

JUN 6 1950

RESTRICTED

No. 132

To the

Officer in Charge of the American Mission,
Vienna.

The Secretary of State transmits herewith for the appropriate action of the Officer in Charge a copy of a letter from Senator Herbert H. Lehman, dated May 24, 1950 and enclosures.

The Department of State has had numerous requests for information and assistance in connection with the restitution claims of United States citizens with property rights or interests in Austria. Some of those making the requests allege that they have applied to the Austrian authorities but have not received prompt or adequate attention to their claims. The Department is anxious to be more fully informed as to the basis for these statements and requests that the Legation make a study of the situation at the earliest possible date. The results of this study will be of use not only in replying to particular queries but also in conversations with the representatives of the Austrian Government in connection with the treatment of Article 42 of the draft State Treaty. It is suggested that the Legation's investigation be based on conversations with those Austrian authorities competent to make general policy statements with regard to the restitution program and also on information to be supplied by those who are acquainted with the facts as to the number of cases which have been processed and some of the specific difficulties which may have prevented action in particular cases.

The Department needs this information not only to reply to further letters, but also for the possible issuance at a later date of a press release indicating what action should be taken by United States citizens, particularly those who have not already filed claims. The Department also requests that the Legation supply it with sets of the restitution laws and a summary indicating the salient points as they relate to the study requested.

Enclosures:

Copy of letter from
Senator Lehman dated
May 24, 1950 with
enclosures.

S/S-CR
JUN 5 1950 P.M.

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A true copy of
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S M Steger

RG 59
Entry CDF 1950-54
File 262.114.1
Box 1061

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Authority NND 873050
By JK NARA Date 7/10/00

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262.1141/5-2450

FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

File
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SECURITY : RESTRICTED

PRIORITY: AIR POUCH

TO : Department of State

OFFICE OF EUROPEAN AFFAIRS
MESSAGE CENTER 262.1141/7-750

ECON INDEX

July 15

FROM : VIENNA 22 JULY 7, 1950 2 ENCLOSURES

REF : DEPT.'S INSTRUCTION NO. 132 OF JUNE 6, 1950

SUBJECT : THE PRESENT SITUATION CONCERNING RESTITUTION IN AUSTRIA

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The Austrian Government has thus far enacted seven restitution laws. The most important of these laws are: The First Restitution Law¹, enacted July 26, 1946, which enables persons whose property was confiscated by the German Reich and subsequently taken over by the Austrian Government to obtain restitution upon application to the appropriate Finanzlandesdirektion, appealable to the Federal Ministry of Property Control (now the Federal Ministry of Finance, Property Control Section); the Second Restitution Law², enacted March 27, 1947, which enables persons whose property was held by the NSDAP or convicted war criminal and was subsequently confiscated by the Austrian Government to obtain restitution upon application to the appropriate Finanzlandesdirektion, appealable to the Federal Ministry of Property Control (now the Federal Ministry of Finance, Property Control Section); and the Third Restitution Law³, also enacted on March 27, 1947, which enables persecuted persons whose property is found in private hands (and in the case of movable property was not innocently acquired at a public auction or from a licensed tradesman) to obtain restitution upon proceedings to be instituted before especially established Restitution Commissions in the various provinces and Vienna and appellate restitution commissions connected with the Courts of Appeals and Supreme Court. The time limit for filing claims under these three restitution laws was recently extended to December 31, 1951.

262.1141/7-750

LABOR ADVISER
OFFICE OF ASSISTANT SECRETARY
FOR ECONOMIC AFFAIRS

AUG 22 1950

RECORDS BRANCH

1. This study is intended as a supplement to Leg. Despatch No. 311 of June 30, 1949.
2. For a translation of the text of this law, see Enclosure No. 1 to Leg. Despatch No. 1633 of August 26, 1946.
3. For a translation of the text of this law, see Enclosure No. 1 (No. 2) to Leg. Despatch No. 2564 of February 13, 1947.
4. See Section 4 of The Third Restitution Law.

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ACTION COPY — DEPARTMENT OF STATE

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The action office must return this permanent record copy to DC/R files with an endorsement of action taken.

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Up to May 31, 1950, the total number of claims filed under the First Restitution Law was 10,797, under the Second 1105, and under the Third 25,695. In addition 5824 cases falling within the scope of the Third Restitution Law were settled out of court. Of these filed claims 6876 (63%) under the First, 400 (36%) under the Second, and 4506 (17%) under the Third Restitution Law have been granted and there were pending or unconsidered a total of 2583 (24%) under the First, 476 (43%) under the Second, and 8938 (35%) under the Third Restitution Law. Of a total of 575 appeals under the First and Second Restitution Laws, 87 were pending or not yet considered on May 31, 1950 and of a total of 6317 appeals to the appellate commissions under the Third Restitution Law, only 483 were still pending. (More detailed statistics of the status of restitution cases as of May 31, 1950 are given in Enclosure No. 1 to this despatch)

Progress in the settlement and adjudication of restitution cases has been much speedier during the past six months due largely to additional judges having been assigned to the Restitution Commissions and increasing familiarity of all judges with the problems involved.

The Legation has received comparatively few complaints about the administration of the first three restitution laws in the past six months. Delays in the process of adjudication are now generally found to be caused by (1) the objections of the Soviet Element to the prosecution of proceedings or the execution of judgments in cases involving nominally German assets located in the Soviet Zone or in the international sector of Vienna; (2) procedural obstacles such as are frequently interposed by defendants in normal litigation; and (3) the necessity for the production of detailed evidence and counter-proof in complicated cases, particularly on the question of the amount of the contribution which the restitutee may be required to remit for the purchase price paid, improvements made, or funds otherwise expended by a defendant who is found to have been an "Anstaendiger Erwerber" (decent acquirer). The Legation believes that on the whole the decisions of the Restitution Commissions have been quite fair to the claimants.

On the other hand, considerable opposition to the Third Restitution Law has arisen on account of injustices which its provisions are alleged to impose upon bona fide purchasers of property formerly belonging to persecutees.

