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C. R. I. L. C. T. I. C.
SAFEHAVEN REPORT

DEC 11 1947

American Embassy
Lisbon, Portugal

File. 280

No. 280

November 24, 1947

Rec'd
Dec. 4
ACTION
OVD

Gold Negotiations
Allies Reply to Portuguese September 1946
Gold Memo

INFO
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BCR With reference to Embassy's Despatch No. 202, October 1,
EU 1947, Embassy's telegram No. 950, November 19, 1947, and
AS related previous, the Ambassador has the honor to transmit
ARMY with the complete text of the reply prepared by the
NAVAL Allied delegation which answers the Portuguese Gold Memo of
CIA September 24, 1946. A French translation of the enclosed
TREAS reply was also delivered to the Portuguese delegation along
with the English text on Thursday, November 20, 1947.

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Enclosure:

Text of Reply to Portuguese Gold Memo of September 24,
1946.

J. Hanley: H. Kasper: Schwartz: ear
Original and hectograph to Department
cc--American Embassy, London
American Embassy, Paris
American Embassy, Madrid

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VIB-3/2

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- 2 -

Enclosure to Safehaven Despatch No. 230, November 24, 1947
Lisbon, Portugal

THE ALLIED DELEGATIONS' REPLY TO THE MEMORANDUM
DATED SEPTEMBER 24, 1946
OF THE PORTUGUESE DELEGATION

The Allied Delegations have carefully examined the Memorandum of September 24, 1946, of the Portuguese Delegation and have the honor to make the following reply. In the first place it is clear that the September 1946 Allied Memorandum on Looted Gold was only introductory, and sought to bring under examination the total quantity of Gold acquired by the Bank of Portugal from Germany. Since that date the identification as loot of some of the Gold acquired by Portugal from Germany has been clarified to the satisfaction of the delegations. It is therefore appropriate now to dispose of the remaining issues raised by the Portuguese delegation.

I. The Portuguese delegation has maintained that the countries claiming restitution of Gold looted by Germany should avail themselves of procedures provided by Portuguese law in order to establish their property rights to the Gold. The Allied Delegations cannot admit that with respect to the fulfilment of an international obligation such as Resolution VI of the United Nations Conference at Bretton Woods, and involving a number of governments, the question should be litigated before a domestic forum and solely on the basis of domestic law and practice.

II. The Portuguese delegation has contended that any obligation Portugal may have to restore looted Gold refers only to Gold purchased after February 24, 1944, the date of the Allied Gold Declaration. In this connection, the Portuguese delegation contends that Portugal cannot be presumed to have known that the Gold acquired by it during the war, and prior to the date of the Gold Declaration, was looted. The Allied Delegations wish to make the following comments:

(a) Even if there had not been any declaration by the Allied governments, the Allied delegations consider that there would nevertheless exist both a legal and a moral obligation upon the part of the neutral governments which acquired looted Gold from Germany to make restitution thereof. The Allied declarations were verbal announcements of a widely recognized state of affairs which had already existed for some time.

(b) On January 5, 1943, the Allied nations issued a joint declaration regarding forced transfers of property in enemy-controlled territory. This declaration referred to "property, rights and interests of any description whatsoever which are, or have been situated in the territories which have come under the occupation or control, direct or indirect, of the governments with which they are at war." The Allied delegations maintain that there can be no question that this declaration included Gold. It should be noted also that the declaration referred not only to transfers of property made after the date of its issuance but to all transfers of

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property

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Authority AMD 96496
by MPT NARA Date 2/5/77

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VII B-3/3

SECRET

- 8 -

Inclosure to Telehaver Despatch No. 220, November 24, 1947
Lisbon, Portugal

property made at any time during the period of enemy occupation. The Allied nations clearly provided that they could not recognize the transfer of title to looted gold which the Axis at any time had disposed of in world markets. The Allied delegations cannot conceive that should the occasion again arise for the issue of a similar warning, a more appropriate general statement could be framed. It obviously included all those forms of the wealth of the occupied countries which Germany was known to be looting, oil, securities, objets d'art, livestock, jewels, all capable of disguise, all disposable in world markets, were all included.

