

TO:

Brenner
Mr. J. E. Dubois

Please examine at your
convenience to see if we
have covered in our legal
memos. the point worth
discussing.

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MR. J. E. DUBOIS

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DEPARTMENT OF STATE
DIVISION OF ECONOMIC SECURITY CONTROLS

April 26, 1945

MEMORANDUM

To: Mr. Joseph DuBois
Assistant to the Secretary
Treasury Department

From: S. J. Rubin

I am attaching hereto a copy of a memorandum which I drafted rather hastily the other day, with respect to some of the problems which arise in connection with reparation. Mr. Leviton and I agreed that we would discuss these matters further after I had had a chance to give him my preliminary views in the form of the memorandum attached. I should appreciate any comments which you may have.

I understand that you have given George Luthringer a copy of a memorandum prepared in Treasury on the question of compensation to United States nationals for their property which may be used for reparation purposes. I have been trying to get the extra copy from Emile Despres, so far unsuccessfully, and would appreciate your letting me have another copy if you have one.

DIVISION OF ECONOMIC SECURITY CONTROLS

April 25, 1945

MEMORANDUM

To: Mr. David Leviton
Foreign Economic Administration

FROM: S. J. Rubin

In accordance with our conversation of April 23, I am compiling herein a tentative and rather hasty list of topics which have certain legal implications and which would be of interest to the reparation group. You will recognize that this list has been rather hastily compiled, so that it is far from all-inclusive, that other topics will develop out of any examination of the topics listed below, and that no attempt is made herein to summarize even generally the full implication of the topics. Such explanatory remarks are merely to illustrate the sort of thing which I am thinking of and which I am designating by a particular topic heading.

1. German Property Abroad.

(a) In the United States.

I assume that German property in the United States will be used for reparation purposes or for the claims of American creditors in one way or another. I believe this basic assumption is justified and may be taken as fixed United States policy, subject, of course, to the possibility that Congress may decide otherwise at some future date. Starting from this assumption, however, it would be of extreme value to have a legal memorandum which would outline (a) the history of treatment of enemy property in the United States, at least since World War I; (b) an analysis of legislation which has been proposed in the last few years, particularly the Gerhardt and the Glass bills which were introduced in the last term of Congress; and (c) some recommendations with respect to legislation, particularly on such problems as whether claims of American creditors should be paid out of these assets, whether such claims should be limited to claims arising out of the assets in question or whether general claims of a pre-war, trade nature should be paid, whether some distinction should be made between resident German aliens and Germans abroad with respect to their property in the United States (I assume that such a distinction would be made), whether

a distinction should be drawn between property in the United States of a German who can prove that he was either a member of a prosecuted minority or a member of a resistance group, etc. Other questions will, of course, occur and will be brought up in the course of the investigation.

(b) In the neutral countries.

This exploration is closely connected with the work on Safehaven. It would involve an analysis of the status of the German neutral clearings, an analysis of legislation in the neutral countries under which some claim might be made to German assets, and an analysis of principles of international law under which the Allied powers might seek to lay their hands upon German property in these countries. There will be many ramifications of this problem, even apart from the fundamental political difficulty of obtaining neutral consent to turning over assets within their territories which are asserted to belong to German nationals to the successor control commission or German Government, should there be the latter. Among these problems will be the general question of whether the neutrals should be permitted to, or can be prevented from, using German assets to pay off neutral claims against either the German Government or German individuals. In this connection, it will be necessary to consider politico-economic matters such as the warning given the Swiss approximately two years ago that the extension of a large credit to the Germans was unwarranted, and the effect of this warning on the possible claim of the Swiss that they should be entitled to use German assets to compensate them for debts owing by the Germans arising out of this large credit. In addition, there will be special problems, both generally and country by country, arising out of the unwillingness of the Swiss to give up any information on foreign assets or to recognize foreign decrees vesting the interests of foreign nationals within Swiss territory. (As to this, the policy of the United States with respect to both the Russian decrees issued after the last war and the decrees of the Dutch and other governments in exile issued during this war may be compared and the problem of legislation such as that which exists in Spain which prohibits foreign ownership of more than 25% in a corporation which is not registered as a foreign corporation--a provision which has been widely evaded by all foreign companies operating in Spain, but which might be invoked by the Spanish should the Allies attempt to demonstrate that a particular corporation is 100% German rather than 20%.)

