

TO
Stamp
8
Copy
8/1/00

on cover of file folder

CAH 70- JRSO/NY

No. 8776.

For Mr. Gen.

- discussion of quadripartite discussion.
- treatment of housing & real estate
- Austrian "control" of homeless assets
- Austrian restitution laws summaries & 4th law

* See memo to AJDC about problems of restitution in Europe
 See Robinson article, reference to stocks from Dutch

Bates: 343226-271

Front Side

- Memorandum #2 discussing NY legislation
- Problems of Austrian Restitution Law
- Certificate of Interpretation of Jewish Restitution Commission

PHOTOCOPY PRESERVATION

Back Side

Attached to "Front side" (see above)

Copies Made

Bates range: 343176-198

Copies Made

Bates range: 343199-225

L A H J P - J R S O / M Y

File No. 951

For Mr Gene Sojer

① See Kagan to Rubin 12/2/57

② See Silberstein to Kagan for how vague
this all was 8/15/63

Fallon

Bates: 343272 - 280

CAHP - JRSO/NY

887 a

For Mr. Gene Sofer
Pursuant to custodian for property for
under law 52. See JTA story.
See pertinent laws & codes to
Adelson re: need for Successor organiza-
tion.

Bates: 343281-293

CAHP - JRSO/NY

No. 281 d

For Mr. Gene Sofer
Jewish securities in Germany (2 documents)
letter in German to be translated

CLINTON LIBRARY PHOTOCOPY

Bates: 343294-305

LAHJP - JRSO/NY

8876

For Mr. Gene Sofer

Player in Jewish Reconstruction Commission

Extension of deadline for claims against foreign enemy govt.

30405: 343306-315

CAHJP

JRSO/1/4 No. 919

For Mr. Gene Sojer

Bates: 343316-343320

LAH JP-JRSO/NV
869

For Mr. Gene Sojer
See Berlin letter re: Italian assets

Spies Made

Bates range:
343167-175

Bates range: 343167-175

CAHJP Return to Am J Com

COPY

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (U.S.)
Legal Division
APO 742

21 May 1947
Number 18

Mr. Max Lowenthal
467 Central Park West
New York, New York

Dear Max:

Attached hereto is a copy of a memorandum I prepared to show the status of the quadripartite negotiations as of the 20th of May. I prepared this memorandum in connection with a conference which I asked Rockwell to call this morning with Bennett, Ball and Cassoday. We discussed the prospects of obtaining quadripartite agreement and the probable time schedule, and, as a result, a cable is being drafted for Clay's signature to go to State Department summarizing the situation and asking what compromises would be acceptable in order to obtain quadripartite agreement.

I had originally planned to call a conference with Clay for last Sunday to report on the status of the negotiations and point out to him that, in order to meet the 60-day deadline (which is over the first week in June), we ought to try to bring the negotiations up to CORC immediately. Rockwell agreed with this but Bennett objected very violently and insisted that, since Cassoday estimated that he would be in a position to state the exact position of the various parties with respect to the entire law by Wednesday, May 21 (today), we should wait until that time before considering an approach to Clay. Under the circumstances, I agreed to wait until today before seeing Clay. On Saturday (the day after my conversation with Bennett), we spent seven hours discussing Article 20 and wound up with a two to two disagreement. The Russians again brought up the question of identifiable property, stating that, if property was lost or destroyed, it was no longer identifiable, and that in such case claimants should have no greater rights than UN Nationals who can no longer trace their property and have to seek compensation from the Reich Government. The French agreed with the Russians that the word identifiable cannot apply to property lost or destroyed, but are willing to grant that the claimant can seek compensation in lieu thereof from the restitutor. The British and Americans both insisted that identifiable refers to property identifiable as of the time of confiscation. At the end of the day, when we were discussing the setting of the dates for the next meetings, the Russian said flatly he

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cannot agree to meet more than twice a week and that the restitution law should have no priority in the discussions over the Russian paper on Disposition of Property of Nazi Organizations. In general the whole attitude of the Russian representative had suddenly become obstructive since our informal meeting on Wednesday, May 14, at which time he had specifically accepted Article 20.

Yesterday, (Tuesday, May 20) the Russian was a little more conciliatory and some minor progress was made. The French agreed in general with Article 21 but reserved final opinion until the next meeting. He insisted on the deletion of the words "and are fully secured by" in the middle of the second sentence. This is agreeable to me since it adds nothing which is not covered by the phrase "for which the restitutor may claim compensation under Articles 17, 18, and 19". The Russian said he would agree provided the deletion was made. I believe this article will be agreed on at the next meeting. With respect to Article 22, the Russians and French said they considered the first sentence useless and objected strenuously to the second sentence. Cassoday was unable to justify what is in reality a very innocent provision meant to prevent claims for improvements by holders for what do not actually constitute improvements but merely represent an inflationary increase in Mark values, e.g., where a holder has confiscated land with a house on it and remodels the house into an apartment building of no greater value. The Mark value of that property at the present time might be 100 times what it was at the time of remodelling, but since remodelling did not actually constitute an improvement of the property, this would prevent the holders from claiming compensation for something which is not actually an improvement. It was thus a two to two disagreement on Article 22.

Article 23 was agreed on after changing all the shalls to may and the may to shalls. In paragraph B, second line, strike the words "the rights of persons" and substitute "the housing conditions and the measures for the protection of tenants". Line 4, change 1946 to 1942. Line 5, put a period after the word "parties. Line 6, strike the words "with the following provisions" and substitute "the regulations may take into consideration the needs of the claimant, for example:". Strike sub-paragraph 1. Renumber sub-paragraph 2 to be sub-paragraph 1. Strike the words "the claimant shall have the right". In the third line of sub-paragraph 2, strike the words "his close relatives" and substitute "members of his family" (as defined in Section 53 of the Criminal Code." Renumber sub-paragraph 3 to be sub-paragraph 2; strike the words "the claimant shall have the right". Delete sub-paragraph 4.

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Attached is a copy of the revised Article 23 as agreed upon.

Article 24 was agreed on without discussion. Article 25 was agreed on after deletion of words "but such refund shall not exceed the amount of the equity in the property restituted to him. Likewise,". There will thus be a period placed after the word "restituted" at the end of the third line and the word "the" at the end of the fifth line will start a new sentence. The French objected to having this provision here on the grounds that it contradicts the provisions of 17, 18 and 19 which purport to be complete. Since his objection was merely one of organization rather than of principle, we agreed to delete this phrase from Article 25 on condition that a similar provision be inserted in 17, 18 and 19.

Article 26 evoked strong objections from the French and Russians as it stands. The Russians see no reason why the German Civil Law should not apply (i.e., no acceleration); the French felt the provision was much too broad as its present wording would apply to obligations incurred by the claimant prior to the confiscation. They therefore suggested insertion of the phrase "incurred for improvements" after the word "mortgages" in the second line. This compromise suggestion is acceptable to us, but final agreement on the Article was postponed until the next session which will take place on Friday, May 23.

Thus, with slightly less than two weeks to go before the end of the 60-day deadline, the Property Control Committee (the committee of the first instance) has finished consideration of slightly more than half of the provisions of the American draft. No meetings are contemplated for next week, inasmuch as the French representative will be in Baden-Baden. At the meeting with Bennett, Ball, Cassoday and Rockwell yesterday morning, we discussed the present status of the negotiations and decided that, even if Clay were to immediately ask CORC to set a deadline on the negotiations in the Property Control Committee and the Legal Directorate, it would be at least the middle of June before a paper could be submitted to CORC from Finance Directorate showing the points of agreement and disagreement. The consensus of opinion was that it would take a minimum of 30 to 45 days to clear it from CORC to the Legal Directorate and a minimum of a month in the Legal Directorate, so that there is no hope of any actual quadripartite promulgation before the middle of August.

We then discussed what compromises, if any, the U.S. ought to make in order to obtain quadripartite agreement. Bennett was willing to compromise the Successor Organization provision by permitting escheat to the State on condition that the funds be used for the relief and rehabilitation of Nazi victims. I

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pointed out that this would be in flat contradiction of the position taken by the U.S. Government with respect to the Satellite Governments and that it most certainly would not be acceptable to the Jewish organizations from a moral even more than a financial standpoint. Bennett, of course, is willing to jettison the power of avoidance provision and meet the French objection by making the presumption rebuttable on proof that fair value had been paid. I pointed out that there are really only two provisions in the whole draft which introduce new ideas into the German Civil Law. These are the provisions for a successor organization rather than escheat to the State and the provision for the power of avoidance (that is the presumption of duress). Without these provisions, we might just as well go back to the German Civil Code instead of spending a year and a half drafting a law of restitution to Nazi victims. I said that I definitely would recommend to Clay against any compromise on either the Successor Organization provision or the presumption of power of avoidance. I said, if necessary, I would be willing to use Article 7 (Election of Remedies) as a trading point.

It was decided not to make any recommendations to Clay, but merely to prepare a factual summary in the form of a cable to Washington and discuss it with Clay on Saturday. I will call you Saturday night, May 24, to give you the latest information.

I would like to discuss, as soon as possible, with the Organizations this question of whether we are willing to take any compromises in the American draft in the interests of getting a quadripartite agreement. For my own part, were it not for the Berlin property which looms so large, I would be willing to say the hell with it, inasmuch as it is quite certain that we will get very little out of the Russian Zone and there isn't much worth worrying about in the French Zone. Moreover, it may be that, if we got a bipartite zonal law, we can then, at a later period, reach some less satisfactory compromise in the Kommandatura with respect to Berlin property. On the other hand, it would be desirable to have a quadripartite law if it would not involve too much substantive sacrifice. There are thus really two questions to be considered: granted a quadripartite law is desirable (1) how long are we willing to wait to obtain such an agreement? and (2) how far are we prepared to retreat from our present position in order to obtain such agreement.

With respect to (1), I would like to see a barrage of cables, beginning immediately, from the Organizations and, if possible, from State Department concerning progress of the negotiations. Then, after the first week in June, inquiries as to whether it is contemplated to immediately proceed with unilateral promulgation. If the answers to these cables are still equivocal, pressure must be put on to the effect that, if immediate agreement at the highest levels of Control Council cannot be obtained, U. S. should proceed to unilateral or bizonal legislation.

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If OMOUS argues about the desirability of quadripartite legislation, I think it should be pointed out very strongly that, unless the provisions for the power of revocation and heirless property are in the law, State Department and the Organizations consider that such a law would have little value over and above recourse to the normal provisions of the Civil Code and that, if these provisions are not acceptable to the Russians and the French, there is no further point in discussing the matter with them. The procedure should then be to pass bizonal restitution laws and then bring the pressure on the Russians and the French to at least make available to victims of Nazi action the relief granted by the Civil Code, together with such presumptions and other relief granted in our draft as they are willing to accept.

