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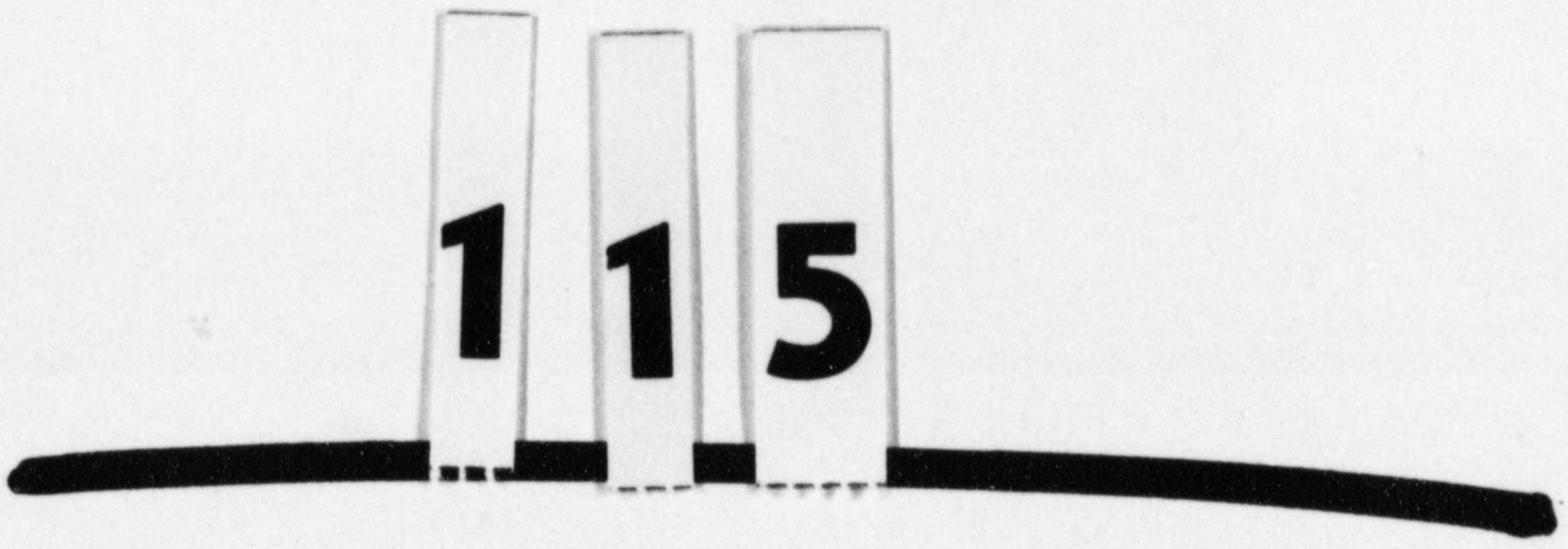

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MINUTES OF INFORMAL POLICY
COMMITTEE ON GERMANY

TOP SECRET

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Name K. Quinlan
Date 2 Oct 1973

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May 18 1945

DECLASSIFIED E.O. 11652, Sec 3(E) and 5(D) or (E) NND# 740132

TOP SECRET

May 18, 1945
4:00 p.m.

REPARATIONS

Present: Secretary Morgenthau
Mr. Glasser
Mr. Coe
Mr. DuBois
Mr. Pauley
Mr. Marshall
Mr. Luthringer
Mr. Despres
Mr. Riddleberger — State
Mr. Clayton
Lieutenant Bancroft
Commander Richardson
Mr. Cox
Mr. Downey
Colonel Chandler
Colonel Brownell
Mr. McCloy — A
Justice Jackson — FEA
Mr. Fowler
Mr. Bard — N

White Treasury

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To SECRET Authority: Ltr of 5-19-61
from JCS Decl. Branch, State Dept.
Name Kathie Owen
Date 2-11-66

DECLASSIFIED BY:
JCS DECLASSIFICATION BRANCH
DATE 1973

H.M.JR: Couldn't we do a little preliminary sparring, Mr. Clayton?

MR. CLAYTON: I have a memo which Justice Jackson sent to Mr. Pauley after Mr. Pauley had discussed with him, the memo which this committee had agreed upon as instructions to the United States representative on the Reparation Commission. The memo has to do with one of the labor clauses of the memo of instructions which we drew up. I think perhaps the best thing to do, Mr. Secretary, would be just to read the Justice Jackson communication.

It's called "Memo for Edwin W. Pauley, United States Representative on the Reparation Commission, Redraft of Instructions.

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To SECRET Authority: Ltr of 5-19-61
from James R. Burke, State Dept.
Name Kathie Owen
Date 2-11-66

"~~A part of~~ this draft affects the trial of war criminals. Section 4 from this point of view is open to serious objections. Section 4d provides that, 'Compulsory labor service should be required only from war criminals and individuals definitely determined by appropriate process to be members of the Gestapo, the SS, the SSS, leaders of the S.A., or leading collaborators, supporters of and participants in the Nazi Party or Administration.'

"This subjects persons to compulsory labor service through membership in these organizations. That would make it farcical to conduct trials concerning the conspiratorial character of those organizations or the guilt of their membership. The only purpose of a trial is to determine whether these organizations are of such a structure and character that membership should warrant punishment. All of this is prejudged by the instrument in question. 4d should not go further than to read substantially as follows: 'Compulsory labor should be required only from convicted war criminals, and that for the period and in accordance with the conditions of their sentence.' Beyond that it is not my business what may be done about reparations through use of labor, but as I said to you, I think the plan to force great numbers of laborers into foreign service which means herding them into concentration camps will largely destroy the moral position of the United States in this war. As Harriman pointed out to us, the treatment of this labor is bound to be appalling by American standards. In a year or two there will come drifting out of Russia tales of oppressive treatment of this labor which I fear will be all too well founded and which in my judgment will arouse sharp condemnation by American sentiment, with serious results to those who have favored it.

I feel sure President Roosevelt's commitments at Yalta did not contemplate the sort of thing that is now being considered."

(Justice Jackson and Mr. Fowler enter the conference.)

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from James F. Burke, State Dept.
Name Kathie Ouen
Date 2-11-66

JUSTICE JACKSON: I'm sorry to be late.

MR. CLAYTON: Mr. Justice, we are just reading this communication which you sent to Mr. Pauley.

"In a year or two there will come drifting out of Russia tales of oppressive treatment of this labor which I fear will be all too well founded and which in my judgment will arouse sharp condemnation by American sentiment, with serious results to those who have favored it.

"I feel sure President Roosevelt's commitments at Yalta did not contemplate the sort of thing that is now being considered. What the world needs is not to turn one crowd out of concentration camps and put another crowd in, but to end the concentration camp idea.

"Respectfully submitted, Robert H. Jackson."

Would you like to add anything to that, Mr. Justice, at this time?

JUSTICE JACKSON: No.

MR. CLAYTON: Well, the matter is open for discussion, gentlemen.

MR. McCLOY: You will recall that when this directive was being discussed we took the position that this was a matter that had to be referred to--should be referred to Mr. Justice Jackson, as of course it ties in with this directive. The directive has been approved by the Joint Chiefs of Staff. However, that's on a point which is not a military point, and I don't imagine there would be any difficulty in changing it any way that we wanted to.

The language that Justice Jackson used, I venture to suggest might possibly be made to fit a little better the context--the particular language that you suggested--but that's only a detail. We can come to that.

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JUSTICE JACKSON: The point is, as far as I'm concerned, if these people are to go for their membership in the organizations, there is no use of our trying to say what type of organizations or anything else. It's all settled as far as we are concerned, and I am glad enough to have it settled and be out of it, but that's--

MR. PAULEY: The practical problem you face in this regard is that--I certainly would like to see all labor that is used as a matter of reparations be those who are convicted by some legal authority, such as that that Justice Jackson is bringing about. That would certainly relieve me of many headaches and would seem the orderly way to go about it. It is one thing, however, if you are going to convict one hundred thousand people. It's another thing if you are going to convict five million. Well, perhaps that would meet the demands of those who will use labor as reparations. If you convict one hundred thousand people you know that it won't, so that it comes down to a practical problem of what to do after that.

MR. CLAYTON: I think you pretty well stated it.

H.M.JR: Isn't there one other thing, Mr. Pauley, from the standpoint of this Government? The only reparations we can look forward to is the work we might get out of these people?

MR. PAULEY: It seems to me the largest item of reparations to be expected is labor.

MR. McCLOY: Haven't we taken the position we don't want labor?

MR. CLAYTON: I don't think that the Secretary meant to imply that we did.

H.M.JR: I meant for Europe.

MR. CLAYTON: You didn't mean for the United States?

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H.M.JR: I meant for Europe.

MR. CLAYTON: That's what I understood.

MR. McCLOY: As a practical matter, the plan of prosecution of war criminals embodies this indictment and the conviction of these, particularly of these vicious organizations. That plan has been approved by the highest authorities. It was discussed at San Francisco, with Mr. Molotov and Mr. Eden. Mr. Molotov said he would have to give it further consideration, but the conversations we had when Judge Rosenman was there, for what it is worth, he indicated that was a pretty good idea. President Roosevelt and President Truman approved the concept of bringing and trying these organizations, and I think we have got to modify that existing approval, or modify the directive.

MR. CLAYTON: Do I understand you to say that President Roosevelt and President Truman approved the idea of trying these organizations as organizations?

MR. McCLOY: Yes, that was part of the plan submitted by Judge Rosenman to both President Roosevelt and President Truman.

MR. CLAYTON: And then if you find that the organization was an organization of war criminals, let us say the--

MR. McCLOY: Gestapo.

MR. CLAYTON: ...all you have to do is find a certain individual--as a member of the organization he is guilty.

MR. McCLOY: If he's voluntarily a member and didn't act under duress.

MR. CLAYTON: Is that your understanding?

JUSTICE JACKSON: Yes. Of course how many people you will actually net as a result of that is a question

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depending on the thoroughness of identification and thoroughness of your controls in Germany and the police work that would have to follow the conviction of the organizations. I have no idea that at a maximum it would net anything like the figures of labor that are being talked of for reparations. Of course, reparations labor without any reference to criminal elements is not a concern of mine, but taking these organizations that took the maximum responsibility doesn't begin to solve that problem, and there will be great difficulty with identification as people go underground. These organizations will attempt to go underground, and how far they will be successful you can't say, but I dare say a great percentage of them will never be identified.

MR. McCLOY: The SSS organization--

H.M.JR: Without questioning your good faith, but I don't understand. We sat here four or five continuous days as a committee and nobody during that time said that President Roosevelt or President Truman had agreed this was the way these people should be tried. Nobody ever raised it. Nobody ever said that.

COL. BROWNELL: You will remember Mr. McCloy was not here at that time, and I know Mr. Lovett didn't know, and I certainly didn't know myself.

H.M.JR: Who signed for the War Department?

COL. CHANDLER: Mr. Lovett, and at my suggestion-- I knew there was some such document, but I didn't know what it was--he suggested that Justice Jackson and Mr. McCloy better be consulted. I didn't know what that was about.

H.M.JR: I still don't understand that such a document--the State Department or somebody wouldn't know about it.

MR. McCLOY: The State Department was aware of it. The State Department signed it.

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MR. CLAYTON: Secretary Stimson signed for the War Department. Mr. Lovett took the document to him to sign.

MR. McCLOY: Mr. Stimson said, "Well, this is subject to checking it with Justice Jackson."

COL. BROWNELL: The understanding was at that time that it was to be shown to Justice Jackson.

H.M.JR: I still say it's most unusual that such an agreement exists and this committee wasn't informed of it and there was no evidence of it before this committee.

MR. CLAYTON: Well, Mr. Secretary, the last few minutes is the first time I ever heard of it.

MR. PAULEY: Well, we get down practically to this, that paragraph 4--that's in the directive to our representative, Justice Jackson--and that is the basis that he is proceeding on, namely, to convict those people outlined in paragraph 4 and 4d. Now, all of those people are certainly subject to be used as labor in reparation payments. Now, suppose that is not enough. Suppose that the other countries feel that they must have more German labor? Then where do we go from there? We end everything compulsory there and then you must rely on some voluntary system.

Now, do you want to advocate a reconstruction corps taking the place of it on a Selective Service basis, such as they did with their military, starting in 1935? I believe that's right, isn't it? And how can you do that until Germany is returned to some sort of local government, whether it be an overall local government or in divisions, or is there going to be such a thing as voluntary labor in regard to reparations? I have serious doubts there could be such a thing as voluntary labor unless living and food conditions would be so bad in Germany somebody would want to get out, and that would be a matter of

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laws and private arrangements between other countries.

(Mr. Bard enters the conference.)

MR. PAULEY: I think the only thing, with the President and Justice Jackson having agreed that they will prosecute all those people that we enumerate in 4d--that just finishes that, doesn't it? There is nothing much more we can talk about except the next step.

H.M.JR: Where is the document President Truman agreed on? I can't understand Mr. Stimson signing it knowing that this document existed.

JUSTICE JACKSON: I have copies of it. I don't have them here. The original document was by the War, State, and Justice Departments outlining their plan for trial. As I understand it, it was taken by the President to Yalta and there generally it was agreed upon. It was then passed to Foreign Ministers to carry out. The first I knew of it was when I was asked to undertake the job and did it because it seemed to me a feasible way of getting at this problem.

MR. McCLOY: I think it's--no doubt it's a fixed national policy if not an international policy that we indict these organizations and try them as such. The original document was signed sometime long before Yalta, or considerably before Yalta, by the Secretary of the Navy, War, and Secretary Stettinius, and was sent by Secretary Stettinius to the President, carried by him to Yalta, and approved by him. It was not thoroughly discussed, as I understand, at Yalta, but was thrown on the table as something to consider, and then Judge Rosenman was appointed and talked to President Roosevelt about it not very long before his death, and before he went to London he got the President's approval--President Roosevelt's approval on it, and then when he came back after President Roosevelt's death, he submitted it to President Truman, who went over it again, and he thought this was the

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right line, and sent him out to San Francisco to discuss it with Molotov and Eden. I was present when they discussed it with Molotov and Eden, and both Molotov and Eden expressed informally their view that this idea of indicting these organizations was a good idea. They liked that, and Eden practically agreed to it then and there, and then there were some discussions with Judge Rosenman, Sir Millikin and also the Frenchman and Russian whose names I can't recall, who worked over it, and they came to an agreement on the working level. The papers are in the hands, or were in the hands of Judge Rosenman. The more formal papers and the original document signed by Mr. Stettinius--we have a photostatic copy of it, I know.

MR. FOWLER: Mr. Chairman, Mr. Crowley couldn't come. He asked me to apologize. There is very little difference here, and we can dispose of it quite readily. In order to make that a little clearer, if you don't mind, I would just like to refer a moment or two to the deliberations of the committee both in the drafting and in the approval stage. As initially submitted to the top committee, the provision, as you will recall, about labor was a rather loose one, and I have a draft here in which is stated our disinclination to claim reparations in the form of labor. It said labor shall be recruited and then it lists some of these groups and referred rather loosely to those elements of the population who have cooperated in financing and building up the Nazi machinery, and Mr. Crowley, who was in attendance at the meeting, registered strong objection to the language on the ground that it was too loose and too general and did not identify those individuals who would be treated in a punitive fashion with any notion of guilt, so, therefore, the drafting committee resumed its session, and at that time we made a point which was that two forms of distinguishment should be clearly drawn between compulsory and voluntary labor service and that compulsory labor or service outside Germany should be required only as a punitive measure and that compulsory labor service should be required only from individuals definitely determined by appropriate

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process to be war criminals or included in these defined categories of organizations, and I think the drafting committee and the top committee both perhaps indulged the assumption that these organizations were so well identified in the public mind of the United Nations as criminal organizations that we, as Americans, Justice Jackson, could afford to go by our principle of opposing guilt by association; we could make an exception at least in the case of--

JUSTICE JACKSON: You don't need to go that far but--

MR. FOWLER: ...make an exception in these organizations, and so we approved this draft as we have it here, which incorporates the principle that compulsory labor is to be a punitive measure and that it is to be compelled from war criminals and individuals definitely determined by appropriate process to be members of these organizations.

Now, if the War Crimes Commission is going to set about immediately to the trial of the organizations as organizations, and there will be followed some appropriate process in determining given individuals to be members of a given organization and as such, war criminals, it seems to me that the language proposed here as a practical matter in the light of that background of what the War Crimes Commission is to set about doing--it really adds up to exactly the same result.

MR. CLAYTON: May I say--

MR. PAULEY: I can't see how anyone can object to the suggestion of Justice Jackson's to the amendment of that paragraph. I think we all ought to agree on that--period. But where do we go from there, if that's insufficient?

