SECRET.
C.P. 3987.

CABINET.

GERMAN REPARATIONS.

Memo, by the Secretary of State for Foreign Affairs.

(Circulated with reference to Item 1 on today's Cabinet Agenda)

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2, Whitehall Gardens, S.W.,
May 23rd, 1923.
Attitude of French Government in the event of the failure by Germany to meet her reparation obligations.

PRIME MINISTER.

These papers and the advice in which they culminate are the result of a conversation between Sir Eyre Crowe, Sir Cecil Hurst, Mr. Wigram and myself this afternoon.

The legal ground on which we stand is strong (vide Sir C. Hurst's note) though not absolutely impregnable. We may be sure, however, that strong as it is, it will not convince the French and we may go on arguing the matter in interminable notes.

It is preferable therefore to regard the question from the political standpoint.

Here, we are in a position not without advantage.

1. The situation demanding action cannot arise on May 31st, nor before June 15th. It may conceivably not arise until a little later.

2. Monsieur Poincare has indicated his willingness to concert with the Allies upon the situation produced by the probable German default.

3. The right thing to do is to take him at his word and propose or agree to such a consultation.

4. In it, the French and the Belgians will be or may be on one side. The British, Italians, and Japanese will be on the other.
5. Should the French decide to break away after such a consultation and to act on their own, the onus and odium of breaking the Entente will then devolve publicly upon them. They will not do it. For Poincaré would at once fall.

I have not here discussed the German action either on May 31st or June 15th because I am not familiar with their intentions. But it is obvious that a move on their part might throw a different light on the situation.

(Initialled) C.

May 22nd, 1922.

MEMORANDUM.

M. Poincaré's note of May 19th respecting the attitude to be adopted by the French Government in the event of the failure by Germany to meet her reparation obligations.

(A brief summary of the recent history of the reparation negotiations and a note on the state of execution of the allied ultimatum of May 5th 1921, as modified by the Reparation Commission's decisions of January 13th 1922 and March 21st, 1922 are appended to the present memorandum as Annexes i and ii).

The purpose of M. Poincaré's note is to explain:
(1) That the French government will
   (a) in accordance with the procedure contemplated in paragraphs 17 and 18 of annex 2 to part 8 of the treaty of Versailles await the announcement to each of the interested powers by the reparation commission of the actual failure of Germany to fulfil any of her obligations, and,
   (b) then be ready to concert with their allies in examining the position.

(2) That the French government consider that under paragraph 18 of annex 2 to part 8 of the treaty of Versailles the respective governments nevertheless retain the right to take such measures as they may consider necessitated by circumstances, and

(3) That the French government do not consider themselves in the last resort debarred from taking separate action despite the pledge which M. Millerand gave to the British government after the occupation of Frankfurt on April 6th 1920.

The procedure contemplated by the reparation commission in the event of the failure by Germany to accept the demands set out in the commission's note to the German government of March 21st 1922 is clearly set out in the last section of the decision which accompanied that letter. The following procedure is there laid down:

(a) On May 31st 1922 the commission will examine the progress made by the German government towards satisfying the conditions laid down in the commission's letter of March 21st, 1922.

(b) Should the progress made by judged

unsatisfactory
unsatisfactory the provisional arrangement contemplated for the year 1922 will be cancelled and the payments due under the London ultimatum of May 5th 1921 but not paid to date will become due within 14 days of the foregoing cancellation, i.e. about June 15th.

(c) Should these payments not be forthcoming paragraph 17 of annex 2 to part 8 of the treaty of Versailles will immediately operate, i.e., the reparation commission will forthwith give notice of the default of Germany to each of the interested powers.

(d) Paragraph 18 of annex 2 to part 8 of the treaty of Versailles, which reads as follows, will then operate:

"The measures which the allied and associated powers shall have the right to take in case of voluntary default by Germany and which Germany agrees not to regard as acts of war may include economic and financial prohibitions and reprisals and in general such other measures as the respective governments may determine to be necessary in the circumstances."

The interpretation of paragraph 18 is discussed in the accompanying note (annex III). It will be apparent from this that, from the point of view of strict legality, it will be possible to dispute the contention put forward by M. Poincaré. But that the French would finally accept the legal argument is obviously most improbable.