With respect to the question of heirless assets, I would like a statement from the Organizations, at the earliest possible moment, as to whether they would accept as a last resort a formula based on the agreed provisions of the Austrian peace treaty (Article 44, paragraph 2 agreed by the Council of Foreign Ministers at Moscow, April 19). You will recall that it was agreed there that Austria will take under its control (not take title to) all heirless and community property and transfer such property "to appropriate agencies or organizations to be designated by the Four Heads of Mission in Vienna, in agreement with the Austrian Government to be used for the relief and rehabilitation of victims of persecution by the Axis powers." I would like to know whether, as a last resort, the Organizations would accept a formula for Germany along the following lines: The Laender shall take heirless and community property under its control (not title--they already have control in the American zone since Finance Division has turned all blocking of duress property to German agencies) and transfer such property to agencies or organizations to be designated in each zone by the respective zone commanders thereof to be used for the relief, etc. Obviously, Military Government cannot be required to limit its appointing powers by having to obtain the agreement of the Laender Governments to its designation of the Successor Organization, although, it might agree to consult the Laender Governments before making any such decision. My formula makes nothing but a verbal change in the original American proposal, but it more or less follows the formula already agreed on by the French and Russians at Moscow with respect to Austria. We could not accept, of course, a provision that the organizations shall be quadripartitely designated as that would make impossible I think the appointment of an international Jewish Successor Organization. There is a possibility that, if such a formula were offered as a compromise at the proper stage of the negotiations, it might be acceptable to the Russians and the French.

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Incidentally, the French position with respect to successor organizations (that is the French position as stated in Property Control Committee and not in Paris) is that there should be only one successor organization for each Zone or Land and not an organization for Jewish property, one for Catholic property, one for trade union property and separate ones for each political party, etc. Moreover, the French say that, if such single successor organizations are set up, it should provide all the relief for persecutees and the Land Governments should be relieved of this burden. As I indicated in my previous letter, Savary, the Chief of the French Control Office for Germany, indicated that in Paris they had no basic objections to our draft. I think that I shall have to make another trip to Paris very shortly and see if I can't clear up the French position on the successor organization and presumption of duress (on this latter point, the French have strongly insisted in the Property Control Committee that proof of payment of fair value should rebutt any presumption of duress).

On the question of power of avoidance, I would like the organizations to consider whether they would be willing to accept the following compromise: The power of avoidance shall be irrebuttable (with the two exceptions already provided in our draft) with respect to claimants from whom the property was originally confiscated; with respect to their successors in interest, the presumption shall be rebuttable with respect to transactions up to 1938 by proof of payment of fair value--and the burden would then be on the claimant to show duress. After 1938 the presumption would be irrebuttable with respect to all transactions.

I think this formulation might go a long way to meet the objections of the French and even of Bennett and his crowd. The point is that in a number of transaction, fair value was paid and took place between a victim and an Aryan friend. In many such cases, the original victim, although having the right to rescind the transaction, would not do so, whereas a successor in interest, not knowing the circumstances under which the transaction took place, would tend to insist on its right to rescind which might work an injustice on the purchaser. This formula was worked out by Marcuse and I am inclined to think we ought to accept it as a last resort, if it was all that stood between us and a quadripartite law. It might even be so worded as not to preclude the possibility of returning to the original formula in the American zonal implementation.

I would like an answer to these questions at the earliest possible moment in a confidential letter. I would not show them to anybody unless it appears that we either must compromise or give up all hope of a quadripartite law.

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Incidentally, I spoke to Moo Leavitt when he was here about the possibility of the Successor Organization hiring Herman Marcuse to draft proposals for the implementing regulations and possibly to remain on their staff as a German legal expert. Marcuse's contract is up in June and, although they have offered to renew it, he has refused to stay on. I think he has been rather shabbily treated by OMGUS. He richly deserved promotion from P-5 to P-6 which was recommended by Rockwell was turned down by Personnel on the grounds that he "did not have enough experience as a lawyer". The real reason is the ten-year citizenship rule about which I wrote to you some time ago. Marcuse knows more about the technical aspects of the restitution law and its relation to the German law than anybody else concerned. I think he would be a valuable asset to the Successor Organization and certainly deserves some reward from them for the amount of work he has put in on the restitution law.

With an eye to the future, I have been making a survey of the kind of research that must be done over here. I think that work should start immediately on the analysis of the various dossiers in the Divesenstellen, Haufsfinzamt, etc., etc. These vital documents are all in the process of being turned back to the Germans and I am very much afraid that, unless some measures are taken to safeguard them, many important ones will be irretrievably lost. I think that to a large extent we might make use of German Jewish personnel in each of the cities where these offices are located, but we need three or four key American personnel with administrative and financial investigating background as well as a knowledge of German to head up the project. I think Saul Kagan, Chief of the Finance Investigating Section or Captain Fischbein, head of the Finance Division Document Center would do very well for this job. I have sounded them out and they are both interested. As soon as I get a chance, I intend to draft a proposal to Clay for the isolation and protection of these documents and for permission to the Jewish organizations to have access to them. If you have any ideas on this matter, please send them along.

Please apologize to Noel for me for not having written to him. I do intend to get around to writing a long letter one of these days, but I'm sure that you keep him up to date on everything I've got to say, and I've sort of gotten out of the habit of writing personal letters.

Best wishes from Helen and myself.

(signed) Irwin
Irwin S. Mason

P.S. Attached is a copy of a letter I wrote to-day to Andre Blumel.

Enclosures

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Dispositions taken by Property Control Committee up to 20 May 1947 with respect to provisions of U. S. proposal of Quadripartite Restitution Law.

As of 20 May 1947, Property Control Committee had considered 26 articles. It had agreed on 9. It appears probable that agreement will easily be reached on 9 articles. There is a possibility that the Russian and French objections to 4 articles can be overcome in this committee. 3 articles are subject to basic disagreement by both the Russians and the French which cannot be met without compromising the American position.

Agreed:

Preamble, Articles 1, 3, 8, 10, 15, 16, 23, 24 and 25.

Probable Agreement:

Articles 5, 9, 13, 14, 17, 18, 19, 21.

Possibility of Agreement without Compromising the American position:

Articles 11, 12, 20, 22 and 26.

Strong Disagreement by Russians and French:

Articles 4, 6 and 7.

Discussion of Article 2 was postponed until completion of all the other articles.

THE JEWISH RESTITUTION COMMISSION

April 2nd, 1947.

**The American Jewish Joint Distribution Committee
The Jewish Agency for Palestine**

Gentlemen:

In order to carry out the purposes of the corporation the American Jewish Joint Distribution Committee and The Jewish Agency for Palestine have been designated to act jointly as the sole agents of the Commission in all matters relating to property (other than Jewish cultural, religious and historic objects) with which the Commission, in the course of its work, will be concerned.

The imminence of the enactment of a Restitution Law for the American Zone of Occupation in Germany, and other developments in Europe, as well as in the United States, have rendered it necessary that the Commission should begin to function at the earliest possible date in order to carry out the purposes for which it was formed.

Accordingly, the Commission hereby requests the American Jewish Joint Distribution Committee and The Jewish Agency for Palestine to proceed with this work, in the name of the Commission, on the following understanding:

1. The American Jewish Joint Distribution Committee and The Jewish Agency for Palestine shall, as quickly as practicable, create such administrative machinery, hire such personnel, in the United States and abroad, as, in their opinion, shall be necessary and adequate for the proper implementation of the work.

2. All funds required for the creation and maintenance of such administrative machinery, and for payment of salaries and expenses connected therewith, shall be advanced by the American Jewish Joint Distribution Committee and The Jewish Agency for Palestine; such advances to be repaid solely out of proceeds received by the American Jewish Joint Distribution Committee and The Jewish Agency for Palestine in consequence of their activities hereunder.

3. All property and income received and held in consequence of the activities of the American Jewish Joint Distribution Committee and The Jewish Agency for Palestine, as agents for the Commission, after deduction of administrative and other expenses arising out of such activities, shall be employed by the American Jewish Joint Distribution Committee and The Jewish Agency for Palestine in their work of relief, rehabilitation, reconstruction, resettlement and immigration pursuant to the purposes of the Commission as set forth in its Certificate of Incorporation and its By-Laws in such manner as they shall determine.

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April 2nd, 1947.

American Jewish Joint Distribution Committee
The Jewish Agency for Palestine

4. The American Jewish Joint Distribution Committee and The Jewish Agency for Palestine will render, at least twice a year, detailed reports of their activities as the agents of the Commission. Detailed financial reports will be furnished to the Commission at least once a year. The first of such reports shall be rendered by The American Jewish Joint Distribution Committee and The Jewish Agency for Palestine not later than October 1st, 1947.

5. It is understood and agreed that the American Jewish Joint Distribution Committee and The Jewish Agency for Palestine will have full administrative control over all administrative bodies created by them for the purposes of carrying out the work of the Commission. The American Jewish Joint Distribution Committee and The Jewish Agency for Palestine will consult with the Board of Directors of the Commission on basic questions of policy, and will act in accordance with the decision of the Board on such matters.

6. The Commission will advise the Government of the United States and such other governments and authorities, as occasion may require, of the designation of the American Jewish Joint Distribution Committee and The Jewish Agency for Palestine as its sole agents in all matters relating to property (other than Jewish cultural, religious, and historical objects), and will issue such authorization as they may need from time to time in order to enable them to carry out their work on behalf of the Commission.

7. The American Jewish Joint Distribution Committee and The Jewish Agency for Palestine agree that they shall, to the best of their ability, act as the agents of The Commission as aforesaid, and that, as such agents, they shall promptly undertake necessary and appropriate measures and activities in order to discover, claim, acquire, receive, hold, maintain, manage, administer, hire, sell, liquidate, and otherwise dispose of any and all property and property rights (other than Jewish cultural, religious, and historical objects) over which the Commission shall have jurisdiction, and to apply the income therefrom, increments thereto, and proceeds thereof in accordance with the provisions of Paragraph "3" of this letter.

Will you please indicate your acceptance of the foregoing.

Sincerely yours,

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Office of the Adviser on Jewish
Affairs to the Commander in Chief.

HEADQUARTERS
EUROPEAN COMMAND

Office of the Commander in Chief

APO 757, c/o Postmaster
New York, New York

2 April 1947

Mr. I. L. Kenen
American Jewish Conference
521 Fifth Avenue
New York 17, New York

Dear Mr. Kenen:

I am herewith enclosing a copy of the proposed Fourth Austrian Restitution Law. I have requested a translation of this law and will critique it for the Rabbi when I receive a translation.

