereafter, 59 installments of 23.790.000 \$ and one final installment of the unpaid balance shall be paid for interest and capital (Article I, 2).

As of July 1955, a total of 62,5 million dollars on interests has been paid according to that agreement.

b. It is significant that the agreement has provided from the outset for the possibility of later alterations.

aa. Germany is entitled to make prepayments as she may choose. In such cases she is obliged, though, to make the same proportionate prepayment to Great Britain and France with which countries similar agreements on post-war economic assistance rendered by these two governments were concluded at London (Article I, 4).



- bb. The continuation of the policy of confiscation and non-return against the vast majority of the German properties is all the more irritating and discriminating because it is the only exception to the rule of a policy of returning vested assets, as applied in the case of the German assets after World War I and of the Italian assets after World War II.

By extending this policy of return to the German assets still confiscated, the principle of non-confiscation will be restored to its full vigour. It is generally accepted and emphasized on many occasions that the international recognition and force of the principle of non-confiscation is of vital importance to millions of American investors, defending billions of dollars of investments in practically all countries of the world on this side of the Iron Curtain.

It is a dangerous disservice to the interests of these American investors to put foreign countries in the position to point to the U.S. as a precedent when confiscating, "nationalizing" or otherwise taking the investments and properties of these Americans.

- cc. The policy of non-confiscation has been applied recently even to private properties belonging to citizens of Soviet Satellites, formerly German Allies. A Public Law signed by the President on August 9, 1955, provides for the divesting "subject to release" of property owned by a natural person, citizen of Bulgaria, Hungary or Rumania (Sec. 202 b). Properties belonging to corporations are not divested simply because all corporations in those countries have become "nationalized", that is taken over by the government. These assets, now governmental, are for that reason going to be used for the paying of war damage claims of American citizens against those governments (Congressional Record of June 23, 1955, p. 7777).

The reason for not confiscating the properties of private individuals was given convincingly by the Assistant and the Deputy Assistant Secretaries of State, Mr. Morton and Mr. Barbour, by identical statements before the House Foreign Affairs Committee (March 29, viz. July 8, 1955):

"The Department of State is of the opinion that the property of natural persons should be excluded from the vesting program. While the United States has the right to seize such property, it is considered undesirable to take this action; the assets of natural persons are relatively small in amount and WE DO NOT WISH TO ALIENATE THE SUPPORT OF FRIENDLY NATIONALS OF BULGARIA, HUNGARY AND RUMANIA OR IMPAIR THEIR FAITH IN THE UNITED STATES. Thus the legislation provides for keeping the assets of natural persons in a blocked



status subject to release, when, as, and upon such terms as the President or his designee may prescribe."

If it is important to avoid alienation of friendly nationals, now subject to unfriendly governments, it makes no sense not to care for the alienation of friendly nationals, citizens of an allied government.

- dd. No additional appropriation from tax payers money will be needed for filling the gap in the liquidation proceeds. It would be utterly futile and a symptom of unrealistic approach to harbour any hope that it might be possible to obtain appropriations in the sense proper of the word from Congress for this purpose.

It is true, of course, that this money coming back from Germany under the Post-War Economic Assistance Debt Agreement originally also was American tax payers money. There should be no fooling about this hard fact.

But there are a number of essential differences between money which has to be appropriated newly and explicitly for the specific purpose of filling the funds of the liquidation proceeds and that money to flow back from Germany in these years and the years to come.

- 1a. This money has been appropriated and spent by the U.S. already once. It was given without the slightest reasonable hope to see one single dollar of it again in the foreseeable future. To accept this statement, one only needs to recall the economic, social, political and organizational situation of Germany during the years she was given that money: destitute and hopeless.

It is an unexpected "windfall" that there had evolved a German Government being at all in the position to incur the obligation to repay at least 1 billion \$ of that money, - and to keep that obligation.

- 1b. Similar post-war economic assistance has been rendered to a number of other free countries in Europe. Their obligations to repay that money have been either cancelled altogether or reduced to a far greater degree than that of Germany.
- 1c. Further "alterations", that is outright reductions of that debt had been envisaged from the beginning already at the time of the signing of the agreement of February 27, 1953 (cf. III,A,2,b). The chief reason for such envisaged future reduction, i.e. German rearmament, has materialized in the meantime.



ld. No outright "reduction" is being asked from the U.S. The money will have to be paid from the German economy, as agreed upon in London. The idea is to use a certain portion of this money in such way as to give it to certain members of that same German economy whose properties were confiscated. This would amount to some sort of indirect or intermediate "reduction".

