

VI. 1. POSSIBLE U.S. W/DRAWAL FROM WASH. ACCORD

FOOTNOTE 353

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STANDARD FORM NO. 64

SECRET

# Office Memorandum • UNITED STATES GOVERNMENT

TO : G: Mr. Matthews

DATE: November 7, 1950

FROM : EUR: Mr. Perkins

SUBJECT: Swiss Offer to Discuss Disposition of German Assets.

The Swiss obligated themselves in 1946 to liquidate German assets by signing an Accord with the United States, United Kingdom and France but have since raised a series of problems which, in the Swiss view, prevent their implementation of the Accord. Of these problems, two have caused the most difficulty: (1) The settlement of Swiss claims to certain German assets in the United States, commonly referred to as the intercustodial issue and (2) The degree of compensation to be provided in German money to Germans whose assets in Switzerland will be liquidated.

The compensation issue has never been formally discussed with the Swiss but there is no expectation that the extremely limited compensation scheme (10 per cent cash - 90 per cent pie-in-the-sky) which GER says is the maximum that they are willing to force on the German Government, will be considered as adequate by the Swiss.

The present stalemate with the Swiss is caused by the Swiss insistence to relate performance under the Accord with the attainment of their demands, which are of pecuniary value to the Swiss, under the intercustodial issue. The Swiss demand for their desiderata regarding intercustodial matters <sup>1/</sup> caused the cancellation, under abrupt circumstances, of the last scheduled conference on the Accord.

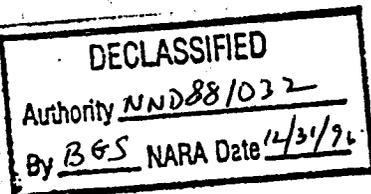
The Swiss have suggested another meeting on the Accord but under conditions which reserve for themselves the unilateral power to relate their performance under the Accord to the satisfaction of their demands on the intercustodial issue. We have not yet responded to this Swiss note dated September 20, 1950.

In 1948 the Swiss demanded arbitration of all issues in dispute but later agreed to seek settlement by negotiation. The negotiations have so far failed but neither side has admitted failure. The Swiss meanwhile periodically reminded us that they have only temporarily shelved their request for arbitration. The United States considers the intercustodial issue outside the scope of, and therefore not arbitral under, the Accord (although the Swiss say it is). The compensation issue is arbitral and the best guess is that we would lose the decision. GER is not willing to submit the compensation matter to arbitration because of the disadvantages which would be found in carrying out a possible adverse decision.

1/ The United States and Switzerland had negotiated in 1949 an ad referendum intercustodial agreement but the Swiss last June proposed substantial modifications to that agreement which the United States Alien Property Custodian says are unreasonable and would extend to the Swiss more generous treatment than that given to our Allies. The Swiss have refused the U. S. offer to discuss the modifications after the Accord has been settled when the ad referendum agreement can be discussed on its own merits. The Swiss also have refused the U. S. offer to settle the issue on the basis of the existing ad referendum agreement.

(NOTE: UNDERSCORING IS NOT PART OF THE ORIGINAL DOCUMENT.)

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EUR's Recommendation

In 1948 the Department decided that if efforts then being made to obtain Swiss performance under the Accord failed, the United States would withdraw from its Trusteeship. We have since been involved in fruitless negotiations and up to now have not had a clear opportunity to carry out its decision. EUR, retaining action responsibility for the Accord, now recognizes that further negotiations will not achieve the liquidation of German assets by the Swiss. Moreover, EUR fears that another conference, assuming the intercustodial impasse can be broken, would only result in another impasse on the compensation issue because the Swiss will declare GER's limited proposal as inadequate. The U. S. Minister at Bern shares the opinion that our best compensation offer is inadequate. If the Swiss renew their request for arbitration of all unsettled issues, the United States would have to refuse because GER is not willing to run the risk of an adverse arbitral award requiring more generous compensation. By refusing to arbitrate the compensation question which is clearly arbitral under the Accord the United States would incur embarrassment and primary blame for the failure of the Accord.