(c) In other United Nations.

The problems here will be mostly on the political level but some legal investigation might be profitable as to the possibility of using German property in those United Nations which do not have substantial claims against Germany so that the proceeds of such property could be paid into the general reparation pool. Perhaps more practicable would be the investigation of the possibility of using German assets in such countries for the purchase of supplies in those countries for relief or other purposes, perhaps on behalf of the occupied countries. It obviously would be difficult to persuade any one of the Latin American countries, for example, to allow a large amount of foreign capital bodily to be withdrawn from that country; but it might be possible to use the German capital in question for purchases of some supplies, particularly if those supplies were materials which did not ordinarily, at least in the quantities which would be involved, provide normal sources of foreign exchange for the country in question.

2. Use of United States property in Germany for reparation purposes.

It is my understanding that some work on this topic has been done in Treasury, although I have not seen the memorandum in question. It seems essential to do some work on the question of utilization of United States property in Germany for reparation payments, particularly by way of transfer of capital equipment to other of the reparation claiming countries. The obvious example is the possible transfer of the Opel Motor Works to (say) Belgium. Whether the United States is bound to protest such a transfer, whether United States property within enemy territory assumes the risk of such an occurrence, whether the United States or the owners of the plant in question are entitled to reparation claims based upon the value of the transferred plant, etc., are questions which require a good deal of elaboration. The possible transfer of plants to other countries but with the United States interests retaining a claim to or an interest in such plants is also a matter which should be explored. For example, it might be possible to transfer a plant which was owned 50% by Germans and 50% by Americans to a country like France with the Americans retaining their 50% ownership interest, and the French receiving, by way of reparation, the German interest in the plant. In the same connection, some investigation should be made to the extent to which a deindustrialization policy can be based upon the transfer of United States owned plants and equipment, and the further question of possible claims.

3. Itemization of possible reparation claims on behalf of the United States.

It seems quite clear that the United States cannot claim for "the total cost of the war" as some persons have suggested. On the other hand, the United States probably can claim for such items as ship losses, damage to United States property abroad and the like. It would be extremely valuable to have, first, an itemization of the various types of claims which the United States might legitimately make (drafted from view of listing the largest possible items on which the United States could make a claim), and second, some breakdown of the possible amounts which might be claimed under each of the listed categories with some indication of the manner in which these amounts would be built up. For example, ship losses might have been compensated to a certain extent by insurance and reinsurance contracts so that the ultimate loss might actually be as much a British loss (through reinsurance contracts) as an American loss.

4. Booty.

There has been some indication that the contents of entire towns are being considered as "war booty" when the occupants in those towns have resisted. The relation of such booty to the reparation question, and the definition of what actually constitutes booty under international law is a topic which needs some careful investigation. It is my private guess that defining booty narrowly would not be particularly desirable, but that a large amount of what may be confiscated as booty should, in the ultimate settlement, be credited against the reparation claim of the acquiring power.

5. Treatment of persecuted minorities.

This is probably not strictly a reparation question. However, it is possible that in connection with the reparation settlement, some effort will be made to work out a method of placing upon Germany a portion of the burden of resettling persecuted religious and racial minorities. The resettlement problem will probably occur principally in connection with the racial minorities, since religious and political minorities who have been prosecuted might be expected to return to Germany and to take up their property in that country. The entire

question of the claims of dispossessed persons who have, since the time of the act of dispossession, become citizens of the United States, or such persons who, although not citizens of any United Nation, are and have been since the war outside of Germany, should be investigated and made a subject of some study.

6. Treatment of German private property in ceded territory.

An investigation of the legal status of such property should be made. I assume that a policy similar to that expressed in the Versailles Treaty will be followed, of making such property subject to reparation claims. Particularly will this be so if a policy is followed of moving German nationals out of territory which may be transferred from Germany to other powers.

7. Restitution and Replacement.

A good deal of work has already been done in this particular field, and although further work is obviously necessary, I should feel it desirable to devote a separate memorandum to this topic.