It is my present plan to go to Vienna within the near future and there check on the progress being made on the enabling ordinance relative to the Third Restitution Law. At the same time, I will make whatever recommendations I deem appropriate on the Fourth Restitution Law.

Will you please submit the Fourth Restitution Law to the people who advise you on matters of this nature and let me have your comments and recommendations at the earliest possible date.

Cordially yours,

(Signed)

ABRAHAM S. HYMAN
Major JAGD
Legal Consultant to Adviser on Jewish Affairs
to Commander-in-Chief, European Command

ASH:ow
Encl.

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DEPARTMENT OF STATE

FOR THE PRESS

APRIL 4, 1947
NO. 284

AUSTRIAN RESTITUTION LAWS

During the period from September 14, 1948, to March 28, 1947, the Government of Austria has put into effect three laws dealing with the restitution of property which, in connection with the National Socialist assumption of power, was taken away from its owners after March 18, 1938 for so-called racial, national or other reasons, either arbitrarily or on the basis of laws or other regulations.

The First Restitution Law covers property presently subject to administration by the Federal or State governments of Austria (as trustee for the former German authorities). The Second Restitution Law covers property where title has passed to the Federal Government of Austria. The Third Restitution Law covers all other cases where property has been taken away, except:

1. claims of employees,
2. claims of leasees of apartments and business premises and small produce gardens,
3. claims based on the confiscation or the prevention of the exercise of patent rights, or other commercial protection rights, or other intangible property rights,
4. claims based on public law which fall within the competence of the administration authorities.

It is expected that special legislation will regulate these claims.

Under all three laws claims may be filed for restitution by the original owners of the property. If the original owner shall have died, the spouse, parents, children, brothers and sisters, and nephews and nieces may file claim if the estate has been probated. Failing these heirs, other heirs at law may make claim if they had been a part of the decedent's household. Where the estate is in probate the executor or administrator may file claim.

Claims under the First and Second Restitution Laws should be filed with the Finanzlandesdirektion for property located within the particular Finanzlandesdirektion District. Where property is located within more than one such District, or if the claimant is unable to determine in which Finanzlandesdirektion his property is located, the Austrian Federal Ministry for Safeguarding Property and Economic Planning (Bundesministerium fuer Vermoegenssicherung und Wirtschaftsplanung) has agreed to receive claims for forwarding to the competent Finanzlandesdirektion. However, it is desirable that as far as possible claims be filed directly with the competent Finanzlandesdirektion in order to avoid extra handling and delay.

Claims under the Third Restitution Law should be filed with the appropriate Restitution Commission (Rueckstellungskommission). A Restitution Commission will be established at each Landesgericht (Provincial Court) having jurisdiction in civil law matters. Its competence will extend throughout the Federal Land in which the Landesgericht is located. For Vienna, lower Austria and the Burgenland the Restitution Commission will be established at the court for civil matters, Vienna. The jurisdiction of the Commission at the Landesgericht Linz-Nord will cover the district of that court.

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Claims may be filed by an attorney in fact. The power-of-attorney must be executed subsequent to April 27, 1945. It should be notarized and sent with County Clerk's certificate to the Legation of Austria, Washington, D. C., for authentication. Unauthenticated powers-of-attorney will not be recognized as valid by the authorities in Austria.

Because of the technical nature of these laws, and because it is the responsibility of the individual claimant to determine under which law his claim should be filed, it would appear desirable that a competent Austrian attorney be empowered to act as attorney in fact. There is on file with the Department of State a complete list of attorneys who have been approved by the Bar Associations of Vienna, Graz, Linz, Salzburg, Klagenfurt, Innsbruck, and Feldkirch.

Neither the Department of State nor, it is understood, the Legation of Austria in Washington is equipped to be of any assistance in the interpretation of these laws or in the filing of the claims. The American Legation at Vienna, likewise, is in no position to file claims or to interpret the restitution laws. However, the American Legation in Vienna will render every possible facility and assistance to the designated agents in Austria of American citizens. These representatives may call upon the Legation to obtain documents which have heretofore been filed by prospective claimants. In addition, the Legation will send to applicants copies of memoranda prepared by the Austrian Ministry for Safeguarding Property and Economic Planning concerning the method of filing restitution claims under these laws.

It should be clearly understood by persons having claims, that any previous filing of papers with the Department of State or the American Legation in Vienna does not constitute a proper filing for the purposes of obtaining restitution under the Austrian laws. Nor does the filing of forms TFR 500 with the U.S. Treasury Department constitute filing of claims. Furthermore, persons who have merely reported to the Austrian Government, under the Austrian Government, under the Austrian law of May 10, 1945, as amended, the fact that property has been taken away from them, should not regard these statements as proper claims. Claims can be filed only in the form provided for by each particular restitution law.

It should also be noted that the claims together with all their supporting documents must be in the German language.

Claims under the First Restitution Law should be filed before September 14, 1947. Claims filed under the other two laws should be filed within one year after the date of their enactment, or March 28, 1947.

* * * * *

TRANSLATION OF LAW.....GOVERNING LAWS OF INJURED OWNERS OF RIGHTS TO PREMISES
(Fourth Restitution Law)

I.

(1) - Subject matter of this law are tenancy rights in dwelling rooms and business premises, as well as in properties used for industrial purposes or for small produce gardens of whose exercise the claimant was deprived during the German occupation of Austria, either through arbitrary measures or as the result of laws or other enactments, in particular through legal transactions and other legal acts connected with the seizure of power by the National Socialists.

(2) - The provisions of this law do not apply to claims arising from the deprivation of rights to premises whose restoration is governed by other restitution laws, nor to rights arising from sub-leases unless the latter extended to entire apartments or business premises.

II.

(1) - The injured claimant can apply within one year after the coming into force of this law to the Restitution Commission which has jurisdiction by reason of the locality of the premises, to have said premises vacated by the person who himself seized them, in one of the ways enumerated in I above, or who has caused their seizure or has participated therein and who is still in possession, as well as against any person who after seizure occupied the premises without valid legal justification. The period of one year can be extended by order of the MINISTRY FOR SOCIAL ADMINISTRATION.

(2) - The immediate successor of the party injured in the exercise of his rights to the premises, is to be presumed to have caused the seizure or participated in it. The burden of proving the contrary rests upon him. The following persons shall be deemed to be in the same position as the immediate successor: his parents, children and spouse who have acquired the right to the premises from him; and occupiers of premises who, after the termination of Austria's occupation acquired the right to the premises although they knew of the existence of injured rightful claimants.

(3) - Rightful claimants within the meaning of Par. II (1) include in the case of leases of apartments, the injured rightful claimant's, spouse, children, parents,

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brothers and sisters and their sons and daughters, if at the time of the seizure they were members of his household. In the case of business premises and premises used for industrial purposes, it includes the injured rightful claimant, the spouse and children. The same applies to leaseholds of small produce gardens if the last named persons participated at the time of the seizure in the operation and exploitation of the property.

(4) - The Restitution Commission has to order vacating and has to fix an appropriate period for vacating. Extension of that period is inadmissible. With vacating (i.e. handing over of the premises to the injured, rightful claimant II(1)) rights created after seizure are extinguished. The injured claimant (II-(1)) has to pay rent from the date of vacating.

(5) - The provisions of sub-sections 1 to 4 apply also if the occupier of the premises is in occupation solely as the result of a temporary occupation permit issued by the competent authority.

III

(1) - If the occupier of the premises (2) himself was subjected to political persecution under National Socialism, the Restitution Commission has to weigh the opposing interests of the parties and to exercise its equitable discretion. If it holds the interests of the occupier of the premises to be more deserving of protection, it has to reject the application for vacating and has to liquidate the rights to the premises of the injured rightful claimant.

(2) - Whether the occupier of the premises was subjected to political persecution under National Socialism is to be decided by the Commission on the basis of testimony given by the Federation of Formerly Political Persecuted Anti-Fascists.

IV

(1) - If no claim is made within the prescribed period, by any one of the persons entitled to claim under II, or if these persons have renounced their claims, the community (Gemeinde) can make the claim within a further six months after the termination of the period fixed in II (1).

(2) - Such premises are to be allotted to injured rightful claimants (1) who have lost their premises under III, or as a result of the destruction of the premises through

- 3 -

the war, or who cannot make effective claims to their premises because of the lack of legal requisites in the person of the occupier. Details will be regulated by decree.

V.

Legal transactions effected after the 27th of April 1945 shall not affect the making effective of claims under this law unless the injured claimant has renounced his claim.

VI.

As for other matters, provisions of the Third Restitution Law are to be applied to wherever applicable.

VII.

The Ministry for Social Administration in agreement with the interested other Ministries, is charged with the execution of this law.

ARBEITSGEMEINSCHAFT

ZUR VERTRETUNG PRIVATER VERMÜGENSINTERESSEN IM AUSLAND

Z Ü R I C H
Jenatschstr. 1

Zurich, February 27, 1947

American Joint Distribution Committee

New York

As you know, of course, the former German regime had arranged in all countries under its influence to have unpopular owners deprived of their property. The particular forms of this dispossession are only too well known, so that they don't have to be described here in any detail.

Many of these victims of dispossession are unfortunately no longer alive. Some, however, succeeded in escaping abroad. Because of their long absence and the course of events they lost contact with the authorities who today would have to arrange for a possible restitution. Many of these persons hesitate to undertake any of the necessary steps, because they believe that they don't have the necessary means and even doubt that restitution of their property is possible.

For the individual it is indeed difficult and often unproportionally expensive, to press his claims with the proper authorities. Not all of the many persons who offer to represent his interests have the necessary knowledge and are worthy of such trust.

In Switzerland all claims of persons who are not able to represent their own interests are taken care of by the "Arbeitsgemeinschaft zur Vertretung privater Vermögensinteressen im Ausland" (Cooperative for the representation of private property claims from abroad) which has its headquarters in Zürich and branch offices in Bern and St. Gallen. The collaborators of the ARBEITSGEMEINSCHAFT in the different occupation zones are all experts with the necessary knowledge of economic and legal aspects. They dispose over the necessary contacts to the proper authorities in their field of work.

Moreover we must point out that these authorities at the moment deal only with comparatively great values, while claims for apartment furnishings, etc. are being postponed. Thus we would suggest that at present only such cases are submitted to us which are substantial enough to be simply filed away by the authorities as being too insignificant.

On the basis of the existing decrees, we are working so far in the following regions:

- 1) Czechoslovakia
- 2) Austria
- 3) Germany
 - a) Russian Zone
 - b) French Zone
 - c) American Zone
 - d) English Zone
 - e) Berlin
- 4) Holland

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-2-

The two offices in Bern and St. Gallen will process the materials which are sent to them and will forward them to the appropriate collaborators with all documents for further handling.