5. See Section 5 of the Third Restitution Law.

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Proposed amendments which would seriously affect the rights of restitution claimants and permit the reopening of adjudicated cases have been pending in Parliament for some time. There appears to be little danger now of adoption of any very drastic amendments but during recent weeks there has been some political agitation to require the Restitution Commissions to suspend or slow down the adjudication of pending cases until Parliament has taken action on the proposed or modified amendments. The latest report in the "Wiener Zeitung" of June 29 indicates that some amendments may be adopted next Fall which would "rectify" the law with respect to "Bad hardship cases". The Legation has expressed to Government and party leaders its concern lest any drastic amendments be adopted⁶.

The Fourth Restitution Law⁷, enacted August 8, 1947, which enables the re-registration of firm names altered or extinguished during the Nazi regime, the Fifth Restitution Law⁸, enacted June 22, 1949, which provides procedures whereby corporations (juridic persons) dissolved during the Nazi regime may be re-established and the former shareholders restored to their original interests, and the Six Restitution Law⁹, enacted September 3, 1949, which enables the restoration of patent and trade mark rights, cover the technical legal problems in these fields quite adequately insofar as the Legation has been able to judge. The time limit for filing claims under the Fourth Restitution Law as now fixed is December 31, 1950, under the Fifth is December 31, 1951, and under the Sixth is September 3, 1950. The Legation has received no complaints of unreasonable delays in the administration of these laws.

The Seventh Restitution Law¹⁰, which concerns the restitution of pension rights, was enacted on July 14, 1949 and confines restitutions to pension rights commencing May 1, 1945 and places other limitations on pension claims which were objected to by the U.S. Element at the Allied Council.

6. See Leg. Despatch No. 328 of April 18, 1950.
7. For a translation of the text of this law, see Leg. Despatch No. 3301 of July 30, 1947.
8. For a synopsis of this law, see Leg. Despatch No. 568 of December 5, 1949.
9. Copies of this law are being sent to the Dept. under separate cover.
10. For translation of the text and comments upon this law, see Leg. Despatch No. 605 of December 28, 1949. The time limit for the filing of claims under this law is now fixed at September 26, 1951. If, however, the claim falls due later than September 27, 1949, then the claim has to be filed within two years from the date it fell due.

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The provisions of this law, which discriminates against non-residents of Austria with respect to the suspension of social security benefits which make up a portion of pension payments, may for the future be remedied by a recent amendment to the Social Security Transition Law which provides that the suspension may be lifted in favor of persons living in countries which reciprocally pay social security payments due to residents of Austria. Clarification of this situation must await reply to the Note which the Legation recently addressed to the Austrian Government requesting that payments of such benefits be made to residents of the U.S. in view of the reciprocity granted under the U.S. Social Security Program. Under recent decisions of the Austrian Courts, Austrian nationals residing outside of Austria may be able to obtain social security benefits owing them retroactively to May 1, 1945 if they were forced to emigrate from Austria during the Anschluss. On the basis of these decisions, persons formerly having the status of Austrian civil servants and now residing abroad, who are not covered by the Social Security Transition Law or the Seventh Restitution Law, may also be able to obtain pension payments as long as they retained their Austrian nationality.

The Austrian Parliament has as yet enacted no legislation which would enable persecutees to obtain restitution of their former lesseholds or apartments. The Federal Chancellor recently informed Lt. General Keyes, in reply to his complaint, that any drastic legislation on this subject would seriously aggravate the present "appalling housing situation in Austria", particularly in view of the fact that many dwellings are no longer occupied by the aryanizers and that many are now occupied by war victims or victims of Nazi oppression. The Chancellor stated, however, that the Austrian Government still intends to adopt some solution of the problem. Insofar as the Legation has been able to discover, there is very little Austrian sentiment in favor of legislation on this subject, which would go further than to enable persecutees who return to Austria to obtain restitution of their former dwellings from aryanizers.

No legislation has been enacted to provide for the restitution of trade licenses, but the Austrian Ministry of Trade, which has supervisory functions over most of such matters, early this year issued an instruction to the competent licensing authorities under its jurisdiction suggesting that preferential treatment be given to applications for trade licenses in connection with restituted

11. See Leg. Despatch No. 504 of June 1, 1950.

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businesses. Since the issuance of this instruction, all applications for trade licenses in connection with businesses restituted to American citizens which have come to the attention of the Legation have been granted.

Another matter upon which the Austrian Government has thus far failed to enact legislation is the establishment of an agency to take control of heirless and unclaimed property of Nazi victims. Draft legislation for the establishment of a so-called Restitution Fund for this purpose has been under consideration for some time but has evoked strong protests by the U.S. and British Legations because they go beyond the provisions of Art. 44 of the draft Treaty and would endanger the likelihood that such assets will ultimately be transferred to appropriate organizations for the relief and rehabilitation of persecutees¹². The recent extension to December 31, 1951 of the time limits for the filing of claims under the first three restitution laws furnishes the Austrian Government with a lame excuse for delaying action in this matter on the ground that it will incur unnecessary expense in taking control of these assets for which restitution claims may ultimately be filed.

Except as noted in the foregoing discussion and as may appear in isolated situations which may not fall within the scope of the existing legislation, the Legation believes that the Austrian restitution program has been just and reasonable and fairly and quite expeditiously executed. // and, unless existing legislation is amended, provides on the whole substantial fulfillment of Article 42 of the draft Treaty with respect to the restoration of existing property which was taken from victims of the Nazi regime¹³.

Compensation for the loss, destruction, or damage to property in Austria during the German occupation or during the war has thus far been provided by the Austrian Government only to the very limited extent of loans under the Dwelling Reconstruction Law, enacted on June 16, 1948¹⁴.

12. See Leg. Despatch No. 337 of April 20, 1950.
13. For further comments on the Austrian Restitution Laws in relation to Article 42 of the draft treaty, see Leg. Despatch No. 61 of February 13, 1950 and Leg. Despatch No. 64 of February 21, 1950.
14. For a report on this law and a translation of its text, see Leg. Despatch No. 352 of August 6, 1948 and Leg. Despatch No. 392 of August 31, 1948.

