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## **Clinton Presidential Records Mandatory Declassification Review**

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CONFIDENTIAL

DECL: 10-4-99

October 5, 1999

MEMORANDUM FOR ROBERT A. BRADTKE  
 EXECUTIVE SECRETARY  
 NATIONAL SECURITY COUNCIL

SUBJECT: Talking Points for Phone Call with Chancellor  
 Schroeder on compensating former Forced and Slave  
 Laborers

The President and Chancellor Schroeder have agreed to a phone call today to discuss the financial contribution that Germany will make to a foundation that would compensate forced and slave laborers, and handle all other claims against German companies from the Nazi era. Deputy Secretary of the Treasury Stuart Eizenstat expects the Germans to propose a low offer of no more than 6 billion D-Marks. We fear that such a low offer could lead to a breakdown in the negotiations and a negative public reaction in the United States, with threats of state and local sanctions against German companies. A low offer may also lead to negative reactions among Germany's neighbors.

We recommend that the President praise the Chancellor for his leadership on this matter and argue for an opening German offer closer to 10 billion D-Marks, with an eventual willingness to go up to this level, if necessary. We believe that an eventual settlement will not be possible if it is much below 10 billion D-Marks. Background and Talking Points are attached.

*Stephen J. Moll*  
 Kristie A. Kenney *for*  
 Executive Secretary

OCT 6 9:05

Attachments:

- Background and Talking Points

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## **Forced and Slave Labor Claims against Germany**

In today's telephone conversation, Chancellor Schroeder is expected to address Germany's financial offer for forced and slave labor compensation, and all other claims against German companies from the Nazi era. He is also likely to raise related legal issues. The next round of multilateral negotiations on this subject, co-chaired by Deputy Secretary Eizenstat and Count Lambsdorff, will take place in Washington on October 6 and 7. The participants in the negotiations are:

- the Conference on Jewish Material Claims Against Germany,
- a number of plaintiffs' attorneys who have brought class action lawsuits against German companies,
- the governments of Poland, the Czech Republic, Ukraine, Belarus, and Russia (most claimants are from these countries), along with their German-financed Reconciliation Foundations,
- Israel, the United States, and Germany, and
- the German companies.

You wrote Schroeder on September 2 on this subject, and he responded on September 13 (both letters attached, Tabs 2 and 3).

### **Recent Developments**

There have been two important developments since your correspondence with Schroeder that have changed the dynamics of the negotiations:

- In two of the some 30 cases against German companies and Ford, judges dismissed the lawsuits, stating that the claims are not justiciable and should be addressed on a government-to-government basis. Although both State and Justice lawyers have serious concerns regarding these opinions, at this point, we have decided not to intervene.
- The German Government has now agreed to establish a single foundation. Thus, Schroeder has accepted a suggestion in your letter that the German Government combine the industry and government foundations into one public foundation. Schroeder's acceptance of this approach will facilitate a solution. It is administratively easier and solves many conceptual problems.

### Legal Closure

From the beginning of this process, the German companies have insisted that a prerequisite for establishing the foundation is obtaining legal peace from lawsuits in U.S. courts for acts arising out of the Nazi era. While from the beginning of this process we believed that a traditional class action settlement would be the easiest and surest way to provide such peace, an approach they refused to pursue, we are nevertheless prepared to take unprecedented steps to help them achieve this through a different approach. Our Justice Department is prepared to file a statement of interest in any pending or future cases against German companies which are covered by the foundation. We would state that the foundation should be regarded as the exclusive remedy for all claims covered by the foundation. It appears that we are close to an agreement that would broaden the scope of the foundation to cover all claims against German companies arising out of the Nazi period. In addition to submitting this unprecedented statement of interest, if asked by a court, we would state that dismissal of claims was consistent with our policy interests.

On September 27, in response to the German request, Eizenstat told Lambsdorff that we are now prepared to add justiciability as one of the legal hurdles that must be overcome in any Nazi-era lawsuits against German companies. We believe that we have offered to go the extra mile for the Germans to help them obtain legal peace.

### Relocated versus Deported

One of the most difficult issues to resolve has been German insistence that the proposed foundation cover laborers "deported" and sent to labor camps in Germany, but not those who were "relocated" to labor camps within their own country. By using this artificial distinction, the Germans had hoped to reduce the number of forced laborers eligible for compensation. We repeatedly asserted that such a distinction is morally and politically unacceptable and would fail to achieve legal closure for those unable to take advantage of the foundation initiative.

In order to resolve this issue, we have proposed that the German Foundation make lump-sum payments to the German-financed Reconciliation Foundations located in Poland, the Czech Republic, Ukraine, Belarus, and Russia. These foundations, rather than the German foundation, would in turn pay the forced labor survivors in those countries and

would have the discretion to pay relocated, deported and/or agricultural laborers as each sees fit. We appear to be close to an agreement on this. We would also solve the German Government's political problem of not wanting to pay agricultural workers forced to work on German farms during World War II through the same device that pays former forced and slave laborers. Our proposed approach would leave it up to the Reconciliation Foundations to determine whom would be paid.