In view, therefore, of this and of the fact that immediate
immediate independent action by the French is not in question, it is for consideration whether the reply which we should return to M. Poincaré should not be on some such general lines as the following:

M. Poincaré is at pains to argue that the solemn pledges, given to His Majesty's Government in April 1920, that the French government would, for the future, only act in agreement with its allies in all inter-allied questions which are raised by the execution of the treaty, do not apply in the present case, for various technical and legal reasons.

His Majesty's Government do not admit the soundness of M. Poincaré's argument and are fully prepared to show conclusively why it is faulty. An outline of their counter-argument is given in the annexed memorandum.

They are, however, loth to follow M. Poincaré in the path of legal controversy in regard to a matter touching, as this does, the very heart of the alliance. They prefer to dwell on the definite intimation given in his note that the French government will in fact be ready, if and when the reparation committee has declared Germany to have defaulted, to concert with their allies for the purpose of considering the position as regards the measures to be taken.

His Majesty's Government think it unnecessary at this moment to pursue the theoretical and hypothetical question as to what isolated action if any, might legitimately be taken by one or the other of the allied powers in the event of their failing to come to an agreement among themselves for common action. They would fain believe that in this, as in all previous instances, the loyal co-operation of the allied
allied governments will ensure the successful pursuit of a common policy on the basis of unanimity.

It is in this conviction that they now ask the French government to arrange for a meeting of representatives of the four allied powers as soon as possible after the reparation commission have made their report.

Foreign Office,
May 22nd, 1922.
MEMORANDUM

Recent history of the reparation negotiations.

The hopeless situation of the German finances at the end of last year led, at the Cannes conference in January, 1922, to proposals for a large reduction in the 1922 payments due under the London ultimatum of May 1921. Instead of the payments totalling a sum of 3.3 milliards of gold marks (due under the London ultimatum) the allied experts at Cannes recommended the payment during the year 1922 only of some 720,000,000 of gold marks and deliveries in kind to the maximum value of 1,450,000,000 gold marks.

The fall of M. Briand, however, rendered it impossible for the Supreme Council to take any definite decision on the experts' proposals, and the Cannes conference contented itself with instructing the Reparation Commission to summon the German government to put forward their own proposals for the 1922 payments, and for the guarantees in the shape of budgetary and currency reform which might reasonably be expected as the result of the partial moratorium which the allies proposed to grant.

The German proposals were received on January 23, 1922. They may be said to have been not unreasonable so far as the guarantee budgetary and currency reforms were concerned. They contained, however, no definite proposals for the 1922 payments.
the German government contenting themselves with pleading their inability to make such large payments as those suggested by the Cannes experts.

The Reparation Commission replied to the German proposals on March 21, 1922. The proposals of the Cannes experts were adhered to. In addition to the guarantee reforms originally demanded, the German government were summoned (apparently in order to meet the further deterioration in the financial position consequent upon the recent fall in the mark) to increase, by a further 60 milliards of paper marks, the German taxes of which a heavy increase was already foreshadowed by the "taxation compromise" of January 26, 1922. The German government were further informed that they would have to keep the Reparation Commission fully seized of all their fiscal legislation.

As was to be expected, the Reparation Commission's demands were refused by the German government on April 7, 1922. The German government declared their inability to impose further new taxation, or to make further cash payments, otherwise than by means of a foreign loan, or to accept any "control" which would be such as to imply the exercise by foreign Powers of "a decisive influence on the passing and the application of legislation". The German government, however, welcomed the institution by the Reparation Commission of a special commission of experts, with the participation of neutrals and a German representative,
3.

representative, to examine the possibility of the payment of reparation by means of a foreign loan. They offered also to submit to "an exhaustive examination of Germany's fiscal capacity, in conformity with article 234 of the treaty, under the auspices of the Reparation Commission and by means of experts not confined to nationals of the states directly concerned."

The Reparation Commission, in a note of April 13, 1922 adhered to the demands made on March 23, 1922. In so far, however, as the demand for the additional 60 milliards paper marks taxation was concerned, they announced their readiness "to consider any plan, which the German government may be able itself to propose giving a reasonable prospect of dealing satisfactorily with the whole of the budget deficit".

The German government rejoined on May 9, 1922 that, whilst they fully realized the need for meeting expenditure out of current taxation, they could not, in order to pay reparation, agree to impose at the moment fresh taxes amounting to a further 60 milliards of paper marks. They were ready, before May 31, 1922 "to submit a complete scheme for the purpose" of meeting as far as possible all expenditure out of current taxation: but "important payments due by Germany in foreign currency cannot be met without the aid of foreign loans". The German government announced also their readiness "to afford to the Reparation Commission all the facilities for investigation asked for" and their willingness "to consult with the commission as regards the legislative projects planned/
planned by the German government in financial matters."