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Insofar as the Legation is aware, there has been no discrimination against foreigners in the application of this law but its benefits are so restricted and the conditions for the repayment of loans which may be made under it are so stringent, it is of practical help only in few cases. An exceptional situation exists in the case of the Austrian Postal Savings Bank, which has been re-established as an agency of the Austrian Government under the Ministry of Finance and has assumed as a rule only such savings and checking accounts in the former Reichspostsparkassenamt as were held by Nationals or residents of Austria on April 27, 1945. The Reichspostsparkassenamt, a German Government agency, absorbed the former Austrian Postal Savings Bank on March 19, 1938 and thereafter transferred to Berlin all its assets and subsequent receipts. The Austrian Ministry of Finance contends that the present Austrian Postal Savings Bank is not liable for deposits made with the Reichspostsparkassenamt and that persons who were not residents or nationals of Austria on April 27, 1945 have no right to complain if their accounts are not recognized. The Legation has protested the action of the Austrian Postal Savings Bank on the ground that it controvenes the spirit and intent of paragraph 4 of Article 42 of the draft Treaty which provides that the Austrian Government will afford UN nationals no less favorable treatment than is accorded Austrian Nationals when compensation is provided for injury or damage to property in Austria which occurred during the German occupation and on the further ground that in any event the Austrian Government is liable for all accounts existing on March 19, 1938¹⁵. The reply of the Austrian Government is being awaited and it is hoped that the situation will soon be satisfactorily adjusted.

The Memorandum of the "Committee for Restitution in Austria", which was sent to Senator Herbert H. Lehman on November 29, 1949 and was enclosed in the reference instructions of the Department, was transmitted to Lt. Gen. Keyes, U.S. High Commissioner to Austria, by Congressman Jacob K. Javits on June 20, 1949. A copy of Lt. Gen. Keyes' letter to Congressman Javits dated September 10, 1949 on the subject matter of the complaints and demands in this memorandum is appended as Enclosure No. 2 to this despatch and may, in the discretion of the Department, be forwarded to Senator Lehman together with the foregoing review of the present situation.

Two sets of each of the seven Austrian Restitution Laws are being sent to the Department under separate cover.

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Footnote 15. For a copy of the Legation's note to the Austrian Government and a synopsis of this problem, see Leg. Despatch No. 584 of June 27, 1950. The Legation has some question whether paragraph 4 of Article 42 of the draft Treaty covers the situation with respect to deposits made in the Reichspostsparkassenamt after March 19, 1938 because the claim against the Reichspostsparkassenamt still exists and the damage may be construed to have occurred after the German occupation.

Walter Dowling
Walter Dowling
Charge D'Affaires, a.i.

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Enclosures:

- (1) Statistics on Status of Restitution Cases as of May 31, 1950.
- (2) Copy of Lt. Gen. Keyes' letter dated Sept. 10, 1949

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Enclosure No. 1
to Despatch No.22
of July 7, 1950,
Vienna, Austria.

Status of Restitution of alienated Property
on 31 May 1950

I. Application pursuant to the First Restitution Law which deals with the restitution of alienated property now being administered by the Austrian State or Land Government.

Authority	Filed in May 1950	Total filed	With-drawn or transferred	Granted	Denied	Pending	Not yet considered
Vienna, Lower Austria and Burgenland	67	8613	321	5504	414	1952	422
Upper Austria	-	551	55	368	94	34	-
Styria	2	795	30	461	210	71	23
Salzburg	-	348	23	252	45	25	3
Carinthia	1	233	17	100	73	43	-
Tyrol	-	214	26	151	28	9	-
Vorarlberg	-	43	1	40	1	-	1
	70	10797	473	6876	865	2134	449

II. Application pursuant to the Second Restitution Law which concerns restitution of alienated property, the title to which had passed to the Austrian State.

Authority	Filed in May 1950	Total filed	With-drawn or transferred	Granted	Denied	Pending	Not yet considered
Vienna, Lower Austria and Burgenland	8	568	4	187	17	277	83
Upper Austria	1	122	6	46	51	19	-
Styria	-	138	8	47	39	40	4
Salzburg	-	72	3	22	24	18	5
Carinthia	-	82	4	38	31	9	-
Tyrol	-	75	15	31	13	15	1
Vorarlberg	-	48	9	29	5	4	1
	9	1105	49	400	180	382	94

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Disposition of Appeals by the Federal Ministry of Property Control and Economic Planning.

	First Restitution Law	Second Restitution Law
Total of appeals on 31 May 1950:		
therefrom: 1. granted	101	45
2. denied	258	35
3. withdrawn	38	11
4. pending	28	11
5. not yet considered	26	22
	451	124

III. Applications pursuant to the Third Restitution Law which provides for the restitution of real and personal property now in the hands of persons, corporations, etc.

Authority	Filed in May 1950	Total filed	With- drawn	Trans- ferred	Granted	Settled	Denied	Pend- ing
RK Wien	263	18391	2005	823	3168	4482	732	7181
RK Graz	22	3439	744	91	505	749	746	604
RK Linz	17	2521	347	208	518	311	257	880
RK Inns- bruck	7	1344	158	35	315	237	326	273
	309	25695	3254	1157	4506	5779	2061	8938
ORK Wien	46	935	--	--	632	193	49	61
ROK Wien	126	3722	82	70	2190	327	672	381
ROK Graz	20	923	1	--	686	76	159	1
ROK Linz	15	485	3	6	332	23	107	14
ROK Inns- bruck	12	252	4	7	91	3	121	26

Number of compromises, renouncements and acknowledgments filed with the district administrations, pursuant to Sec. 13 (2) of the Third Restitution Law.

31 May 1950

Vienna	3302	Carinthia	419
Lower Austria	720	Salzburg	143
Upper Austria	330	Tyrol	192
Muehlviertel	68	Vorarlberg	118
Styria	375	Burgenland	157
			5824

21 June 1950

For the Federal Minister
s/Nowakk

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Authority NNO 873050
By JK NARA Date 7/6/00

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Enclosure No. 2
to Despatch No. 22
of July 7, 1950,
Vienna, Austria.