JUSTICE JACKSON: I assume that would be insufficient from what studies I have made of it. I have no idea that convictions would yield anything like the bulk of labor that is being considered. There is one other thing that concerns my work and that is this, whether having convicted these

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people, the United States has any responsibility when their sentence is served, whether there are any provisions on the manner in which they will serve. I cannot let--I would disassociate myself from it instantly if this became a project, the primary purpose of which is to get labor for Russia, and we just can't let a trial that is supposed to be on the level of an ascertainment of the facts about this thing to make our case for history become smeared, as I think it would be smeared if it's already adjudged that these people are going into Russian service and that we are merely going through the forms of a trial for the purpose of shoving them there. It would be discredited so badly to begin with as a judicial proceeding, if it is to be done I ought not to be doing it. So, I think that you have a little more responsibility when we convict and sentence a man to see that he serves that sentence under conditions and is released at the time that is provided for in the sentence.

MR. DuBOIS: I think that raises a much more fundamental issue here, and that is that at Yalta it was agreed that we should have labor service. What is your idea of what form that labor service should take? We know that Russia wants a large number of laborers. A Gallup Poll recently showed eighty-two percent of the people in this country were in favor of sending three or four million workers to repair the devastation in Russia. In the light of what you say, how do you feel?

JUSTICE JACKSON: I don't know that that's my problem, but I'll tell you how I do feel. I don't give a damn what the Gallup Poll says because I have seen sentiment change over night in this country. If you are going to decide on the basis of the Gallup Poll, you will be out on the worst limb, if I'm any judge. You let stories get out of Russia and let the press come out and say these people are being denied certain rights--when you take four or five million people out of Germany you are hitting at a lot of interests outside of Germany. You'll see sentiment change, so I would pay no attention to Gallup Polls.

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Now, the question of the number and amount of labor and how it should be recruited is a very great problem. If you put that on to a local government, I should expect that government to fall before it could carry through a program of recruiting a great amount of labor to foreign countries. You will have to carry it out yourselves.

MR. DuBOIS: Apart from Gallup Polls it was agreed at Yalta that we should have labor service. The problem now is how we are going to carry that out. Originally, we discussed here, as Mr. Fowler said, recruiting labor and giving priority to these particular groups. You could presumably draft them as you draft men for the Army, but we thought it might be more acceptable from the public relations standpoint if we picked on these particular groups.

Now, I frankly don't see personally why this is necessarily inconsistent with the problem of war crimes. I think that it's in a sense a different problem. We have agreed at Yalta that labor services should be furnished to the various countries. We could have said men between the ages of twenty-five and thirty should comprise that labor force.

We could have classified, well, say, just mechanics, and so forth. Instead, we felt from the standpoint of public relations in this country and Germany itself that it might be more desirable to take these particular types of organizations from which to select the labor. It's well known that they are murder gangs.

It doesn't follow that, it seems to me, because we say it is desirable to pick the SS group and the Gestapo group for this particular purpose--that doesn't mean you can not also convict the SS and Gestapo of war crimes. The two aren't necessarily inconsistent.

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JUSTICE JACKSON: But what is the point to convict them if they're going to serve the same sentence without conviction as with it?

MR. DuBOIS: It doesn't necessarily mean they serve the same sentence. We could put a reservation in here that this is without prejudice to any conviction that you may give. That can be put in here, if that is the only problem. They can serve, first, labor in Russia and then serve your conviction, or, first serve your sentence and then go to labor, but this wouldn't necessarily prejudice any conviction you may get.

MR. BARD: Suppose you convict the Gestapo as a whole? Does that mean they can be taken as a whole or do you have to cover each individual case?

JUSTICE JACKSON: You cover each. What we've planned would be roughly this: You would first hold your inquiry as to the nature of this organization, its purposes, plans, methods, structure, lines of responsibility, and you would then make your findings. See? If we are successful, it's a criminal organization. It constitutes conspiracy on a very wide plane. The action of every person within the general plan binds everybody always just like you convict them in violating the Narcotic Act by conspiracy, or any other Act. There's nothing very novel about that procedure except you've got a lot of defendants who aren't present. You can't round them up and have them in court, so our plan, in order to overcome that difficulty, is that the findings made by this Commission shall be conclusive in every other court as to the nature of the organization. So if we get a finding that it is or the Gestapo is a criminal organization, all they have to do is to pick up people who are members and bring them before a military tribunal of some kind--a very summary one. Are you a member? You have the question open whether you have the right identification. I suppose if the individual had any plausible claim that he had been subjected to duress, you'd have to give that some hearing, but you'd have no questions open except those incident to his own membership.

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MR. BARD: Is that consistent with this little paragraph which says compulsory labor should be required only from convicted criminals?

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JUSTICE JACKSON: We consider them convicted by the two steps. You wouldn't be able to pick up--you'd have the two steps to take in order to reach the individuals subject to the sentence.

MR. BARD: Mr. Pauley, what position are you going to be in when you get over there and the court hasn't convened, and there are a million and a half or two million already serving in labor in Russia? That's what you're going to find. This is all fine but we've got to be realistic about it. They're going to be there and they're going to be serving in Russia when the time comes.

MR. CLAYTON: As a matter of fact --

MR. PAULEY: I think, irrespective of what I'd do about it, that's going to be ineffective. They've already done it.

H.M.JR: What I don't understand is this: Let's leave Russia out of the picture for a minute. I don't quite understand. Here this Commission is going to sit, and I'd like it explained to me if I don't understand it. For instance, by the way, where are you going to have these hearings? Where are you going to do this thing? Then let's say you convict three or four of these organizations. Then, does that apply only to those members who are within that part of the territory of which General Eisenhower is in control?

JUSTICE JACKSON: Not if we can get the other people to cooperate with us. That's why we're trying to get a four-power tribunal. Just where it will sit will, of course, depend on who comes in and on the military judgment -- where it ought to sit for security reasons. We'll assemble a big gang of these people, and you have problems which I won't attempt to solve. I should rely entirely on the judgment of Eisenhower or whoever delegates where we should sit, and the time of sitting will depend on how quick Russia and England and France can come in. We're pressing as hard as we know how.

H.M.JR: Well, I just am trying to get information. Supposing these things might drag on for months? I don't

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know how long a trial like that would take. Supposing two or three months pass and there is no decision? As I understand it, there's no decision definitely on who's going to be represented and what country is going to be represented on the Reparation Commission. That hasn't been settled. Suppose this drags on for months. In the meantime, irrespective of Russia, are we going to assist countries like Poland, France, Belgium and Holland, Denmark and Yugoslavia? Are they going to get labor from Germany, or is it that these people just stay in prison camps during this period of first setting up the Crimes Commission, and second, during the prior period.

JUSTICE JACKSON: It's a little hard to answer that because I don't know how many of the members of these organizations are now in prison. Undoubtedly, the forces that have been taken to Russia include a great many of them. The time of trial may very well be much delayed. If it's too much delayed, it's our thought it becomes plain that this is going to drizzle out, and we'd ask the President to set up a Commission to determine what should be done with those prisoners that are in our custody, and we'd present our case and make an historical record of what this is all about and proceed on our own. It's quite conceivable that we may never get an agreement. We ought to be past that point but you know --

H.M.JR: You're not.

JUSTICE JACKSON: ...how easy it is for things to fall through.

MR. CLAYTON: So far as compulsory labor service is concerned, I think we only ought to be realistic enough to recognize that what we are discussing here is a set of rules that would govern our own actions in respect to our own district, our own zone, and nothing else.

MR. McCLOY: And it's also an instruction to Mr. Pauley to state what the American point of view is.

MR. CLAYTON: You pointed out they've taken them wholesale out of the Russian zone, and there's nothing we can do about it as a practical matter except to try to insist on these rules and see if we can get them across. Now, Mr. Justice, I'd like to ask you if this

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language would meet your approval. "Compulsory labor service should be required only from war criminals and individuals definitely determined by appropriate process to be members of any organization or organizations determined by appropriate process to be a war criminal organization. Such service should be required only for the period of the sentence of such individuals."

JUSTICE JACKSON: There's a very vague term in there, "appropriate process," and if our Russian brethren assume that to mean just grabbing, it would be a little difficult.

MR. CLAYTON: We've construed it for ourselves in our own zone. As I said a moment ago, I think that we are really just talking about rules to govern ourselves in our own zone, as a matter of --

JUSTICE JACKSON: The rest can do as they damn please.

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MR. FOWLER: Mr. Chairman, I don't know whether it's in order, but I believe that there isn't a great difference here. It's a known fact that in the document here we are assuming that the War Crimes Commission is going to endeavor to make it a matter of proof, and as these organizations are subjected to trial and determinations are made, they would naturally be incorporated within the meaning of the language Justice Jackson proposed. Therefore, I would suggest that if it be in order, that the Committee accept the language suggested or the language that you read, whichever seems more preferable, and I say that because that is thoroughly consistent with the position that we have taken in the working committee all along, and I believe it's generally in line with the position that was concluded.

JUSTICE JACKSON: I liked the language Mr. McCloy has rather better than either my own or this. I think it's a little more specific than this and avoids misunderstanding, and it is more comprehensive than mine.

MR. McCLOY: "Compulsory labor service should be required only from those judicially convicted as war criminals, including individuals determined by appropriate judicial process to be members of European Axis organizations, official or unofficial, which themselves have been adjudicated to be criminal in purpose or activities."

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MR. CLAYTON: That sounds all right to me.

JUSTICE JACKSON: A little less capable of misunderstanding.

MR. McCLOY: Now, as I understood it, we were going to limit this labor to those who are criminal in some aspect. I think Mr. Crowley meant that -- I wasn't here -- unless they were criminals he wouldn't have anything to do with it. That doesn't mean when you get over there you won't find a lot of German people going to camps in Siberia, but there's our national position to present.

H.M.JR: Is this wholly devoted to Germany?

MR. McCLOY: This is only the German paper.

H.M.JR: This doesn't--

MR. McCLOY: This is an amendment of the reparation's paper to Germany. Then if we can't get an agreement, if this Government can't get an agreement on the plan forwarded by Judge Rosenman and now being carried out by Justice Jackson, we can go ahead and apply unilaterally this policy, and say, after you've convicted them, here, there are so many. We've got probably one hundred and fifty or two hundred thousand SS troops in our hands today. We'll gradually accumulate some more. I wouldn't be surprised if in the American zone alone under American custody at the moment we have as many as three hundred thousand people. Say these people are convicted and we're going to make them available to the French under these rules -- these are the sets of conditions for labor in France, or if they want to subscribe to the same rules, Russia, or Holland, or whatever it is. We'll do our best to make them comply to those rules. At least our position will then have been clear. At Yalta, as I understand it-- I wasn't at Yalta -- we had to swallow pretty hard over their slave labor clause, and we were afraid that it would afront American public opinion if it was put down as a general clause, the elements of it to be worked out later. As a result of further meetings, and always at the back of the minds of the people who were negotiating it--at least on the American side--was the thought that there would be some rules prescribed under which this labor would be employed, so that it wouldn't deteriorate--so at least we would do, as far

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as we could, those things which would be necessary to see that id didn't deteriorate to the shee concentration camp aspect of Europe as it had in Germany.

MR. CLAYTON: Well, Mr. Justice, it appears that the only real difference of substance between us is that we assumed here in writing this Section 4d that the organizations named therein were war criminal organizations, and your court is going to try them and find out whether they are or not; that's the principal difference.

JUSTICE JACKSON: Yes.

MR. CLAYTON: If that's the only difference, it seems to me that Mr. McCloy's language in the draft there corrects it.

MR. McCLOY: Then from there it's up to Mr. Pauley to determine whether the Russians will take it.

MR. PAULEY: I move we get that out of the way; we accept that and get that done. Then let's go on from there.

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MR. CLAYTON: Is there any discussion? Mr. Secretary, have you any point of view?

H. M.JR: Just for the record, you put the Treasury down for not voting either way.

MR. CLAYTON: On this question of the substitution of this clause that Mr. McCloy has read?

H. M.JR: Yes.

MR. BARD: I'd like to ask if the way your draft reads means that each one of these people has got to be handled on an individual basis?

MR. CLAYTON: That's what our draft provided too, Ralph. Our draft provided that too.

JUSTICE JACKSON: This is not going to be a separate criminal trial. You bring these fellows in -- if we've got a couple hundred of them in camp, we can process them pretty fast. If they admit they're voluntary members

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of the organization, that is that. If they deny it, we put the burden on them to prove the facts.

MR. BARD: You'd sentence them to a three year period or five year period.

JUSTICE JACKSON: The plan of the sentence was that all sentences would be subject to the approval of the Supreme or the Control Commission, because even after you have determined the question of guilt or innocence, and the character of the organization, you have policy questions involved in it instead of sentence -- uniformity of sentence -- that seems to indicate that that better be subject to review rather than to be left to --

MR. BARD: What I mean is you say that as an organization it's a criminal organization, and you bring ten thousand of these SS troops -- you find that they are members of the SS troops and each one of these ten thousand can then get individual sentences of a certain period of time. That would be impracticable.

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JUSTICE JACKSON: Oh well, there would be a general sentence for persons who voluntarily become members, and the only thing you would refer to the second hearing, the second stage, would be "Are you a member?" "Did you join voluntarily?" If he had any real defense, the burden of proof is on him.

MR. DOWNEY: Then a blanket sentence would be given.

MR. CLAYTON: But in our language, Ralph, as you notice, it provides that individuals who have been definitely determined by appropriate process to be members of these named organizations would deserve it, so we assume that each individual would have to be found to be a member of an organization.

MR. BARD: Yes, but that --

MR. McCLOY: That would be a processing -- it would be just putting them through the mill. And you'd have a notary, or whatever it is, there to take it down. And if that's all you have to say, we find you're a member --

JUSTICE JACKSON: We put the burden on them.

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MR. McCLOY: Unless they're convincing --

MR. CLAYTON: Jack, would you mind reading one more time that clause?

MR. McCLOY: "Compulsory labor service should be required only from those judicially convicted as war criminals, including individuals determined by appropriate judicial process to be members of European Axis organizations, official or unofficial, which themselves have been adjudicated to be criminal in purpose or activities."

MR. CLAYTON: Any further discussion?

MR. BARD: From our view point --

MR. McCLOY: After Justice Jackson puts the Gestapo on the stand and has indicted them like the American Sugar Company or whatever it was, then he says, "By God, you're guilty."

MR. BARD: The SS troops in their set-up were the most patriotic organization in Germany. It was not criminal when it was formed. It's criminal according to our conception.

MR. RIDDLEBERGER: Mr. Secretary, we might make one point there. Insofar as these organizations mentioned by name here are concerned, there was certainly no compulsion on the part of any German to become a member. Quite the contrary. It was a privilege. It was a boast of Himmler that it was a rare privilege to be a member of the SS, and you could only join after you had demonstrated your complete devotion and fanaticism on the part of primciples. Perhaps in the judicial sense, Mr. Justice, we have pre-judged the guilt of these organizations, but I think we did it bearing in mind the fact that their guilt could be easily established.

MR. FOWLER: As a matter of fact, we discussed a number of other organizations that we didn't include here that you might.

MR. McCLOY: You might very well indict the General Staff.

MR. FOWLER: Sure.

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MR. McCLOY: I think that's a very good thing to indict.

JUSTICE JACKSON: Of course the question has been raised as to the Nazi party. You run into some difficulty there you don't have in connection with some of the other organizations, but there may be other organizations that could be included in this.

MR. McCLOY: Bear in mind that S. A. is an enormous organization.

MR. RIDDLEBERGER: Not any more after 1943. It lost most of its power, and the SS really took over. It was very large.

MR. CLAYTON: Anything else, Ralph? Joe? Mr. Pauley, have you anything else?

MR. PAULEY: Where do we go from there?

MR. CLAYTON: We haven't finished on this. I wondered if you had anything else to say on this suggested substitute? Mr. Secretary, we have always acted by unanimous vote.

H. M.JR: Well, I don't want to.

MR. CLAYTON: You understand it, don't you?

H. M.JR: I understand it, but as I said, I don't want -- what do they do? Do they excuse themselves?

MR. McCLOY: We are still ahead of the court, Mr. Secretary, because you are just not voting.

H. M.JR: It's wholly unrealistic and we are just going at this thing -- I don't know, I'm not a lawyer. I might -- can anybody give me an example in the history of the world where you have found an organization guilty? Has any court ever convicted an organization?

JUSTICE JACKSON: You have quite a number of anti-trust cases where you have convicted trade organizations.

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H. M.JR: Individuals.

JUSTICE JACKSON: But I agree with you that there is much to be unconventional about this. If there isn't, there is no sense in doing it.