Thus the position remains that on May 31, 1922 the Reparation Commission will, in accordance with their note of March 21, 1922, examine the measures taken by the German government to give effect to the demands made in that note. Certain of these demands appear to have been actually executed. Thus the payments due on April 15th, and May 15th 1922 have been made. The subsidies appear to have been abolished, or to be in course of abolition. The German government have announced their willingness to accept, to some extent the control of German finance demanded by the Reparation Commission. But the German government have not accepted the demand of the Reparation Commission to interfere with what may be called the right of legislative initiative; and they still protest their inability to continue to meet the payments demanded unless they can secure a foreign loan.

Foreign Office,
May 22nd, 1922.
STATE OF EXECUTION OF THE ALLIED ULTIMATUM OF MAY 5, 1921, AS MODIFIED BY THE REPARATION COMMISSION'S DECISIONS OF JANUARY 13, 1922 AND MARCH 21, 1922.

Under the allied ultimatum of May 5, 1921, the German Government undertook:

1. To carry out, without reserve or condition, their obligations as defined by the Reparation Commission, and to accept and provide the guarantees in respect of those obligations demanded by the Commission.

2. To carry out, without reserve or delay, the measures of military, naval and air disarmament notified in the allied note from Paris of January 29, 1921.

3. To carry out, without reserve or delay, the trial of the war criminals and certain other unfulfilled articles of the treaty relating mainly to German customs discrimination against allied nationals and German discrimination against allied interests in the emigration traffic.

1. Reparation. The German obligations maturing in 1921 were duly executed, i.e., the two quarterly instalments of the fixed annuity were covered by the payment of the first milliard on May 25, 1921, and the instalment of the variable annuity, due on November 15, 1921, was covered by the value to date of deliveries in kind and of proceeds of the Reparation (Recovery) Act. "The guarantees demanded by the Reparation Commission" were accepted by the establishment of the Committee of Guarantees.
No further obligations matured under the ultimatum of May 5, 1921, as its terms were modified on January 13, 1922 by the decision of the Reparation Commission to declare a provisional moratorium. Under this moratorium the German Government had to pay 31 millions of gold Marks every ten days as from January 18, 1922, and to submit a definitive scheme of future payment and guarantees on or before January 28, 1922.

The scheme of financial reform may be said to have been submitted on January 28, 1922, but the German Government professed themselves unable, in view of their financial condition, to submit any definitive scheme for future payments. The ten­daily payments were punctually made amounting in all, with certain other miscellaneous sums, to 281,948,920 gold marks.

The Reparation Commission announced their new decision on March 21, 1922 and under this decision demanded:

(2) 720 millions of gold Marks in cash during 1922, less the 281,948,920 gold Marks paid under the provisional moratorium. (N.B. This leaves, at the time of writing May 21, 1922, 370 millions of gold Marks to be paid during the remainder of the year; the payments due on April 15th, 1922 and May 15, 1922 having been duly met.)

(b) Deliveries in kind to the value of 1,450 millions of gold Marks. (N.B. The execution of this demand will presumably in large part depend on the successful working of a recent agreement between
between the German Government and the Reparation Commission, under which the amount of deliveries in kind is practically dependent on private arrangement between allied individual purchasers and German contractors. The only intervention of the Governments consists in the decision of an allied Government to count such and such a contract as part payment of reparation, in which case the German Government pays the German seller and the allied buyer the allied Government).

(c) The legislative abolition by April 5, 1922, of bread, railway and posts subsidies. (N.B. Dr. Wirth informed Mr. Lloyd George on May 4 that the railways and posts subsidies had already disappeared and that the bread subsidy would disappear this summer.)

(d) The passage, by April 30, 1922, of measures to prevent the export of capital, and, by May 31, 1922, to secure the independence of the Reichsbank and the publication of pre-war economic and financial statistics. (N.B. No information is available on the progress made by the German Government in the execution of these measures).

(e) The establishment of a budgetary surplus by means of the operation by April 30, 1922 of the new taxes decreed in January, 1922 by means of a fresh revision of expenditure, to be effected before April 21, 1922, and by means of an increase in taxation of a further 60 milliards of paper Marks, to be effected by May 31, 1922. (N.B. The German Government in their note to the Reparation Commission of May 9, 1922, stated that it was impossible to
to levy the extra 60 milliards. They added, however, that they would "submit to the Commission before May 31, 1922 "a complete scheme for the purpose of giving effect to the principle" of balancing the German budget.

