UNRRA
(Green file.)

TO:
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COPY

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On November 9, 1943, the United Nations and Associated Governments entered into an agreement creating the United Nations Relief and Rehabilitation Administration. This organization will be financed by contributions from the member governments and its Director General has requested that arrangements be made for it to open an account at the Federal Reserve Bank of New York.

The agreement does not cover specifically the various administrative procedures to be followed by UNRRA in carrying out its functions. With respect to the method of holding and using its funds the agreement provides that : "In arranging for the procurement, transportation, and distribution of supplies and services, he [the Director General] and his representatives shall consult and collaborate with the appropriate authorities of the United Nations and shall, whenever practicable, use the facilities made available by such authorities" (Art. IV sec. 2). The Financial Plan adopted by the Council provides, in section 5, that ten percent of the contributions shall be in the form of currency which can be expended outside the contributing country, and the balance of the contributions shall be made by the establishment of a credit in local currency. Thus the exact method of handling necessary banking operations is not included either in the agreement or in the Financial Plan.

It seems clear that the Federal Reserve Bank of New York, as fiscal agent of the United States, can open an account in the name of UNRRA and perform all banking activities necessary for the proper operations of such account. The Federal might also open such an account in its individual capacity as a bank. Prior to April 7, 1941 the Federal Reserve Banks had authority to "open and maintain banking accounts for * * * foreign correspondents or agencies" which maintained accounts for such Federal Reserve banks (sec. 14(e) of the Federal Reserve Act. as amended, U.S.C. title 12, sec. 358). When the Federal Reserve Act was amended in 1941, the authority of the banks to maintain foreign accounts was extended to include "foreign banks or bankers, [and] foreign states as defined in section 25(b) of this Act." The legislative history of the amendment makes it clear that the purpose of the new authority was to permit the Federal Reserve banks to receive deposits from foreign governments and also from foreign central banks which had not been appointed correspondents or agents of the Federal Reserve banks. Accordingly, the establishment of the proposed account by the Federal in its indicidual capacity as a bank could be undertaken only on the basis that UNRRA is a foreign government, a foreign bank, or

a foreign banker. Under existing conditions such a construction seems justifiable since it is possible that UNRRA comes within the definition of "foreign state" in section 25(b). That definition is "any foreign government or any department, district, province, county, possession, or other similar governmental organization or subdivision of a foreign government, and any agency or instrumentality of any such foreign government or of any such organization or subdivision." Although UNRRA is not an agency or instrumentality of any particular foreign government, it is an agency or instrumentality of several foreign governments jointly. Thus, to construe amended section 14(e) of the Federal Reserve Act to permit the Federal to open an account for UNRRA would not do violence to the language used. It is suggested that this possibility be discussed informally with the Federal to determine whether it would be willing to take such action.

Section 15 of the Federal Reserve Act (U.S.C. title 12, sec. 391) provides that the Federal Reserve banks "when required by the Secretary of the Treasury, shall act as fiscal agents of the United States." No limitations are imposed upon the services which the Federal Reserve banks may perform in that capacity and, accordingly, they have full authority to act for the Secretary in the performance of any functions within the scope of his office.

The authority of the Federal Reserve Bank of New York to open such account as fiscal agent of the United States is supported by the power of the President as the sole organ of the Federal Government in the conduct of foreign relations, the establishment of similar accounts in the past, an opinion of the Attorney General dealing with the authority of the Treasurer to perform certain services for the government of the Philippine Islands, section 5(b) of the Trading with the enemy Act, as amended, section 10 of the Gold Reserve Act of 1934, and section 161 of the Revised Statutes (U.S.C. title 5, sec. 22).

The extremely broad scope of the President's powers in the field of foreign affairs is clearly described by the opinion of the Supreme Court in United States v. Curtiss-Wright Export Corporation (1936) 299 U.S. 304. The principles enunciated in that opinion are:

> (1) The powers of the federal government with respect to foreign affairs, as distinguished from its power over internal affairs, did not depend upon the grants of the Constitution but were received by it from Great Britain as successor to that sovereign (299 U.S. 318). (2) In the broad field of foreign affairs "with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation" (299 U.S. 319). (3) The President "as the sole organ of the federal government in the field of international relations" possesses "very delicate plenary and exclusive power * * * which does not require as a basis for its exercise an act of Congress, but which, of course,

like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution." (299 U.S. 320).

The position taken in that case was reiterated in Belmont v. United States (1937) 301 U.S. 324, and United States v. Pink (1942) 315 U.S. 203.

The agreement establishing UNRRA, to which the United States is a party, is a matter within the scope of the President's authority in the field of international relations. Having authority to enter into the agreement, the President also had authority to facilitate its operations. The right to use the services of the Federal Reserve Bank of New York will assist UNRRA in achieving its objectives. Immediate establishment of the proposed account will serve as a precedent for the handling of UNRRA's banking problems through central banks. This will undoubtedly lead other contributing countries to take similar action, thus providing the fullest protection for UNRRA's assets and giving UNRRA the best qualified fiscal agents obtainable. In addition, the Federal Reserve Bank of New York is licensed to hold gold and if UNRRA acquires any gold the license can be broadened to accomodate it; the prestige of an important intergovernmental agency calls for the services of the central bank; and the embarrassment will be avoided which might be caused if it were necessary for UNRRA to choose a commercial bank. Accordingly, it seems clear that the President, through the Secretary of the Treasury, may direct the Federal Reserve Bank of New York, as fiscal agent of the United States, to open the proposed account.