H. M.JR: The other day a man was brought up, and I saw this some place -- it wasn't a burgomaster -- and he was asked if he was a Nazi and he said, "No, I am not a good Nazi. I ran a black market on the side." So I just for many reasons am afraid that -- I want to be excused from voting because I think this is wholly an unrealistic approach, so I can't get in on a discussion as to technicalities or legal procedures. In the meantime, the Army is going to call for people to harvest the crop and mine coal and everything else, and so for many reasons, personal and otherwise, I would like to be excused from voting either way, as I said.

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MR. PAULEY: I don't see any difference in the thing, in the 4d we had and this other except that you have a judicial body determining who shall serve.

MR. McCLOY: That's the point.

MR. PAULEY: And in our 4d we said heretofore that compulsory labor service should be required only from war criminals and individuals definitely determined by appropriate process, and now we have the appropriate process. That's the only difference, as I see it, Mr. Secretary.

H. M.JR: As I understood it, Mr. Pauley, in this directive we were saying people who were members of this particular organization were guilty, and therefore we could ask them to go to work, and now we are going to -- I'd like your advice. I said, if I understood this previous directive, it was that we said that people of these organizations are guilty.

MR. McCLOY: They are already guilty.

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H. M.JR: And that therefore anybody who is a member of them would be called upon to do a certain amount of labor.

MR. McCLOY: That's right.

H. M.JR: And now we are going to say that if we find these organizations guilty of any crime, that each person has to be found and also found guilty.

MR. McCLOY: No, just mere identification as a member which you would have to do in any case.

H. M.JR: Is this international body going to do that?

MR. McCLOY: No, there will be an appropriate--

H. M.JR: Wait a minute. After they find the organization is guilty, this Crime Commission--now wait a minute, under civil liberties and everything else you have got to give each man a hearing.

MR. McCLOY: There would be a hearing of a limited character only to determine his membership in a criminal organization.

H. M.JR: How many can you process?

MR. McCLOY: I think we can process a very substantial number.

H. M.JR: You are saying that today?

MR. McCLOY: I know today we have got--

H. M.JR: But is the Crime Commission going to set down rules and regulations under which each individual is going to get a hearing?

JUSTICE JACKSON: They will make findings as to general organizations and turn them over to Eisenhower, and from there on they would have to catch these people and give them a chance to say whether they are not and why they are not. If they are successful in getting

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records, of course that would be very helpful. There are various ways under consideration for getting identification. It would be difficult to identify people who were members. It depends on how helpful people in Germany are about it, whether they take the attitude of covering them up, or whether some of them can be induced by appropriate means to disclose their neighbors.

MR. DUBOIS: Who will give them that hearing, Mr. Jackson?

JUSTICE JACKSON: The military.

MR. CLAYTON: I think this is highly important, and I didn't understand it before. If I understand Justice Jackson correctly, he is now saying his court will pass on the guilt of these organizations as organizations; that then his court will have nothing further to do with identifying the individual members of these organizations, but that they turn that function over to the military.

JUSTICE JACKSON: That's right.

MR. McCLOY: I would suggest, Mr. Jackson, we could cut out that word "judicially" in the first part.

MR. FOWLER: That would be exactly, in effect, what we had.

MR. McCLOY: No it wouldn't, because you are talking about individuals determined by appropriate process. That process may not be strictly judicial--organizations which themselves have been adjudicated. That means by judicial process to be criminal in purpose and activities. It may be only a processing you put there.

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MR. FOWLER: Except the prejudging point.

COL. BROWNELL: It means appropriate process would provide for membership and provide for adjudication of guilt. It's--

MR. CLAYTON: I think this is highly important. We ought to get it very clear.

H.M.JR: It's the same word.

COL. BROWNELL: That's the same word we had before.

MR. McCLOY: The adjudication that these are guilty.

MR. DuBOIS: They've got "adjudicate" here.

MR. FOWLER: It means instead of you and I and the rest of us sitting around the table saying these named organizations are guilty that the War Crimes Commission is going to do that in an orderly, formal, judicial process, and perhaps include other organizations that we haven't dared to mention here because we didn't have enough.

MR. McCLOY; We picked these fellows out when we drew this thing, saying these are the most obvious fellows.

MR. CLAYTON: We'd probably come out at the same point, Mr. Secretary. Now since that has been changed a little, we'd probably come out at the same point in the end by the way it reads. Now it certainly would in all probability include several other organizations that we didn't name.

H.M.JR: The only thing, the word that bothered DuBois is the word "adjudicated."

MR. DuBOIS: That's the gist of it.

MR. CLAYTON: That relates only to the organizations, you see.

MR. DuBOIS: The real difficulty it seems to me on

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this whole thing is the idea that you have to adjudicate the SS--that's all that you're now talking about--in the light of the facts as being a guilty organization. The facts of history speak for the fact that that is a murder gang, and now to suggest that you have to have a trial to establish the character of the SS, I don't understand it. I'd like to ask Mr. Justice what he feels his trial would bring out that hasn't already been brought out, and that the world doesn't already know.

JUSTICE JACKSON: Well, in the first place when someone says, "We already know," I've always said, "For God's sake give me the evidence," and I don't get it. Now, if you're going to have a record, you've got to have something besides current rumor, newspaper reports, and that sort of thing. We'll get the record and make the record, so far as--

MR. McCLOY: That would be much more valuable.

JUSTICE JACKSON: There's much more difficulty in establishing a lot of these things in a way that you're going to have them recorded for the practical value of the world for the future if somebody writes the history of this thing, than in simply saying it's all true and we know it.

MR. BARD: It's consitent with our Constitution and our way of doing business.

MR. McCLOY: It's the way you get the value of the business.

MR. DUBOIS: Let me point this out, just for example. Suppose a court should come out and find that the SS was not this type of organization. I guarantee you that records or no records, the decision of that court would be so condemned in the eyes of the world that the court might as well fold up. I'm saying that to attempt to determine that the SS is such an organization is in effect a farcical trial.

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MR. McCLOY: No more farcical than if a man came in the room this minute and we all saw him murder the Secretary of the Treasury.

H. M.JR: Why pick on me. (Laughter)

MR. McCLOY: We all know, by God, that he'd still have to have a trial.

JUSTICE JACKSON: We all knew it was a farcical thing.

H. M.JR: I hope that wasn't a Freudian slip. (Laughter)

JUSTICE JACKSON: We expected conviction of the saboteurs, and they went through a trial, and there was a record to show why those people were executed. You want to execute them for the right reasons, if you want to do anything for the future peace of the world. If we stand for the things we've been saying we stand for, we can hardly refuse to make an inquiry. It's difficult for me to see why you can hesitate to record here the evidence and make it available--the record of its rise and the barbarism and all that--to have it available, and this is the only real official way to do it. Now, as far as I'm concerned, that decision is passed. It's a political decision as to whether you should execute these people without trial, release them without trial, or try them and decide at the end of the trial what to do. That decision was made by the President, and I was asked to run the legal end of the prosecution. So I'm really not in a position to say whether it's the wisest thing to do or not.

H. M.JR: Could I have five minutes?

(The Secretary, Mr. Bell and Mr. McCloy leave the conference.)

MR. CLAYTON: If you pick up the argument as you make it, let us say all right, we know the Gestapo, the SS--we know what they have done, and what's the use of a trial? Where do you stop with that? Suppose there are twenty organizations, and some are more or less guilty than others. Where are you going to stop with this process of determing, before you have a trial, which are guilty and which are not?

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MR. DUBOIS: I agree there's a problem--where are you going to draw the line? You always have that problem. But you take--I'm speaking only of the SS and the Gestapo. It seems to me that what we know speaks so loud that the rest becomes sort of an anti-climax. I'd like to ask you, Mr. Justice, whether there's any doubt in your mind as to what decision the court will reach.

JUSTICE JACKSON: There is no doubt in my mind the facts will show this was a barbarous organization. I think there might be doubt as to whether they will say it's a crime under international law. You know there are difficulties about that, but one of the difficulties is that everybody in this town says, "Well, we know it." I say where's your evidence. Get your files. I'm told there are--in one section they had a great many cases. I get the cases. Well, they haven't a bit more than we've got on this table. I tell you, in making a record of this thing so that the man to write the story of this twenty years from now can bank on it, and saying that we know it, are two different things, and if it isn't worth while writing--but I have been assigned to the job of writing it, and so that's back of me, and for heaven's sake, if you've got any reliable information, give it to us.

MR. GLASSER: Mr. Justice, do you think we ought to let the labor reparations wait until you have completed the record, or is it your idea that we really can't go ahead with labor reparations until you have finished your accumulation of evidence, which may take a considerable period of time.

JUSTICE JACKSON: I don't see how you can put people in the position of serving a sentence until the case is completed.

MR. GLASSER: Well, I gather that the theory is that this is reparations and that they're not serving sentence, that Germany has been asked to supply labor service as reparations. Now, we are imposing a criteria on the Germans for their selection, as Mr. DuBois pointed out. We might have picked those men who have blue eyes or other criteria, but we feel that this is the best criteria in the interest of world peace, future security of the world. On that

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basis they're not serving their sentence but they are accomplishing the duty of the German people. The Germans have this duty to fulfill, and they are fulfilling it, and they're the ones that have been picked.

JUSTICE JACKSON: As a pure proposition of reparations, if you want to take them, that's perfectly all right with me. All that means is that I drop them out of the trial, because I can't be in a position of trying somebody to see whether they'll be subjected to punishment. They have already been subjected on the assumption they're guilty, but if you make the assumption that they're guilty on the basis--

MR. DUBOIS: That point could be taken care of, Justice. I take it that this sort of thing could be written--whatever is done in the way of reparations wouldn't prejudice also trying of war criminals. Again, Mr. Clayton, it is in here, when we take these people as labor that doesn't necessarily mean that they have to meet all the traditional tests of having been determined to be a war criminal. I think when we started out here, before we had the draft, it wasn't even limited to these people. In other words, again, coming back to the point, you can take men between 25 and 30. Instead we said that we should take those groups. At least what we know is a reasonable enough basis to use these people in this way. We're not executing or shooting them--what we know is a reasonable enough basis to choose these people, to pick them.

MR. CLAYTON: It is true we did start out without the conditions we later adopted, but it's just this idea--the value of these meetings is getting different individuals together who have an interest in the matter to express their points of view out of which we get something that makes more sense than if any one of us did it by ourselves.

MR. BARD: I don't see how that--what bothers me is, is it entirely practical? You need people to get out coal right now, not six months from now when they make their decisions about these things. You need people now to raise crops, and you're not going to get anybody's support for at least six months. In the meantime they sit around and do nothing and twiddle their thumbs, and people are starving to death and going without something to eat.

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JUSTICE JACKSON: Don't misunderstand me as to putting these people to work under the American command in Germany all you want to.

MR. CLAYTON: In Germany.

MR. BARD: As prisoners of war.

MR. CLAYTON: As prisoners of war, certainly. I anticipated that that would be done right along, because I have probably told you if you talked with them, that they figure that the three principal coal-producing areas in Germany which ordinarily produce one hundred fifty million tons of coal a year would only produce in the next twelve months around fifty million tons, in other words, one-third of normal; and that's a tragic thing, because you know fuel is one of the very critical things in Europe. The reason is manpower, labor, they said. The mines are all in pretty good condition. It's a question of putting people down. They've taken a lot out that they've had in there and they have left and gone home, the French, Belgians, Dutch, and Poles, and so forth. And now they better take these Germans, the Army, and put them in there under Army administration and see that they do this work and mine that coal, and I imagine that Eisenhower will certainly do it.

JUSTICE JACKSON: Of course. The thing they're talking about is putting these fellows to work on crops and mining coal under American command. That's one thing--it doesn't worry me greatly if you send some people into France. France can't run a slave system consistently with a free economy. They would help them a little bit, and it would taper off, and they would go back, and they won't be very successful in making use of them. England the same, if they use some of them. One country that can consistently take these people and press them to slavery and set up a slave system on this thing is Russia who has got the system to make this work, and I tell you every man connected with that venture will eventually have the condemnation of the American people, because the stories that come out of there will make their hair stand.

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MR. FOWLER: The main thing we ought to also keep in mind is this program we have for Germany. We've also got a lot of good stuff in it, and the important thing is a position you can maintain over a long sustaining period of time in order to achieve results. And I think we've got to think about what we all know, that these public opinions--there's always a tendency to run a lynch mob the night after the woman's body is discovered, and in three or four months it's an entirely different state of mind. I think we maybe ought,--and that's been our position all along--to do this thing in such a way that you're going to bolster it up and be able to maintain it as a matter of right and justice, against the swings of opinion wherever they may come from over a long period of time.

(The Secretary, Mr. Bell and Mr. McCloy reenter the conference.)

H. M.JR: Mr. Chairman, I think it's unfortunate that we didn't have the advantage of having a study in advance of all the documents which were available. It's so hard when one has so many things to do closer to the Treasury than this. But I fear by not voting it might be misinterpreted that I was not in favor of this new resolution. I want to say that I am in favor of this resolution because inasmuch as the President of the United States has decided to set up a Crimes Commission and it's the way to adjudicate these various organizations, if there's no misunderstanding, I'll say we are in favor of this revised statement.

MR. CLAYTON: That's fine. Thank you, sir. I'd like to say what you said about not having an opportunity to examine the documents, and so forth. It's entirely correct, but I had to call this meeting rather hurriedly, and did so the minute I saw Mr. Pauley's letter, because he's leaving on Sunday and so his time is very short.

H. M.JR: Well, I think that this document had been around at the time previous to President Roosevelt's going to Yalta. It's difficult when at a discussion certain people have seen this, and certain people have seen the minutes of the Yalta Conference, that neither you nor I have, and neither you nor I have seen this Rosenman paper.

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MR. CLAYTON: That's right.

H. M.JR: And I think it's difficult to work under those circumstances. We're talking about the lives of a great many people and the peace of the world.

MR. CLAYTON: That's right.

H. M.JR: It's difficult to give careful consideration with guns to your heads. It's pretty hard to act under those conditions. I'm not accustomed to participating in committee work on that basis.

(Mr. DuBois leaves conference temporarily.)

MR. CLAYTON: I think if we adopt the substitute paragraph read by Mr. McCloy for paragraph 4(d) in our original document and we do that unanimously, now we should get, I think, a little paper written up which carries the action of this committee, and I take it we should sign it and send it to the President just as we did the other papers. We ought to do that certainly tomorrow.

(Mr. DuBois reenters the conference.)

H. M.JR: Mr. Bell can sign for me because I won't be here tomorrow.

MR. CLAYTON: I see. We'll get a paper written up and it will just take one page, and send it all around for signature, so that we'll than have it in order and present it to the President sometime towmorrow so that he can give it to Mr. Pauley. Well, has anything else come before the meeting?

MR. McCLOY: I think Mr. Pauley has a point.

MR. PAULEY: This, of course, leaves this Commission exactly nowhere, practically. The big problem we're going to have is that, of course, I have no idea in advance how many people are going to be convicted as war criminals, but I have a feeling that there are not going to be as many as other countries will want for labor. Well, what shall the American, the United States representative do about that? What shall our attitude be in the amendment

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that was just adopted? It covers practically all compulsory labor, doesn't it? That's its intention.

MR. McCLOY: It did before that.

MR. CLAYTON: It did before that.

MR. PAULEY: Now, do we just say period, that's all, or do we have suggestions that we give, as a reconstruction corps, or what? Personally, I don't think there will be such a thing as voluntary labor if we carry out the spirit of the letter of this agreement, namely, in making more or less uniform the living conditions throughout Europe. And yet I'm in a very awkward position. Everybody is going to want something that we're not going to be able to participate in doing.

MR. BARD: If Eisenhower does what we think he's going to do, he'll take care of all these demands with war prisoners--all legitimate demands, with prisoners of war, and that question won't come up to you for several months. In the meantime, it will be taken care of on that basis. It will be done just by ordering ten thousand here or three thousand here, or so forth. That's what's going to take care of this situation.

MR. PAULEY: How many war prisoners do we have?

MR. McCLOY: About a million and a half, I think.

MR. PAULEY: That are now in Germany?

MR. McCLOY: As I get it, you've been instructed as the American representative on the Reparations Commission to take a position that we're against slave labor as such, and that the type of reparations labor that is to be made available, so far as this country is concerned, we'd have negotiations with our conferees over there, but that's the American position. And compulsory labor would be only on the basis of--

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(Discussion off the record.)

MR. McCLOY: We have adopted in a limited form this idea of reparations labor. There will be, as Mr. Bard points out, a substantial amount of war prisoner labor that will take up some of the immediate labor requirements. We are sending some of the war prisoners into mines. We can do that under legal process, but our position is we want to regularize the reparations labor so that we don't get into the concentration camp idea.