(f) Facilities for the Reparation Commission not only to examine the legislative and administrative measures passed and intended to secure the execution of the Reparation Commission's demands, but also facilities for the Reparation Commission to examine these measures "at each stage" in order that "if occasion arises" the Commission will be able to request Germany "to take the measures necessary to remedy defects detected". (N.B.: The German Government in their note to the Reparation Commission of May 11, 1922, stated that they were prepared "to afford to the Reparation Commission all the facilities for investigation asked for and to consult with the Commission as regards the legislative financial projects planned".)

2. Disarmament.
(a) Astronautical. This is now complete. The Aeronautical Control Commission was formally liquidated as from May 5, 1922, and the new allied Aeronautical Committee of Guarantees, paid by the allies, entered upon its duties, with German consent, as from May 5, 1922.
(b) Naval. The Control Commission is still engaged in verifying certain details, and will apparently be so engaged for some three or four months. The British Admiralty have, however, long considered the execution of the naval clauses complete for all practical purposes, and would not, it is understood, be averse to the immediate withdrawal of the Control Commission.

(c) Military.

(i) Army strength. Reduction to 100,000 men has long since been executed, but control commission have so far been unable to reach a final settlement of various legislative and administrative details.

(ii) War Material. The following quantities, on March 9, 1922, remained to be destroyed out of the following quantities surrendered (the latter being believed to be bulk of material surplus to that allowed German army under treaty):

- Guns and barrels: 122 out of 33,452
- Trench mortars: 8 " 11,596
- Machine guns: 108 " 87,076
- Small arms: 25,309 " 4,366,090
- Shells, loaded: 732 tons " 11,410 tons
- Small arms ammunition: 43,125,600 " 450,584,000

(iii) Fortresses. Reductions effected in accordance with treaty, except in occupied territory.

(iv) Disarmament of unauthorised forces and of civil population. The following arms surrendered to January, 1922:

- Guns: 171
- Machine guns: 12,245
- Rifles and carbines: 1,473,720
The War Office do not consider that further efforts by the German Government to complete the disarmament of the civil population will yield any considerable results, although a certain number of rifles are still scattered about the country.

(v) Police. Reduced to stipulated strength - 150,000 (police) and 17,000 (gendarmerie), - but a dispute is still proceeding with the German Government on the ground that part of the police - the "schutzpolizei", strength 85,000 men are lodged in barracks, subject to quasi-military drill organized in formations and responsible to the states and not to the municipalities.

(vi) Factories. 6,097 out of 6,942 factories, known to have manufactured munitions, have been converted and passed by the Control Commission for the manufacture of non-military material.

(vii) Import and Export of War Material. Necessary laws long since passed, but the Control Commission are still verifying details.

3. War Criminals and various Treaty Clauses relating to discrimination against allied nationals in German customs administration, and as regards emigration traffic. There have been no complaints respecting the last two matters recently, and these questions may therefore be assumed to be temporarily dead.
As regards war criminals, the position is as follows. Of the seven cases put up by the British Government for trial by the Leipzig Court, the accused in three cases had disappeared, so that no trials could take place. In one of the remaining cases, the plea of superior orders was admitted by the court, and the accused acquitted, and in the remaining three, sentences were passed, which Sir E. Pollock, who was present at the trials, at the time considered not unsatisfactory. At the time also he paid a tribute to the manner in which the court had conducted its work.

No Italian cases ever came before the court for trial, as, apparently, the Italian Government had difficulty in collecting the evidence. Three French cases and one Belgian case came before the court. No details are available respecting their conduct, but at some period during the trial of these cases French officials were insulted in the town of Leipzig, the French mission withdrew, and the cases came to an end.

On August 13, 1921, the matter came before the Supreme Council in Paris, and the Supreme Council decided that a commission should be appointed to report to the Supreme Council on the result of the trials before the Leipzig Court and on the sentences pronounced, and that this commission should also submit proposals on the course to be pursued in the future, with a view to the application of articles 228 - 230 of the treaty.

This Commission, which was composed of French, British, Belgian and Italian representatives, reported on January 7, 1922, that "except perhaps in a very few cases, the Leipzig Court has not given satisfaction in the sense that adequate efforts have not been made there to arrive at the truth. As regards the judgments given by the court the unanimous/
unanimous opinion of the commission is that, in almost all cases, the court has not given satisfaction, in the sense that certain accused persons have been acquitted when they should have been condemned, and that, even where the accused have been judged guilty, the penalty applied has not been sufficient."

