

Footnote 339

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Authority NND881032  
By BGS NARA Date 12/30/96

Off

rum • UNITED STATES GOVERNMENT

TO : Mr. Perkins - EUR  
FROM : Roswell H. Whitman via Mr. Achilles  
SUBJECT: Swiss-Allied Accord Concerning the Disposition of German Assets in Switzerland.

DATE: 1/3/50

Problem

To determine the Department's position regarding payment of compensation to Germans in Germany whose property is liquidated in Switzerland under the terms of the Swiss-Allied Accord and thereby to settle the conflict between GER opposing such payment and WE favoring such payment.

Background

The Swiss-Allied Accord signed May 25, 1946 (Attachment No. 1) by the Governments of France, Great Britain and the United States representing the Governments signatory to the Paris Reparation Agreement on the one hand, and by Switzerland on the other, provides for the elimination of German interests in property in Switzerland and for allocation of one-half of the proceeds of liquidation of such assets to the Allies and one-half to Switzerland. Article 1 of the Accord states in part:

"The Swiss Compensation Office shall pursue and complete its investigations of property of every description in Switzerland owned or controlled by Germans in Germany and it shall liquidate such property. This provision shall apply equally to the property of such other persons of German nationality as are to be repatriated.

"The Germans affected by this measure shall be indemnified in German money for the property which has been liquidated in Switzerland pursuant to this Accord. In each such case an identical rate of exchange shall be applied.

"Switzerland will, out of funds available to it in Germany, furnish one-half of the German money necessary for this purpose."

Article I Section C of the Annex of the Accord states:

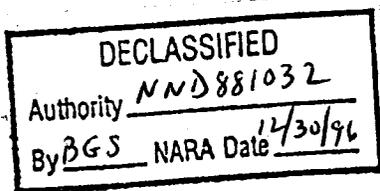
"The Compensation Office will notify to the Joint Commission, for transmission to the competent authorities in Germany, the amount realized by the liquidation in each case of German

property

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

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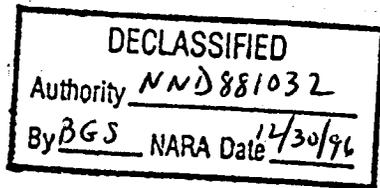


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property with particulars of the names and addresses of the German owners of that property. The competent authorities in Germany will take the necessary measures in order that there will be recorded the title of the German owners of the property liquidated to receive the counter value thereof in German money, calculated at a uniform rate of exchange. An amount equal to one-half will be debited to the credit existing in the name of the Swiss Government at the 'Verrechnungskasse' in Berlin. Nothing in this arrangement shall hereafter be invoked by one or the other party to this Accord as a precedent for the settlement of any Swiss claim upon Germany nor shall it be alleged that the Allied Governments thereby recognized any right on the part of Switzerland to dispose of the credit above mentioned."

The Swiss Government has refused to implement the Swiss-Allied Accord by liquidating the German Assets in Switzerland until solution is reached of four major issues and eighteen minor issues. The major issues are (1) The establishment of a rate of exchange between the German Mark and the Swiss Franc. (2) Establishing procedures for delivering the counter value in German currency to German owners of assets liquidated in Switzerland, (see quoted Section of Accord above). (3) Disposition of German Assets in Switzerland owned from the Soviet zone of Germany. (4) Disposition of assets in Switzerland concerning which there are intercustodial conflicts. (Attachments 2 through 8)

In order to resolve all of the issues, both major and minor, numerous international conferences have been held. The most important of these occurred during May and June of 1949 at which time Mr. Willard Thorp, Assistant Secretary of State was the American Delegate. At this Conference the eighteen minor issues were settled pending a final agreement on the four major issues. It was believed at the Conference that other major issues could be settled satisfactorily after a settlement of issue number four. Concerning number four, the Conference was recessed in order that the Government of Switzerland might hold a series of bilateral conferences with numerous Allied countries to settle the question of intercustodial conflicts. It was agreed that following the establishment of bilateral agreements, or efforts in that direction, the Government of Switzerland would call another Four-Power Conference for the purpose of settling once and for all the other three major issues. These bilateral conferences have been or are being held and a conference on Accord matters may be called in the near future by the Swiss Government.



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Since the Government of Switzerland insists upon fulfillment of those clauses of the Accord providing for compensation to Germans who own property liquidated in Switzerland (issue 2 above) it would be futile for the United States to enter another Four-Power Conference if that part of the agreement cannot be carried out by the Allies.

The Office of German Affairs within the Department feels that it is impossible to carry out that part of the Four-Power agreement requiring a system of compensation for German owners of assets liquidated in Switzerland when no compensation has been or is being provided for Germans who have lost assets during the war by other means, as for example, bomb damage, German Assets liquidated in other countries, etc. WE, on the other hand, believes that commitments of the Four-Power agreement should prevail and that the Allies should be prepared to propose to the Swiss at the next conference compensation in the form of an immediate payment of some percentage of the total, as for example, 10% or 15% in cash with 85% or 90% in bonds. The thinking of the three Allied delegations during the last conference was on the basis of discussions in the Department and from communications between the Department and the United States Government representatives in Germany during May of 1949 that such a system of compensation might be developed (Attachment No. 9).