### 10 Billion D-Marks

Deputy Secretary Eizenstat told Count Lambsdorff in late August that the German government and companies would need to provide the proposed German foundations with a combined contribution of 10 billion D-marks (\$5.5 billion). We would need this amount so that we could argue publicly and in court that the German offer is a fair settlement. This amount is also critical because the Germans have also insisted on a settlement which would cover all injuries from World War II related to German companies: not only forced/slave labor cases, but bank cases involving the aryanization of property, insurance cases, and other matters, e.g., medical experimentation.

Our information is that the Germans may propose in this week's round of talks an amount that will be no more than 6 billion D-Marks. German industry would provide 4 billion D-marks and the German Government would provide only 2 billion. The German companies are disappointed that their government will fail to match fully their offer, as they had expected. Schroeder's budget constraint is a factor. The expected low German offer is probably also based on the assumption that they have no legal liability and that Poland the Czech Republic will not wish to create a public political dispute with Germany at this time. However, this position fails to take into account a negative public reaction if the offer is too low, and also fails to recognize that class action lawyers will be unwilling to settle for this amount. Moreover, there is a prospect that the judges erred and the lower court rulings will be reversed on appeal.

We recommend that you praise the Chancellor for his leadership on this matter and argue for an opening German offer closer to 10 billion D-Marks, with an eventual willingness to go up to this level, if necessary. We believe that an eventual settlement will not be possible if it is much below 10 billion D-Marks. Talking Points are at Tab 1.

### Talking Points

- I would like say how much I have appreciated your leadership on this critical matter. You are making a historical and powerful statement on behalf of Germany as it enters the new millennium.
- I understand that you have proposed the establishment of a single German foundation to cover both public sector and private sector laborers.
- I appreciate your favorable consideration of our suggestion for a combined foundation. I truly believe that this approach will make it easier to find a solution.

### Legal Closure

- We are prepared to take unprecedented steps within our judicial system to provide German companies with the legal peace they seek.
- As I mentioned in my letter of September 2, the United States is prepared to file a statement of interest in any pending or future case against German companies in U.S. courts arising out of the Nazi era which would be covered by the foundation.
- This is particularly significant given that it appears that the proposed foundation would now be comprehensive and cover all such claims.
- Our Statement of Interest would say, among other things, that this foundation should be regarded as the exclusive remedy for all Nazi-era claims against German companies that are covered by the foundation.
- If asked by a court, we would state that dismissal of these cases is in the policy interests of the United States.
- Moreover, I intend to support a bilateral agreement with Germany in which, among other things, the United States commits itself to file such a statement.

**Need for 10 Billion D-Marks**

- While the United States is prepared to take such unprecedented steps, there has to be a credible amount of money allocated to the foundation to underscore the moral obligation of German companies for their mistreatment of millions of forced laborers.
- This would best ensure that the foundation is viewed as an acceptable alternative to the court process.
- Deputy Secretary Eizenstat has told Count Lambsdorff that it will take 10 billion D-Marks to settle this matter. I hope that your opening offer this week in Washington will come close to this amount, and that ultimately you would be willing to go up to this level if necessary. We cannot guarantee that this would resolve the matter, but we would press hard for settlement at that amount.
- I recognize that you face serious budget constraints that limit the amount of your government's contribution. I believe it will be difficult to get final agreement on an amount less than 10 billion D-Marks.
- It is important to recognize that the German companies want a settlement for all injuries arising from their conduct in World War II - not just slave and forced labor matters, but banking, aryanization of property, insurance, medical experimentation, and all other possible actions.
- If these negotiations break down, I fear that there could be a negative public reaction in the United States, with threats of state and local sanctions against German companies as well as negative reactions among Germany's neighbors in Central and Eastern Europe.
- There are reports that the plaintiffs' attorneys want to launch a public relations campaign against German companies and Ford, although Deputy Secretary Eizenstat has warned them against this approach.
- We should not let this matter continue to drag on. We need to settle soon. With the significant progress that we have made in recent weeks, I believe such a solution is in sight.

- I want to reiterate that, to ensure the moral and legal closure that Germany seeks, the German government and companies need to ultimately offer 10 billion D-Marks, if necessary, to settle this matter, given the breadth and completeness of closure they seek for any and all injuries arising from World War II conduct, not only slave and forced labor cases.

(**IF ASKED** to agree to a more sweeping approach on legal closure and extinguish the lawsuits by Executive Order)

- We need to review your suggestion with our lawyers, but we believe we have satisfied the concerns of the German companies by the extraordinary lengths we are prepared to go to help them achieve legal peace. Count Lambsdorff should talk to Eizenstat about this.