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FOREIGN SERVICE DESPATCH

FROM : Ambassador, Bonn

DESP. NO. 503

TO : THE DEPARTMENT OF STATE, WASHINGTON.

September 30, 1957
DATE

REF : CERP for Germany, Section D, Items I-A-1 and IV-A-3; G-256 of September 30, 1957

18 For Dept. Use Only	ACTION	DEPT.
	REC'D 10/6	11/27-1, R/11/2, IRO-F, E-7, L-2, ICA-10, W/HSC-3 O CIA-12, GOM-10, TR-3, OSD-4, OSD-4, ARMY-4

SUBJECT: AHC Law 27

As stated in Bonn's G-256 to the Department, representatives of the British Embassy asked our opinion of a draft letter they have prepared for the purpose of terminating Allied interest in completion of the sales obligations imposed on Alfred Krupp pursuant to AHC Law 27. A copy of this draft letter, which is attached as enclosure No. 1, was sent us on September 11; copies have also been sent to the British Foreign Office and to the French Embassy at Bonn, but no indication of the reaction of either office has yet been received.

The British Embassy representatives propose to send letters from the Allied Ambassadors to the German Foreign Minister as replies to Chancellor Adenauer's letters of February 1957 to French Premier Mollot, the British Foreign Minister, and Secretary of State Dulles. We doubt whether it would be proper to attempt a solution of a matter which is embodied in the Settlement Convention and has treaty status in France, Germany and the U.K. and is an executive agreement on the part of the U.S. by an exchange of letters between Ambassadors and the German Foreign Minister. Because it might be necessary to publish the correspondence by which Allied interest in Law 27 is terminated, we are reluctant to make reference to the Chancellor's letters in that he refers to political difficulties facing the Federal Government before the elections which took place in the fall of 1957 and the alleged lack of legal means in the Federal Republic to force sales. Further, we do not believe that the Chancellor's letters were documents which demand replies. Finally, we see no useful purpose in referring to the enterprises involved when we are dealing with a general obligation which the Federal Government assumed in the Settlement Convention.

In our opinion, it would be preferable for the settlement of Law 27 to take the form of Allied Government announcements to the Federal Government that the Allies no longer hold the Federal Government obliged to fulfill the obligations imposed on it in Article 9 of Chapter One of the Settlement Convention. Such an announcement would call attention to the Federal Government's obligations arising under Article 9, state the reasons why the Allied Governments believe that the conditions requiring the imposition of those obligations no longer obtain, and announce that the Allied Governments release the German Federal Government from

its obligation

R/SEC DESPATCH, Jr, shot
REPORTER

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its obligation to ensure that the remaining sales obligations are carried out. A draft note in this sense has been prepared and is attached as Enclosure No. 2.

The British Embassy representatives also say that their Government desires to ward any Allied release of interest in the fulfillment of Law 27 in a manner which would obviate the possibility of lawsuits being brought against the British Government by persons alleging to have bought of sold shares solely on the assumption that the Governments would insist upon the completion of all sales obligations; they state this is a major reason for the length of their draft letter. For this reason, they would like to see a letter sent to Chancellor Adenauer for the purpose of protecting themselves from lawsuits even if the Allies send a note, as we propose. We are inclined to think that the British are looking for trouble in that Article 9, paragraph 2, of Chapter One of the Settlement Convention clearly vests in the Federal Government the responsibility for ensuring that sales obligations are completed.

As reported in BOM's D-111, July 25, 1958, the German Foreign Office representatives whom we saw on July 24 had not yet considered the formal legal measures that might be necessary to terminate Law 27 as domestic German legislation. They were inclined to think, on the spur of the moment, that termination of Law 27 and the sales obligations issued thereunder could be accomplished by an executive act. We wonder whether a letter of consent as specified in Article 1, paragraph 1, of Chapter One of the Settlement Convention, will be necessary.

Request:

The Department is requested to:

1. Advise us urgently of its reaction to the British draft letter, as we expect to be asked to comment on it in the near future.
2. Consider the draft note which we prepared to terminate Allied interest in the enforcement of Law 27 sales obligations and inform us of manner in which the Department believes such termination should be made.
3. Advise us whether it believes that the Allies should express an interest in the method whereby the Federal Government would terminate Law 27.

For the Ambassador:

William C. Ockey
William C. Ockey
Counselor of Embassy
for Economic Affairs

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From HQ
September 30, 1950

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September 30, 1958.
Ambassy, Bonn.