MR. CLAYTON: Can you send war prisoners into France to demine the land, for example?

MR. McCLOY: That's again the Geneva Convention, I think, but we can send them into the mines in France.

MR. CLAYTON: I see. Well, it seems--

MR. McCLOY: Or agriculture or something like that.

MR. CLAYTON: It seems to me Mr. McCloy is right. What we have adopted here is a set of conditions under which, as I understand it, we would consent to give up individuals from the American zone for forced labor or service outside of Germany and that we would try to get these conditions adopted for all the other zones.

MR. FOWLER: Well--

MR. McCLOY: I want to point out it's not by reason that we just adopted it, because the provisions we had before posed the same thing.

MR. FOWLER: Mr. Chairman, in the discussions of this in the informal committee, we agreed that there would be many opportunities to promote a system of voluntary labor, the payment of which would be borne by the German people as a whole. The conditions and incentives for making-- for offering themselves as available could be made such that there would be considerable advantage and considerable

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opportunity to build up those voluntary labor corps if conditions are going to be as bad in Germany as are indicated, and a man's family is going to be entitled to a little extra rations, or he has no job in Germany. He has a chance to, if he wants to, volunteer under prescribed terms and conditions specific periods of service, with specific wages and working conditions to go outside. There ought to be plenty of opportunities to develop a system to be paid for by the German people as a whole.

MR. PAULEY: The Russians practically have already stated that they are going to want a minimum of five million men for five or more years. Now, are they war prisoners, and are those convicted sufficient for them to get that many?

MR. FOWLER: The answer to that is if the Russians are willing to agree to handle those individuals, to offer terms and working conditions and agree with the other United Nations as to a handling of those individuals that will go into that work, that offers an opportunity and an incentive for the individuals to go; that then there is going to be a reasonable chance of them taking advantage of this labor which would be paid for not by the Russians but by the German people as a whole.

MR PAULEY: Practically, for some reason or other, that doesn't just ring a bell with me that the Germans are going to go by some incentive plan into Russia to work.

MR. FOWLER: That depends a lot, I think, on the evidences of bona fide and good faith that the Russians would be willing to assure--

MR. CLAYTON: But, Mr. Pauley, if we approach the matter on some idea that if the Russians and French couldn't get under these conditions as many laborers as they want, whether we should attempt something else,

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that would really mean a reconsideration of these conditions, so that it seems to me having adopted these conditions, if we all agree--

MR. PAULEY: That's perfectly satisfactory if you say that finishes it. Period. That's all I want to know.

MR. CLAYTON: I think that's the situation it's in at the moment.

MR. PAULEY: Okay.

MR. RIDDLEBERGER: There's another question.

MR. BARD: You're under no obligation to force this on them. As I understand it, you don't want to be in any position of that kind.

(Discussion off the record.)

MR. COE: Mr. Pauley is going to have to send back to the President for further instructions pretty soon.

MR. DESPRES: There's a question of the possibility of allowing the Russians to have the prisoners of war--some of the prisoners of war that we are holding who could be used for labor so long as--

MR. McCLOY: ...they observe the Geneva Convention.

MR. PAULEY: They were not a party to the Geneva Convention.

MR. McCLOY: Before we turn them over we can exact from them that they observe the Geneva Convention.

MR. CLAYTON: That's something for the military to decide. We don't need to decide that here if they are prisoners of war.

MR. McCLOY: That's something else.

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MR. CLAYTON: I don't think that's anything for us.

MR. McCLOY: That's an established policy of our Government that we don't let them go unless we get assurance that the Geneva Convention is going to be followed.

H. M.JR: All right.

MR. CLAYTON: If there is nothing else--thank you, sir.

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TOP SECRET

May 3, 1945
9:00 a.m.

REPARATIONS

Present: Mr. D. W. Bell
Mr. Clayton
Gen. Hilldring
Mr. Pauley
Mr. DuBois
Mr. Glasser
Com. Richardson
Col. Chandler
Col. Brownell
Mr. Riddleberger
Mr. Fowler
Mr. Lovett
Mr. Bard
Col McCarthy
Mr. Downey
Mr. Cox
Mr. Despres
Mr. Lutheringer
Mr. Coe
Lt. Bancroft
Mr. Lubin

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from James P. Burke, State Dept.
Name Kathie Dewey
Date 2-11-66

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JCS DECLASSIFICATION BRANCH
DATE 12-13

MR. CLAYTON: Have you a copy of this, Mr. Secretary?

(Indicates Attachment A.)

Mr. Secretary, we have two documents here, one dealing with the aspects of the reparations problem minus the labor question, and another document dealing with the labor question. I suggest that we proceed with the document we were discussing when we last met, and take up the labor document later.

We had finished with paragraph number eight, I believe in our other meeting, so we will go now to paragraph nine.

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"9. As an interim program, pending the formulation of more definitive arrangements, this Government would favor formulation of an immediate program by the Reparations Commission along the following lines:

"a. During the initial period following the collapse of Germany each of the four occupying powers - Great Britain, Russia, France and the United States - may remove from its zone of occupation in Germany plants, equipments and materials (including current output) of such a nature and not in excess of such amounts as may be determined by the Reparations Commission. It shall be our policy to press for inclusion in such an initial removal schedule the categories of plant, equipment and materials described in paragraphs 30, 31 and 32 of the "Directive to the Commander in Chief of the United States Forces of Occupation Regarding the Military Government of Germany" and in paragraph 3 g. above.

"b. The decision as to whether or not the removal of particular plants, equipment or materials out of a zone in Germany is consistent with the purposes of occupation would be made by the commander of such zone, subject to the following conditions:

"i There would be constant consultation between zone commanders.

"ii In making a decision as to removal the zone commander would be responsible for carrying out any relevant agreed policies which may be formulated from time to time by the Control Council.

"iii The Control Council would have an opportunity to consider any particular removal and could veto it.

"iv Regular reports should be made to the Control Council of transfers for reparation account and the Control Council should keep appropriate Allied agencies currently informed.

"c. During this initial period any one of the four occupying powers could allow, if it so desired, any other

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United Nation entitled to reparations in the form of removals from Germany to take out of its zone plants, equipment and materials of such a nature and not in excess of such amounts as may be determined by the Reparations Commission. Such removals would be subject to the policy and conditions specified in sub-paragraphs (a) and (b) above.

"d. Records should be kept of all deliveries made on reparations account under such interim arrangements and such deliveries should be made without prejudice to the final allocation of reparation shares. The Reparation Commission should determine the principles for valuation of such deliveries."

MR. CLAYTON: Beginning with paragraph 9, are there any comments? That is a rather long one.

Are there any comments on 10?

MR. LOVETT: Yes, sir, I have a couple on ten. The first one is just a request for information, really, as to whether or not that last sentence in the first paragraph reading, "The reparation agency should be given continuing responsibility for drawing up at regular intervals detailed schedules of the amounts and kinds of reparations items to be delivered and should have authority to determine the allocation of specific items among claimant governments." I suppose we realize that we are not covering any basis for allocations, but I assume that is deliberate so that the Commission would consider in its instructions the problem, although it isn't defined in the memo here.

MR. CLAYTON: I think that is correct. I take it it is one of the jobs of the Reparations Commission to determine the amount of reparations and the allocation between the different claimants.

MR. PAULEY: Yes. Well, unfortunately this document won't be binding on the Commission. It is only our policy as set forth, and we have yet to negotiate with the other nations.

MR. CLAYTON: Right.

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MR. LOVETT: The point, Mr. Pauley, that was running through my mind was, are we to use the three basic yardsticks in the Yalta protocol? Are we to weigh the damage suffered by the countries on a merely physical basis, or do we include dollars of expenditure, loss of life, and that sort of thing? In other words, it will take quite a high degree of preparation in order to cover that, and I assume that we didn't attempt to cover it here.

MR. PAULEY: I think that is correct.

MR. BELL: Does the Commission have to approve this handling in removal of all industrial plants?

MR. CLAYTON: The physical job of dismantling.

MR. BELL: Supposing in the zone the British are occupying, do they have the authority to go ahead and dismantle and remove the industrial plants from the zone without the approval of the Reparations Commission?

MR. CLAYTON: Well, I take it that the Reparations Commission, as stated here, will indicate to the zone commander the specific items which it would like to have removed.

MR. BELL: They can't do anything until the Reparations Commission specified that particular plant.

MR. CLAYTON: That would be my understanding from the document.

MR. LUBIN: There are two phases in this thing. In the early stages the Commission may say to the zone commander in Britain, "As far as we are concerned you can move out any plants within these categories." They probably would be the same categories in 30, 31, and 32 that are going to have to be dismantled and torn down, and during that period he can go ahead and do it. Then, also, the Central Commission can say to the French, "You can come in and take any plants you want." Records will be kept, and they will be debited to the receiving countries. That is the first phase.

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Then there is a second phase.

MR. BELL: But there is an allocation of that so there would be a sort of equal credit to the reparations account of those particular countries. It wouldn't give the country who has administrative supervision over the zone with all industrial plants an advantage by getting those plants for itself.

MR. CLAYTON: That is definitely the function of the Commission. The job of the actual physical removal would be, I should think, the function of the zone commander, butit is the function of the--

MR. BELL: The country to which it is allocated is determined by the Commission. They have no advantage by having the zone that has all the industrial plants in it.

MR. LUBIN: They may remove such plants, equipment, and materials of such a nature and not in excess of such amounts as may be determined by the Reparations Commission.

MR. BROWNELL: During the early period the only limitation is the amount each country may remove from its zone. That amount is fixed by the Reparations Commission, but you are correct in your understanding that during the initial period no attempt at allocations is made. Now, up to the amount stated, Russia would be able to take out all of a certain type of property, or France would be able to take out all of its certain type of property from their respective zones.

MR. BELL: Who appraises it?

MR. BROWNELL: After removal it is reported by the Control Council, and the Reparations Commission would then have the job of appraising it.

MR. BELL: And there still might be an advantage then to the country.

MR. BROWNELL: There is definitely an advantage to the country that has a richer zone. There is provision for

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MR. LOVETT: I am afraid I haven't made my point clear. I am not talking about that part of the paragraph, but about the second sentence which relates to the execution of the plan, whether the Control Council should have authority to withhold that plant from France. Now, in that case seventy-five percent of the Control Council might be favorable to withholding, but one member of the Control Council could block and stop the withholding merely by voting no. And it is not provided that that should be referred to the Governments in question.

MR. LUBIN: Oh, yes, the next sentence covers that.

MR. LOVETT: Yes, but I mean at this particular stage it is referred only by a zone commander to--

MR. LUBIN: ...the Control Council. If the Control Council over-rules him on a three to one vote, then the zone commander goes back to his Government, and his Government confers with the other powers.

MR. LOVETT: Well, I think I am talking about the reverse situation. Let's leave the zone commanders out for the purpose of trying to make the point clear. If the Control Council agrees that something should be done by a seventy-five percent vote, the twenty-five percent vote of one member can stop the action. Now, that doesn't give those three votes necessary authority to go back to their Governments at all. The question I am raising is whether or not in spite of the over-all program of the Control Council by one vote to block action where it requires unanimous action it is necessary or desirable--and I don't know that it is--to include with this specific type of problem a provision requiring majority vote which would mean that any three members could make a decision.

MR. COE: I think in the first place we can't make it. I don't think we can make it in this context because we have already negotiated with the other Governments an agreement about the Control Council and its method of operation. It seems to me, though, that in making such a decision you have to go over the whole gamut of things that

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Bob, you had another point, I think, on ten.

MR. LOVETT: Yes, in the third paragraph starting, "The occupation authorities should be responsible for the execution of the plan within Germany. In the execution of the plan, the Control Council should have the authority to withhold from transfer as reparations specific items the removal of which in its judgment would reduce the available economic means below the minimum required to meet the other obligations of the occupation." I have just really a general question there as to the machinery. Perhaps Lubin may have it clearly in mind. Wouldn't it be possible under this language for the Reparations Commission to have assigned plant X, say, in the Russian zone to France? The Russians decline to give it up, and then it goes to the Control Council, and the Control Council votes-- France, Britain, and the U. S.--for removal of the plant. Russia still says no, and under the Control Council arrangements, the plant is not moved. The query is whether it would be appropriate or desirable to provide in this specific type of question that the Control Council act by majority vote?

MR. LUBIN: I don't think it is within our function to tell the Control Council how it must run its business. I mean, that is already an agreement between the four countries relative to how they will operate. The situation as we visualize it is this: The commanding generals in our zone are going to have this plant. They go before the Control Council and present their case. They have a chance to sit down and discuss it, and we assume that after discussion pro and con they may come to some agreement. Let's assume that they don't come to an agreement, and then our commanding general notifies Washington. I think that the first thing that would happen here is that the State Department would get in touch with the Russians and other people and say, "We have got to have this plant, and we are going to tell our general he can keep it." In other words, what we want to do is avoid any dogmatic quick decision. If we are going to over-rule the Commission at any point, we want the Governments to sit down and talk it over; and if they can't settle it in Berlin, do it via their embassies in their major Governments.

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come up in the occupation, because the whole theory of the Control Council and the zone commander is apparently based on the fact that you agree upon what you all can get together on unanimously in the Control Council; and if you don't do that, full power resides in each zone to do what it likes.

MR. LOVETT: You may be right. I am just getting this doubt off my chest.

MR. COE: I think there are a lot of questions where we would rather have it go by majority if we could.

MR. LOVETT: All I'm asking is whether it is an intelligent thing to do to try to remove this category of questions from the basic unanimous requirement and put it on the basis of the majority vote. I don't know myself. I simply raise the question.

MR. DuBOIS: There are two points. In the first place, of course, each zone commander would have control of his own zone, and two, isn't this true that we provide all the way through here by review by the Control Council--it seems to me as a practical matter, even though you have theoretical possibilities of one blocking it, that after a while the pressure of the three Governments telling another Government, "We don't want this thing done," in a sense like your Security Council where the pressure of opinion is such that it amounts to something, even though one vote may block it--in other words, take for example when a specific issue comes up as to whether or not specific kinds of plants should be moved out of the Russian zone, and the British, U. S., and French commanders say, "We don't think that should go out," that means something to the Russians.

(Secretary leaves the conference temporarily.)

MR. LOVETT: Do you think it does? It hasn't in Bucharest, Sofia, or Budapest or Austria.

MR. DuBOIS: That depends on whether or not you assume it doesn't mean anything. If you assume that it doesn't

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mean anything over a period of time, then it seems your Control Council is going to break down, anyway. I think, myself, it will mean a lot over a period of time.

MR. DESPRES: I think there is another point in this connection, and that is this, as we have it formulated now, the Control Council, if unanimous, can block removal. If the Control Council is not unanimous, the commander of the zone in which the property in question is located can with the approval of his Government block removal.

(Mr. Downey leaves the conference temporarily.)

MR. LOVETT: Now, the only purpose of adopting a majority rule would be to enable three commanders to block removal from a fourth zone when the commander of that fourth zone was prepared to let the item go out. I think that if there were such a rule that the other three could block removal, that if we proposed that kind of a rule, inevitably that would be tied up with a counter proposal. Then I would say we would have to go along with it if we supported this, namely, that the other three commanders could force removal from a fourth zone in the face of everything.

MR. DESPRES: In other words, if the three other commanders should over-ride the commander in the fourth zone when he wanted to remove something, I would say they have to be able to over-ride in this opposite case when the commander in the zone wants to retain something.

MR. LOVETT: If that is sound, and it may be, then I think we have got to bring the language in the next sentence into agreement with the principle and cut out the word essential and substitute something less than that, because essential is too restrictive, I think, on General Eisenhower.

MR. LOVETT: It is more restrictive than the sentence before. It relates to the use of judgment in reducing available economic means below the minimum required, whereas in the next sentence the zone commander is limited by the fact that retention must be based within his zone on something that is essential. That seems to me to be much too tough

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a word. If it relates to the feeding of troops, for example, it may be necessary to give them a certain number of calories a day, but they can sustain life on half that, and it is a question of whether you would call the difference between those two yardsticks essential enough.

MR. LUBIN: That determination would be up to the zone commander. In other words, if Eisenhower said, "It is essential that I have thirty-six hundred calories a day," and if his Government agrees with him, he keeps the food.

MR. LOVETT: I don't read it that way.

MR. LUBIN: It says, "...the zone commander if he believes that the retention of any specific item within his zone is essential to the purposes of the occupation, may with the specific consent--"

MR. LOVETT: So that the yardstick set up for him is essential.

MR. LUBIN: As related to his own government. That criteria comes in only when he is dealing with his own government.