I am sure that this information will be of interest to you and to your circles, and can assure you that all cases you might refer to the ARBEITSGEMEINSCHAFT, will be handled with the greatest of care.

Sincerely yours,

ARBEITSGEMEINSCHAFT ZUR VERTRETUNG
PRIVATER VERMOEGENSINTERESSEN IM AUSLAND

Translation from the German

AU

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ARBEITSGEMEINSCHAFT
ZUR VERTRETUNG PRIVATER VERBOEGENSINTERESSEN IM AUSLAND

Z U R I C H
Jenatschstr. 1

Office ST. GALLEN
Oberer Graben 12

Office BERN
Marktgasse 51/III

Dear Sirs:

With further reference to our enclosed letter we would like to inform you that

1. The BERN office of our "ARBEITSGEMEINSCHAFT" is under the direction of

Dr. jur. Georges Brunshvig, counsel

B e r n, Marktgasse 51, and

2. The ST. GALLEN office is under the direction of

Dr. jur. Erwin Deneberg, lawyer

St. G a l l e n, Oberer Graben 12.

All cases are being processed immediately by both offices. The two directors of the offices offer the fullest guarantee for reliable and expert handling.

ARBEITSGEMEINSCHAFT ZUR VERTRETUNG
PRIVATER VERMOEGENSINTERESSEN IM AUSLAND

Translation from the German
AU

343244

NEWS *from*

WORLD JEWISH CONGRESS

1834 BROADWAY
NEW YORK 23, N. Y.

Circle 6-1900

RESTITUTION IN EUROPE

by Nohemiah Robinson

RECEIVED	
NOTED BY	REFER TO
	<i>[Signature]</i>
APR - 7 1947	
ANSWERED	

[Handwritten signature: J. Restitution]

According to careful and conservative estimates, the Jews who fell under Nazi domination were robbed, through confiscation, sequestration and other transfers of wealth, worth in 1938, at least some 8 billion dollars. This robbery was not only a reason for and a consequence of the German anti-Jewish measures; it served also the purpose of augmenting the Nazi war chest. But its most obnoxious and corrupt feature was to win allies by transferring Jewish property to organizations and individuals in Germany and abroad, thus creating "vested interests" whose holders became not only willing tools but also staunch supporters of the Nazi and Fascist regimes.

The Allies, early in the war, recognized that these acts of spoliation were not only harmful to the victims but also constituted a grave danger to orderly state practices. The Governments-in-Exile issued laws, decrees and declarations proclaiming the nullity of such acts or promising to nullify them and even threatened the accomplices of such acts with heavy fines. On January 5, 1943, the Allied Nations joined in a United Nations Declaration to state solemnly that they will not tolerate these acts whatever their form. These domestic and international acts contained a warning to third persons not to acquire robbed property and a promise to the victims that the wrong done will be remedied.

Almost two years elapsed now since the end of the war in Europe. What is the state of restitution at present? Although the situation varies somewhat from country to country, the following picture is true of almost all countries.

A large portion of Jewish wealth consisted of movables, securities and monies. These items were to the greatest extent either carried away, consumed, or are in possession of persons who cannot be traced, or are protected by existing legislation. Industrial and commercial enterprises, insofar as they are restored, are mostly empty shells as the stocks and machines were sold, transported abroad or otherwise disappeared. Real estate, whose ownership is easiest to trace, is being restituted but a large part suffered damage or was dilapidated.

In Germany, where the estimate for the value of Jewish properties as of 1933 (made by the Statistical Bureau and the Institute of Business Research) amounts to 8.2 billion RM, while more recent evaluations speak of 9.5-10 billions, no legislation has been enacted so far to reconstitute even properties outrightly confiscated by the Nazi regime; the only action possible is to put such properties under administration by German bodies supervised by the Allies. The result of the registration by the present possessors was insignificant; requests for such action made by the owners somewhat alleviated the situation, but they are scattered and tardive. For instance, in all four sections of Berlin - a city in which over 160,000 Jews lived in 1933 - only some 3900 former Jewish houses and about 200 small enterprises are at present in the administration of the custodian for Jewish properties. The Military Government and the German authorities in the US Zone have been working on a restitution law for over a year; the draft has recently been completed but its enactment is still stalled by the German Laenderrat. Some progress has been made in the French Zone, very little in the British Zone and of the Russian Zone Thuringia alone is known to have enacted a restitution law of dubious quality. No action on a quadripartite basis could be arrived at so far.

In Austria a law of compulsory registration of spoliated properties was enacted in September 1946, but so far only some 25,000 objects were registered, instead of the estimated 60,000. The first restitution law dealing with outrightly confiscated properties was promulgated at the same time and two others were passed only recently. The progress of restitution was very restricted until now, in part owing to the Russian claims and to other difficulties inherent in the mixed regime. Although there were 180,000 Jews in Vienna in 1938 and only about 8,000 at present, a large portion of them cannot regain their apartments and other premises; the bill introduced for this purpose would rather perpetuate the injustice than remedy it.

In France restitution of available properties, especially real estate and enterprises, was carried out on a quite satisfactory basis. But restitution of apartments and other premises failed to materialize to a very large extent, and

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restoration of movables is lagging considerably. The Jewish tax of about 1 billion francs levied in 1941 has not yet been repaid.

In Belgium confiscated properties have been in general, insofar as they are available, restored. However, the much promised law facilitating restitution of properties transferred under duress has not yet been promulgated, and the recovery of valuables left with Gentiles before deportation is not being spurred by legislative and other measures.

In Holland the progress of restitution differs according to the category of property but is slow in all cases. All in all, custodians for some 10,000 Jewish objects were appointed but only a part thereof were restored to the owners or their heirs. Restoration of real estate started recently only. A large portion of the wealth consisted of stocks and bonds which were in part transferred to Germany and thence sold abroad (it is estimated that American stocks and bonds worth some 20 million were recently repatriated to the United States as cloaked neutral or allied property).

Czechoslovakia enacted appropriate legislation not too long ago. Restitution is greatly hampered through the requirement to prove "national trustworthiness" by Jewish applicants who years before the war made use of their constitutional right to declare themselves of German or Hungarian "nationality", to use these languages or to attend schools in these tongues. The slow progress of restitution is indicated by the fact that out of about 16,000 Jewish properties in the former Protectorate under administration of the "Auswanderungsfond" at the end of the war only about 2,600 were restituted at the start of this year. In Slovakia where the value of Jewish properties in 1940 was estimated at 4.5 billion crowns some 2,000 claims have already been submitted with an equal number expected to be filed when the necessary formalities have been fulfilled. A very sore problem there is the confiscation of landed estates of all persons who before the war made use of the German or Hungarian tongue in their family intercourse. Meanwhile a large portion of such landed estates was distributed among peasants and could hardly be recovered at all.

In Greece some strides in restitution were made, but out of 2,500 Jewish commercial enterprises in Salonica transferred to Germans and their Greek collaborators only some 100 were restored to former owners so far.

In consequence of the wholesale extirpation of Jews in Europe under the Nazis a large portion of Jewish wealth became masterless or unclaimed. Thus, while there are thousands of uprooted Jewish families who cannot reintegrate themselves into the economy of their country or settle down elsewhere because of lack of means and must be helped from abroad, considerable Jewish fortunes lie idle or are in possession of the "aryanizers" or are taken over by the state or other public bodies. The injustice of this situation was recognized by the Allies when they drafted the peace treaties with the satellite nations and imposed on Romania and Hungary the obligation to turn over such properties to Jewish bodies. Greece renounced on the right of escheat over a year ago but failed until now to implement the renunciation by appropriate action. Italy is expected to follow this example but there is little, if any, sign that other states are desirous of doing the same. Even Switzerland and Sweden, which countries were required by the Paris Agreement on Reparations to make heirless "refugee funds" available in favor of non-repatriable victims of Nazi action, did not comply until now with this request, mainly on the grounds that Allied nations do not themselves fulfil what they require from the neutrals.

The delays and inequities in restoring robbed Jewish properties are in part explained by the general difficulties which beset all European nations in consequence of the war and its aftermaths. This cannot, however, explain fully the meager results of two years of peace. The truth is that in every country the Jews have been considerably reduced in numbers and do not represent a big factor in political life, while the beneficiaries of the robbery of their properties (be it the present possessor or administrator thereof) are much stronger in figures and much more influential, including, as they do, large banks, insurance companies, officials and politicians. At first these beatl possedentes tried open action, as was the case in France where in 1945 the possessors and administrators of Jewish properties formed "protective" associations and overtly protested against restitution. When the authorities dissolved these associations, the open agitation calmed down. Now more subtle measures are employed: incitement of the mob against individual acts of restitution (Hungary), the very recent "Beer case" in Czechoslovakia, the refusal (Romania) or tardiness (Czechoslovakia) of authorities to issue certificates enabling the claimant to prove his case, the refusal or lack of support for the execution of court decisions (Greece, France), tardiness of the officials administering Jewish properties in deciding upon requests or restoring them to the owners, etc.

The World Jewish Congress has since long requested international action or at least international standards in solving this moot problem. Such action or standards would eliminate or at least weaken considerably the influence of the various pressure groups working against restitution and, in many cases, against the sincere desire of the Government. In addition, no Government would have to ask what the others are doing before it embarks on an efficient program. Furthermore, there are in the United States and Great Britain at present considerable numbers of persons having all over Europe large property interest; many of them are American or British citizens. If these nations would employ their influence for the benefit of the victims, their position in regard to restitution and the whole matter of restitution would have had advanced much further than it is today.

COPY OF CABLE

C O N F I D E N T I A L

From: OMGUS Berlin Germany sgd Clay

To: War Department for WDSGA

Laenderrat meeting 11 March.

Decided at that meeting that Laenderrat will submit draft restitution law to OMGUS with following resolution "Ministers presidents * take position that immediate and comprehensive restitution of property confiscated on grounds of race, political opinion or religion is necessary. However, draft is objectionable in various far reaching and legally complicated provisions. This applies to long period for filing claims until 31 December 1948 and to far reaching right of claimants to avoid transactions which provisions may inflict hardship on bona fide and honest buyers. In view of unforeseeable variety of situations falling under draft law it is necessary to give some leeway for discretion in treating individual cases which discretion is not afforded by draft. Greatest objections result from fact that draft law shall be effective in one zone only, particularly since situations under law often extend over territories of more than one zone. Equitable solution of restitution in which governments of US Zone are particularly concerned can be accomplished only by uniform law in all zones.

Military Government is requested to consider above views".

C O N F I D E N T I A L

C O P Y

AMERICAN JOINT DISTRIBUTION COMMITTEE, APO 777 POSTMASTER NEW YORK CITY

VIENNA MEMO 894

February 20, 1947

TO: AJDC, Paris - Mr. Beckelman

From: J.S. Silber

Re: Third Restitution Law

I am enclosing herewith an extract of the Third Restitution Law which was recently passed by Parliament. The extract has been taken from official sources, and we are forwarding it to you in German in order to avoid any incorrect translations or misinterpretations. The parts that have been added or amended are underlined.