EUR recommends that the best way to avoid such an untenable position is to avoid giving the Swiss an opportunity to declare the compensation plan unsatisfactory. EUR proposes, therefore, not to attend another conference, but to withdraw now from our Trustee function on the basis that Swiss insistence upon satisfaction of their intercustodial desiderata as a condition precedent to their performance under the Accord, has made the Accord unworkable as far as the United States is concerned. 1/

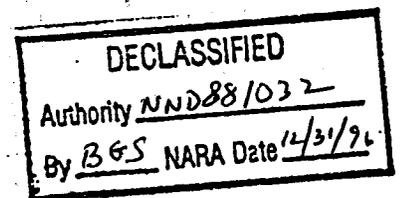
EUR's proposal (concurring in by the Department of Justice and Treasury) will permit a dignified withdrawal from a situation which for more than four years has poisoned our normally good relations with the Swiss. Such a withdrawal, however, does not contemplate the creation of a vacuum as regards German assets in Switzerland. Switzerland's obligations under the Accord and existing blocking mechanisms would not lapse, and the emerging German Government could effectively deal with the Swiss. In such a settlement it must be contemplated that Germany will be part of the Western Europe defense structure and hence its acquisition of purchasing power in Switzerland would redound to the common good.

GER's Recommendation

GER, not holding action responsibility for the Accord, would prefer to continue negotiations and when the Swiss again demand arbitration of the compensation issue, to excuse our refusal to arbitrate by stating that conditions now are such that we cannot honor a commitment made in 1946 to provide compensation. 2/

1/ The United States cannot be criticized for a withdrawal on the intercustodial issue because the Inter-Allied Reparation Agency for which the United States is acting as Trustee, has adopted a resolution to the effect that the Accord is not the proper framework for the settlement of Switzerland's claims to German property in the Allied countries.

2/ EUR and L/E do not agree that a change in conditions provides an excuse for welshing on a commitment to arbitrate.

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GER's concern is that the United States relinquishment of its Trustee functions would make it possible for the remaining Trustees (U.K. and France) to agree to a more generous compensation plan or to submit the compensation question to arbitration. If so, GER fears that the United States would be outvoted when execution of a more generous compensation plan came before the High Commission. GER points out that if the question is arbitrated, the reserved powers in Germany in certain fields would have to be preserved for a longer period than would otherwise be desirable in order to carry out the arbitral decision.

GER concludes that if the alternative course of action they favor is not possible in the light of the present status of negotiations, then GER concurs in EUR's recommendation to withdraw.

#### L's Recommendation

L takes the objective view that the United States should perform its international obligations or arbitrate any relevant disputes save only when the vital security interests of the United States may be jeopardized. GER does not assert that vital security interests are involved in the provision of compensation to the Germans, but does say that the effects of a more generous compensation plan would be harmful to Allied interests to a degree which would make arbitration extremely inadvisable. L, therefore, recommends that the Department continue its efforts to secure implementation of the Accord or if such efforts fail, to agree to give full compensation or to submit any dispute to arbitration. This does not mean that L objects to the use of any tactical devices, in the continuation of our efforts, that may be available to persuade the Swiss to withdraw their demands on the intercustodial issue or to accept a modified form of compensation. L's views are that if full compensation is ultimately provided the Swiss would implement<sup>2/</sup> the Accord or in all events the burden for failure of the Accord would rest squarely on them.

#### E's Recommendation

E views this problem as of primary concern to other offices of the Department but is in agreement with the position taken by L in respect to the need for the United States to carry out its part of the Swiss Accord. Mr. Thorp does not dissent from the action proposed by EUR and advises no alternate course, but like others who have been connected with this project to realize reparations from German assets in Switzerland, is unhappy that the effort has been unfruitful.

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- 1/ The British and French have indicated, however, that before committing themselves regarding compensation, they would ask to what extent the United States can cooperate in imposing on the Germans a more generous compensation scheme.
  - 2/ EUR does not think the Swiss will implement the Accord until the whole question has been arbitrated and an international arbitral Tribunal tells the Swiss that on the basis of international law, they must implement the Accord.

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You are asked to decide:

- (a) If L's demand that GER assert vital security interests in this problem is realistic.
- (b) If EUR's proposed action is appropriate.

*11/8/50 Seen by Mr. Bombardier who supports EUR's position.*

*JW* *AP*

EUR:WE:LRWilliams:AFPeterson:lw