MR. LOVETT: His yardstick is whether he believes it is essential to the purposes of the occupation.

MR. LUBIN: And if he does, he may "...with the specific consent of his Government withhold the removal of such item."

MR. LOVETT: I will only talk about the word essential.

MR. LUBIN: His government will determine whether it is essential enough.

MR. LOVETT: Why don't you leave it out and put the burden on his Government? Here he can't do anything, as I read this, unless he believes that the retention of this specific item is essential to the purpose of the occupation.

MR. LUBIN: In other words, if the other three Governments think that the thing should go out and he still wants it in his zone, then he ought to convince his Government that it is essential.

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MR. LOVETT: If you said that, that would meet my point completely.

MR. LUBIN: That is what it says.

COL. BROWNELL: Why shouldn't the same language be used with respect to the judgment of the zone commander as you have used with respect to the judgment of the Control Council and say, "After review in the absence of agreement the zone commander, if he believes that the retention of any specific item within his zone is necessary to maintain the required--to meet the other obligations of the occupation"--as it is now drafted, the question will be decided in the light of essentiality both by the zone commander and on review by the government; and if you follow the language strictly, both the government and the zone commander would have to determine that something was essential, that they couldn't possibly get along without it. The same yardstick should apply in both places. There are many things that perhaps should be exempt and would be exempt if the Control Council should come to agreement that they aren't essential, but still would be the minimum required to meet the other obligations.

(Mr. Riddleberger enters the conference.)

MR. DESPRES: Representatives of the four Governments could sit down in Berlin and argue it out and it is agreed that the items should leave the area, then if he still wants the Control Council over-ruled by his Government, which we are saying he can do, then I think he ought to show his Government it is essential for him to have it.

COL. BROWNELL: I think essentiality is too strong a yardstick to place on the zone commander.

MR. LUBIN: I don't think it is strong enough.

COL. BROWNELL: It means he can't possibly get along without it, that he can't possibly bring food or something else in from the U. S. to take its place. A balance of convenience, a balance of desirability, or even a balance of necessity might indicate that the items should be

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retained in the zone for a while. There is no real reason for imposing that he cannot do it during the first period. During the interim period much weaker language is used.

MR. PAULEY: I can't see where the phrase "essential to civilian requirements," and so forth, departs in any way from the discussion at Yalta. That is the theory on the basis of this whole thing, and as long as the matter of interpreting the word "essential" and what it means is strictly within the hands of the zone commander who represents this Government, I see no hazard there.

COL. BROWNELL: There are many things, Mr. Pauley, that probably should be retained which it could be argued were not absolutely essential.

MR. PAULEY: But it is strictly within the hands of the zone commander.

COL. BROWNELL: It is not entirely, if you limit him by the word "essential." This point, incidentally, is a real point which was discussed in the working committee, and there is one school of thought that the zone commander should not be allowed to block a withdrawl unless there is no other possible means for his taking care of the need in question. To take an extreme example, it might not be essential for him to retain certain food because it would be possible to import from the United States additional food. Yet on balance it might be most desirable to do it by keeping the food in the zone instead of requiring additional food to be shipped from the United States. He should be given more play and more room for a--

MR. CLAYTON: May I just comment on that, Colonel? I don't quite see the point. I mean, I don't see the aptness of your example there, because I can hardly conceive that you would ship food out of Germany if the United States was going to have to ship it back in.

MR. COE: This is specific language with regard to that.

COL. BROWNELL: That only relates to the German people, and if it is intended to give the zone commander the right

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in a case of that kind, then there is no use in using the word "essential."

MR. COE: Maybe it is a poor example.

MR. LUBIN: If the zone commander presents his cast to the Control Council and it is over-ruled and he still wants to have his way, he ought to make a damn good case to his Government that he can't get along without it.

COL. BROWNELL: That would be so if it isn't for unanimity rule.

MR. PAULEY: That has already been agreed upon, unanimity.

MR. LUBIN: You are saying to the U. S. Government, "Listen, give this guy the right to get into a controversy with his colleagues who have already over-ruled him," and I think before we give him that privilege he ought to make a damn good case that it is going to be hard to get along without this article, and he ought to show his Government before his Government goes to the Russians and says, "We are sorry, we are going to let this guy keep this, anyway." He ought to go to his Government and show that it is essential.

MR. LOVETT: It is hard to explain what really is in my mind. I am asking whether the matter of essentiality can't be left to this Government to determine rather than have the commander on the spot limit it in the referral of the thing to something that he feels is essential. There is no question about the Government in my mind having the ultimate responsibility for determining whether you are to keep it or give it up, and if they want to ship stuff in this country rather than have him retain the thing that he feels is necessary, that is O.K. I am wondering whether we are not limiting the zone commander to the type of problem he can refer. That is the basic thing.

MR. CLAYTON: May I comment on that, Bob? You say that if the zone commander wants to let stuff go out,

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there is going to have to be shipped from this co supplies which he has given up. I don't see that at all. And I think that there is in this document--if there isn't, there should be a provision that under no circumstances will the U. S. agree to any policy which would result in reparations being paid for by the U. S. And if you are going to ship food out of Germany when you know that the U. S. is going to have to promptly ship it back there, you are running the risk there that the U. S. is going to be paying for reparations.

MR. LOVETT: That is what it very defenitely does, I think.

MR. CLAYTON: I don't think any of us want to promote a policy of that kind, and that any of us would agree to a policy of that kind.

MR. LOVETT: This is not provided for in this document. I think Mr. Clayton has a good point.

MR. DuBOIS: This says, "...if he believes that the retention of any specific item within his zone is essential to the purposes of the occupation--" now, that principle of occupation is already provided for in this document.

MR. LOVETT: It is only in the interim period.

MR. DuBOIS: No, the earlier principle. I think what you say is made clear, and this says "...essential to the purpose," so I think it is already covered.

MR. LOVETT: I don't think it is nearly clear enough, but it just wouldn't make any sense for us to divert stuff from the Pacific war to occupational troops in Germany so that reparations could be paid to some other country.

MR. CLAYTON: It not only doesn't make any sense, but we provide in here that we shall not do it. For example, on page two, sub-paragraph D, "This Government opposes any reparations plan based upon the assumption that the United States or any other country will finance any reconstruction in Germany or reparation by Germany." If you ship food out

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of Germany which makes the food situation so desperate there that the U. S. has got to immediately or shortly thereafter ship the food back in, why then we are paying reparations, which, of course, none of us want to do.

Then again on the bottom of page four--on my copy it is page four, sub-paragraph K. says, "It will be inevitable that the German standard of living will be adversely affected by the carrying out of the Reparations Plan. However, the reparation exactions should be held within such limits as to leave the German people with sufficient means to provide a minimum subsistence standard of living without sustained outside relief; but under no condition should this limitation operate to require the retention in Germany of means to support basic living standards on a higher level than that existing in any one of the neighboring United Nations."

And then 4. says, "To the extent necessary to pay for such minimum German imports as may be determined to be essential, recipient countries should be required to pay so far as practicable for German exports, except removals of existing plant and equipment. Imports for which payment will be sought shall include supplies imported by the occupying forces for displaced persons and German civilians."

It is not quite as explicit in this document as it was in the previous one, and I think that is a weakness of it, that under no conditions shall the U. S. be placed in such a position that it will be, in effect, paying reparations. That was a point that President Roosevelt was very explicit on in our conference with him, and he was very determined that we should not this time be in the position of removing things from Germany for the benefit of other countries in reparations to the degree and extent that would make it necessary soon thereafter or at some later date to supply that or some other item to the German people, thus, in effect, resulting in the United States paying in part the reparations.

The item that you mentioned, Colonel Brownell, would be out at once if we make this document as clear as we should make it.

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COL. BROWNELL: Mr. Clayton, I don't think it would be. I think this point is a very important point, and I am sure that the language as used--and I think my colleagues on the working committee agree--would restrict the power or discretion of the zone commander. As was pointed out, if he thinks that different standards should be placed on the zone commander than we have placed on the Control Council or that we have placed on the zone commander during the interim period--we have discussed examples in the working committee. For instance, the one of synthetic oil plants is usually used. Now, this language is intended by my colleagues to make it harder for the zone commander to say that something is required for his zone and to make it harder for the Government to say that something is required for the zone, because the test is one of essentiality rather than the test that is imposed on the Control Council, and that is that it be not the minimum required to meet the other obligations. I don't see the logic of imposing a stiffer requirement on the zone commander, and I submit that the same test should be used that you used in laying down the rule for the Control Council.

I would not discuss the point so much if it were not that it goes so to the heart of what our Army commander is allowed to do.

MR. LUBIN: "After review by the zone commander"--wouldn't this meet your requirements? The zone commander may withhold removal of any specific item if his Government designates such items as essential to the purpose of his occupation.

MR. CLAYTON: Does that meet your point?

COL. BROWNELL: That would not meet my point.

MR. LUBIN: The Government decides, and not the officer.

MR. LOVETT: That would help, I think, to meet my main objection, but Mr. Clayton has raised a point that it seems to me is not clearly covered in this particular draft.

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Let's take our old synthetic oil plant again. There is a synthetic oil plant in the American zone. The zone commander says, "I need that in order to keep my troops mobilized." The Reparations Council and the Control Council say, "Give it up." Now, as I understand some of the previous discussions, the theory has been O.K. He gives it up even if he has to ship in a new plant or new gasoline, or whatever it may be, from this country. We feel that that shipment is a method of forcing the United States to pay reparations. We would be just as well off if we shipped that gasoline, well, say, direct to Russia and kept the German plant.

MR. FOWLER: Mr. Lovett, I have a suggestion.

H.M.JR: It is an unfortunate example.

MR. LUBIN: That means we have got to keep all the German industries going.

MR. FOWLER: We can repair that by one sentence in paragraph 4. We have the provision, "To the extent necessary to pay for such minimum German imports as may be determined to be essential--" now, that would be your petroleum to keep your wheels turning. "Recipient countries should be required to pay so far as practicable for German exports, except removals of existing plant and equipment."

MR. CLAYTON: Equipment?

MR. FOWLER: Equipment. In order to make it clear, we say, "Exports required to pay for such minimum imports shall be charged to current production prior to reparations." That means that the amounts required to pay for your imports of oil, rubber, food, or whatever the items may be, would be paid for with German exports before those exports could be charged to the reparations account.

MR. CLAYTON: Or credited to it. We had that language in the previous draft, and I think we should have it again.

MR. FOWLER: I think we intended to have it.

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MR. CLAYTON: We had the exact language. It is in 1067, the March 23 document.

MR. FOWLER: To make that case?

MR. CLAYTON: This March 23rd document says, "The first charge on all approved exports"--President Roosevelt himself wrote in that word himself, the word approved. It was the only change he made. "The first charge on all approved exports for reparations or otherwise shall be a sum necessary to pay for imports."

MR. FOWLER: I think it is very important to put that in here.

MR. CLAYTON: I think we should have it, too.

MR. FOWLER: Then I visualize that if you had fifty million tons of coal to export and it appeared that you were going to have to import a certain quantity of oil and rubber, the countries that wanted that coal would have to pay for it, and you would use that money to pay for the imports in terms of oil and rubber. And before anybody could get the coal for nothing, you would have charged them out of current production the amount necessary to take care of your importing program.

MR. LOVETT: That covers it.

H.M.JR: Is that all right?

MR. DuBOIS: Yes.

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MR. CLAYTON: In putting this sentence which I have just read from the March 23 document into the document which we are now reviewing, the sentence reads, "The first charge on all approved exports for reparations or otherwise shall be a sum necessary to pay for imports." It has been suggested that in putting that sentence into the present document that we should except from it, "existing plant and equipment." In other words, if you approve the removal of certain plants or equipment for reparations, you should not require payment for that or align against that to cover any necessary imports.

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MR. LUBIN: Joe had the word "from current production."

MR. FOWLER: "Exports required to pay for such minimum imports shall be charged to current production prior to reparations from current production."

MR. CLAYTON: I don't think "current production" is sufficient, Joe, because there might be large inventories of food or some other materials on hand which--

MR. FOWLER: Right.

MR. CLAYTON: ...which ought to be covered.

MR. FOWLER: "...charged to export of stocks, raw materials, or current production of semi-fabricated or finished production."

MR. DESPRES: I think you have an idea here, Joe, which I am not sure your sentence brings out. I think the notion you are trying to get at is that production for export to pay for minimum imports shall be a part of the minimum economic activity in Germany that we deem essential. I don't think your language quite expresses that.

MR. LUBIN: I think the additional wording you suggest is better, except plants.

MR. CLAYTON: Yes, I think this covers it if we put in parentheses. Read what you have got there now.

MR. DESPRES: "The first charge on all approved exports for reparations or otherwise, other than removals of existing plant and equipment, shall be assumed sufficient to pay for authorized imports."

MR. CLAYTON: "...shall be assumed necessary to pay for imports."

MR. DESPRES: "...shall be assumed necessary to pay for imports.

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MR. FOWLER: "...such minimum German imports as may be--

MR. DESPRES: How about just saying "authorized imports?"

MR. CLAYTON: Or "approved?" We said "approved exports."

MR. DESPRES: "Approved imports." Might that be the first sentence of our paragraph 4?

MR. CLAYTON: It is agreeable that we substitute that sentence as read for the following in paragraph 4, "To the extent necessary to pay for such minimum German imports as may be determined to be essential, recipient countries should be required to pay so far as practicable for German exports, except removals?" The proposal is to substitute the language which Mr. Despres read for the sentence I just read. Is that agreeable with everybody?

MR. DESPRES: You might keep both, make the recipient countries pay.

MR. CLAYTON: Well, all right, I am agreeable to keeping it, but I would cut out the prhase "...so far as practicable," because I think they ought to be required to pay for any consumer goods of any kind that they get if that means that we are going to have to reimport it.

MR. LUTHRINGER: Mr. Clayton, I think that phrase was written in, as I recall the discussion of the working group, because it was argued that some countries like Czechoslovakia would be wholly without foreign exchange resources and wouldn't be able to pay for goods which were essential to relief. Now, if we have to make this absolute, why it is made absolute, but I think there are going to be a great many tough situations arise.

MR. CLAYTON: Well, they can. If Czechoslovakia requires goods in Germany for relief for which they are unable to pay--

(Col. McCarthy leaves the conference temporarily.)

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MR. McCLOY: ...and the removal of those goods from Germany means you would have to ship in something in place of it, then I think that the U. S. should decide whether it wants to extend this relief to Czechoslovakia.

MR. COE: You can't settle relief financing methods in these reparations.

MR. CLAYTON: Read the sentence again, please. Please watch this carefully because it is important and you propose to put it in as the first sentence in paragraph 4 of this document, "The first charge on all approved exports for reparations or otherwise (other than removals of existing plant and equipment) shall be a sum necessary to pay for approved imports. Accordingly, to the extent necessary to pay for such minimum German imports as may be determined to be essential, recipient countries should be required to pay for German exports, except for removals of existing plants and equipment."

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MR. CLAYTON: If there is no dissent, that change will be made in paragraph 4.

Now, let's come back to your 10. It seems to me that the burden of proof ought to be on the zone commander of any zone if he is agreeable to the removal of any plant or equipment from his zone for which the other three zone commanders are requesting removal. I think, Bob, that the burden of proof is properly placed on him, and it seems to me that this language is not too restrictive.

MR. LOVETT: I think the burden of proof should be on the zone commander if he is the minority fellow and that, of course, the decision should be left to the Government. I am merely trying to get the language so drawn as to enable him to refer it to the Government for decision without having to make a show of essentiality at that stage of referral.

MR. DuBOIS: He doesn't have to make a show to the other commanders, as I understand this language. If he leaves it, it is essential he report that fact to his Government. I think it is different from the case that Colonel Brownell put up. It is one thing to say if all four commanders get together and reach an agreement; it is another thing, as Mr. Clayton

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says, that this fellow is bucking three commanders. If he does that, he ought to feel it is essential before he reports it to his Government.

COL. BROWNELL: The others may have a very indirect interest, and he may have a direct interest. He should have the burden of proof, but I think both he and his Government should be allowed to retain an item if it is required for the purpose of occupation.

MR. DuBOIS: Even if they don't think it is essential.

COL. BROWNELL: Even if they don't think it is essential. Essential is one hundred percent wrong wording.

MR. DuBOIS: Essential to the purpose of occupation.

COL. BROWNELL: It is intended for that. You wouldn't be arguing if you wouldn't want to restrict the discretion of both the zone commander and his Government.

MR. DESPRES: You don't want to restrict the discretion of this Government at all.

COL. BROWNELL: The Government also would have to come to the conclusion that it was essential.

MR. DESPRES: The criteria of essentiality to the purpose of occupation will be laid down in the directives that are given to zone commanders by the Government.