(c) The Allied Gold Declaration of February 28, 1944, to which the Portuguese Government has adhered cites with approval and incorporates by reference, the principles expounded in the Allied Declaration of January 5, 1943, and then sets forth with more particularity the techniques with respect to gold purchases which the members of the United Nations are committed to apply in putting into effect the principles of the previous Declaration. That was its purpose; it did not suggest that the prior Declaration did not encompass looted gold. Moreover, Resolution No. VI of the United Nations Conference at Bretton Woods, to which the Portuguese Government also has adhered, was a still further declaration of the principles previously expounded and an expression of intent by the signatories that they would take action to effectuate such principles. The Allied delegations feel that the issues not raised by the Portuguese delegation are inconsistent with the letter and the spirit of those joint declarations and resolutions.

(d) Further, the Allied delegations cannot believe that the central bank of the Republic of Portugal did not at any time consider as a matter of concern to itself, as well as to other neutral banks, how it could be possible that Germany had at its disposal almost unlimited quantities of gold. The circumstances of the time were such as to raise doubt in the minds of any central bank with respect to the legitimacy of title to gold which was offered by Germany in settlement of obligations.

(e) The Portuguese delegation has stated in its memorandum that it would only consider claims based on gold bars that are in the form and with the marks with which they were received looted from the legitimate possessors. The gold looted by Germany has been traced to its present possessors either in its original looted state or as remelted gold originating from old coins or gold bars. In all cases exact identification is proved. The Prussian Mint records are available, and from those records it is established that identified looted gold was recast into bars the identity of each bar being as positive as the gold in its original state. Gold, like jewels or other valuables, may appear in some now guise, but moreover, as is the case here, the refiner has taken pains to record in minute particular the manner by which and

SECRET

the form

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VII-B-3/4

CONFIDENTIAL

- 4 -

Enclosure to Safehaven Despatch No. 288, November 24, 1947
Lisbon, Portugal

the form into which he has superficially changed the stolen
things, then neither conscience nor logic permit it to be
said that identification of the property is not acceptable.

IV. The Portuguese delegation has indicated that because
trade was legitimate, looted gold tendered in settlement of
such trade became legitimate. The Allied delegations deny
that it was any more legitimate to tender looted gold than
it would be to tender the Mona Lisa, or Corsica, and deny
that a good title could pass by such a transaction. The
Allied delegations have not at any time questioned the good
faith of the Bank of Portugal, but all good men are liable
to be deceived: "Remo plus juris ad alium transferre potest
quam ipse habet." The question is not one of good faith but
of acquiring looted gold without being able to acquire a
valid title thereto.

The 13 Allied Nations signatory to the Paris Agreement
on Reparations and Looted Gold of January 14, 1946, are in
complete accord that all monetary gold taken by Germany
during the period of the military occupation of any country,
that is at any time after the 3rd of September, 1939, even
when taken by measures purporting to observe legal require-
ments, must be considered as looted; and that under all just
principles of moral as well as international law, restitution
without payment of compensation should be made of any such
looted gold by the countries which acquired it from German.

The Allied delegations therefore cannot now find any
reason to admit that it is legitimate to treat property
established to have been stolen property, as a good settle-
ment of claims or credits of another country however
legitimate those credits.

V. The Portuguese delegation has stated that in the event
Portugal recognizes any legal obligation to restore looted
gold, Portugal is entitled to compensation for the gold so
restored. This question apparently arises as the result of
certain provisions of Portuguese law to the effect that a
purchaser in good faith is entitled to compensation for
stolen property which he may be required to restore to its
rightful owner.