The law, even in its amended form, adheres to the fiction that the bona-fide possessor will not be responsible for property consumed or destroyed except through negligence. The bona-fide possessor also retains the proceeds of the property still in his possession or consumed during the time thereof.

Furthermore, in cases of "undue Hardship" the court may, at its discretion assess the amount up to which the holder shall be bound to return the proceeds of the property.

With reference to taxes, such as the "Reichsfluchtsteuer" and "Judenabgabe" the court is given the discretion to determine whether they are to be borne by the acquirer or by the legal owner.

Finally, no provision has been made to secure or control heirless property during the interval between the expiration of the deadline set for claims and the creation of the Fund. This agency has addressed a note to the Austrian Government offering to set up and to assist in setting up the machinery to expedite the bringing of forfeited property under control.

signed J. S. Silber

jss/g
cc: Rabbi Phillip Bernstein

Auszug aus dem 3. Rueckstellungsgesetz.

Par. 5.

- (1) Der rueckstellungspflichtige Erwerber kann gegen den Eigentuerer (Par. 1, Abs. (1)) und dessen Erben (Legatäre) - im folgenden geschaedigter Eigentuerer genannt - die gegen diesen bestehenden Rechte aller Erwerber (Par. 2, Abs. (3)) geltend machen, bei entgeltlichen Erwerb jedoch nur bis zum Betrage, den er selbst bezahlt hat.
- (2) Wurden bei einer Vermoegensentziehung im uebrigen die Regeln des redlichen Verkehrs eingehalten, so hat der Erwerber zwar das entzogene Vermoegen zurueckzustellen, zur Leistung von Ersatz ist er jedoch nur bei Verschulden verpflichtet. Im uebrigen finden auf ihn die Bestimmungen des buergerlichen Rechtes ueber den redlichen Besitzer Anwendung. Par. 338 ABGB ist sinngemaess anzuwenden.
- (4) Wenn die Rueckstellung von Ertraegnissen eine unbillige Haerte fuer den rueckstellungspflichtigen Erwerber bedeutet, kann die Rueckstellungskommission (par. 15) in Beruecksichtigung aller Umstaende des Falles die Hoehe der zurueckzustellenden Ertraegnisse nach billigem Ermessen festsetzen.

Par. 6.

- (1) Der geschaedigte Eigentuerer hat als Gegenleistung nur das zurueckzustellen, was er zu seiner freien Verfuegung erhalten hat. Falls aber die in Par. 5, Abs. (2), erster Satz, bezeichneten Voraussetzungen zutreffen, kann die Rueckstellungskommission nach billigem Ermessen, insbesondere in Beruecksichtigung der persoenlichen Verhaeltnisse und gegenseitigen Beziehungen der Parteien bestimmen, ob und welcher Teil des vom Erwerber bezahlten, vom Eigentuerer aber nicht zur freien Verfuegung erhaltenen Kaufpreises dem Erwerber vom geschaedigten Eigentuerer zu ersetzen ist.
- (2) Ob und inwieweit der geschaedigte Eigentuerer die Gegenleistung zu verzinsen hat, entscheidet die Rueckstellungskommission nach billigem Ermessen.
- (3) Das entzogene Vermoegen ist unbeschadet der Bestimmungen des Par. 5, Abs. (2), mindestens in jenem Ausmass und Zustand zurueckzustellen, in dem es sich am 31. Juli 1946 befunden hat.

Par. 7. Die auf Grund dieses Bundesgesetzes an den geschaedigten Eigentuerer rueckgestellten Ertraegnisse unterliegen bei ihm weder der Einkommen noch der Gewerbesteuer. Fuer Abgabenrueckstaende des Erwerbers, die die Zeit von dem 27. April 1945 auf das entzogene Vermoegen und dessen Ertraegnisse entfallen, haftet der geschaedigte Eigentuerer bis zum Werte der rueckgestellten Ertraegnisse; fuer die Abgabenrueckstaende, die auf die Zeit seit dem 27. April 1945 entfallen, haftet er bis zum Werte des rueckgestellten Vermoegens und der Ertraegnisse.

- Par 9. (1) Die auf den in Par 1. Abs. (1) genannten Vermoegen fuer Rueckstaende anReichsfluchtsteuer und Judenvermoegensebgabe im Grundbuch eingetragenen Pfandrechte sind von Amtswegen oder auf Antrag zu loeschen.
- (2) Hinsichtlich anderer buecherlich sichergestellter oeffentlicher Abgaben oder Steuerstrafen, die waehrend der deutschen Besetzung Oesterreichs vorgeschrieben worden sind, ist auf Antrag die Wiederaufnahme des Verfahrens zu bewilligen. Dem Antrag kommt aufschiebende Wirkung zu. Anhaengige Executionen sind aufzuschieben.
- Par 14.(4) Abwesenheitskuratoren sind zur Geltendmachung von Anspruechen aus diesem Gesetze (Abs.(1)) nur dann berechtigt, wenn sie auf Antrag eines Testamentserben (Legatars) oder eines in Abs. (2) bezeichneten nahen Angehoerigen oder eines Bevollmaechtigten (abs. (3)) einer solchen Person bestellt worden sind. Zur Bestellung solcher Abwesenheitskuratoren ist auch der Vorsitzende der Rueckstellungskommission (Par. 15 Abs.(2)) berechtigt, vor der das Verfahren anhaengig gemacht werden kann (Par. 20, Abs. (1)). Ist der Antrag auf Bestellung eines Abwesenheitskurators innerhalb der in Abs. (1) bezeichneten Frist gestellt worden, kann jedoch der Abwesenheitskurator nicht mehr so rechtzeitig bestellt werden, dass er das Verfahren nach Par. 15 innerhalb der in Abs. (1) bezeichneten Frist anhaengig machen kann, so hat der Vorsitzende eine angemessene Frist zu bestimmen, innerhalb der das Verfahren als rechtzeitig anhaengig gemacht zu gelten hat.
- (5) Sonstige Personen, insbesondere Zessionare, sind zur Erhebung des Rueckstellungsanspruches nicht berechtigt. Inwieweit Anspruache, die nach den vorstehenden Bestimmungen nicht geltend gemacht wurden oder werden koennen, wird ein besonderes Bundesgesetz regeln.
- Par.23 (3) Ist die Rueckstellung des entzogenen Vermoegens infolge seiner wirtschaftlichen Umgestaltung nicht tunlich, so kann die Kommission falls dies den Grundsuetzen der Billigkeit entspricht, dem Erwerber die Leistung eines anderen ihm gehoerigen Vermoegens auftragen, das dem entzogenen Vermoegen nach seiner wirtschaftlichen Zweckbestimmung gleichartig, sehnlich oder gleichwertig ist oder aber auch dem geschaedigten Eigentuemmer eine seinem Schaden entsprechende Beteiligung zusprechen. Gegen den Willen des geschaedigten Eigentuemmers kann aber nur auf Verguetung des Schaetzungswertes erkannt werden.
- Par. 27 Vor dem Inkrafttreten dieses Bundesgesetzes gefaellte Urteile und erlassene Bescheide stehen der Geltendmachung von Anspruechen nach diesem Bundesgesetz nicht entgegen. W
- Par. 28 Wer ein entzogenes Vermoegen in Seiner Macht oder Gewahrsame hatte, ist verpflichtet, dem geschaedigten Eigentuemmer Auskunft ueber dessen Verbleib zu geben. Im falle der Weigerung hat ihm

die nach seinem Wohnsitz zuständige Ruckstellungskommission (Par. 15, Abs. (2)) die Ablegung seines Eides darueber, was ihm ueber den Verbleib des Vermoegens bekannt ist, aufzutragen, sofern der geschaedigte Eigentuerer das Vorliegen der Voraussetzungen der Auskunftspflicht glaubhaft macht. Auf das Verfahren finden die Bestimmungen der Par. 47 ff. Executionsordnung sinngemaess Anwendung.

HIGHLY CONFIDENTIAL

MEMORANDUM NO. 2

Notes on the Meeting Re.

RESTITUTION OF HEIRLESS PROPERTY

Held at the Offices of the American Jewish Conference
Wednesday, February 26, 1947
2:30 PM

1. Representatives of all organizations were present with the exception of an authorized representative from the World Jewish Congress.
2. The American Jewish Conference requested the Chairman of the meeting (Mr. Boukstein) to discuss first the Austrian Third Restitution Law passed on February 6. The analysis of this law, prepared by the staff of the American Jewish Conference, appears to indicate that the law is full of loopholes operating against those who wish to regain their property or against their heirs.

It was the sense of the meeting that a series of objections were to be incorporated into a cable either to General Clark or the State Department, or both, requesting the exercise of a veto since under the rules governing occupation of Austria, a veto by anyone of the four powers is enough to stop the law, provided, however, such veto is exercised within 31 days after the law is passed.

Upon informal advice from the State Department, and after the proposed cable was read on the phone to one of the associates of the State Department, it was resolved to have this cable addressed directly to General Clark (Copy of the cable is attached).

3. Col. Bernard Bernstein again brought up the question of the expansion of the list of organizations who are to be the founders of the Jewish Restitution Commission. He particularly was interested in the inclusion of the Conseil Representatif des Juifs de France and the Alliance Israelite. It was the sense of the meeting that the 12 organizations listed are to be considered as the initial members, provided the JDC does not raise objections:

1. The Jewish Agency for Palestine
2. The American Jewish Joint Distribution Committee
3. The American Jewish Conference
4. The American Jewish Committee
5. The Board of Deputies of British Jews
6. Conseil Representatif des Juifs de France
7. The World Jewish Congress
8. Council for the Protection of the Rights and Interests of
Jews from Germany
9. Central Committee of Liberated Jews in Germany
10. Existing Jewish Communities in Germany and Austria
11. Commission on European Jewish Cultural Reconstruction
12. Alliance Israelite

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-2-

4. Col. Bernatein informed those assembled that Mr. Breitel, the legal adviser to Gov. Dewey, told him that the status of the proposed New York State legislation governing Jewish heirless property is as follows: The State Government feels that it would prefer to transfer whatever funds might be available from the liquidation of such property to the Federal Government, which, in turn, because of its international obligations, then may turn it over to the Jewish organizations. The thinking behind this proposal is that the New York State Government would prefer to forestall any possibilities of other groups requesting action similar to that now requested by the Jewish organizations, although these other groups may request ~~it~~ on a basis entirely unlike that serving the Jewish organizations. Dr. Lowenstein and Mr. Boukstein informed the meeting that they received information from the State Department that the New York State Government's request to the State Department to express its point of view on this method of treating Jewish heirless property in the State of New York is now resting with the Attorney General of the U. S. who has to render his opinion on the subject.