Now, I have the feeling that in this discussion we are really talking about the difference that has arisen over IPCOG 1, but I would say that however that came out, this says, "...essential for the purpose of the occupation." This Government is free to define its prupose of occupation. It could be to bring the good life to Germans or something of that sort, in which case a great deal would be essential. But I would say that that is not a subject for this document. That is a subject that we do deal with in IPCOG 1.

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MR. DuBOIS: I agree, Colonel, it is an important point. I think that is why you are arguing the other side. We have already stated the purposes of occupation, and we have stated them pretty broadly in the point we just put in. If the commander feels in the light of those purposes it is essential, that is one thing. If he doesn't feel it is essential--

MR. LOVETT: Is it proposed to have the yardstick applied by the Government limited by the word "essential?" That is the way the language reads. The Government, of course--

MR. LOVETT: If so, it is quite a test to place on the Government.

MR. DESPRES: I think the matter might be illustrated in this way: In IPCOG 1 when they call for an effort to produce the maximum miscellaneous agricultural output, that is a part of the program of this Government. Therefore, with respect to Germany, I would say a removal which heavily interferes with this maximum miscellaneous agricultural output objective would be contrary to the purposes of this Government under the terms of that directive.

MR. LOVETT: We might all agree to that, Mr. Despres, but we wouldn't be the ones that are interpreting this thing, and I am struggling to get this language as clear as possible so that the poor fellows that have to decide these questions when they come back won't necessarily be limited by the drafting.

MR. CLAYTON: But, Bob, if this says merely that if he believes that it is essential, it seems to me that that just becomes then a question of his conscience.

COL. BROWNELL: Why not save his conscience? You are saying in effect, Mr. Clayton, that he can get away with it by interpreting the word "essential" to mean something other than essential? Why don't we use the language we have used two lines above and save his conscience?

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MR. DESPRES: What language, "...minimum required?"

COL. BROWNELL: Yes.

MR. DESPRES: I think that is all right.

MR. FOWLER: Let me ask you about this case proposed that the zone commander or the Allied Control Council by the maximum miscellaneous agricultural output or coal output could take advantage of the tremendous demand that there will be for those products to establish a fairly high cash or exchange account with which they could purchase the minimum imports of oil and rubber. Now, in the language as you suggest here there is no burden of going forward on the part of the Control Council or the occupation forces to try and make Germany get by without running synthetic oil plants and synthetic rubber plants. All they have to do is just say, "If we ship this plant out and, therefore, can't operate, that reduces the available economic minimum required to meet the other obligations of the occupation."

Now, it seems to me that more than an automatic certification of that sort is required. We are really asking the zone commander to say that with all of the resources that may be available to him such as production and sale outside, the removal of this plant is going to make it impossible for him to carry out the purpose of the occupation and is, therefore, essential that he maintain it. In other words, you are not leaving any room, it seems to me, for the flexibility of his operations to achieve the purposes we have in mind here, and that is going to one of the primary responsibilities that we are trying to place on him. May I suggest that the language be changed, as follows? I think it would probably be acceptable to everybody. "After review by the Control Council, and in the absence of agreement, the zone commander, if he believes the the removal of any specific item from his zone would reduce the available economic means below the minimum require to meet ot to attain the purposes of the occupation, he may, with the specific consent of his Government--"

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MR. LUBIN: Absolutely not. We would never agree to that, because there would be many, many instances where we

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would want to reduce the capacity of Germany below the means necessary on the theory that those things ought to be brought into Germany from the outside. There will be thousands of cases of that sort.

MR. CLAYTON: This is the language that is used in the sentence above, "In the execution of the plan, the Control Council should have the authority to withhold from transfer as reparations specific items the removal of which in its judgment would reduce the available economic means below the minimum required to meet the other obligations of the occupation."

MR. LUBIN: You have got the judgment of four people there.

MR. CLAYTON: Not four.

MR. LUBIN: You have got the four commanders in the Control Council.

MR. CLAYTON: No, the next sentence shows that the zone commander would only go to the Government in the absence of agreement, so you wouldn't have four.

MR. LUBIN: Well, three.

MR. CLAYTON: Maybe three, or maybe two.

MR. LUBIN: Four people are going to consider this; the judgment of four people is going to be involved, but there will be many instances where you will want to reduce the productive capacity of Germany below that which is necessary to maintain those means, and one of the purposes of this is to see that other countries are not dependent upon Germany.

MR. FOWLER: One of the purposes of the paper is to see how quickly Germany becomes dependent upon other sources of supply for things like oil and rubber, and that is the real concern we have here in this paragraph.

MR. LOVETT: That is true.

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MR. FOWLER: I think it is perfectly true that if after maximizing all of the possible exports and saying all that we hope to get for this is equivalent to two hundred million dollars and here is your table of essential imports--and they will call for so much oil and so much rubber--and the total value of that in the market outside is two hundred and fifty million dollars, and therefore, we will have a deficit of fifty million dollars here to contend with, and the removal of these particular plants is going to reduce our economic means below the point that Germany can afford to pay to buy rubber and oil from the outside market. Then there would be a case here.

MR. LUBIN: I don't believe there would even in that, Joe. I think there would be other less essential items that shouldn't be imported that Germany should go without.

MR. FOWLER: I am assuming it is a completely tight case on the essential import picture. I think it is a drafting problem here.

MR. DuBOIS: Could I try one other version?

MR. CLAYTON: We will have one more try, and that is yours.

MR. DuBOIS: "The zone commander, if he believes that any specific item should be retained within his zone, may, with the specific determination of his Government, if such an item is essential to the purpose of occupation, withhold the removal of such item."

MR. CLAYTON: Would that be agreeable to you, Bob?

MR. LOVETT: That covers our basic point.

COL. BROWNELL: It does not cover the point.

H.M.JR: I am really getting--why don't you say what you are objecting to? Let's have it out. All this sparring!

MR. LOVETT: That would cover my principle.

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H.M.JR: I don't know what all this sparring is about.

MR. PAULEY: Why not go back to the same language that was in there?

H.M.JR: Let's be more frank about this thing. I mean, you have got certain underlying principles, and we have. If there is something that you don't like about it, say so.

MR. PAULEY: May I say this?

MR. LUBIN: Just a minute, Joe.

MR. PAULEY: To come back to the same language that is in there, it seems to me it gives the necessary discretion to our own zone commander. We must bear in mind that this document that we are drafting here is a policy of this Government, and we are only hopeful that it will be acceptable to all the other Governments concerned, and however you change this, you must not think only of your own zone commander, but remember that the thing can work against you with other zone commanders. I think it is entirely satisfactory and discretionary with the zone commander here to the greatest extent that it should be.

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MR. CLAYTON: Could we just listen to this one more time, Mr. Pauley? It seems to me that essentially the language which he has read is the same as this. Just read it, please, Joe.

MR. DuBOIS: "The zone commander, if he believes that any specific item should be retained within his zone, may, with the specific determination of his Government, if such item is essential to the purpose of occupation, withhold the removal of such item."

MR. CLAYTON: Isn't that almost the same?

MR. PAULEY: I don't see any difference.

MR. CLAYTON: Well, is that agreeable to you?

MR. FOWLER: It adds one change which I think helps meet Mr. Lovett's point. It removes the burden of the zone

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from certifying the item is essential. All he does is say he thinks it should be retained, and it is up to this Government to make the determination.

MR. CLAYTON: It puts the burden of determination of essentiality on the U. S. Government instead of the zone commander.

H.M.JR: Excuse me. Wait a minute. Let me ask Mr. Lovett and General Hilldring if this is all right. Can they recommend this to the Combined Chiefs of Staff? Because this thing gets back to the very point--I understand the Combined Chiefs of Staff don't want to go along.

GEN. HILLDRING: I don't think--

MR. LOVETT: I don't know anything about that.

MR. GLASSER: Joint Chiefs of Staff.

H.M.JR: I am sorry, but I mean I think it is this thing that has been underlying this whole business. Let's get this thing.

GEN. HILLDRING: From what I have heard this morning, Mr. Secretary--and I don't know--I haven't talked to Colonel Brownell; I just listened to what he said. I don't think the same point is involved here. From what I have heard of the discussion, the Joint Chiefs of Staff did not challenge the policy of our Government that synthetic rubber and petroleum could not be removed from Germany, despite the fact that they might need that petroleum and rubber for their minimum needs, that they didn't take those things off the black list.

H.M.JR: No, but we have got some language. You, Mr. Lovett, and you, General Hilldring--you first, please. If this language we are talking about now is acceptable, are you gentlemen in the War Department prepared to recommend this to the Chiefs of Staff--is that what the--

MR. CLAYTON: Joint Chiefs of Staff?

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Date 2-11-66

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MR. LOVETT: Well, the most we could do in any event, Mr. Secretary, is to recommend it. If we approve the language as presently suggested, I should think that would be entirely appropriate for General Hilldring and me to state that it has our individual approval. But that is no guarantee that the language would be retained. Is that 1067 there? May I see it? I am not familiar with the point you particularly raised.

H.M.JR: I didn't raise it; the Joint Chiefs of Staff raised it. I think that Colonel Brownell--

MR. CLAYTON: Perhaps in order to get it settled once and for all, Mr. Secretary, maybe we had better read this copy of our other document.

GEN. HILLDRING: I think that language is not contrary to this. I don't think you want to be in a position of approving here something which you can't at the same time recommend to these Joint Chiefs of Staff, and that is why I thought we might just as well settle it. I appreciate the fact that reparations doesn't go to the Joint Chiefs of Staff, but 1067 does, and it is the same point.

MR. LOVETT: It is not related to this document at all.

H.M.JR: But it is the same principle we have been arguing here, and every time we come up against it, we have the same thing that is being raised, so I would like to get it settled once and for all at this level.

MR. CLAYTON: I think you would like for the reparations document in this respect to be consistent with the document we approved on Friday.

H.M.JR: That is right, so the representatives of the Army can go along with it.

MR. CLAYTON: I think that is right. Now, to make sure that is the case, I think we should pause for a moment to read this short communication from the Joint Chiefs of Staff.

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(Reading "Memorandum for the Secretary of War: Secretary of the Navy," dated May 2, 1945, attachment B.)

"The Joint Chiefs of Staff recommend that the Secretary of War and the Secretary of the Navy inform the Secretary of State as follows:

"The Joint Chiefs of Staff have considered the military implications of the proposed directive to the Commander in Chief, U. S. Forces of Occupation, regarding the military government of Germany contained in IPCOG 1, and with the following amendments see no objections from the military point of view:

"a. Delete the period at the end of the last sentence, paragraph 30," and that reads, "You will not postpone enforcement of the prohibitions contained in subparagraphs a and b and the instructions in subparagraph c without specific approval of your government through the Joint Chiefs of Staff," and add the following: "'...except that, in your discretion, you may permit the production of synthetic rubber and oil, aluminum and magnesium, to the minimum extent necessary to meet the purposes stated in paragraphs 4 and 5 of the directive.'"

That is the first recommendation, and the next is b.

MR. LOVETT: Paragraphs 4 and 5--have you got those?

MR. CLAYTON: They are part of the draft. They relate to purposes of the occupation, minimum standard of living and prevention of starvation, disease, unrest, and so fortth, that would endanger the occupying forces.

Now, I have just read the first suggestion they make. Here is the second:

"b. Delete the word 'excluding' in line 2, subparagraph a, paragraph 32, and insert the word 'including' in lieu thereof." Subparagraph a now reads, "prohibit and prevent production of iron and steel, chemicals, non-ferrous metals (excluding aluminum and magnesium), machine tools,

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radio and electrical equipment--" and so forth. With the proposed change it would read, "prohibit and prevent production of iron and steel, chemicals, non-ferrous metals (including aluminum and magnesium)--."

They also propose to, "Also insert the words 'synthetic rubber and oil' after the word 'vehicles' in line 4" of the same paragraph, which would make it read, "automotive vehicles, synthetic rubber and oil, heavy machinery and important parts thereof, except for the purposes stated in paragraphs 4 and 5 of this directive."

The next is "c. Delete the period and add the following words to the last sentence of paragraph 32." The last sentence in 32 reads, "Pending agreement in the Control Council, you will put some measures into effect in your own zone," and they wish to add "as soon as you had an opportunity to review and determine production necessary for the purposes stated in paragraphs 4 and 5 of this directive." I wouldn't think there was anything in those suggestions which--

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H.M.JR: I ought to step out of the room because the Joint Chiefs of Staff evidently don't know that the Secretary of the Treasury exists, but I might point out that on the recommendation of Mr. Stimson to President Roosevelt President Roosevelt did appoint a committee composed of the Secretary of State, War, and Treasury to deal with Germany, and that committee, so far as I know, is still in existence. But notwithstanding I am here--I don't know on what basis--to say that the Joint Chiefs of Staff don't know I exist--but on whatever basis I am here, I do say that this is not acceptable to me.

MR. CLAYTON: Will you excuse me just a minute, please, Mr. Secretary? I think perhaps the reason the Joint Chiefs of Staff communication was framed in the way it was is due to the fact that our covering memo to the President sending this, or transmitting this document, was signed by the Acting Secretary of State, and we all as a committee signed, as you remember, on the bottom of it, and I imagine that that is the reason they directed their communication in the way in which they did.

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H.M.JR: It is just the secretariat they wished on us here, and their method of communicating to the Joint Chiefs of Staff, but--

MR. COE: I think this has been handled as a SWNCC document, hasn't it?

H.M.JR: But I am just pointing it out. I am sure no discourtesy was meant.

(Mr. Pauley left the conference temporarily.)

H.M.JR: I think it is stupid the way it was handled, but I am accustomed to that, and I just didn't want to let it pass. But we will go on, anyway.

MR. FOWLER: Mr. Clayton, there are several substantive effects on those amendments.

MR. CLAYTON: Could we pass that for a moment and stick to the reparations document? I don't think that these suggestions of the Joint Chiefs of Staff really materially affect this matter that we have just been discussing.

MR. LOVETT: I don't, either. I don't see that it has--

GEN. HILLDRING: May I say one thing about this paper?

MR. CLAYTON: Yes, sir.

GEN. HILLDRING: I think that it can be resolved, Mr. Chairman, if a joint committee of this group and of the JCS get together I think it can be ironed out and resolved.

MR. CLAYTON: May we just not discuss that right now but go on with reparations? We just brought that in because we thought it might affect this matter we are discussing and--

H.M.JR: I don't agree with you. Look, if I understand this thing correctly, the point is whether in the wisdom of the commanding General in Germany he can continue production and that decision can be his.

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Now, the point that we raised the other day is that if the commanding General thought that it was necessary to meet certain production in Germany that he would telegraph the Joint Chiefs of Staff who in turn would ask the President of the United States, or whoever he designated, and pending that decision he could continue production. Is that right?

GEN. HILLDRING: Well, Mr. Secretary, that was the thing that I advocated here the day that IPCOG 1 was proposed, and I can't now say that that is agreeable to the Joint Chiefs of Staff, but I do say this, Mr. Secretary, that if IPCOG 1 had written those words into the document they sent the Joint Chiefs of Staff, that I could have sold that to the Joint Chiefs of Staff; we would have gotten a document back from the JCS approved. Now, the pendulum has gone from one extreme to the other. I am sure, Mr. Secretary, if you throw this back into a joint working committee we can get out of it now something agreeable to both bodies. We have been at both poles, and we have one extremity in IPCOG 1 and the other extremity here.

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Now, I can't say what the JCS--

MR. LUBIN: I think we can solve it, because I know the Joint Chiefs of Staff do not want to have anything at all to say about the economic policy of the United States, and they do not intend in this document to say that Germany will be denied its ability to produce petroleum that it needs. They will not go into that question. They don't want to tackle it. It is not for them to say, and that is the point you have in mind.

H.M.JR: I have got two points in mind. First, I have got that point, and it seems to me the thing you are talking about is in the reparations--they are exactly the same point.

(Mr. Bard entered the conference.)

MR. CLAYTON: Mr. Secretary, can't we settle the reparations matter now and leave the other to discussion later in connection with this document? I mean, does it make any diffcrent about this suggestion in regard to the Joint

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Chiefs of Staff as to whether we should adopt this language which Joe has just proposed? If we are all agreeable to that language, can't we adopt it and go on with reparations?

H.M.JR: You can if the Army representatives will say that this language which we agreed on the other day as far as this committee was concerned, is still acceptable to them in the form of a recommendation.

GEN. HILLDRING: I will fight for that language with all I have.