Your Excellency,

I have the honour to refer to the Federal Chancellor's letter to the Prime Minister of February 21, 1957 in which the request was made that the obligations on the German coal and steel industries to sell assets, pursuant to Allied High Commission Law No. 27 should be considered and complied with.

The Federal German Foreign Office have communicated to the Embassies of the Three Powers in Bonn information concerning the present state of these obligations in so far as they refer to the former firm Fried. Krupp. On the basis of this information, and after consultation with the governments of France and the United States, Her Majesty's Government are now in a position to give an opinion on the Federal Chancellor's request in so far as it concerns the former firm Fried. Krupp.

In forming their conclusion, Her Majesty's Government have taken into consideration the following facts:

- (1) All the reorganization measures under Law 27 in respect of the formation of new, and the reorganization of existing, enterprises have been carried out.
- (11) The following imposed conditions to sell have been fulfilled.
 - (a) Participation in the Hoesler-Lippe Bergbau A.G.
 - (b) Participation in the Hars-Lahn-Brubergbau A.G.
 - (c) Participation in the Bergbau A.G. Constantin der Grosse.

In addition, under the de-concentration plan, the following assets of the firm Fried. Krupp have been separated:

- (a) 4 debentures of 11 million DM each to 4 children of the von Bohlen und Halbach family.
 - (b) Capito & Klein (Sheet metal rolling mill in Düsseldorf), ceded half each to the children of Irsgard von Bohlen und Halbach and to the son of the deceased Claus von Bohlen und Halbach.
 - (c) Participation in the Westfälische Drahtindustrie ceded half each to the children of Irsgard von Bohlen und Halbach and to the son of the deceased Claus von Bohlen und Halbach.
- (111) There remain, subject to the imposed condition to sell:

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- (a) The 100% participation of the firm Fried. Krupp in the Hütten- und Bergwerke Rheinhausen A.G. This company is a holding company which owns the total share capital of the Hüttenwerke Rheinhausen A.G. (100 million DM), the Bergwerke Essen-Rosemray A.G. (share capital 30 million DM) and 50% of the 15 million DM share capital of the Harz-Lahn-Erbergbau A.G.
- (b) The 100% participation in the Steinkohlen-Bergwerk Hannover Hammbal A.G.

Her Majesty's Government have also taken note of the following opinions of the Federal Government, who have been responsible since the signing of the Paris Agreement for the carrying out of the deconcentration plans:

- (i) That owing to the close affiliation in the past between the Steinkohlenbergwerk Hannover-Hammbal A.G. and the Hütten- und Bergwerke Rheinhausen A.G., the shares of the former company could for economic reasons be sold only to those of the latter.
- (ii) That if, as the Federal Government considers unlikely, a purchaser could be found for these two concerns who could pay a price which could be considered economically tolerable as provided for in Article 10, para. 4, of Chapter 1 of the Convention for the Settlement of Matters Arising out of the War and the Occupation it is extremely unlikely that sufficient extra capital would be found to provide for the extensive capital investments which are needed in both enterprises in the interests both of the workers involved and general European coal and steel requirements in the foreseeable future.

Her Majesty's Government have been particularly influenced in their consideration of this question by the provisions of the Treaty concerning the establishment of the European Community for Coal and Steel, under which affiliations can only take place with the approval of the High Authority which is only given if it is established:

- *that the proposed action does not give the persons or enterprises concerned the possibility in respect of the products subject to their jurisdiction
- to determine the prices of those products in a considerable portion of the market to control or restrict production or distribution or to prevent genuine competition
- or to evade the application of the rules of competition resulting from the application of that treaty, in particular by the creation of an

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Copy of Enclosure
Number No. 503 dated
November 30, 1958

artificial preferential treatment which would confer an important advantage in the access to the markets of the other Contracting Parties.

When judging this situation, the Commission must take into consideration in accordance with the provisions of Article 4, paragraph b the Agreement, the kind of the advantages of the kind existing within the Community. The Commission considers that justified in order to avoid or to remove the disadvantages arising out of any inequality of the conditions of competition. (Article 66, Section 2 of the Treaty establishing the European Community for Coal and Steel).

Her Majesty's Government has not a copy of this nature concerning possible connection between the "Stichting voor de Ruhr" and the Bochum Verein is at present before the High Authority.