With respect to this point the following comments are
made:

(a) The provisions cited by the Portuguese delegation
are measures of internal Portuguese law designed to govern
relations between private individuals in Portugal and do
not relate to problems arising out of international trans-
actions conducted by treasuries or central banks.

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(b) The internal

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By WPD NARA Date 2/15/77

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VH B/3/5

CONFIDENTIAL

- 5 -

Inclosure to Safchaven Cospatch No. 200, November 24, 1947
Lisbon, Portugal

(b) The internal laws of many countries, including those of the United Kingdom and the United States differ from the Portuguese law and make no provision for compensation by the true owner of stolen properties to purchasers in good faith.

(c) The return of property to its rightful owner conditional upon payment of its equivalent value as compensation to the holder is not restitution but a mere sale, and the Allied Delegations are not charged by the governments they represent to negotiate for the repurchase of any looted property, but to seek by mutual agreement the restitution of looted gold. Acceptance of the principle advanced by the Portuguese Delegation would nullify any settlement made with respect to the restitution of looted gold or other looted property, inasmuch as the countries which were looted would have to pay the value of the gold restored. The Allies do not dispute the right of the Portuguese Government to demand settlement from a future German Government or any other person who may have been involved.

(d) It is well to note that France, the United Kingdom, and the United States have been negotiating with other neutral governments concerning the restitution of looted gold. Despite juristic issues which may have been raised, in fact agreements for the restitution of looted gold without compensation have been concluded and are in effect. In these agreements the countries concerned recognized without difficulty the moral reasons which made it incumbent upon them to make restitution of monetary gold taken by Germany from their neighbors.

V. The Portuguese delegation has emphasized that restitution of looted gold could in effect leave an unsecured and unmerited German debt in respect of goods and services legitimately supplied to Germany by Portugal. While the Allied delegations deny that there exists any universal principle which requires the owner of a stolen article to repurchase it from any innocent holder, they prefer to rest their resistance to any formal recognition of a juridical right to "compensation" upon the manifest political impracticability of a concession of principle, in the right of compensation, which was neither sought by nor given to any other country in the like case. As the discussions between the delegations have disclosed, unsatisfied credits in favor of almost every European and many other states against Germany await such settlement as may be possible when Germany is again a peaceful member of the family of nations. In Germany's existing state of virtual bankruptcy it is not possible, in practice or politics, to cover all such credits or to advance any one creditor to a position of preference and priority. Such cash settlements as have been approved by the concert of nations have taken account of the merits of hardship to the claimant, and the certainty that Germany could not or could find means of payment in cash or more than a small percentage. For these

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reasons

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VII B-3/6.

~~CONFIDENTIAL~~

- 6 -

Enclosure to Safehaven Despatch No. 230, November 24, 1947
Lisbon, Portugal

reasons the Allied Delegations must reject the implication that Portugal would only make restitution to the extent that she was promptly repaid in full.

For the foregoing reasons the Allied Delegations reaffirm that the proofs of looting, and continuity of identification which they present in relation to the looted gold are now established and incontestable, as has been recognized by, among others, the Bank for International Settlements, whose decision was based solely upon facts. Moreover the gold now in question had the same origins and is identified by the same proofs, documentary and otherwise, as in all other cases where restitution has been agreed. Where all others under similar circumstances have recognized the weight of the facts brought out by the Allies, considerations of domestic law, good faith, and legitimate trade and appreciation of warnings given have no cogency.

Therefore, what remains is the impact upon Portugal of a moral duty which transcends the legal concepts of the domestic code, and to which, of all the countries to whom a similar appeal has been presented, she cannot remain alone unresponsive.

<u>French Delegation</u>	<u>British Delegation</u>	<u>United States Delegation</u>
Marcel Valdte Albert E. Sumblehl Gerald Priestley	E. L. LeCombe L. A. Lismore	Herman H. Jasper Robert Schwartz J. J. Hanley

Lisbon, 26th November, 1947.

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