Honorable Jacob K. Javits
House of Representatives
Washington 25, D.C.

September 10, 1949.

Dear Mr. Javits:

I should like to refer to your letter of June 20, 1949, with which you forwarded to me a memorandum of the Committee for Restitution in Austria, and to my reply of July 5. A detailed study of the Committee's proposals has been made by my staff and comments based on this analysis are set forth below.

Regarding the proposal under point 15 that the promised restitution laws be enacted, it should be noted that, except for certain necessary pieces of legislation which have been called to the attention of the Federal Chancellor, a large part of the program is already in effect. The first step was taken in 1945 with the passage of a statute requiring the registration with the Austrian authorities of all property rights which had been "aryanized" or confiscated after March 13, 1938. The so-called First Restitution Law - Law No. 156 of July 26, 1946 - opened the way to restitution of alienated property which had been confiscated by the German Reich and was then administered by the Austrian Federal, or by local Governments. The corollary Second Restitution Law - Law No. 53 of March 27, 1947 - dealt with the restitution of alienated property title to which had passed to the Austrian Federal Government. The statute of most importance to your constituents, the Third Restitution Law - Law No. 54 of March 27, 1947 - provided for restitution of real and personal property held by private persons or corporations. Under the Fourth Restitution Law - Law No. 143 of August 8, 1947 - the names of Austrian firms which had been changed or deleted under Nazi pressure were authorized to be re-registered provided that the new undertaking be a continuation of the old and that at least some of its shareholders are the dispossessed original owners. The Fifth Restitution Law - Law No. 164 of June 22, 1949 - provides for restitution of the property of juridical persons. The recently enacted Sixth Restitution Law - Law No. 199 of September 3, 1949 (not yet promulgated) - is the legal foundation for restoration of patents and trademarks.

I am impressed with the justness of the proposal under point 8 for pension payments to those whose private

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employment contracts were broken under Nazi pressure and who now live abroad. In my letter to the Chancellor, a copy of which was sent you on July 5, the elimination of certain sections of the then proposed pension law (which) would not have improved the status of pension and wage claimants but actually have reduced their legal rights was recommended. The most objectionable paragraph of the original bill - that making pension payments retroactive only to May 1, 1945 - was subsequently stricken out, but the Seventh Restitution Law as passed by the Austrian Parliament on July 14, 1949 was still in several important respects inadequate. The U.S. Element pointed out during Allied Council consideration of this measure that it would operate in favor of those persons who were retained in employment as against persecutees whose employment contracts were abrogated. Its most discriminatory aspect, to my mind, is that it will allow former employers to deduct from pensions the amount which would be contributed towards them by the public social insurance institute. Since the present law governing social insurance limits its payments to persons residing in Austria, it must be concluded that the pensions for which your constituents may be eligible will be reduced by whatever sum they paid into the social insurance fund during their employment in Austria. Despite the opposition of our representative, no objection to this unsatisfactory version was made by Great Britain and the Soviet Union and it has become law.

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now
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The demand for restitution of lease-hold property (point 2) and that for return of apartments (point 6) have already had the endorsement of the U.S. Element. I refer you to the second paragraph in the copy of my recent letter to the Federal Chancellor. I therein expressed my concern over the postponement of the long overdue legislation to restore tenancy rights of victims of Nazi oppression and urged early action to rectify this situation.

I am in wholehearted sympathy with the Committee's fourteenth point and have already called upon the Chancellor to overcome the obstacles in the way of speedier administration.

The proposal in point 10 that the Law of Inheritance of the Civil Code be made applicable to restitutable property will be, I believe, satisfactorily met by the plan now in advanced discussion to set up a fund for the administration of heirless property of Nazi victims which would otherwise, under Austrian law, escheat to the Government.

As to

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As to the proposal in point 7 that claims of Nazi victims against Austrian debtors be exempted from the statute of limitations, the time for filing such claims has been extended to January 31, 1950 by Law No. 131 (1949).

With regard to the suggestion under point 10 that the privilege of former Nazi persecutees now residing abroad to dispose freely of schilling balances within Austria, as proposed in point 9, may be expected to be restored when the condition of the Austrian economy permits. At present, such schilling balances are not in all cases completely frozen insofar as, with permission of the Austrian National Bank, they can be used for support of relatives residing in Austria, travel within Austria and payment of expenses in connection with their blocked accounts, to them the rights and privileges of other classes holding assets in Austria. Such legislation, amortization of stolen, looted or confiscated securities, as called for in point 11, can be effected only if the securities in question can not be located. In such case, the victim of confiscation has merely to request the issuing corporation to cancel the stock share or bond and to issue a new one in its stead. Where the securities can be found, the former owner may get them back under the Third Restitution Law.

Proposal 12 - the reinstatement to their rights of life insurance policy owners - I understand to mean enabling the policy holders to retain full insurance rights by resuming premium payments. If this is the intent, I must tell you that the prospects are most unpromising. In some cases the cash surrender value was paid to the German Government. In other cases, no payment was made, and the policyholder whose policy was declared forfeit without compensation may now surrender it for 40% of its cash surrender value as of May 8, 1945, 60% remaining blocked. Even should it be made possible for the insured to reinstate a policy, it seems that accrued back payments would be too high, in relation to the return that could be expected, to make reinstatement advisable. It must be considered, too, that not merely refugees but all Austrian holders of life insurance policies in existence on May 8, 1945 are affected by the 60% reduction in the cash surrender value of their policies. The weakened state of the insurance business in Austria, caused in part by heavy holdings in German bonds, necessitates drastic modifications in commitments to policy holders. Until reconstruction is accomplished,

there
Respectfully

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there is good reason to think that the blanket reinstatement of persecutee's policies without regard to present insurability would not merely be of dubious value to the insured but would constitute an excessive burden on the insurance companies.