The commission therefore reported that further trials before the Leipzig Court were useless, and recommended that the allied Governments should summon the German Government to hand over the war criminals to the allied Governments for trial.

This report still awaits the consideration of the Supreme Council.

GENOA, Foreign Office
May 26, 1922.
The commission therefore reported that further trials before the Leipzig Court were useless, and recommended that the allied governments should summon the German government to hand over the war criminals to the allied governments for trial.

The Supreme Council have not so far taken this report into consideration. Nor is it probable, had it done so, that it would have acted on the advice that the demand for the surrender of the war criminals should now be formally renewed. The allied governments are well aware that such a demand could only lead to a repetition of Germany's categorical refusal on the plea of inability, thus throwing them back into the same difficulty which they had attempted to solve by agreeing to the experiment of the Leipzig trials.

On the other hand, it is clearly unsatisfactory to do nothing at all and leave matters simply as they are. The French government therefore having, on their part, decided to withdraw all their cases from further proceedings at Leipzig now propose that the Ambassadors Conference address a note to the German government confined to announcing such withdrawal.
withdrawal and to "taking note" of Germany's failure to carry out the terms of the treaty. The Secretary of State has authorised Lord Hardinge to co-operate with his colleagues of the Ambassadors Conference in preparing the draft of such a note, on the clear understanding that the draft must be submitted to His Majesty's Government for their approval, before it is finally adopted and acted upon.

FOREIGN OFFICE,
May 22nd 1922.
ANNEX III.

Memorandum on the Legal Situation.

The French rely on paragraph 18 of annex 2 to the reparation section of the treaty of Versailles as justifying independent action, such as an advance into the Ruhr, in case the reparation commission notify under paragraph 17 that Germany is in default.

Paragraph 18 is as follows:

"The measures which the allied and associated powers shall have the right to take, in case of voluntary default by Germany, and which Germany agrees not to regard as acts of war, may include economic and financial prohibitions and reprisals and in general such other measures as the respective governments may determine to be necessary in the circumstances."

The interpretation of this paragraph is not very easy, but to my mind the intention was that the action was to be taken by the individual governments and that the individual governments had a discretion as to the action they would take, but the fact that the action is to be decided on by the individual governments shows that it must be action of the type which it is proper for governments to take individually. Economic and financial prohibitions, etc., constitute measures which would be taken within the territory of the individual allied state concerned and the proper deduction to be drawn from the presence of the word "respective" is that the "other measures" referred to are also such as individual governments would take within the limits of their own sovereignty.

The occupation of German territory is not such a measure as an individual government is entitled, consistently with the spirit of the treaty of Versailles, to take for the purpose of enforcing the execution of the
the treaty. Article 428 provides for a joint allied occupation of certain territory west of the Rhine as a guarantee for the execution of the treaty, and article 430 provides for the reoccupation of any such territory, if part should have been evacuated, on a finding by the reparation commission that Germany refuses to observe the whole or part of her obligations under the present treaty.

The foregoing interpretation of paragraph 18 is corroborated by the other provisions of the treaty of Versailles. The last paragraph of article 233 provides as follows:-

"The commission shall concurrently draw up a schedule of payments prescribing the time and manner for securing and discharging the entire obligation within a period of 30 years from May 1st, 1921. If, however, within the period mentioned, Germany fails to discharge her obligations, any balance remaining unpaid may, within the discretion of the commission, be postponed for settlement in subsequent years, or may be handled otherwise in such manner as the allied and associated governments, acting in accordance with the procedure laid down in this part of the present treaty, shall determine."

It will be noticed that default in the discharge of a payment due is here regarded as producing a situation to be handled by the allied and associated governments in common. It seems unreasonable that a particular power should have a more extended right of individual action in respect of the non-payment of a particular instalment than in respect of the whole sum due of which the instalment forms but a part.

Paragraph 18, the provision on which the French rely, merely forms part of one of the annexes to the reparation section. It is an annex which may even be amended by the allied powers represented on the reparation commission without the consent of Germany:-

(See paragraph 22. "Subject to the provisions of the present treaty, this annex may be amended by the unanimous decision of the governments represented from time to time on the commission").
(Signed) Cecil J.B.Hurst,
22nd May, 1922.