

B.42.52.A.0LEGATION OF THE
UNITED STATES OF AMERICA

Bern, February 10, 1948. ✓

Excellency:

Your Excellency will remember that among the letters attached to the Agreement on German assets in Switzerland concluded on May 25, 1946 between the Swiss Government and the Governments of Great Britain, France and the United States, were those in which the Allied Governments reserved the rights, derived from the Act of Surrender and from their exercise of supreme authority in Germany, which they claim to exercise over the property of the German States existing in Switzerland, and in which the Swiss Delegation replied that without admitting that the Allied argument was well-founded they would bring this reservation to the knowledge of the Swiss Government.

The United States Government understands that the refusal of the Swiss Government to transfer German State assets in Switzerland to the Allies is based on the view that the position of the Allies in Germany is that of occupying powers; i.e., military authorities whose provisional rights and responsibilities are defined in Articles 42-56 of the Hague Convention of October 18, 1907; and that a juridical successor to the previous German government would only come into existence if a new German government were set up and recognized, or if the occupied territory were formally annexed by the Allies.

The United States Government contends that it is altogether inadmissible to invoke, or apply to present

circumstances/

His Excellency
Max Petitpierre,
Federal Councillor,
Chief, Federal Political Department,
Bern.

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circumstances in Germany, an instrument which admittedly and designedly applies to entirely different circumstances. The Hague Convention of 1907 was drawn up to meet the ordinary case when in the course of a war - as a rule when hostilities are still in progress - one belligerent is in occupation of part or the whole of the enemy territory, but still fighting an enemy ally. The Convention was intended to cover the ordinary case where the occupying power is in actual fact merely a military occupant, and where there is a civil government of the occupied territory functioning side-by-side with the occupying authorities, and, subject to such overriding powers of direction as the Convention gives to occupying authorities, carrying on the ordinary civil administration of the territory in the ordinary way. Cases in point are the German occupation of Belgium during the first World War, and of France during the recent war.

The present state of affairs in Germany is entirely different. Though technically a state of war still exists, all fighting has long since ceased and Germany is in the occupation of the Allies not for any war purpose, but for the purpose of controlling the country and carrying on its government. It was precisely for this reason that clauses were inserted in the Declaration of June 5, 1945 Regarding Defeat of Germany and Assumption of Supreme Authority by Allied Powers, giving the Allies powers far beyond those of "military occupants" and investing them with supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command and any state, municipal or local government or authority. For instance, a military occupant is bound to respect, unless absolutely prevented, the laws in force in the country occupied under Article 43 of the Hague Convention of 1907; but since the reform of the German State and the eradication of National Socialist principles was one of the Allies' first objectives, it was necessary

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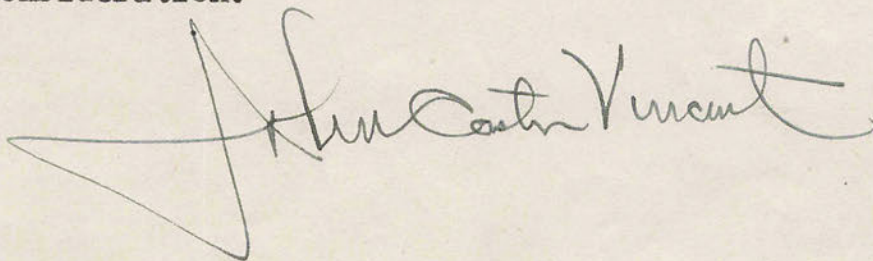
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to ensure, and the Allies did in fact ensure that they should have the necessary legal power to effect such changes.

The cardinal fact is that there is at the present time no German civil government in Germany, and this fact alone makes it indisputable that the Allies are not simply in the position of military occupants. In the absence of a German civil government, the Allies were obliged to take over the civil government of the country and they are still in this position. If the contention of the Swiss Government be correct, there is no escape from the conclusion that a substantial part of the action taken by the Allies in Germany is illegal and contrary to the rules of international law. The United States Government can hardly believe that the Swiss Government intends to put forward this view. If, on the other hand, the action taken by the Allies in Germany is legal and legitimate, the United States Government fails to see any valid reason for denying the Allies right to control and dispose of German official assets in Switzerland. If the Allies can legitimately control all German assets in Germany in ways which, if they were merely occupants, would not be permissible under the terms of the Hague Convention of 1907, it is surely impossible to contend that they have not similar rights of control in relation to German State assets abroad.

The United States Government requests that the Swiss Government will give further consideration to this question in the light of the foregoing observations and will favor them with an expression of their views in due course.

Please accept, Excellency, the renewed assurance of my highest consideration.

A handwritten signature in dark ink, appearing to read "John Edgar Hoover". The signature is written in a cursive style with a large, sweeping initial "J" and "H".