It should be noted, however, that the Allied delegations shunted the question of compensation to a very large degree during the last conference. The question of compensation was relegated to the technical level where the Swiss representatives expressed neither approval nor disapproval of a compensation procedure offering less than 100% to individual owners in Germany. However, at the final session of the Conference in June, Minister Walter Stucki of the Swiss delegation lifted the question of compensation from a technical or the plenary level and made it clear that compensation in some form be paid to Germans upon liquidation of their assets in Switzerland was of the greatest importance - that in fact without it the Swiss Federal Assembly would never have ratified the agreement and that without its implementation by the Allies the Swiss will not proceed with liquidation. Mr. Stucki likened the situation to the taking of property by the United States Government under the theory of Eminent Domain where just compensation is paid to an owner deprived of his property. Nevertheless, when the Swiss met with various members of the American delegation socially they (the Swiss except Stucki) implied they were well aware of the situation in Germany where less than 100% compensation would be a matter of practical necessity.

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Minister Stucki's position is in general agreement with the other Swiss delegates and is explained in Telegram 1961, December 30, 1949 from Bern (Attachment No. 10). The United States Government avoided any definite commitments even though it had received from OMGUS information indicating that the 10% payment with bonds for 90% for all persons effected by "Safe Haven Agreements" in neutral countries might be managed (Attachment No. 9).

The Department is now faced with a specific conflict between (a) the clauses of the Swiss-Allied Accord which require compensation and (b) the present policy as explained by GER which prevents compensation to Germans in Germany.

WE believes (1) The United States, France and Great Britain have an undoubted obligation under the Accord to provide indemnity to German owners of assets liquidated in Switzerland. L/E agrees with this conclusion. (2) If the Allies refuse to provide such payment and the Accord thereby collapses by Swiss refusal to liquidate assets, the Allies are renegeing on an international obligation not only to themselves but to the other IARA countries on whose behalf the three Allies are acting and who are expecting and need a share of the proceeds of liquidation. (3) The United States will be in a more difficult position than Great Britain and France vis-a-vis the other countries in the Inter-Allied Reparation Agency since both Great Britain and France favor providing some form of compensation in order to prevent the failure of the Accord and in order to carry out what they believe to be their obligations thereunder. (4) Under the Occupation Statute the United States, Great Britain and France reserved the right in Germany to carry out their international commitments of which compensation to Germans who own assets liquidated in Switzerland is one.

On the other hand GER opposes any proposal which would provide payment of compensation because it would be inequitable and unpopular with the German people if at the same time provision was not made for similar compensation for others who suffered war damage.

Since it is essential that the Governments of UK and France be informed of our position at the earliest possible moment, the problem is presented to the Assistant Secretary level for decision. Mr. Willard Thorpe who is thoroughly familiar with all Swiss-Allied Accord problems will no doubt be of inestimable value in reaching a Departmental position.

Recommendation

It is recommended that you (1) agree with the WE viewpoint expressed above, and (2) that you attempt to persuade Mr. Byroade to adopt this viewpoint.

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Attachments:

1. The Swiss-Allied Accord, May 25, 1946.
2. A letter addressed to Mr. Thorpe, Mr. Penson and Mr. de Panifiew (US, British and French Delegates to the International Conference of May and June of 1949) from Minister Walter Stucki, Delegate of Switzerland.
3. A letter addressed to Minister Walter Stucki by the delegates of France, UK and US to the International Conference in May and June, 1949.
4. Document #11 of May 26, 1949 from the Four-Power Conference regarding the Swiss-Allied Accord.
5. Document #10 of May 26, 1949 from the Four-Power Conference regarding the Swiss-Allied Accord.
6. Document #9, of May 26, 1949 from the Four-Power Conference regarding the Swiss-Allied Accord.
7. Document #8 of May 26, 1949 from the Four-Power Conference regarding the Swiss-Allied Accord.
8. Clipping from New York Times December 21, 1949.
9. Exchange of Communication between Department and OMGUS.
10. Telegram 1961 December 30 from Bern.

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Corrigendum to Memorandum dated January 3, 1950

To: Mr. Perkins - EUR  
From: Roswell H. Whitman - Via Mr. Achilles.

The Swiss-Allied Accord concerning the disposition of German Assets in Switzerland.

GER having read the above described memorandum suggests the following alterations:

Page 2 - Second Paragraph - Point 2 should read "establishing and implementing procedures for delivering the counter-value in currency to German owners of assets liquidated in Switzerland."

Page 3 - Second Paragraph of first sentence should read "The office of German Affairs within the Department feels that it is impossible to carry out that part of the Four-Power Agreement requiring a system of compensation for German owners of assets liquidated in Switzerland because (1) this would be discriminatory treatment in favor of a particular class of persons who lost as a result of the war and would be politically dangerous, (2) it would lead to demands for compensation in Germany for other classes of war losses, the acceptance of which would be economically impossible."

Page 4 Penultimate paragraph above "recommendations" should read "On the other hand GER opposes any proposal which would provide payment of compensation because it would be (1) discriminatory and inequitable and (2) would lead to demands for compensation for other classes of war claimants which demands could not be met since it would be economically impossible."

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Whitman