MR. LOVETT: Mr. Secretary, to go back to the history of this committee, the people that have been working on this reparations problem have not been concerned with some of the attitudes expressed there. I think, as General Hilldring pointed out, the Joint Chiefs got off on the wrong foot because the conclusions reached here were not correctly stated in the paper submitted to them. In fact, it was just the reverse.

H.M.JR: I agree.

MR. LOVETT: Naturally they were concerned about it. Now that the matter has been restored to the decision as initially made, General Hilldring and I will do what we appropriately can to express our views and recommendations on this. That is not, however, to say we have any means of compelling the Joint Chiefs of Staff to take action one way or the other.

H.M.JR: What you said is all I want.

MR. LOVETT: All right, sir, that is satisfactory.

H.M.JR: That is all.

MR. CLAYTON: Can we take up reparations?

H.M.JR: Yes.

MR. CLAYTON: Is the language which we were discussing when we picked up this document from the Joint Chiefs of Staff

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H.M.JR: That is agreeable to me.

agreeable to everybody? I heard no objection? And if there is none, it will be adopted in place of the last sentence-- in place of the third from the last sentence in item 10. We will delete the sentence which reads, "After review by the Control Council and in the absence of agreement, the zone commander if he believes that the retention of any specific item within his zone is essential to the purposes of the occupation, may with the specific consent of his government withhold the removal of such item." For that sentence we will substitute--will you read it please?

MR. DuBOIS: "After review by the Control Council and in the absence of agreement, the zone commander, if he believes that any specific item should be retained within his zone, may with the specific determination of his Government that such item is essential to the purposesof the occupation, withhold the removal of such items."

MR. LUBIN: Why don't you just--

H.M.JR: Excuse me. Will that be the same language as 1067?

MR. CLAYTON: No, Mr. Secretary, that is a reparations language, but it doesn't belong in 1067.

H.M.JR: But pending--

MR. LOVETT: This deals with the permanent business.

MR. DuBOIS: To this extent, you see, as I understand it, to the extent that the determination of whether or not these things are to remain even temporarily will depend upon the decision of this Government to communicate it through the Joint Chiefs of Staff that they are essential even for that temporary purpose.

MR. LOVETT: Our recommendation to the Joint Chiefs of Staff will be in line with the sentence just read. Whether they will adopt that precise language or not, I am unable to say.

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H.M.JR: That is agreeable to me.

GEN. HILLDRING: I would support that view.

H.M.JR: All right.

MR. CLAYTON: All right, that takes care of that. Are there any other suggestions about paragraph 10?

Mr. Secretary, it seems to me that when this is rewritten that we should have one more meeting at the risk of somebody who will think of something else that is to be changed. I think it is important that we have one more meeting and go over it very carefully. It is an entirely important document, as we all agree, I am sure. As to this Reparations Document, I think we should have it redrafted in accordance with our agreement here today and then go over it one more time.

MR. DOWNEY: Mr. Clayton, in one of the earlier sections of this document a change was made in line with the suggestion Mr. Bard made. We have a small suggestion to make on that.

MR. CLAYTON: On the Reparations Document?

MR. BARD: Paragraph 3 g. at the end.

MR. DOWNEY: That last reference to merchant shipping. You remember, it was suggested the other day that in the first instance the general policy should be to get all of the merchant shipping wherever situated into the pool. I think the Navy feels also that in the eventual treatment of Navy shipping we should not necessarily now accept the principle that it should go to the country in whose zone they happen to be for the reason that so much of the German shipping by the action of the British Navy, the American Air Forces, and the British Air Forces, has been forced into positions in the Baltic that probably would artificially put much more in the Russian zone than normally would be the case. I would like to suggest, therefore, in that parenthetical clause where we say that, "This Government favors the inclusion of German ocean going tonnage in the shipping pool until the end of the war against Japan", that we insert there "...and its division on some fair basis thereafter." Just leave the thing open.

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MR. LUBIN: Would you prefer to have it in nine?

MR. DOWNEY: It wouldn't make a bit of difference.

MR. LUBIN: O.K. Each of the four occupying powers may remove from its zone of occupation in German plants, equipment and materials including current output and excluding ocean-going merchant tonnage.

MR. DOWNEY: You say 9?

MR. LUBIN: Yes.

MR. DOWNEY: That would implementing the idea. I would like to get the idea in where we mentioned it first that our notion is that the ships should go first into the pool and thereafter be subject to some fair division, but not necessarily a strictly zoneal division. I just want to leave it open.

MR. CLAYTON: I think the point is very well taken. We might put it in both places, in G at the point that you suggested, and then put in 9 the way Mr. Lubin suggested.

MR. DOWNEY: That would be perfect.

MR. DESPRES: It is excluding ocean-going ships?

MR. DOWNEY: That is right.

MR. LUBIN: Yes.

MR. DOWNEY: That may not be exactly the right terminology but I think for the purposes here it is adequate.

MR. GLASSER: What flag will they go under when they go in the pool?

MR. DOWNEY: I don't know.

MR. GLASSER: I don't think you are really solving the problem, by discussing its distribution after the end of the war with Japan, or termination of the ppol. Isn't your

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MR. FOWLER: And by that device remove from the American reparations--

problem really first, that they enter the pool, and second, the terms on which they enter the pool, under which flag.

MR. DOWNEY: What I am trying to do is not to be foreclosed.

MR. BARD: A pool is a joint operation.

MR. DOWNEY: We don't know what is going to happen.

MR. LUBIN: The flag does not necessarily determine the ownership.

MR. CLAYTON: There is one point before we leave this first reparations document that Mr. McCloy--

H.M.JR: The rural buergermeister?

MR. CLAYTON: No, but he had a very good point that I don't believe is adequately covered, if covered at all, in this document, and that is that guns and ammunition and things of that kind should not be considered subject to removal as reparations, that they should be destroyed, and I think that is a good point. I think it ought to be covered in there that guns and ammunition and things of that kind should not be considered as items to be removed as reparations because, of course, we don't want to get into a question of dividing up war-making equipment with these different countries, and his point was that things of that kind should be destroyed immediately, and I think that that is a very good point. But we can discuss it here if anybody has a different point of view.

MR. FOWLER: Isn't it the existing production in the form of guns and war equipment that is on hand as distinct from that that might be produced by the plants in question, but the existing stocks of those guns and ammunition--war-making equipment--aren't they confiscated as war booty?

(Mr. Bell leaves the conference.)

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MR. FOWLER: And by that device remove from the American reparations--

GEN. HILLDRING: The trouble, Joe, is that you come into the problem then of having to provide ammunition for them which has been produced only in Germany. If you could be sure that it wouldn't serve in the end to continue the plants which originally produced them in order to replace the weapons themselves, I think it would be all right.

(Mr. Lubin leaves conference temporarily.)

MR. FOWLER: That is a very good suggestion in the light of what you have said.

MR. CLAYTON: Aside from the point that General Hilldring has made, isn't it a good plan just to destroy that stuff?

GEN. HILLDRING: It is a two-edged sword. If we could avoid the replacement problem by equiping French divisions with German equipment, we would save the American taxpayer a lot of money.

(Mr. Pauley re-enters the conference.)

MR. BARD: You have got a program now supplying France with a lot of stuff. You wouldn't want to include ships in that.

MR. DESPRES: For most types of weapons--

MR. CLAYTON: Not ships.

MR. DESPRES: The weapons would not be good for very long unless they get replacement parts, and if we don't let them open the factories--

MR. LOVETT: The French factories, to be specific, have been making parts and ammunition for German metric calibers. They have a somewhat different problem. I would like to see it go. I don't know whether it is apropos here or not, but we have a specific problem that I think might be brought out

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to get Mr. Pauley's judgment on. Take a case like the vast underground factories like in Nordhausen, to be specific. There was another one with some twenty-seven kilometers of tunnels. Nordhausen has approximately four hundred five thousand square feet of artifically ventilated manufacturing space under a mixture of limestone and granite cliff. It is almost impossible to get to it. From the point of view of future peace, the Air Force would like to see all the ammunition and junk we could get together put in that place and blow it up so it comes down and thereafter provide that everything that Germany builds be built on the surface of the ground, because otherwise they are going to go underground, and as I say, these two enormous plants over there--

MR. PAULEY: Certainly you have no disagreement with me on that.

MR. LOVETT: And if--I am bringing this up now because we ought to retain enough of this explosive or other junk to put in there and bring the whole works down. You could do it.

MR. PAULEY: I heartily endorse it.

MR. CLAYTON: I do, too.

MR. BARD: Some of those big plants are in the area Russia would take over.

MR. LOVETT: That is right; that is why I mention it. If we could collapse those big underground things; and if we can require in some fashion that Germany thereafter--if they do any rebuilding at all, they be permitted to build only on the surface, I think we would go a long way toward preserving peace.

MR. CLAYTON: If the committee agrees that some provision be written into this document regarding guns and ammunition, the destruction of it, why, I suggest that we ask the War Department to try to draft a clause that would cover that.

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GEN. HILLDRING: Joe, isn't that one of your projects?

MR. FOWLER: Absolutely, yes, sir.

GEN. HILLDRING: Aren't you working on this early and late?

MR. FOWLER: General Minton, General Wolfe and Admiral Rusek are compiling--

MR. LOVETT: A special commission.

MR. FOWLER: Project one, two, and four of our group --

MR. DESPRES: It is a complicated little matter of language. There are the samples you don't want to destroy, but keep for examination, and so forth. That is why I thought it would be useful if the War Department--

GEN. HILLDRING: My point is, rather than refer it to the War and Navy Departments, refer it to your committee.

MR. LUBIN: As far as this commission is concerned, all we want are instructions. We can't treat those things as reparations. How you handle them, we don't give a damn.

MR. CLAYTON: Will the working group try to include a paragraph to that effect in that sense? Now, we have this very short document, one page and a quarter, on the use of German labor and reparations.

MR. FOWLER: Mr. Chairman, since the last meeting I have had several talks with Mr. Crowley on this point, and I want to make several points clear for the record, first, in reference to taking this matter to the public, it was very definitely implied in his remark that that would be only after he would have become a private citizen, and there was no implication on his part as a member of this committee to transfer our discussions to the public. I think that was not implied, and I want to make it clear here for the record. Two, we have had discussions with him on this matter, and I am persuaded that the difference is only in language and clarity of statement and not any

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different in substantive point of view, and the draft that was submitted here this morning would have his endorsement for inclusion either as a separate document or as a paragraph in the paper in which we have been addressing ourselves.

MR. CLAYTON: Fine.

Now we will read it. (Reads "Draft Statement of Labor Reparations," attachment C.)

Now, what is the first comment to be made on this document?

H.M.JR: I would like to ask a question. Are there any records of what was said at Yalta with regard to this subject?

MR. CLAYTON: Yes, sir, there are. I think so far as I know there are one or two copies locked up in a safe. I have never seen one.

MR. PAYLEY: I have seen it, Mr. Secretary.

H.M.JR: You have?

The point I am making is, I don't think we want to fly in the face of something that might injure our position vis-a-vis Russia. If we knew what was in the document--

MR. PAULEY: I can only say this, that the discussion was general, and we at least participated in it without objection to the discussion on the use of labor, but there was nothing that I know of in the discussion that would preclude our taking this position that has just been read.

H.M.JR: You are condifent of that?

MR. PAULEY: However, my own personal position in this matter is that I don't want to express any comment on this particular thing at all, except to simply say that it either does or does not meet the entire viewpoint of this group to the President, and if there are other viewpoints, I will present thse to him. I would like to have the benefit of everybody's discussion on it.

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MR. BARD: You don't think this paper would create a strong controversy based on what is in the Yalta agreement?

MR. PAULEY: There is nothing to date that I have read that--I should put it this way--that there is nothing I have read that we have said that would be contrary to this. I don't believe that this is exactly the Russian's idea of the situation, however, but I see nothing inconsistent in our presentation of this viewpoint. It may not be agreed to by Russia or the British.

MR. CIAYTON: I think that is the point, whether there is anything in this document which is inconsistent with the discussions that surrounded the Yalta agreement; and if there is not, I think we might proceed with the discussion, don't you, Mr. Pauley?

MR. PAULEY: Yes.

MR. CLAYTON: I take it there is no comment on 1. 2 is as follows: "This government is strongly of the view that Germans other than those deserving of punishment should not be called upon to perform compulsory labor service outside Germany."

MR. LOVETT: Does use of the words "...deserving of punishment should not be called upon to perform.." instead of sponsor, or something like that, carry a connotation of requirement of a trial of some sort?

MR. FOWLER: The specific language spelling out 2 is in 3. I think your point is better raised in connection with 3 than 2.

MR. LOVETT: O.K.

(Secretary leaves the conference temporarily.)

MR. LOVETT: It was to lay background for 3 where there are completely different programs, as I understand it. War criminals will be tried, and a program for other groups which will not require court proceedings--

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MR. FOWLER: They will only require those proceedings that are adequate to satisfy the language that the individual is definitely determined by appropriate process to be in the group.

MR. CLAYTON: I think 3 is the point, really, that we want to discuss.

MR. LOVETT: I have no views on the thing at all. I am trying to respond to Mr. Pauley's suggestion that if there are any possible weak points in here we take a good look at them. And reading the thing for the first time as I have here this morning--

MR. COE: Really, instead of "...other than those deserving of punishment," it should be, "...other than those included in 3."

MR. CLAYTON: I think that 2 is sort of surpluses and 3 says very definitely that compulsory labor services should be required only from individuals definitely of that type, and so forth. Doesn't it make 2 sort of surpluses?

MR. FOWLER: I think if you want to say "...other than those referred to in paragraph 3," it would be perfectly satisfactory. It is just a question of getting a definitive statement of principle.

MR. COE: You have the same thing in 3, Joe, "Compulsory labor service should be required only from---"

MR. FOWLER: If you want to say that this Government is strongly of the view that compulsory labor service should be required only from individuals, that--

MR. COE: Then you have got the whole thing.

MR. LOVETT: You may get some assurance that vis-a-vis the American public by having a statement in two.

MR. FOWLER: That is right.

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from James P. Burke, State Dept.
Name K. Owen
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MR. LOVETT: Either by the use of the words "...deservi of punishment," or "...responsible for certain action."

MR. BARD: I would like to bring up the question as to whether the word "Germans" is broad enough. You have got Italy; you have got a strange fishy crowd that is fighting us steadily. You might have the same with the segment of the Poles that might have been back of the Germans. I don't think "Germans" is a broad enough term.

MR. RIDDLEBERGER: Mr. Secretary, perhaps I could elaborate on that point by saying "...under Nazi legislation." It is very far-reaching. I think this language would catch almost any person of German descent in these areas around Germany.

MR. BARD: You've got several divisions of Italians that just surrendered.

MR. LOVETT: This is a paper relating only to reparations from Germany.

MR. PAULEY: I think the point is well taken, plus the fact that it is well known that the Russians have already taken more than one million so-called sympathizers out of Rumania. And what they are doing with them, no one knows. But I think all of those points should be discussed, not exclusively with the view of what we want to do with them, but the problem--anticipating what the Russians' thinking along this line might be.

MR. LUBIN: In view of the fact that the first sentence refers to the Yalta Agreement and deals only with German labor, it is necessary to use the words in 2, "This Government is strongly of the view that persons other than those." This might become a general policy with respect to the U.S.

MR. CLAYTON: I suggest that we change paragraph 2 to read as follows, "This government is strongly of the view that persons other than those specified in 3 below as deserving of punishment should not be called upon to--"

MR. LUBIN: Will, my objection to that is this, we may find other groups or individuals who don't fit into this category that have been cooperating with the Germans that we will want to put under the category of deserving of punishment.

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MR. CLAYTON: That is covered in the latter part of 3, "...or leading collaborators, supporters of and participants in the Nazi party or administration." If it isn't, the language at the beginning of three is wrong, because it says, "Compulsory labor service should be required only from individuals," and so forth.

Now, with that discussion, see if you will agree on this: Change 2 to read as follows, "This government is strongly of the view that persons other than those specified in 3 below as deserving of punishment should not be called upon to perform compulsory labor service outside of Germany," which now reads, "Compulsory labor service should be required only from individuals definitely determined by appropriate process to be war criminals, members of the Gestapo, the S.S., the Sicherheitsdienst der S.S., leaders of the S.A., or leading collaborators, supporters of and participants in the Nazi party or administration." Now, it is those two paragraphs that we are considering.

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MR. LOVETT: And the thing I am trying to raise, Will, is the lumping in one group here of that class of war criminals in which the War Crimes Commission apparently is considering some sort of judicial determination, and the other group beginning with the members of the Gestapo, and so forth who are determined through appropriate process to be parts of that organization. Perhaps you could distinguish between them by saying something like this, "...to be required only from individuals determined by appropriate process to be war criminals, and sentenced to such labor," and B, "...individuals definitely determined by appropriate process to be members of the Gestapo, the SS," and so forth.

