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Office Memorandum • UNITED STATES GOVERNMENT

TO : EUR - Mr. Bombricht ✓
FROM : WE - Mr. Peterson MP.
SUBJECT: Swiss-Allied Accord

DATE: November 21, 1950

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You have suggested as a solution to the Accord dilemma a formula somewhat along the following line: (1) arbitration of those modifications suggested by the Swiss to the present draft intercustodial agreement which cannot be settled by negotiation; (2) the intercustodial agreement or arbitral decision shall not become effective until after the Swiss have demonstrated their intentions to perform under the Accord by liquidating a substantial amount of German property; (3) all other issues under the Accord, except for the compensation issue, should that become a problem, shall be settled within a stated period of time either by negotiation or by arbitration; (4) the Allies and the Swiss shall agree, as a condition precedent, that the compensation issue shall not be submitted to arbitration by either side.

If the real motive for Swiss intransigence on the Accord has been solely their desire to secure the release of an estimated 15 to 50 million dollars of assets in the United States which are involved in the Swiss intercustodial claims, then it would seem that the formula set forth above would be an entirely satisfactory solution to the impasse. Recent speculation that the Swiss are interested in liquidating German assets in "partnership" with the Allies in order to satisfy Swiss claims against Germany out of Switzerland's share of the proceeds would also tend to recommend your formula as a practical step toward a solution of the overall problem posed by the Accord.

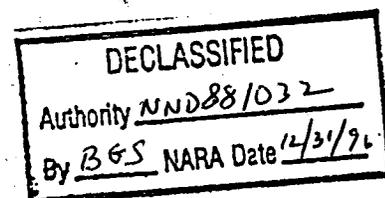
WE, however, on weighing all of the evidence, still is of the view that the Swiss will not perform under the Accord on any basis other than pursuant to a decision of an arbitral tribunal or other international body. WE, therefore, concludes that the formula outlined above will be rejected by the Swiss. This they can do without entirely abandoning their intercustodial claims or prejudicing their desire to satisfy Swiss claims against Germany. As to the first, the Swiss always have recourse to the United States courts or to the administrative procedures of the Office of Alien Property for the return of vested non-enemy property. With respect to collecting German debts, the Swiss can rationalize that they will eventually be able to satisfy their claims on the basis of an arbitral decision setting forth in terms of international law who should get what; in the meantime they continue to hold the blocked German assets as collateral.

If, as WE suggests, the formula is rejected, the Swiss would be in a position to say that the Allies, in making the proposal, admit their inability to carry out their obligations, and could reject further

negotiation

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negotiation in favor of their original demand for arbitration of all issues, including compensation, which, they have reminded us recently, was shelved only temporarily in order to attempt a solution of the disputed issues by negotiation as suggested by the Allies.

Alternatively, the Swiss might accept the formula but this would not necessarily settle all problems under the Accord because it is almost a certainty that after the stated period for negotiation, we would still lack agreement on compensation. Thus, we would still be left with an unfulfilled agreement which the Swiss could define as unworkable because of the inadequacy of our compensation offer. While the Swiss would be prevented from demanding arbitration, the United States would be subjected to pressures from the Swiss, French, British, and other IARA countries to arbitrate. The United States would at that time not have recourse to the favorable intercustodial issue behind which WE now proposes the United States hide its disabilities on the compensation problem.

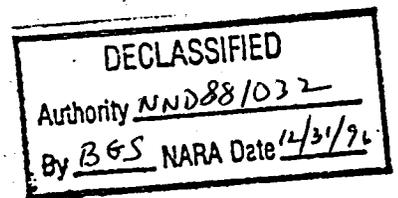
WE still recommends that the United States lay down its trusteeship because of the irreconcilability of views on the scope of the Accord.^{1/} The British and French, in objecting to that decision, have failed to provide an alternative course of action which will either secure the liquidation of German assets in Switzerland or safeguard the United States from embarrassment on the compensation issue. You will recall that the British and French were advised that while we agreed to delay delivery of our note to the Swiss, we would expect from them an alternative suggestion and not merely a protest. The British and French, of course, have not offered such an alternative and the points on which their protests are based are easily rebuttable.

It may be, however, that in the interest of maintaining harmony among the Allies in view of the more urgent considerations in other fields, we should allow ourselves to be diverted from a course of action which best serves the interests of the United States and which we believe serves Allied interests. If this should be the decision we should frankly advise the British and French that because of their last minute protests we agree to continue our trusteeship but only if they agree, in turn, to bear the responsibility for presenting the compensation plan at the next conference and agree to take the initiative in refusing arbitration of

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^{1/} We assume that if the Accord is defined unworkable on the intercustodial issue, any inquiries from the Swiss regarding our plans for compensation will be answered by the assertion that their adamant attitude on the American intercustodial issue made the Accord unworkable and caused its lapse.

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that issue, should agreement be impossible, or to provide another basis (as they say can surely be found) on which the United States (or the Allies) can break off negotiations with impunity should arbitration of the compensation issue become imminent. By getting such a commitment in advance whereby our Allies and not the United States will carry the ball on no-increase and no-arbitration of the compensation issue, the United States will not be left holding the bag alone. This would otherwise be the case because the British and French would favor arbitration of the compensation issue if that action held forth some possibility for getting Swiss francs.

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