With regard to the suggestion under point 13 that Nazi persecutees be indemnified for losses due to change in or devaluation of currency, we must bear in mind that the hardships attendant upon the several currency conversions in Austria since March 11, 1938 have hit not refugees alone, but all residents of Austria. It must be apparent that the enactment of the complicated legislation that would be required to protect persecutees against the consequences of currency laws enacted in the course of the last eleven years would go beyond the proper purpose of restoring to them the rights and privileges of other classes holding assets in Austria. Such legislation, insofar as it would grant refugees a preferential status to which they would not have been entitled had they not been subject to persecution, would, in my opinion, not help but rather impair the moral strength of the persecutees' position.

The personal liability of the so-called "commissars" or administrators appointed under the national socialist regime (point 3) is already recognized not only in the general civil and criminal law but in the War Criminals Act. These persons are subject to prosecution for fraud and embezzlement if they used their position for such purposes. Convictions for either of these offenses are, under Austrian practice, binding on the Civil Courts in a subsequent suit by the victim for recovery of the fraudulently acquired or embezzled property. That administrators will be held to account for abuse of their position is doubly assured by the War Criminals Act which makes them liable to confiscation of property upon a finding that they had enriched themselves by virtue of the Nazi system. Thus, not only the personal accountability of Nazi-appointed administrators but also their financial liability (as called for by point 4) is enforced by present Austrian law. The accountability of "aryanizers", of owners, as distinguished from administrators is set out in paragraph 338 of the Third Restitution Law. Under that provision, the "aryanizer" may be required to return not only the business itself but also the income derived from it (with certain deductions, in the cases of bona fide purchasers for value, of necessary business expenses and contributions to the business enterprise).

Regarding

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Regarding the proposal of free legal counsel in restitution and indemnity matters - point 17 - it must be borne in mind that a successful claimant under a restitution statute as under other Austrian laws is entitled to reimbursement by his opponent for all expenses, including lawyer's fees.

I should like, finally, to consider together a group of proposals in the Committee's memorandum which I could not support without violating the principle of Austrian sovereignty to which our Government is committed. I refer to the opening demand that the present Austrian Government be held liable to compensate for all damages inflicted upon Nazi victims during the German occupation; to proposal Number 5 - that the Reichs Escape Tax be refunded and indemnification for Nazi expropriated personal property be made; to the suggestion under point 16 that a general war damage law be enacted; and to the demand in point 18 for right of appeal from decisions of restitution commissions or other Austrian agencies to an Allied or United Nations body. To charge Austria, a liberated country, financially or morally with the acts of the regime from which it had been liberated would be in contradiction to the policy maintained not only by our Government but also by Great Britain, France and the Soviet Union. Right of appeal in matters of restitution to a non-Austrian agency would just as clearly be incompatible with well-recognized principles of sovereignty.

Trusting that the matter set out above answers in a large measure the points raised by the committee, I am,

Sincerely,

GEOFFREY KEYES
Lieutenant General, USA
Commanding

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Authority NND 873050

By JK NARA Date 7/10/00

263.1141 NASH, GRETA B. /8-250

Aug 24 1950

In reply refer to
WE 263.1141 Nash,
Greta B. /8-250

My dear Miss Nash:

With further reference to your letter dated June 12, 1950 and to the Department's letter of July 24, 1950, the Department has now received from the Legation in Vienna some additional information in relation to the payment of racist taxes exacted from restitution claimants.

The Legation informs the Department that it is within the discretion of the Austrian Restitution Commission to require a restitutee to refund to the restitutor such portion of the purchase price which was originally paid by the original transferee, although it was not actually received by the transferor because of racist taxes imposed on him by the German authorities, if the original transferee "observed the rules of fair business practices" in the transaction. Under these regulations the question of whether or not you can legally be required to pay the full price paid by the transferee for your parents' apartment house in Vienna would seem to rest upon a determination of whether or not the transferee did observe these "rules of fair business practices." This is a question for determination by the Austrian restitution authorities. The Department has no grounds for making representations unless there is evidence that in a particular case the decision of the Austrian restitution authorities discriminates against a United States national.

The Department has great sympathy for the individual hardships which have arisen from the complicated transfers of property that occurred in Austria after 1938 and will make every effort to ensure that United States citizens receive treatment equal to that accorded to Austrian citizens in the administration of the Austrian restitution laws.

The Department

Miss Greta B. Nash,
315 1/2 South Western Avenue,
Los Angeles 5, California.

DC/R/
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Rev
Cat 41

CS/H

263.1141 Nash, Greta B. /8-250

338313

RG 55
Entry COF 1950-54
File 263.1141-116
Box 1806

The Department assumes from your letter that you did file a claim for restitution of your property before the proper Austrian authorities. If you and your legal counsel have reason to feel that the original decision of the Austrian Restitution Commission was unjust, the proper procedure would seem to be to file an appeal before the proper Austrian appeals authority. If you have reason to believe that you were discriminated against because of your American citizenship you may wish to have your attorney call at the Legation in Vienna to discuss your case with an officer of the Legation before filing your appeal.

Sincerely yours,

For the Secretary of State:

George A. Tesoro
Acting Officer in Charge of
Western European Economic Affairs

S/S - CR

AUG 17 1950 A.M.

AUG 21 1950 P.M. *MS* ✓

AUG 24 1950 P.M.

mm

S. O.

EUR:WE:MMBlack:evc
8/14/50

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RG	59
Entry	LOF 1950-54
File	863.111/0.476
Rox	1806

FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

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WCP
1950
AUG
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TO : Department of State

263.1141 Nash, Greta B./8-250

FROM : VIENNA 121 August 2, 1950

REF : DEPT'S INSTRUCTION NO. 11 OF JULY 24

SUBJECT : PAYMENT OF RACIST TAXES BY RESTITUTION CLAIMANTS

263.1141 Nash, Greta B./6-1250

The operation of the Austrian Restitution Laws with respect to racist taxes exacted from a restitution claimant was explained in Legdespatch No. 311 of June 30, 1949. These laws prescribe that the Restitution Commissions may require a restitutee to refund to the restitutor such portion of the purchase price paid by the original transferee which was not actually received by the transferor because of racist taxes imposed on him by the German authorities only if the original transferee "observed the rules of fair business practices" in the transaction. In many such cases it would be unfair to make the original transferee, or his successor, assume responsibility for and bear the burden of such taxes. The Legation accordingly does not feel that representations should be made to the Austrian authorities concerning these provisions of the restitution laws unless it clearly appears that the discretionary power of the Restitution Commissions in a particular case has been abused, particularly in the light of the current public resentment on account of the hardships on restitutors imposed by the existing restitution laws. As a matter of fact so-called "decent acquirers" frequently suffer considerable damage by restitution even if they are refunded the entire purchase price, in that the present purchasing power of the refund is considerably less than the purchasing power of the original payment.