Such "reduction" would have the immense beneficial result of removing an adamant obstacle from the road of American foreign policy. The U.S. has been ready to spend 3 billions of dollars to keep her mortal enemies from starving and to help them recovering from a war they fought to the bitter end.

It does not seem to make sense if the U.S. should shrink from a proposal to use some of this money which she thought gone for ever but which by a most unexpected development has become available once more for removing the sore spot left after her policy to make allies out of these former enemies has borne such spectacular success.

le. To keep things straight in the proper proportions of financial magnitude, it will be helpful to remember the fact that the money value of all assets confiscated from German owners in the U.S. is equivalent to the costs of one modern division of which Germany is expected to organize twelve.

"More than 500 Mio. \$ in German occupation cost funds have been spent in four years to construct the Kaiserslautern complex", center of the US Western Area Command (US News World Report, February 25, 1955).

Does it make sense to keep the equivalent value of private assets of those supposed to defend Kaiserslautern together with American troops?

ee. It may be that the payments of Germany on interests and capital according to the London Debt Agreement may not suffice to provide all the money necessary for filling the gap at the time a return of the properties can be effectuated.

In such case, prepayments from the part of the German Government should take place. It cannot be doubted that the German Government would be ready to consider such prepayments if by doing so it can contribute its share to a solution of the property issue.



This will be all the more true since the possibility of prepayments was envisaged explicitly when framing the Debt Agreement (cf. above III A, 2, b, aa).

It is obvious that the Post-War Economic Assistance Debt can hardly be considered to be an investment from the part of the U.S. in terms of earning interests on it. It can be assumed, therefore, that the U.S. will be quite ready to accept prepayments, if offered. The interest rate of 2 1/2% is hardly high enough to make the U.S. eager to enjoy that interest as long as possible.

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It is also true that Germany happens to be situated in a section of the world which belongs to the traditionally troubled areas. It may be considered to be no bad policy to get debts paid from such areas in not too many installments.

3. Not all the money spent from the liquidation proceeds will have to be procured from this source of the Post-War Economic Assistance Debt. The German owners will be ready to contribute their share to the solution of the assets issue by making a sacrifice. They will be ready to waive a certain portion of their claims.

a. This idea is not new. After World War I, 20% of the assets had to be sacrificed by the owners (cf. above I, B, 4). This was meant to be but a temporary sacrifice, it is true, but to be repaid only after a considerable length of time (cf. above). For reasons discussed previously, this sacrifice turned out to be a permanent one.

b. The same idea has been discussed after World War II when people began to look for a solution. To cite but one example, the bill introduced by Senator Chavez 1953 (S.J.Res. 92) provided for the return of the assets, subject to a deduction of 20%.

c. Assuming a sacrifice of 20% from the part of the owners of the assets, valued at about 450 Mio. \$ (cf. above II, A, 2), an amount of about 90 Mio. \$ could be deducted from the total claims of the German owners.

These figures are including, of course, those properties claimed by their owners to be non-German. It is impossible to ascertain beforehand how many of these owners, if any, will be ready to accept the burden of the sacrifice - and the "taint", by implication, to be German. If faced with the alternative either to have back 80% of the property immediately or to fight for the 100% by continuing litigation with all risks, costs and quarrels, it is safe to assume that at least a considerable number of the approximately 23 cases now under litigation will be very glad to choose the 80% return.



d. The application of the same sacrifice to all owners may tend to be unfair to the smaller ones. It might be preferable, therefore, to accept a gliding scale for levying the deduction according to the size of the asset, asking more from the larger ones and less from the smaller properties.

B. Financing the payment of war claims.

For financing the payment of war claims, the same source should be made available: repayments and, if necessary, prepayments on the Post-War Economic Assistance Debt.

