

May 7, 1945

MEMORANDUM

Re: Removal of American Property in Germany
as Reparations in Kind.

In the next few weeks a Reparations Commission, composed of representatives of the United States, Russia, Great Britain and possibly others will meet in Moscow to formulate a general program for the exaction of reparations from Germany.

The keystone of the American position will be that the reparations program must conform with our over-all economic and security objectives in Germany. Therefore, it is believed that the primary emphasis should be placed upon the elimination of Germany's industrial capacity to wage war and the strengthening and developing of the industries and trade of the surrounding United Nations. This policy would be accomplished in the initial period following the cessation of hostilities by the removal of industries, machinery, equipment and plants from Germany and the simultaneous transfer of the same as "reparations in kind" to members of the United Nations upon their request and in such amounts as may be determined by the Reparations Commission. Such a program will serve to compensate injured nations to some extent while accomplishing simultaneously the principle purpose of the occupation--removal of Germany's capacity to wage another war. It is intended that such removals shall take place regardless of whether or not the plants and equipment are German-owned. Thus, in some cases, factories and equipment owned by American citizens (or corporations) will be dismantled and removed and the ownership thereof transferred to the respective United Nations as reparations in kind.

It is not contemplated that the Reparations Commission will consider the question of compensating United Nations' nationals for losses suffered as the result of property in Germany being damaged by the war, or removed to provide reparations, except that it may be found desirable for the United States to make a claim for reparations sufficient to cover any such losses which may be suffered by its nationals.

Within each zone of occupation the owners of property which is removed will be paid fair compensation in the local German currency.

The program is likely to be attacked on the grounds: (1) that private property of American citizens can not be taken for reparations in kind; but (2) if, however, such property is taken, the American owners thereof are entitled to compensation other than mark currency. The following are the answers which refute such arguments:

1. The paramount policy underlying the whole program for Germany is the elimination of its potential for making war. Therefore plants and equipment capable of making implements for war, no matter by whom

they are owned, cannot be left in Germany. They must be removed or destroyed. It is in the framework of this fundamental policy that the rights of American owners of property must be considered.

2. When an American citizen (or corporation) invests in property in a foreign country, he holds such property subject to certain risks one of which is that, according to local law, and the policy of the local government, such property may be taken by the government for its own use, upon the payment of fair compensation. (German law does not even give an absolute right to compensation.) Property holders in America are subject to this same risk, and indeed the power to take private property for a public use is one which is inherent in every government. This right applies to all property, regardless of ownership, as has been shown in a recent Legal Memorandum. *

3. The principle described in 2 above is applicable no matter what form the American property interest may take. Whether the interest is in the form of direct ownership, stock participation in a German corporation, or security for a debt, it may always be taken by the government. In the case of direct ownership as we have seen the property may be taken under the power of eminent domain. The same is true of a German corporation the stock of which is wholly or partially owned by American citizens. The physical assets of such a corporation within Germany would also be subject to a taking by the government. An example of this is the action by Generalissimo Franco of Spain in the early days of the war, when he confiscated calculating machines which were owned by a Spanish subsidiary of the International Business Machines Corporation and sold them to the German Government.

Secured creditors are in the same position. In the case of private loans secured by property situated within Germany (or any other country) the creditors are always subject to the risk that the collateral will be taken by the government. This has even been true with respect to security for foreign government bonds.

4. Thus, American property owners have no greater rights in Germany than do German property owners. They are subject to exactly the same risks, and they have no cause for complaint as long as they are not discriminated against. There is no discrimination in the plan for reparations in kind, for it deals with all heavy industry, no matter by whom it is owned, in exactly the same manner.

* Memorandum of March 20, 1945 re Authority of the Allied Military Government of Germany to Expropriate Specific Property in Germany Owned by American Citizens or Corporations.

5. An American investor in foreign property also takes a risk that he will be unable to convert his property into dollars or some other foreign exchange. This has been true for many years in Europe, ever since the advent of Government foreign exchange controls. Under such controls the acquisition of foreign exchange is not a matter of right but depends on the ability to secure permission from the foreign government.

6. This has been especially true in Germany which has regulated the acquisition of foreign exchange since 1934. Pursuant to a complete revision of the German law in 1938 it has been practically impossible for American owners of property in Germany to secure in exchange for such property anything except German currency.

7. It follows that when the government of a foreign country determines as a matter of public policy to take American property for a public use the owners of such property are only entitled to receive compensation in the local currency. Thus the plan for taking such property as reparations in kind and for paying compensation in German currency does not deny to American property holders any rights which they formerly had. The public policy for which the property is taken is not only that of the government of Germany then actually in operation, but it is also that of the United Nations including the government of the property owner.

8. Under the present income tax law American owners of property in Germany have been entitled to write such property off as a total loss, thus recovering their investments through tax savings. The action taken by some of the American owners is discussed in a separate memorandum.

9. The objection may be raised that payment in German currency will be no compensation whatever because it is inevitable that there will be inflation in Germany and that the Reichsmark will eventually become worthless. If this is true, it is a risk which any property owner takes. In times of inflation it is advisable to have your money in goods. When the property of American citizens is taken by the Allied government of Germany as reparations in kind and they are paid compensation in German currency they will have the same opportunity to protect themselves that any German citizen has, namely, to invest the proceeds in goods in order to avoid the loss resulting from inflation. This is all they are entitled to, as we have shown in paragraph 4 above, since as far as their property in Germany is concerned they can be treated in the same way as nationals of Germany.

10. If it should be decided that American owners of property in Germany should receive compensation other than mark currency, the decision would have to be made on the basis of some policy which would override the right of the government in control of Germany to take the property in return for compensation paid in marks. Of course, such owners would have no basis for asserting that the compensation

should be paid by the Government of the United States. The most they could ask for would be that the United States attempt to collect sufficient reparations from Germany in the form of foreign exchange, or goods which can be sold for foreign exchange, to pay whatever losses they may suffer.

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From the foregoing it is clear that the American plan for reparations is absolutely just in its treatment of the property interests of American citizens, and that such property owners can raise no valid objection to this plan.