Col. Bernatein further suggested that he be appointed a Committee of One to get speedy action from Washington, since New York State Legislature will adjourn March 15 and it is important to get the State law passed before that date so that it can be emulated by other states of the Union. This suggestion was tabled.

There appeared to be some difficulties which may develop in connection with this method proposed by Mr. Breitel. In the opinion of the writer, they loom rather large, but they may turn out to be much smaller. Specifically, when the State Government turns in funds to the Federal Government, they may have to be credited to the general receipts of the U. S. Treasury, and it would require a special appropriation from Congress to have these funds turned over to Jewish organizations. This in itself might be complicated. The writer is unqualified to say whether the funds derived from liquidation of heirless property by the State of New York can be turned over to the Federal Government under some arrangement other than being incorporated into the general receipts of the U. S. Treasury, such as trust funds. The writer expressed these fears and was supported by Mr. Boukstein. However, Col. Bernstein felt that such act can be guided through Congress rather quickly and to him the importance of getting action from the New York State Legislature was of greater consequence as a model for other state legislatures to follow.

5. The World Jewish Congress will have its meeting tomorrow (Feb. 27), at which time their decision with regard to the designation of the JDC and the Jewish Agency for Palestine as the exclusive agents of the proposed Jewish Restitution Commission will be rendered.

6. It was decided to hold the next meeting of the five organizations on Tuesday, March 4, at 4:00 at the offices of the American Jewish Conference, with the agenda devoted to:

- (a) The proposed New York State Law governing the allocation of abandoned alien assets in New York to non-repatriable victims of German action, and
- (b) The letter from Rabbi Bernstein requesting concerted action to stem the alarming growth of anti-Semitism in Germany in general, and in the American Zone of occupation in particular.

B. M. Jaffe

PROPOSED DRAFT OF CABLE TO
GENERAL CLARK

FEBRUARY 26 1947

UNDERSIGNED ORGANIZATIONS RESPECTFULLY REQUEST AUSTRIAN SECOND AND
THIRD RESTITUTION LAWS AS REPORTEDLY PASSED BY PARLIAMENT FEBRUARY 6
BE VETOED STOP ALTHOUGH IT IS RECOGNIZED THIRD RESTITUTION LAW SLIGHTLY
IMPROVED ALONG LINES OUR SUGGESTIONS CABLED TO YOU JANUARY 11 1947
VARIOUS NEW PROVISIONS MAKE IT EVEN LESS ACCEPTABLE THAN PREVIOUS DRAFTS
STOP RESTITUTION COMMISSIONS BELIEVED UNCONSTITUTIONAL IN VIEW PARAGRAPH
83 SECTION AUSTRIAN CONSTITUTION STOP LAW CONTAINS MANY DANGEROUS
AMBIGUITIES AND EXCEPTIONS STOP MALA FIDES POSSESSORS GIVEN EXCESSIVE
PROTECTION AND OPPORTUNITY FOR COLLUSIVE ACTS TO DETRIMENT OF BONA FIDE
CLAIMANTS STOP PARAGRAPH 2 SECTION 2 PRECLUDES RESTITUTION TO MANY RIGHTFUL
OWNERS OR HEIRS STOP LAW SHOULD STATE EXPLICITLY THAT DURESS IS PRESUMED
IN CASE OF MEMBERS OF PERSECUTED GROUPS STOP LIMITATION OF HEIRS WITHOUT
CORRESPONDING ESTABLISHMENT APPROPRIATE FUND FOR HEIRLESS AND COMMUNAL
PROPERTY IS OBJECTIONAL STOP PROCEDURAL GUARANTEES INADEQUATE STOP LAW
VIOLATIVE OF INTERALLIED DECLARATION JANUARY 5 1943 AND OF AUSTRIAN LAW
106 DECLARING NULL AND VOID ALL LEGAL TRANSACTIONS EFFECTED AS CONSEQUENCE
OF ANSCHLUSS STOP ENACTMENT THIRD RESTITUTION LAW PRESENT FORM WOULD
PREJUDICE POSSIBILITY INCLUSION MORE EQUITABLE PROVISIONS IN AUSTRIAN
TREATY ALONG LINES ROUMANIAN AND HUNGARIAN TREATY PROVISIONS

343255

BM Joffe
JDC

Committee of Five Organisations

February 24, 1947

Frank Barth

Austrian Restitution Laws

The second and third Restitution Laws, copies of which were sent to you under separate cover, were, according to reports reaching us, passed by the Austrian Parliament on February 6, 1947. Both of these laws, particularly the third Restitution Law as shown below under 2 and 3, are utterly unsatisfactory and unacceptable from our point of view.

I - Action to prevent these laws from coming into force must be coordinated with the provisions of the Austrian Control Agreement. This agreement which returned to the Austrian people in principle their self-government and sovereignty, provides that in the case of constitutional law the written approval of the Allied Council is required before any such law may be published and put into effect. In the case of all other legislative measures, it may be assumed that the Allied Council has given its approval if within 31 days of the time of receipt by the Allied Commission it has not informed the Austrian Government that it objects to the legislative measure. ~~of international agreement.~~ Since the Control Council has to arrive at its decisions unanimously, that means that the veto has to be pronounced by all four powers if the two laws should be considered as non-constitutional.

We have no information as to the procedure the Austrian Government has adopted concerning the two laws with respect to the control authorities. From previous experience and reports, also from the fact that neither law is marked as constitutional law, it is clear, however, that the Austrian Government does not consider these laws constitutional.

This view should be contested on the following grounds: Article 83, section 2, of the Austrian Constitution reads: Nobody shall be deprived of his right of access to legally established Courts (Niemand darf seinem gesetzlichen Richter entzogen werden). Since the Third Restitution Law refers restitution to Special Commissions devoid of all attributes of a true judicial court, the constitution has been changed and the law therefore should be classed as a constitutional law. However, this argument might be overruled and we therefore have to base our demarches on the idea that a four power veto is required.

II - The Third Restitution Law is based largely on a previous draft which was heavily criticized by Jewish organizations (see memorandum of January 15th and cable of January 11, 1947). Whereas in some respects the law has been improved along the line of our suggestions, on the other hand it must be said that a number of new provisions have been inserted which are clearly to the disadvantage of the legal owners and fashioned to legalise the illegal possession by the present holders, *and which as a whole make the law even more objectionable than the previous draft.*

A - Among the improvements is Par. 8 - that the present holder shall have the right to retention of the income only and not of the principal itself.

Another improvement is the right of curator absentis appointed by the Court for absentee owners to file claims (Par. 14 (4)).

There was also a provision that repayment of the purchase price which the victim received shall be limited to those amounts which he could actually retain. There is, however, the limitation that if the rules of a "bona fide transaction" were adhered to

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the Restitution Commission can on equity grounds charge the claimant with repayment up to the entire nominal consideration. Par. 6 (1)

B - New provisions to the disadvantage of the claimant.

Par. 2 (2) excludes from restitution all those cases in which the owner could freely choose the purchaser and has received fair consideration. Considering the claimant's difficulties in presenting evidence and the large discretionary powers of the Restitution Commissions, it is clear that this provision will effect adversely a great number of cases.

Par. 5 (2) states that mala fides begins only from the time of process serving, which is an added invitation to collusive finegging of an already limited amount of restitutable property.

Par. 10 (4) provides that in cases where the owner was not subjected to political persecution, the Restitution Commission shall decide on equity grounds if and which new mortgages shall remain valid apart from those already extensively enumerated in Par. 10 (1). That means that in many cases that new charges on the restitutable property will have to be taken over by the claimant.

Par. 23 (2) adds to the far-reaching protection of the holders the right of the Restitution Commissions to limit the claimant to the position of a Trustee in order to provide security for counter claims of the holders

These are only some of the new provisions in the law which make it even more unsatisfactory than it has been before. With the exception of the few above mentioned corrections, our objections voiced in our cable to the Department of State and in our memorandum directed against the previous draft, stand fully. The law still does not extend the presumption of duress to all members of persecuted groups as such; there are no provisions governing unclaimed and heirless property and property of substantially extinct communities. There is no provision in the law itself abrogating the law of excheat whereas at the same time the circle of heirs is greatly limited.

Par. 14 (5) says only that a fund will later be established by a special law, but the language again is very vague and elusive: "To what degree such claims as have not or could not be filed, can later be filed by a fund will be determined by special law".

As to procedural provisions, the law has extended even the discretionary powers of the Restitution Commissions. There are furthermore ^{added} ~~more~~ stringent restrictions with respect to the right to appeal.

C - To sum up, the law is entirely unsatisfactory and unacceptable to Jewish and other groups of persecutees. The law constitutes a flagrant violation of the declaration of January 5, 1943, which reads in part:

"The Governments....reserve all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation.... or which belong, or have belonged, to persons (including juridical persons), resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting, or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected."

Furthermore, the law is contradictory to the Austrian law of May 15, 1946 which declares as null and void all legal transactions undertaken in consequence of the Nazi regime in Austria.

- 3 -

It shall also be mentioned that the Austrian law is basically different in its approach from the draft of the German Restitution Law as it stands at the present time. In every single provision, ~~the~~ substantive as well as procedural German law is more satisfactory than the Austrian law. The German law basically improves the position of the claimant as compared to the position he would have been in under the Civil Code. The Austrian law, contrary to all expectations and to its avowed purpose, puts the claimant in a position greatly worse than it would have been under the existing Civil Code. Under this Code the law gives much more protection to all holders of the property including even mala fides possessors than the Civil Code would grant them otherwise. Under the Civil Code the claimant would have the right to resort to legal courts with all safeguards and guarantees as established under Austrian Code of Procedure.

III - The Second Restitution Law

This law is also unsatisfactory because it limits the circle of heirs to the second degree without even mentioning a fund to be established for property thus becoming heirless. It is therefore safe to assume that the Austrian Government intends to retain such properties. Furthermore, the time limit of one year for the filing of the claim and producing some evidence (glaubhaftmachung) is too short considering the fact that the amendment in the Third Restitution law dealing with the rights of the curator absentis to file claim has not been introduced in this law.

There are a number of other unsatisfactory provisions which will limit greatly the actual scope of restitution.

IV - Conclusions

Despite apparent difficulties and only a slight chance of success, it is suggested to approach all four powers with the demand to raise unanimous veto before the expiration of the 31 day period. It is suggested to submit our criticism by cable to the appropriate representatives of the four powers.