1. It is of high significance that this idea has already been adopted in principle up to an amount of 100 Mio. \$ by the so-called "Tentative Plan" of the U.S. Government, as discussed during the intergovernmental talks at Washington ending March 4, 1955. The U.S. Government intends to propose to Congress to use 100 Mio. \$ of the payments of the German Government on the Post-War Economic Assistance Debt for paying up to \$10,000,- to American war damage claimants. The introduction of a bill providing for such settlement is expected any time. (Introduced on June 8, 1955, H.R. 6730, Sec. 202).

2. The merits of enlarging this limited application of the idea to all American war damage claims are numerous.

a. The total value of the German assets is not sufficient to meet all war damage claims (cf. above II,B,2,b). A Congress and a Government conscious of their obligation towards the American war damage claimants will, therefore, have to look for other additional sources anyhow.

b. It is not possible to look to the German Government as a source for such payments. This road is blocked by Article 5 (2) of the London Debt Agreement saying that "claims arising out of the second World War by ... nationals or countries ... which were at war with ... Germany ... against the Reich shall be deferred until the final settlement of the problem of reparation." No such final settlement has taken place nor is it being contemplated now. The reasons for this clause actually protecting Germany against war damage claims are numerous and intricate. One chief reason has been to reserve "Germany's ability to pay" to her foreign pre-war creditors, amongst which American creditors are occupying the first place.

c. No further appropriations from new money raised by the tax payer will be necessary for Congress if it chooses to use the money flowing back from Germany under the Post-War Economic Assistance Debt for settling the debt of the nation towards those citizens who carried more than the average war burden.

d. This method will also provide for a quick payment. It must not be forgotten that the as yet not liquidated portion of the German assets (estimated value 165 Mio. \$) cannot be sold and made



available for payments to the war damage claimants until and unless the law suits now pending regarding these assets will be decided. Some of these suits are pending for years. Since everyone of these cases involves intricate issues of international as well as domestic law, it is safe to assume that it will take many more years to get a court decision.

As long as these assets are under litigation, they cannot be sold. There have been attempts, it is true, by introducing appropriate bills to make a sale possible inspite of litigation. These attempts have been unsuccessful so far, because it is widely doubted if sale would be in accordance with constitutional law.

But even the liquidation proceeds will be blocked from being used for the purpose of paying war claimants until and unless the suit will be decided upon by the court.

At least some of these assets will never become available for paying the war damage claimants, because it can be assumed that of the 23 assets under litigation certainly a certain number will be said by the courts to be non-German.

e. The use of the repayments under the Post-War Economic Assistance Debt for the paying of the American war damage claimants should be executed as a temporary measure of the US-Government not constituting any waiver of an eventual reparation claim of the U.S. against Germany. It may be that at the time of a four power peace treaty with Germany, the Soviets may be pressing for more reparations. It would be unwise for the U.S. and not in the interest of Germany either if the U.S. would not be in the position to sit in on the reparation issue, leaving the field to the Soviets.

f. Being an unilateral decision of Congress and the Government of the U.S. how to use money due to her from the Government of Germany, it would be in full compliance with Article 5 of the London Debt Agreement (cf. above 2, b).

3. Last not least, the method suggested seems to be the most feasible way to save private property of friendly foreigners, indeed of allies, from being used for payment of debts of a foreign Government.

It is not difficult to foresee situations in which a foreign government might state to have claims, real or fictitious, against the American Government. It will be a welcome precedent to such government to point to the U.S. Government when taking American private properties under its jurisdiction to settle that claim.

In this wicked world, it may even happen that a claim against the U.S. Government will be put up in order to have an excuse for taking the private properties of Americans, be they oil dwells, banana plantations, office buildings or bungalows.



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V. The interest of the American investor is asking for a return of the German assets.

The interest of the American investor has been defended by the State Department in its note of August 28, 1953, addressed to the Government of Guatemala with the following words:

"...The obligation of a state imposed by international law to pay just or fair compensation at the time of taking of property of foreigners cannot be abrogated from the international standpoint by local legislation. If the contrary were true, states seeking to avoid the necessity of making payment for property expropriated from foreign nationals could avoid all pecuniary responsibility simply by changing their local law. Every international obligation could thus be wiped off the books. But international law cannot thus be flouted. Membership in the family of nations imposes international obligations.

"...The United States seeks only that which is just -- that which is reasonable -- that which is fair -- for American investors in Guatemala".

Bremen, March 1956

Dr. E. Schütte