The Legation is unable to investigate the situation with respect to the claim of Miss Greta Nash whose letter was transmitted with the reference instruction of the Department because of the lack of any identifying references to her case, but in any event believes it would be improper to interpose any objections until the Restitution Commission has ruled on the matter.

RECEIVED DIVISION
DOWNS

Walter Dowling
Walter Dowling
Charge d'Affaires, a. i.

RM
ED
AUG 28 1950
M.D.

g/m
EAMag:bb 8-2-50

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g/m
AUG 3 - 1950

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263.1141 NASH, GRETA B./8-250

FAP

338315

RG 59
Entry COF-1950-54
File 263.1141/6-116
Box 1206

EUR

AMB

DC/R TRAFFIC SECTION

AUG 25 11 47 AM 1950

WU R053 PD

EB NEWYORK NY AUG 25 1025A

HON DEAN G ACHESON, SECRETARY OF STATE

DEEPLY DISTURBED BILL INTRODUCED AUSTRIAN PARLIAMENT
 TONCIO ET AL TO ENACT A LAW UEBER DEN HAERTEAUSGLEICH IN
 RUECKSTELLUNGSFAELLEN UND DIE ERRICHTUNG EINES
 HAERTEAUSGLEICHSFONDS STOP BILL VIOLATES ALL ACCEPTED
 PRINCIPLES OF RESTITUTION AND ORDERLY COURT PROCEDURE
 CONTAINS UNWARRANTED EXPROPRIATION PROVISIONS AND LEVELS
 TAXES WITHOUT DUE FOUNDATIONS STOP PROPOSED USE HEIRLESS
 PROPERTY CONTRARY ESTABLISHED PRECEDENTS AND PROVISIONS
 DRAFT TREATY STOP WOULD HIGHLY APPRECIATE STRONG
 REPRESENTATION AUSTRIAN GOVERNMENT ADVISING AGAINST
 ENACTMENT BILL

DR ISRAEL GOLDSTEIN CHAIRMAN WESTERN HEMISPHERE
 BRANCH WORLD JEWISH CONGRESS

1046A..

DC/R
Anal. <u>50</u>
Rev. _____
Cat. <u>d</u>

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200.6341/8-2550

OCT 26 1950

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200.6341/8-2550

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Entry	<u>CDF 1950-54</u>
File	<u>200.6241</u>
Box	<u>872</u>

338316

DECLASSIFIED
 Authority NND 969002
 By JK NARA Date 6/26/00

RESTRICTED

DEPARTMENT OF STATE

DC / R

Memorandum of Conversation

DATE: October 3, 1950

SUBJECT: Claim of David Goldmann to Gold Looted by Nazis in Austria During August, 1940 valued at approximately \$204,000.

PARTICIPANTS: Messrs. David Goldmann, Claimant,
Paul Reiner, Attorney for Mr. Goldmann,
Joseph B. Matre, Dept. of State (L/C)
Ely Maurer, Dept. of State (L/E)
William Frohlich, " " " (MN)

COPIES TO: Messrs. Matre, (L/C)
Maurer, (L/E)
McDiarmid, (MN)
Rosenson, (MN)
Fletcher, (MN)

Mr. Goldmann and his attorney recited the circumstances surrounding the confiscation in August 1940 by the Vienna Secret State Police (acting on behalf of the German Reich) of very substantial quantities of the claimant's property. Among the property confiscated were securities, articles of jewelry and gold in the form of bars and nuggets. Some evidence was presented today indicating that at least 100 kilograms of this looted gold were delivered to or accounted for directly to the German Reichsbank in Berlin. Today's meeting concerned itself with the looted gold, the records of which while no longer in Mr. Goldmann's possession may still be available to him through friends or other sources abroad. At the time of the German occupation of Austria, Mr. Goldmann was a Czechoslovak citizen and a life-long resident of Austria until March 12, 1938 when he fled to London upon the Nazis' invasion of Austria and thence to the United States. Mr. Goldmann acquired United States citizenship on May 20, 1946. He seeks the aid of our Government "to have earmarked" for his benefit an amount of gold held by the Tripartite Gold Commission that would be the equivalent of that looted from him. He states that this is approximately 365 lbs., and is valued at \$204,000.

The Department

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200.6241-*Gold*/10-350
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DECLASSIFIED
Authority NND 969002
By JK NARA Date 6/26/00

RG 59
Entry CAF, 1950-57
File 200.6241
Box 867

338317

RESTRICTED

- 2 -

The Department had previously written to Mr. Goldmann (2-14-49; 6-20-49; 4-18-50) expressing the opinion that Mr. Goldmann has no claim to any of the gold in the "pool" since individuals' claims for restitution of gold do not come within the scope of action of the Tripartite Gold Commission, which is understood to consider claims of governments only; that he may have a compensation claim under Austrian or German law, and that he might wish to put his claim on record with the War Claims Commission.

Mr. Goldmann stated that he and his Austrian attorney, one Dr. Loew, called at the American Legation in Vienna just about one year ago, and he was told that under the existing Austrian restitution laws he could not advance a claim against that Government, nor did the legation know of the existence of any international agreement on which a claim could be based. In that connection, the legation reported to the Department in its despatch No. 428 dated September 15, 1949 that

"Under previously existing Austrian law the possession of gold bars, nuggets and Austrian gold coins was not illegal; restrictions existed merely regarding the sale, transfer or export of such gold.