Accounts of the type proposed are not unknown in the practice of the Federal Reserve Bank of New York as fiscal agent of the United States. During the last war, when the Federal was not authorized in its capacity as a bank to open accounts for foreign governments, fiscal agency accounts were maintained for the governments of Great Britain and France through which were channelled loans made by the United States for the purchase of war materials. Before the United States became a belligerent in the present war and prior to the amendment of the Federal Reserve Act on April 7, 1941, governmental accounts for France, Great Britain, Canada, Australia and the Netherlands were opened by the Federal, as fiscal agent of the United States. The French account was designed to give the Treasury a method of scrutinizing French purchases and the others were created for the purpose of protecting the assets from attachment.

In 1924 S. Parker Gilbert, Agent General for Reparation Payments, requested the opening of such an account to assist him in his work, which included the collection of reparations and their subsequent distribution among the Allied governments. In his letter to the Secretary of the Treasury recommending the establishment of the account, Governor Strong, after discussing the possibility of appointing Mr. Gilbert a correspondent bank, stated:

"The other procedure follows the precedent which has been established on other occasions, by which this bank conducts certain banking transactions in matters in which the United States has or may have a direct or ultimate financial interest, acting in such instances in our general capacity as fiscal agent of the United States. During the war this bank was the intermediary through which payments were made to foreign governments, and those governments carried deposit accounts with us for the purpose of receiving and distributing funds loaned by the United States. We are now receiving certain payments of funds segregated under the terms of the pending priority agreement by which it was expected that the costs of the Army of Occupation would be reimbursed after the Wadsworth agreement was ratified. Those funds, of course, ultimately accrue to the Treasury of the United States. In both of these instances, we have acted in these capacities at the request of the Treasury Department. We have acted at the request of the Treasury in receiving and making payments abroad during and subsequent to the war through various banks in foreign countries. In general, it is our belief that in any transaction where the Government has a direct or ultimate interest, such interest in itself justifies the assumption of such relationships as those proposed by Mr. Gilbert, so long as we are to act as an effective representative of the Treasury in fiscal and financial matters."

The Secretary of the Treasury agreed and the account was opened.

Obviously, the United States has a direct financial interest in banking transactions conducted by UNRRA. Not only will it be the largest contributor to UNRRA, but it will undoubtedly have to bear an even greater burden if UNRRA's funds are not handled properly. For these reasons it is manifest that the United States will be benefitted if UNRRA conducts its banking transactions through the Federal Reserve Bank of New York, as fiscal agent of the United States.

The problem here involved is similar to that considered by the Attorney General in (1903) 25 Op. Atty. Gen. 98, when he had been asked to determine whether the Treasurer could receive the principal and interest of certain Philippine government bonds for distribution to the holders of the bonds. He concluded that there was no specific authority for such action but that if the Philippine government saw fit to commit the receipt and disbursement of the funds to the Treasurer and the Treasurer was willing, with the approval of the Secretary, to undertake the trust, there was no provision of law which

would prohibit it. He described the transaction as "natural and legitimate" due to the close relation of the United States to the bond issue and to the financial situation in general in the Philippine Islands. Thus, the opinion is authority for the proposition that a government official may perform services not covered by specific statutes provided that the action involved is not prohibited and the United States has a close relation with the subject matter.

In the instant situation there is no prohibition against the proposed action and the United States has an important interest in the subject matter. Not only is the United States going to be the largest contributor to UNRRA and the country which will bear the heaviest burden if it is unsuccessful, but also a monetary problem of considerable magnitude is one of the principal reasons for its creation. The need for goods for relief and rehabilitation purposes could not be met by the devastated countries themselves because they lack acceptable foreign exchange. If left to their own devices they would exert great pressure on the exchange value of the dollar with results which might cause instability and defeat the purpose of section 10 of the Gold Reserve Act of 1934 (U.S.C. title 31, sec. 822a). This is, therefore, a field in which the Secretary of the Treasury may properly take action to protect the interests of the United States and the factors involved are quite similar to those considered by the Attorney General in the above opinion.

Moreover, the right to open and maintain an account for UNRRA at the Federal Reserve Bank of New York, as fiscal agent of the United States, does not depend entirely upon the authorities discussed above. Additional support is contained in section 5(b) of the Trading with the enemy Act, as amended by Title III of the First War Powers Act, 1941, and section 161 of the Revised Statutes (U.S.C. title 5, sec. 22).

It is not necessary as a matter of law that the opening of the proposed account be formally approved by the President or the Department of State. However, you may wish to consider whether the approval of either or both should be obtained as a matter of policy.

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