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Enclosure no. 10 of despatch no. 3196 of December 4, 1946 transmitting minutes of second and third plenary sessions and related documents on Spanish-Allied negotiations on German private assets.

[TRANSLATION]

November 25, 1946

MEMORANDUM

The Memorandum of the ACC Delegation of November 21 reproduces in their essence the conclusions of the Note of November 16. It appears fitting to summarize the position of the Spanish Delegation.

I.

1.- The problem being discussed is of a political origin, the engagements of the Spanish Government (Note of May 12, 1945 and Agreement of October 28, 1946) being summarized as follows: (a) to restore to their legitimate proprietors all goods which were the object of robbery, expropriation, or sacking, even under technically legal forms; (b) to prevent the employment of any type of goods for use dangerous to peace; and (c) to recognize the Allied Control Commission as the German Government, registering in its name German public assets located in Spain, even though these assets remain by common accord immobilized until such time as the problem of Spanish credits vis-a-vis the German State is settled.

2.- The political origin of the problem in no way obliges the Spanish Government to act independently of the fundamental principles of international juridical order and of territorial juridical order. Effectively, (a) Spain has maintained herself in a juridically neutral position; (b) she has not participated in the Conferences or organizations which in common accord have adopted new regulations in the premises; and (c) she cannot consider herself as incorporated at present within said organizations nor bound by political engagements of a special nature.

3.- As to German public assets, the Spanish State considers the ACC as the German Government and successor to the rights and obligations of the latter. As to the restoration of robbed assets, especially gold, Spain is disposed to cooperate without limitations in their restitution to their legitimate owners, asking - for cases in which Spain has been the victim of similar expropriations - a treatment of rigorous reciprocity and equality. As to private assets, the Spanish Government defends the principle that its own legislation governs all those located within its territory, and the political engagements which it has freely entered into are limited to the identification and immobilization thereof to the extent and for the length of time which may be necessary to avoid their use by persons dangerous to the maintenance of peace.

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assets belonging to physical or moral persons of German nationality may be transferred freely by their proprietors - independently of their place of residence - in accordance with the formalities which Spanish legislation provides for the transfer of property.

5.- Modification as to the external formalities accrediting a transfer of property - or, in other words, suppression of the presence of Spanish consular agents when treating of acts handed down abroad - would encounter great difficulties, since the absence of Spanish consular representation in Germany - in spite of the recognition of the AGG as Government of that country - implies in itself an irregularity and, with relation to other Powers, discriminatory treatment.

6.- The automatic application in Spain of decisions adopted by a foreign Government with respect to assets of its subjects located in Spanish territory conflicts absolutely with principles of national judicial order and cannot be admitted unless there exists a legislative disposition of superior rank which modifies these principles.

Translated by:

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