It is furthermore suggested to draw attention of the Deputies drafting the Austrian Treaty to the fact that the matter of restitution cannot be left safely to the Austrian Government alone. The fact that the trend of restitution legislation has been to the disadvantage of the claimants can clearly be traced to the gradual cutting down of Allied control of Austria. ~~Even~~ In May 1946 when Law #108 was promulgated the control powers could assume that the Austrian Government would fulfill faithfully its obligation to effect restitution. It is probably that the Control Council Agreement of June 28, 1946 was partially caused by such assumption. The draft of the Third Restitution Law of October, 1946 was the more disappointing as a previous draft of early 1946 was considerably fairer to the group of claimants. It is furthermore suggested to draw attention to the provisions of the expected Peace Treaty ^{and the expected} which are clearly violated by the concept and provisions of this law.

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Notes on the Meeting Re

RESTITUTION OF HEIRLESS PROPERTY

Held at the Offices of the American Jewish Congress
Wednesday, February 19, 1947 2:30 PM

1. Mr. Maurice M. Boukstein, representing the Jewish Agency for Palestine, submitted a draft of the Certificate of Incorporation and of the By-Laws for the proposed Jewish Restitution Commission.

2. Dr. Leon Kubowitzki, of the World Jewish Congress, objected to several items in the proposed By-Laws. Specifically he objected to:

- (a) the inclusion of The Commission on European Jewish Cultural Reconstruction (represented by Profs. Michael and Baron) in the membership of the Corporation. His objections were based on the assumption that the Commission on European Jewish Cultural Reconstruction is a functional organization therefore, according to him, is not warranted for inclusion in the membership.
- (b) Section 4 of Article III of the proposed By-Laws wherein the JDC and the Jewish Agency for Palestine are defined as "agents of the corporation in all matters relating to non-cultural property" and The Jewish Cultural Reconstruction Committee as "agent of the corporation in all matters relating to cultural property."

Dr. Kubowitzki's objections were that the inclusion of the foregoing three organizations in this paragraph of the By-Laws as "the agents of the corporation" will tend to make the Commission "a fiction." In his opinion the Board of Directors should be free to appoint such agents as it finds necessary without enumerating them in the By-Laws.

- (c) Furthermore, Dr. Kubowitzki attempted to forestall complications that might develop as a result of the Jewish Agency's future role on the political scene. His point was that at some stage of developments the Agency might have to be supplanted by another institution or, conversely, the powers that be might object to dealings with the Agency. In general, he seemed to be attempting to protect the interests of the Agency, although the Agency's authorized representative, Mr. Boukstein, was participating in the meeting and took exactly the opposite position. At one stage of the discussion, Mr. Boukstein made it clear that he would be glad to furnish those assembled with such confirmation by the Agency of his position as may be required, asserting that he could produce this confirmation within 48 hours.

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3. Mr. Sobel enunciated the basic conditions attendant to the creation of the Jewish Restitution Commission as developed in Dr. Schwartz-Eliezer Kaplan negotiations in Europe. These conditions were as follows:

- (a) The JDC and the Jewish Agency for Palestine are to have the exclusive discretion as to disposition of proceeds from liquidation of non-cultural assets.
- (b) The provisions for such exclusive delegation of authority are to be incorporated in the By-Laws.
- (c) JDC and Jewish Agency are to establish a ceiling on administrative costs for the restitution program.
- (d) The Jewish Restitution Commission is not to engage in the handling of individual claims since that would require setting up a large personnel and administrative machinery perhaps unwarranted by the results which might be obtained.

4. The question as to who is to go abroad for the Restitution Commission was omitted from Mr. Sobel's presentation inasmuch as the JDC and the Jewish Agency would decide, in the performance of their agencies' functions, who is to go abroad, when and where.

5. Mr. Boukstein supported Mr. Sobel's contentions without exception.

6. Col. Bernard Bernstein pressed Dr. Kubowitzki rather decisively in order to elicit from the latter a direct "yes" or "no" answer as to the future position of the World Jewish Congress vis-a-vis the other member agencies of the Jewish Restitution Commission, particularly as regards designation of the JDC and the Jewish Agency as the agents in the disposal of non-cultural property in the event such designation becomes fait accompli. Dr. Kubowitzki abstained from expressing a direct positive or negative attitude, claiming that he would have to take it up with his governing body. He left ~~with the~~ impression that the World Jewish Congress would continue to defend the contention that the designation of the JDC and the Jewish Agency as agents should not take place in the By-Laws.

7. Prof. Michael stated that his original position was somewhat along the lines now enunciated by Dr. Kubowitzki and that in the course of several preceding meetings he, Prof. Michael, came around to understanding, appreciation and defense of the designation of the JDC and the Jewish Agency as the agents. He furthermore called upon Dr. Kubowitzki to join him in this change of opinion.

8. Col. Bernstein advanced the question of expansion of the member agencies in the Jewish Restitution Commission through the inclusion of representatives from German Jewish organizations located within and outside of Germany. It was pointed out to Col. Bernstein that Section 2 of Article I of the By-Laws provides for expansion of the membership of the corporation when and if such expansion becomes necessary and that the reason why the German Jewish organizations are not immediately represented, is primarily because there is no organization which may claim to be the spokesman for the German Jewish communities now in Germany, and similarly there is no such organization of German Jews who could claim to be the spokesman of German Jews located outside of Germany. It was pointed out, however, that the German Jewish organization in London is sufficiently well established to warrant its inclusion among the member agencies in the corporation.

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Likewise, Col. Bernstein raised the question of participation on a membership basis of the French Jewish communal organizations. There, too, the absence of a single central spokesman for French Jewry was noted with the understanding that the inclusion of representatives of some central French Jewish organization would be very much in order either before the final action to incorporate the Commission, or immediately after such incorporation does take place.

It was brought out repeatedly by several participants that Gen. Clay expressed his preference for a speedy establishment of the Jewish Restitution Committee as well as for representation in this Commission of the German Jewish communities with an emphasis, however, on the establishment of the Commission.

9. The question was raised about the omission of Austria from paragraph 4 of the Certificate of Incorporation. It was pointed out that the wording of this paragraph is sufficiently broad to include Austria as well as any other country in the world.

10. It was agreed by all present that a draft of the By-Laws and of the Certificate of Incorporation would be taken by representatives participating in this meeting to their respective governing bodies for such bodies' final decision as to the advisability of immediate incorporation of the Commission, and that a meeting of the member agencies was to be called within a week to decide on such steps as might be necessary as a result of the decision of the respective governing bodies.

B. M. Joffe

BMJ:MSR
2/21/47

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CERTIFICATE OF INCORPORATION

- of -

THE JEWISH RESTITUTION COMMISSION

(Pursuant to the Membership Corporation Law)

WE, the undersigned, for the purpose of forming a membership corporation pursuant to the Membership Corporations Law of the State of New York hereby certify:

1. The name of the proposed corporation shall be THE JEWISH RESTITUTION COMMISSION.

2. The purposes for which it is to be formed are:

a) To acquire, receive, hold, maintain and distribute for purposes of Jewish relief, rehabilitation, reconstruction, resettlement and immigration, the property of Jews, Jewish organizations, cultural and charitable funds and foundations, and communities which were victims of Nazi or Fascist persecution or discrimination; their claims for compensation and indemnification, all in accordance with laws and policies duly established or to be established by the government or governments concerned or by other forms of international arrangements.

Without limitation of the foregoing, the purposes for which it is to be formed are more particularly as follows:

b) To act on behalf of or as successor to Jews, Jewish organizations, cultural and charitable funds and foundations, and communities which were victims of Nazi or Fascist persecution or discrimination, for the purpose of ascertaining their claims to restitution, compensation, or indemnification; acquiring, receiving, reducing to possession, or prosecuting such claims; holding, maintaining, salvaging, repairing, administering and in all respects dealing with such property and claims, and effecting disposition, liquidation, or conversion of such property or claims by all appropriate means for the purposes herein stated.

c) To act in the aforementioned respects with regard to Jewish books, manuscripts, and other Jewish cultural and religious objects in Germany and in areas formerly occupied by Germany, and to distribute such objects to their rightful owners and to such Jewish organizations, institutions, and communities anywhere in the world as may be determined to be equitably and appropriately entitled to them.

d) To assist governmental and intergovernmental agencies, in a representative capacity or otherwise, in locating, identifying, preserving, cataloguing and determining the proper disposition of Jewish books, manuscripts, and other Jewish cultural and religious objects in Germany or in areas formerly occupied by Germany.

e) To do all and everything necessary, suitable and proper for the accomplishment of any of the purposes hereinbefore set forth and to do every other act or acts, thing or things incidental or

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appurtenant to or growing out of or connected with the aforesaid purposes, or any part thereof, provided the same be not inconsistent with the laws under which this corporation is organized or the laws of any country in which this organization functions.

3. The corporation shall have no capital stock and shall not be conducted for profit.

4. The territories in which its operations are principally to be conducted are the United States of America, Germany and formerly German occupied areas of Europe, and other areas throughout the world.

5. The city and county in which its office is to be located are the City of New York, County of New York.

6. The number of directors shall not be less than (5), nor more than forty one (41).

7. The names and residences of the directors until the first annual meeting are:

NAMES

ADDRESSES

8. All of the subscribers to this certificate are of full age; at least two-thirds of them are citizens of the United States and at least one of them is a resident of the State of New York. Of the persons named as directors, at least one of them is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have made, subscribed, and acknowledged this certificate this _____ day of _____, 1947.

343263

GEN. & EMERG.

Rectified
of property

February 6th, 1947.

Dr. Judah L. Magnes
The Hebrew University
Jerusalem, Palestine

Dear Dr. Magnes:

Mr. Edward Warburg turned over to me your note of January 7th in which you talk of the Trusteeship Corporation which is being planned. The day before Dr. Schwartz returned to Europe in December, a very hasty draft was drawn up for him to discuss with Eliezer Kaplan. Unfortunately, none of us had the opportunity to go over the draft and when we did, after Dr. Schwartz' departure, found it was not at all in line with our thinking. We are now having the document redrafted and we are not yet sure whether the World Jewish Congress would accept the conditions under which we and the Jewish Agency are prepared to enter the Trusteeship. Essentially, the problem is reserving for the Jewish Agency and the JDC the right to divide any property or proceeds thereof for work in Europe and for work in Palestine and to administer those assets without having to be subjected to the direction of a board of agencies who have no operating or other responsibilities in the field.

A number of the organizations interested are prepared to go along with us but we have not yet secured the agreement of the World Jewish Congress to this fundamental concept. There will be a third operating agency and that is Dr. Baron's Commission on European Jewish Cultural Reconstruction. It is the intention of both the Jewish Agency and the JDC that all property having historic Jewish cultural value shall be entrusted to this Commission and, so far as the JDC is concerned, we are prepared to agree to that. Here, too, the Commission will want to have freedom to dispose of the objects that will be turned over to it.