Her Majesty's Government further states belief, expressed in Article 2 of Allied High Commission Law 27:

"that the enterprises listed or described in Schedule A (these include the firm of Fried. Krupp) shall be liquidated and reorganized with a view to the elimination of excessive concentrations of economic power which constitute a threat to international peace or to the maintenance of democratic government in Germany or which unreasonably restrain trade."

They believe that responsibility for preventing excessive concentrations of economic power which constitute a threat to international peace or to the maintenance of democratic government in Germany now rightly belongs to the Federal Government. Her Majesty's Government is also confident that the provisions of the European Coal and Steel Treaty and the proper assent of the High Authority can be relied upon to prevent excessive concentrations which would unreasonably restrain trade. The High Authority has made plain that it has full competence and power to maintain this responsibility.

Her Majesty's Government has therefore decided that, in regard to the firm of Friedrich Krupp, they will not insist on the implementation of Articles 9 and 10 of Chapter One of the Convention of the Settlement of Matters Arising out of the War and the Occupation in the extent that these provisions had not been implemented on the date of this letter. This decision is subject to the assumption by the Federal Government, in relation to Her Majesty's Government, of the responsibility for all the direct and indirect consequences of this decision, which has been taken at the express request of the Federal Chancellor.

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It should be understood that this decision shall not be construed as affecting any other obligation provided or maintained by the aforesaid Convention, particularly not the validity of the provisions under which deconcentration measures with regard to firms other than the firm of Friedrich Krupp are to be carried out.

I should be grateful for your Excellency's confirmation that the Federal Government agrees with the arrangements set out in the preceding two paragraphs.

I avail myself of this opportunity to renew to Your Excellency the expression of my highest esteem.

The _____ Ambassador

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From BORN
September 30, 1958

The Embassy of the United States of America presents its compliments to the Federal Ministry for Foreign Affairs of the Federal Republic of Germany and has the honor to refer to Article 9, of Chapter One, of the Convention on the Settlement of Matters Arising out of the War and Occupation, which was signed at Paris on October 23, 1954.

It will be recalled that Article 9 states that such Allied High Commission legislation concerning the reorganization of the German coal mining and iron and steel industries as was in force on the date of entry into force of the Convention shall be maintained in force insofar and so long as deconcentration measures ordered before that date are still to be carried out or claimants are still to be protected. The Federal Government assumed the obligation to ensure that the measures referred to above were carried through to completion; however, these measures were to be without prejudice to such expansion or affiliation of enterprises as might be permitted under the Treaty on the Establishment of the European Community for Coal and Steel.

The Allied High Commission legislation referred to in Article 9, Chapter One, of the Convention had been enacted for the purpose of effecting a reorganization of the German coal mining and iron and steel industries in a manner which would obviate a pattern of ownership in these industries which would constitute excessive concentrations of economic power. It is the understanding of the United States Government that all reorganizations required in orders issued pursuant to Allied High Commission legislation have been completed.

The United States Government has noted with great pleasure the growth of the European Coal and Steel Community, of which the Federal Republic of Germany is a member, into a viable economic entity, as signified by the successful conclusion of the transition period on February 10, 1958. Cognizance is taken of the provisions regarding mergers of enterprises in the Treaty establishing the Coal and Steel Community and their effective enforcement by the High Authority of the Community. It is also noted that, although the High Authority has no responsibility with respect to the completion of the measures referred to in Article 9, of Chapter One, of the Settlement Convention, paragraph 3 of said Article specifies that the provisions of said Article shall be without prejudice to such expansion or affiliation of enterprises as shall be permitted under the Treaty establishing the Coal and Steel Community, and that certain expansions or affiliations of enterprises in the German coal mining and iron and steel industries have already been authorized.

It appears appropriate also to refer to the Federal Republic's adherence to the Treaty establishing the European Economic Community, which contains rules governing competition, and the Federal Law Against Restraints of Competition as evidence that the Federal Republic has renounced business practices that might lead to excessive concentrations of economic power which might be used in an abusive manner.

The United States Government understands that there remain for completion several sales obligations referred to in Article 9 of the Convention, but that fulfillment of these obligations would not materially change the pattern of ownership in the German coal mining and iron and steel industries and would be of little significance to the German economy. In the circumstances, and bearing

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in mind the factors cited in the two preceding paragraphs, the United States Government relinquishes its interest in fulfillment by the Federal Government of the obligations it assumed under Article 9 of the Convention. If the Federal Government acquiesces in this relinquishment of interest, it is assumed that the Federal Government will take any amendatory steps necessary under German legislation.

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