MR. CLAYTON: See if this doesn't meet it, "Compulsory labor service should be exerted only from war criminals or individuals definitely determined by appropriate process to be members of the Gestapo?"

MR. BARD: War criminals covers everybody, no matter whether they are Poles, French, or--

MR. CLAYTON: And instead of "or." Then it would read, "Compulsory labor service should be required only

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from war criminals and individuals definitely determined by appropriate process to be members of the Gestapo," and so forth.

MR. LOVETT: When you say "...from war criminals," does that mean that you pick them up after they have been sentenced, or you pick them up after they have been determined war criminals? Because otherwise they might be sentenced to six months of hard labor, whereas, you want to give them three years.

MR. FOWLER: As a person is convicted as a war criminal and individuals definitely--

MR. GLASSER: This is not in lieu of punishment for being a war criminal. These war criminals could go on the compulsory labor service, and either before they go on or after they go on, they could suffer whatever punishment is meted out to them by a court by judiciary process. This language will take care of that, because as a Reparations Document, it doesn't raise the question whether this person is available. The court might say he is available, and they could pick him up, or say, "Six months at hard labor." He is not available for reparations until he is made available for that type of work.

MR. LOVETT: But this would not stop you from using those fellows.

MR. GLASSER: They are only available if the court says so.

MR. CLAYTON: "Compulsory labor service should be exerted only from war criminals and individuals definitely determined by appropriate process to be members of the Gestapo."

MR. GLASSER: May I raise a possible change in your number 2? Can we say--instead of "as" say, "...or otherwise deserving of punishment." If you will read it back, I will stop you.

MR. CLAYTON: Then you introduce qualifications that have not been covered, apparently, anywhere, and you want to

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say this Government is strongly of the view that persons other than those specified in 3 below or otherwise deserving of punishment--well, 2 takes care of a good deal of it otherwise, and if you want to put another--how do you cover it?

MR. GLASSER: What we want to cover is, I should think that in 2 that those persons who are deserving of punishment--that is the test of their selection for compulsory labor service.

Now, we say that in 3 we have various classes of persons that would fit that standard. Now, there may be others. You say they are covered by this general category, but really, they are not, because you might want to include those who are, for instance, members of the werewolf organization or violators of current laws or those who are opposing occupation that had not, perhaps because of age, been in the SS or the various organization.

MR. CLAYTON: Who is going to determine?

MR. FOWLER: That is the problem here.

MR. GLASSER: Well, they are available for reparations if they are members of the werewolf organization.

MR. LUBIN: Let's assume that some citizen who has never been a member of these organizations just sabotaged the occupation.

MR. LOVETT: He comes under the active underground.

MR. LUBIN: And he was sentenced by the American Military Court in Germany to ten years of hard labor, and the Court says, "We can have him for reparations. Why shouldn't we take him?"

MR. CLAYTON: Isn't that covered in 3?

MR. LUBIN: It is five months from now that this happens.

MR. LOVETT: The point they are trying to make is, this deals only with those whose bad actions have occurred

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previously where there is a bad group whose actions continued later, underground, werewolf, or whatever you want to call it.

MR. FOWLER: It is a point looking to the future that we will want to take into account. It would seem to me, though, that it raises some questions of procedure and of standards and tests, and what we are really doing here is saying that now that those people who are war criminals and who are determined by appropriate processes to have been members of these groups are going to be included.

Now, when you bring in either "...or otherwise deserving of punishment," or look to it which includes categories we aren't discussing here, or you deal with people who in the future may be determined deserving of punishment, it seems to me we are getting into questions that had better be handled by some kind of supplementary process other than this one here.

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MR. GLASSER: We are not handling--what we are doing in number 2 is simply saying we will not take anybody unless he is deserving of punishment. Later on we make no provision in this document for taking care of future were-wolf organizations, but at least our policy is clear that if in the future at some future time we want to take care of them, we can under the general policy of 2. There is no provision here for taking of traffic violators or even future werewolf members to putting them on these gangs. However, our policy is such that they can be included later.

MR. FOWLER: I think when you get into this question of who is otherwise deserving of punishment without defining whether you are referring to people who steal bread or violate some of the German laws or ordinances or some of the special laws that are issued by the occupation authorities, you get to questions of degree which we are--

MR. GLASSER: We are not taking those up here; we are not considering that. All we are saying is in the future in accordance with United States policy they can be considered and discussed. We are not deciding that question here at all.

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MR. BARD: This is only advisory to the Reparations Commission, anyway. If this question comes up in Moscow that this should be included so they can discuss it--

MR. CLAYTON: See if this would cover it, "This government is strongly of the view that Germans, other than those specified in 3 below, or otherwise determined by appropriate processes as deserving of punishment, should not be called upon to," and so forth.

MR. FOWLER: Who is going to determine that they are worthy of this particular type of punishment, and how that is going to be provided for?

Now, we are going--in the light of the record, up to date we are taking these particular groups, and we are making them available and eligible for this type of service. It seems to me that you are opening up Pandora boxes if you bring in any general classification to a lot of very fine questions of degree which, if you are going to provide for here--it isn't just a simple drafting problem of including a general category which is an open-door clause for building up this compulsory labor service to unpredictable dimensions.

MR. COE: What do you think the dimensions of this pressure group are, Joe? Have you made any figures?

MR. FOWLER: No.

MR. COE: I know the French themselves have asked for three million.

MR. FOWLER: And it is that kind of three million requests for compulsory labor service without reference to whether or not the individuals are--their actions or conduct are deserving of this kind of very special extraordinary treatment which is the problem that is bothering us. It is that three million figure.

MR. LUBIN: If you read that sentence again--

MR. CLAYTON: If I may read my suggestion, I think it is better, "This government is strongly of the view that persons

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other than those specified in 3 below as deserving of punishment should not be called upon to perform compulsory labor service outside Germany," and that we add to 3 after the word "administration" the following: "...or of other similar organizations hostile to Allied purposes." I think that is better.

MR. FOWLER: Does that modify the leading collaborators, supporters of, or participants in, or--

MR. LUBIN: I would say it should, because anybody who becomes a member of the werewolves would do that voluntarily. You can't force these guys to join.

MR. FOWLER: You are worrying about the werewolf case, which I am willing to take into account. I am worrying about the fellow who violates the traffic ordinance or steals a little bread.

MR. LUBIN: This says he has got to deal--it extends the Nazi party or administration to other organizations, other similar organizations hostile to Allied purposes. In other words, to Nazi type organizations which may rise in the future.

MR. DESPRES: It would be leading collaborators, supporters, and participants in the Nazi party or administration, or in other similar organizations, hostile to Allied purposes.

MR. LUBIN: I wouldn't say there you want "leading," I would say, "...or members of," because if you are going to have new organizations in the future; they are not going to be drafted into them; they are going to be voluntary members.

MR. FOWLER: What is an organization hostile to Allied purposes? Is that a labor union that becomes organized, say, six months after we are in occupation?

MR. LUBIN: If you are going to get to that extreme--

MR. FOWLER: That is the extreme you get to.

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particular cloak foster and develop certain conspiratorial actions in which the hundred and hundreds of members who

MR. LUBIN: If you send a man to forced labor because he joins a labor union, you might as well stop arguing.

(Mr. Pauley leaves the conference temporarily.)

MR. BARD: We are making recommendations to the Reparations Committee that they can talk about that subject which may come up. That is all we are doing.

MR. CLAYTON: And this says, Joe, that he has to be determined by appropriate process to be such a person, you see.

MR. DESPRES: It says, "...other similar organizations," similar to the Nazy party.

MR. FOWLER: Well, I think this requires quite a statement. Let's look these facts in the face. What we are doing is indulging a principle of guilt by association, which is justified, according to our traditions, because we think we can clearly establish a case that persons who have been members of the groups identified here or by that token without any other proof as to the action that they may have committed as members of that organization;in becoming active members of the organization, they have so bound themselves into the acts that are committed by that organization, and you are going to, without any further proof of individual action other than becoming members of this organization, to pull them into this particular type of treatment. Now, that is an expedient which we are adopting here to provide for the mass induction of groups into this compulsory labor service.

Now, if you want to add something to cover the persons who are guilty of substantial action in opposition to the purposes of the occupation, it seems to me that you--we ought to go back to our principles of finding the individual guilty of those actions. Everybody knows what happens. Somebody starts a club or organization, a marching and charter club or trade union or a literary society, or God knows what, and all of a sudden somebody proves that certain members of that organization meeting together under that

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particular cloak foster and develop certain conspiratorial actions in which the hundred and hundreds of members who joined it in good faith, no assuming that they were being tied into an organization of that sort, are inducted into this particular type of service.

Now, the groups that we have identified here--as Mr. Riddleberger pointed out yesterday, we know that any German who became a member of these groups or was a leader, collaborator, supporter, or participant in the Nazi party is by that token, even though he went into it with his eyes open and knew what was going on--what you are talking about is something for the future. We would have no objection to including here, "or others convicted of substantial action hostile to the purpose of the occupation deserving of similar punishment." On the other hand, I don't think we want to go out too far in allowing this principle of guilt by association for future organizations and future groups that may develop--

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Name H. Bauer
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MR. RIDDLEBERGER: Couldn't we meet our point by perhaps another sentence merely to the effect that members of the underground or other organizations dedicated to the Nazi system or ideas would be eligible for compulsory labor?

MR. FOWLER: Sure, something of that sort.

MR. BARD: I think if you say, as Joe has, "...or other Nazi organizations"--

MR. FOWLER: "...or others found guilty--"

MR. BARD: I agree with you that you don't want to subject a whole organization to what a few individuals might do.

(Mr. Downey reenters the conference.)

MR. FOWLER: These individuals were ready to do that, but in the future organization--

MR. BARD: If the question of werewolves comes up when you are talking, in most cases you can discuss it.

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MR. FOWLER: I am just wondering. I think your wording was all right.

MR. FOWLER: I was just wondering about the application of this via military organizations in a concrete case. Suppose somebody wrecks a freight train. You go out and get the fellows that put the dynamite on the track and the fellows that bought the dynamite and the fellows that were tied in and by their action furnished a definite conspiracy against the occupation. You don't necessarily--

MR. BARD: ...sock the whole organization.

MR. FOWLER: ...sock the whole organization if it might have other legitimate functions.

MR. DuBOIS: This has "...leading collaborators, supporters of--"

MR. FOWLER: Mr. Lubin says he doesn't want that modification, the emphasis on "leading" to apply to this additional category.

MR. CLAYTON: Let's see if this language that is to be added to paragraph 3 would cover it, "...or other persons determined by appropriate process to be members of the underground or other organizations dedicated to the continuation of Nazism."

MR. LOVETT: We want to hit the military and not just the Nazis in there, too.

MR. COE: Add "militarists."

MR. DESPRES: That is not a separate thought.

MR. LOVETT: Sure it is.

MR. COE: We use Nazism and militarism in 1067.

MR. GLASSER: Can we say, "...dedicated to purposes hostile to the United Nations?"

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MR. CLAYTON: That is very broad.

MR. FOWLER: There are cases in the courts going back for years and years in this country for which all defenders of civil liberties and justice have opposed this type of mass condemnation of individuals.

Now, we are making an exception here in these particular cases because there is, of course, well-established proof regarding these groups. Now, you open that up to the future, and it works back.

MR. CLAYTON: All right, but would this be satisfactory, "...or other persons determined by appropriate process to be members of the underground or other organizations dedicated to the continuation of Nazism or German militarism?"

MR. FOWLER: I have no objection to making it broader in a different way.

MR. BARD: Will you restate what you said a minute ago?

MR. FOWLER: "...or other persons determined by appropriate process to be members of the underground or other organizations dedicated to the continuation of Nazism or German militarism."

MR. DuBOIS: Wouldn't it be "engaged"?

MR. FOWLER: "...requiring substantial punishment."

MR. BARD: I think that is all right.

H.M.JR: I like Mr. Lovett's suggestion about bringing in the military.

MR. LUBIN: Couldn't you say, "...others engaged or determined by appropriate authority to be engaged in action?" Would that take care of it?

MR. CLAYTON: It seems to me this covers it, "or other persons determined by appropriate process to be members of the underground or other organizations dedicated to the continuation of Nazism or German militarism."

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MR. LUBIN: Instead of using "organization," say "...to be engaged in activities."

MR. CLAYTON: "...to be engaged in activities dedicated to the continuation of Nazism or German militarism."

MR. COE: You don't dedicate.

MR. LUBIN: "...in activities--"

MR. DESPRES: "...directed to--"

MR. CLAYTON: "...directed toward the continuation"--"...or all other persons determined by appropriate process to be engaged in activities directed toward the continuation of Nazism or German militarism."

Is that agreeable?

MR. FOWLER: This language here, I think is broader and would be more preferable, "...or other persons determined by appropriate process to be guilty of action requiring substantial punishment."

MR. LUBIN: That may have nothing to do with the fellow who is working to retain militarism in Germany.

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MR. LOVETT: Mr. Fowler, isn't there confusion between the type of actions which bring criminal proceedings and subsequent jail sentence and the types of activities--this is broad, you have to envisage--which do not put the fellow in jail, but make him take a part in rebuilding the damage that the action that he is continuing to perpetuate brought about?

MR. FOWLER: Now, I think to answer that--yes, sir, in discussing this 4 b., the standard of living and conditions of employment, should conform to humane standards. There was some suggestion that we modify the humane standard in our original draft to read, "...according to that required of prison labor or convict labor," and the problems you are going to treat in this category are not even deserving of that type of treatment. I have no quarrel with that point, but this compulsory labor service, being a mild kind of temporate punishment that you might give a fellow for stealing a loaf of bread--this process is a pretty serious business. Mr. Crowley's point is, I think, that the punishment is to fit the crime.

MR. LOVETT: They are going to get pushed around, there is no question about that, but doesn't Mr. Clayton's language really cover the point that we are discussing here? Doesn't it essentially meet your objective?

MR. CLAYTON: I would like to point out, just to support what Mr. Lovett has said, that in this 3 we specifically include as people eligible for this compulsory labor service people who are guilty of

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petty crimes in the ordinary criminal sense, and the persons who will be required for compulsory service will only be members of the Gestapo and other organizations of that character, and leading collaborationists, supporters of, and participants in the Nazi party or administration so that the language which I have read is consistent with that, because it says, "...or other persons determined by appropriate process to be engaged in activities directed toward the continuation of Nazism or German militarism."

MR. FOWLER: Mr. Clayton, what this all boils down to is this, that in endorsing or going along with the compulsory labor service principle we here in the United States have this particular type--we here in the United States are going along with the principle which has always been repugnant to us. We are going along with it in a particular case because of the facts that have been pointed out. These groups have participated and promoted a crime society, and some amount of restoration of the damage that they have caused through their own efforts is required.

Now, in taking it out of the context of past action and fitting it to future action, we are giving life to a system which God only knows how long it will continue. It is a system of punishment for action or crime that it seems to me we ought to end with this war, and I don't know why as one of the by-products of the war we begin to open for the future a continued induction of additional individuals in this type of conduct. If there are werewolves, let's take them out and shoot them. If there are people who perform acts of violence that are contrary to the interests of the occupation, let's punish them. But why do we

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build up over a substantial period of time for the future a system of this sort which is repugnant to us? I don't believe that we would want to support that for the future. Let's tie it down to the past, to a retroaction.

MR. CLAYTON: I don't quite understand the logic of your argument, Joe, because, if I understand your language correctly, you are for making eligible for requirement of compulsory labor service outside of Germany a man who might steal a loaf of bread or a plow from a German.

MR. FOWLER: I am not--

MR. CLAYTON: I have my serious doubts as to whether you should take that kind of petty criminal and make him eligible or subject to compulsory service outside of Germany. Now, the language, on the other hand, which I have read here is directed toward discouraging in every way possible any person in Germany, certainly for the next few years, the immediate future, from continuing the kind of activities which brought on this war and which if continued might bring on another one; that is the justification for the language such as I suggested.

MR. FOWLER: Mr. Clayton, please make this clear. We are satisfied with the language as is because it deals with the groups that have been guilty of action in the past. We don't want to enlarge this concept to make this a catch-all kind of arrangement into which can be included thousands or hundreds of thousands of individuals who may in the future commit various kinds of acts.

MR. CLAYTON: I am not suggesting any addition; the suggestion came from around the table that we broaden it to include these other categories. Now, if the Allied Military Government wants to deal with this werewolf activity in such a way as to impose the most severe sentences, death, life imprisonment, or any of that type of severe penalty, there is certainly not much opposition to that here. Most of the opposition is for giving birth here to a system of compulsory labor service that is not only going

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