I am leaving town for several weeks and have left word that as soon as the redraft of the basic charter for the Trusteeship Corporation and the draft contract between the Corporation and the JDC and Jewish Agency will be prepared, copies will be sent to you.

I had a note from Joe Schwartz that he had discussed the problem with Mr. Kaplan in Geneva and that Mr. Kaplan is essentially in agreement with us

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that we and the Jewish Agency are to have independent control of the assets that may be turned over to the Trusteeship Corporation. This, of course, excludes as I said the objects of historical and Jewish cultural value.

Sincerely yours,

Moses A. Leavitt

MAL:JO

copy to Mr. Warburg

AMERICAN JEWISH CONFERENCE

MEMORANDUM

TO: Mr. Moses Leavitt

FROM: I. L. Kenen

SUBJECT:

DATE: February 5, 1947

Resurrection
Property B.S.
HKBT

FEB 6 1947
 FEB 14 1947

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 10/10

I am enclosing for your information copies of letters from Professor Jerome Michael and Dr. A. Leon Kubowitzki in connection with the proposed Jewish restitution agency.

SUGGESTED CHANGES

EXCERPTS FROM LETTER FROM DR. A. LEON KUBOWITZKI, WORLD JEWISH CONGRESS

January 31, 1947

- "(a) The Restitution Commission will be composed of the Five organizations cooperating on Jewish problems in Germany plus the Council for the Protection of Rights and Interests of Jews from Germany;
- "(b) The scope of the Commission will be limited to Germany and not extended to other countries as well;
- "(c) The appointment of certain organizations as operating agencies will be left to the Board of the Commission and will not be incorporated in the by-laws of the Commission;
- "(d) A special department for the recovery of cultural property will be created and the nomination of the operating agencies in this field will also be reserved to the decision of the Board of the Restitution Commission.

C COMMISSION ON EUROPEAN JEWISH CULTURAL RECONSTRUCTION
O affiliated with
P Conference on Jewish Relations, Inc.
Y 1841 Broadway, New York 23, N. Y.

January 31, 1947

Mr. I. L. Kenen
American Jewish Conference
521 Fifth Avenue
New York 17, N. Y.

Dear Mr. Kenen:

We think it advisable to try to state very explicitly our conception of the relationships which ought to obtain between the Jewish Restitution Commission, as the trustee of confiscated Jewish property, cultural and non-cultural, and the Joint Distribution Committee and the Jewish Agency, as the trustee's agents with respect to non-cultural property, on the one hand, and the trustee's agent with respect to cultural property, on the other.

By way of background for what is to follow, you should know that we, the State Department and General Clay are, we think, in agreement upon the following plan with respect to the restitution of cultural property.

A. German and Austrian governments and governmental agencies shall be required to surrender to the United States authorities all confiscated Jewish religious and cultural property which is in their possession.

B. As soon as the necessary arrangements can be made, there shall be turned over to the Trustee Jewish religious and cultural property now or hereafter in the possession of the United States authorities (a) which is unidentifiable and (b) which is identifiable as having been owned by a Jewish community which is extinct or by a Jewish philanthropic or cultural institution which has ceased to function, upon the understanding that the Trustee will hold all such property until the expiration of whatever period may be fixed for the filing of claims thereto and will continue to hold all of such property to which claims are filed until such claims are adjudicated.

C. Jewish religious and cultural property now or hereafter possessed by the United States authorities which is identifiable as having been otherwise owned but which may not be claimed or which may prove to be ownerless, shall be turned over to the Trustee at the expiration of whatever period may be fixed for the filing of claims thereto, or, in the case of property to which claims may be filed, upon the adjudication of such claims.

(Parenthetically, we wish to point out to you that both General Clay and the State Department are prepared to regard as ownerless cultural property formerly owned by Jewish communities which are extinct or Jewish philanthropic or cultural institutions which have ceased to function. This is a broader conception of ownerless property than that which is embodied in Section 6 of the proposed Restitution Law (Draft of October 18, 1946) and, therefore, before enactment, the Restitution Law should be amended in that regard. And, of course, as pointed out in the letter addressed to the Secretary of State on Nov. 27, 1946, by the Conference and other organizations, it should be so amended as to insure that the Trustee will be recognized as the successor in interest to all unclaimed or ownerless confiscated Jewish property, cultural and non-cultural.)

343268

D. The Trustee shall be permitted to take possession of confiscated Jewish religious and cultural property which is in the possession of individual Germans or Austrians, or of private German or Austrian corporations or associations only if the Trustee establishes its claim thereto as successor in interest of the former owners of such property.

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E. A small mission representing the Trustee shall be admitted to Germany and Austria for the purposes of taking custody of the Jewish religious and cultural property which is presently to be turned over to the Trustee, of consulting with the authorities there with respect to other Jewish religious and cultural property, and of negotiating with lawful owners of such property for its acquisition by the Trustee by purchase or otherwise.

You will observe, therefore, that with respect to cultural property the Trustee will have the following duties and functions:

- (1) To take possession of, to care for, and to hold Jewish religious and cultural objects which from time to time may be turned over to the Trustee as hereinabove provided by the United States authorities.
- (2) To assist the United States authorities in the discovery, as a preliminary to the seizure, of confiscated Jewish religious and cultural property which is in the possession of German or Austrian governments or governmental agencies.
- (3) To discover Jewish religious and cultural property in the possession of individual Germans or Austrians or of private German or Austrian corporations or associations, as a preliminary to the institution and prosecution of claims therefor.
- (4) To file and prosecute claims for the recovery of confiscated Jewish religious and cultural property.
- (5) To consult and advise with the United States authorities regarding Jewish religious and cultural property and problems in connection with its restitution, and to negotiate with lawful owners of such property, such as depleted Jewish communities, for the acquisition thereof by purchase or otherwise.
- (6) To distribute Jewish religious and cultural property acquired by the Trustee among Jewish communities throughout the world in such a manner as best to serve the religious and cultural needs of the Jewish people.

We propose forthwith to organize a membership corporation under New York law with some such name as the Jewish Cultural Reconstruction Corporation. This corporation, to which we shall hereafter refer as the Reconstruction Corporation, will be given powers sufficiently varied and broad to enable it to act either as the Restitution Commission's agent with respect to confiscated cultural property, in the event that there shall be a single trusteeship for both cultural and non-cultural property, as we hope there will be, or as the trustee of the cultural property, in the event that there shall be a separate trustee for such property.

The members of the Reconstruction Corporation will include the World Jewish Congress, the American Jewish Conference, the American Jewish Committee, the Hebrew University, the Commission on European Jewish Cultural Reconstruction, the Council for the Protection of the Rights and Interests of Jews from Germany, and the organization most representative of Jews still living in Germany and Austria.

In the event that there shall be a single trusteeship for all confiscated Jewish property, the Restitution Commission shall irrevocably designate the Reconstruction Commission as the Trustee's agent to perform, in the Trustee's name and on the Trustee's behalf, the duties and functions of the Trustee with respect to cultural property stated above and all other duties and functions of the Trustee in relation thereto.

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It seems clear that in order to perform the Trustee's duties and functions with respect to non-cultural property, the Joint Distribution Committee and the Jewish Agency will have to organize and maintain a special staff and one or more offices in Germany and Austria. In the interests of economy and efficiency this staff should be sufficiently large and should include the necessary expertness to enable it to

- 3 -

perform, under the Reconstruction Corporation's direction, the first four and, perhaps, the first five of the duties and functions of the Trustee with respect to cultural property stated above.

We think that the Committee and the Agency should pay the costs of the recovery of cultural as well as of non-cultural property. In this connection we desire to emphasize the great importance of creating a fund which may be used to purchase Jewish religious and cultural property, for the benefit of the Jewish people, from German and Austrian communities and other lawful owners thereof. Otherwise, Jewish scholarship and the Jewish people will suffer irreparable loss through the dispersion of libraries and the dissipation of other cultural property.

The Reconstruction Corporation will make periodic reports concerning its activities to the Restitution Commission. These reports will be of such a character as to keep the Commission fully informed regarding the manner in which the Trustee's duties and functions with respect to confiscated cultural property are being performed. The Commission will, of course, be entitled to make recommendations to and advise with the Reconstruction Corporation concerning the performance of these duties and functions.

At a recent meeting of the general restitution committee you expressed the belief, in which there appeared to be general concurrence, that the Restitution Commission will be organized and ready to function by February 15, 1947. We very much hope that this will be so, for time is of the essence as far as cultural property is concerned. Every day's delay increases the hazards to which this property is exposed and we do not think that we would be justified in delaying independent action much longer.

Will you please bring this letter to the attention of the Committee, the Agency and all other interested groups.

Sincerely yours,

(signed)

JEROME MICHAEL
Acting Chairman

343270

MR. & EDLMAN
Kestel
J. Eber

Dear Eddie

would you let me know who in the J.A.S. is giving these

January 24, 1947.

matters her attention?

TO EMMU

Professor Salo W. Baron
Department of History
Columbia University
New York City.

I assume
Moe's letter attached
which crossed
with this note
answered his question
FEB 7 1947

yes
→ mean

Dear Professor Baron,

Enclosed please find copies of correspondence with Dr. Huxley of Unesco and with Dr. Edelman of Copenhagen.

I have spoken with Mr. Kaplan of the Jewish Agency, and it is his view, that the Trusteeship Corporation for the custody and disposal of the plundered libraries should not wait for the formation of the larger corporation.

He has had a talk with Dr. Schwartz of the J.D.C., and he is of the opinion that an agreement between the Jewish Agency and the J.D.C. on these matters is possible. Yet there are other obstacles on account of which the formation of the large corporation may be unduly delayed.

The important point about the large corporation is the financial help which it might give.

There are therefore two questions which we should like to raise and to have your answer to :

1. Is it not possible to form the smaller corporation with the proviso that it be included within the larger, if and when the latter is formed ?
2. Can not financial help be secured from the same organizations now, as might be inclined to give it then ?

The question of financing the whole action is giving us much concern. If, for example, we are fortunate enough to secure the books from Czechoslovakia, it will mean the transport of perhaps 500 cases and setting them up here. Could you let us know what thoughts you have concerning this question ?

Should the time come, and we hope it may come soon, when a mission of three persons is sent to Germany and Austria on behalf of the Trusteeship Corporation, we assume that one of these will be a representative of the Hebrew University.

I am sending copies of this letter to Messrs. Kaplan, Warburg and Schwartz.

With regards,

I am,

Sincerely yours,

J.L. Magnes

CC/ Mr. Kaplan, Jewish Agency, Jerusalem.
Mr. J. Schwartz, A.J.J.D.C., Paris.
Mr. E. M. Warburg, A.J.J.D.C. New York.