"In the Legation's opinion it will depend exclusively on the terms of the Austrian Treaty whether Mr. Goldman will have a valid claim against Austria i.e. that it will depend whether the final text of the Treaty will contain a clause compelling Austria to indemnify Allied Nations nationals for losses sustained during the German occupation of this country for which they have no redress under present legislation in Austria."

During the course of today's meeting the Department's officers made it clear to the claimant and his attorney (1) that the United States Government is but one of the three governments, each represented by one Commissioner on the Tripartite Gold Commission, the other governments being Great Britain and France; (2) that all three Commissioners, acting jointly, constitute the Tripartite Gold Commission, which serves merely as the trustee for those claimant countries who can establish their right to participate in the pool; (3) that any award that is made to a claimant government is necessarily based upon its ability to prove that the specific quantities of gold claimed, were in fact looted, and that such gold did, in fact, constitute part of that claimant government's monetary reserves. Obviously, Mr. Goldmann's gold was, in no sense, part of the monetary reserves of any government who could assert a legal right thereto.

It was therefore

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Box	<u>867</u>

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- 3 -

It was therefore impossible to hold out any hope that Mr. Goldmann could recover any gold from the gold pool. Mr. Matre stated that on the basis of many years of experience in the handling of claims of this character and further on the basis of what Mr. Goldmann and his counsel now tell us, the Department is convinced that no tribunal whether already in existence or yet to be established would ever hold that Mr. Goldmann has established lawful title to the gold he claims was his. Accordingly, he expressed the view that Mr. Goldmann would be well advised to lose no time in clarifying his ownership of the looted gold by competent documentary evidence; that such action by Mr. Goldmann might prove very useful at some future date should an Austrian or a German peace treaty be signed and should such treaty contain appropriate language compelling indemnification to be made to those allied nationals who can prove that they come within the provisions of such treaty.

On taking their leave, Messrs. Goldmann and Reiner expressed their thanks for having been given the opportunity of meeting with the Department officers and indicated that they would be guided by their advice and suggestions.

W.S.
OFD:MN:WFrohlich:hmg 10-5-50

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338319

OUTGOING TELEGRAM

INDICATE: COLLECT
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Department of State

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8 P.M.

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11908

JUL 27-51

SENT TO: Amlegation VIENNA 264

RPTD INFO: Hicog FRANKFORT 738

Pouch to: Amembassy LONDON ✓
Amembassy PARIS ✓

(31)
200.6241/7-1851
462.631/6-2851 *(31)*

Origin

Info

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- (1) Further re DEPTTEL 482 JUL 18 to Hicog RPTD Vienna 152; DEPTTEL 182 JUL 20 to Vienna RPTD Frankfort 543; Vienna's 216 JUL 18 RPTD Frankfort 21.
- (2) Para 7, DEPTTEL 482 contains Dept's views ~~concerning~~ ^{time and place to obtain} comments of Austrian govt re contractual arrangements to be agreed UK and ~~French~~, and
- (3) Dept/UK Emb ~~staffs~~ JUL 26 agreed advisability having three West Legs Vienna orally inform Aust ~~govt~~ govt of Tripartite agreement to maintain law 5 in effect with respect to Ger ~~external~~ external assets in Austria (DEPTTEL 482). Leg shld coordinate with UK and ~~French~~ colleagues this matter immedi ~~ately~~.

(4) Re Vienna 216 (IV) Dept advising Hicog in separate instr to be ~~repeated~~ ^{repeated} Vienna.

(5) Re DEPTTEL 182 Dept believes position re gen claims of former Aust ~~nationals~~ nationals no longer resident Austria is matter for Aust ~~govt~~ govt so far as compensation is concerned. Aust ~~govt~~ govt will undoubtedly be aware of US policy of attempting to obtain non-discriminatory treatment its nationals whenever possible. Leg will be informed at later date whether above is regarded by Dept as minimum or total requirement.

200.6241/7-1851

200.6241/7-1851
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JUL 27 5 10 PM '51

Drafted by:

EUR:WE:MElack:lsw 7/27/51

Telegraphic transmission and classification approved by:

M.H. Colladay

Clearances:

GER-Reinstein S/S-CR
L/GER - Raymond Lend JUL 27 1951 P.M.

GEA-Baker
GPA-Auchincloss

DC/R

Anal 474

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338320

Department of State

Page 2 of telegram to Amlegation Vienna

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(6) Dept believes in view complexities contractual relations and similarities problems Germany and Austria re Gen claims, restitution, etc., that it might be useful for US officials in Vienna to arrange with Frankfurt to spend 2 or 3 days there to exchange views.

Acheson

(on HC)

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338321

OUTGOING AIRGRAM

Department of State

2884

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AMLEGATION

2884

Vienna, Austria
A-124, Aug 22, 1951

200.6241 / 8251 (31)
See

SUBJECT: URTEL 420 of August 2, 1951.

REFTEL raises the question of compensation for US nationals, formerly nationals of Austria. The Department's policy on this subject may be considered as contained in Para. 1 of Art. 44 of the Draft Treaty. While the provisions of this article are to some extent also covered by the provisions of Art. 42, no reliance is placed on the latter because of its presently still uncertain status. Furthermore, as long as the Treaty is not in force, Art. 44 can be considered no more than the expression of a policy by this Government.

Para. 1 of Art. 44 states that the Austrian Govt. shall grant compensation on the basis of national treatment where return or restoration of property is impossible.

Consideration of the points raised by REFTEL, keeping in mind the above analysis, leads to thinking along the following lines:

1. Question of life insurance policies, postal savings deposits, bank deposits, etc. Under the policy set forth in Art. 44, Department believes return or restoration are in order. Presumably, a request to this effect will be met by Austrian assertion that return or restoration is impossible because the funds in question were absorbed into the German system. We could counter this by pointing to the proposed turn-over of German external assets to make it possible for the Austrians to return or restore properties such as the above, or we could agree to the impossibility and merely insist that U.S. nationals get that treatment accorded to Austrian nationals in a similar position.

The relevancy of Art. 38 to this situation is not immediately apparent. It is believed here that even if the Federal Republic enacts General Claims Legislation, which appears doubtful, such legislation will probably limit benefits to persons who resided in territory now comprised in that of the Federal Republic. In addition, the waiver in Art. 38

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OUTGOING AIRGRAM

Department of State

VIENNA A-124

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- 2 -

assures that certain claims cannot be asserted by Austria or her nationals against the Federal Republic but it does not excuse Austria or the appropriate institutions or individuals in Austria of liability which must be faced under existing policy.

A specific point in connection with the above arises, for example, from the re-assumption of postal savings deposits of Austrian nationals and residents as of April 27, 1945. See Legdesp 22 of July 27, 1950. It is true that these accounts were subsequently partly blocked, partly devalued. The Department does not know, however, if United States nationals are accorded national treatment and would appreciate the Legation's views.

2. It is believed that the situation with regard to social insurance funds is analogous to the situation with respect to postal savings deposits in that the former Austrian citizen does not appear to have a claim against German social insurance institutions. Instead, he has a claim directly against the Austrian institutions whose claim over against German institutions is barred by the waiver. Austrian institutions will, it is intended, be compensated by the turn-over of German external assets. The preservation in the Paris Reparations Agreement of social insurance claims was championed by the Governments of France, Belgium, etc. who wished to reserve claims arising out of forced labor performed in Germany by their nationals. Austria cannot benefit by this provision and it is doubted that it was intended to give former Austrian nationals, now United Nations nationals a claim directly against German institutions.

Concerning the recent Austro-German Agreement on Social Insurance, the English translation transmitted by Legdesp 145 of July 26, 1951 does not permit the Department to arrive at a clear understanding of the meaning of Paras. 2 and 3 of Art. 39 of the Agreement. However, the relevancy of the Agreement extends only to the question whether US nationals who were former Austrian nationals will be discriminated against thereunder. If the Legation finds that the terms or the administration of the Austro-German agreement do result in discrimination against U.S. nationals in that Austria will make certain payments under Art. 24 but appears to deny them under Art. 39 on the grounds of non-residence, then it would seem that a violation of United States policy as expressed in Art. 44 exists which should be remedied.

3. Conclusion. The Department is anxious to see settled most ex-

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Washington,

NO. _____

VIENNA A-124

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- 3 -

peditionously the outstanding problems in the field of restitution which, while not of great magnitude nevertheless continue to be quite vexatious. The Department has surveyed the subject during the past months and a recent memorandum, embodying a number of points appearing here above is being airpouched to you. The Department has also raised the subject during the recent visit of the Ministers of Justice and of Trade here. At that time, the Austrian Legation stated its willingness to cooperate to the fullest extent to assure solution of outstanding difficulties. A memo of the particular conversation is being airpouched to you and the Department would appreciate receiving the Legation's comments on the desirability of approaching the Austrian Legation here on some of the points described.

Rehagen Jones

ACHESON

Cleared in draft: WE - Mr. Dawson
Mrs. Black
Mr. Rutter
GEA - Mr. Baker
Mr. Jones

Cleared: *L/E* L/E - Mr. Maurer
EM

Jones
L/GER:HALand:lf
8/21/51

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338324

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Authority NND 969002
By JK NARA Date 6/26/00

RG 59
Entry CDF 1950-54
File 200.6241
BOX 872

AUG 29 1950

In reply refer to
WB

My dear Dr. Goldstein:

The Department appreciates your telegram of August 28, 1950, requesting that the United States Government make representations to the Austrian Government against the recent bill introduced in the Austrian Parliament to amend the Third Restitution Law.

It will interest you to know that the Department has consistently opposed proposals for introduction of such a bill and has made strong representations to the Austrian Government against the bill which was introduced in July. You may be assured that these representations will be continued.

Sincerely yours,

For the Secretary of State:

Avery F. Peterson
Officer in Charge of
Economic Affairs
Office of Western European Affairs

DC/R Central Files

200.6341/8-2550

S/S-CR
AUG 29 1950 A.M.

Dr. Israel Goldstein, Chairman,
Western Hemisphere Branch
World Jewish Congress,
1834 Broadway,
New York 23, New York.

DC/R
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XR-262.1141 XR-262.6341

FOREIGN SERVICE DESPATCH

FROM : VIENNA

~~SECRET~~

690

November 5, 1951

TO : THE DEPARTMENT OF STATE, WASHINGTON.

Act on first to WE

AIR POUCH NOV 5 1951

REF : Dept's A-124 of Aug 22 and A-279 of Oct 13

LEGAL ADVISER

SUBJECT: Restitution Rights of U.S. nationals, formerly Austrian nationals.

NOV 5 1951

DEPARTMENT OF STATE

The reference Dept airgram and related Dept memoranda of conversations received by the Legation have convinced us that Germany cannot be expected to assume liability for claims of U.S. nationals, who were formerly Austrian nationals, on account of Austrian life insurance policies, postal savings deposits and social security benefits. With regard to Austria's responsibilities in these matters we have noted the Dept's reliance on Paragraph 44 rather than on Art 42 of the draft treaty, and will stress this in our further discussions with the Austrian authorities should they use the uncertain status of Art 42 as their excuse for not providing remedies which the Dept feels are required.

In the matter of life insurance contracts, Austrian insurers were discharged under German law and are now discharged of liability on those policies which were confiscated or declared forfeited on the basis of the 11th Executive Order under the Reich Citizenship Law and for which the specific cash surrender values were paid by the insurer to the collecting agency of the German Reich. Furthermore, the insurance companies were required to invest their reserves largely in German Government bonds, which are now worthless, and sustained large losses in their other investments on account of war action. Hence we feel we must concede that "the return or restitution" of these policies is "impossible" within the meaning of Article 44(1) of the draft treaty and that the claimants can demand compensation only to the same extent as may be "given to Austrian nationals generally in respect of war damage", which to date is nothing. We hold the same view with respect to bank depositors whose accounts were confiscated and paid to the German Reich.

On the matter of postal savings bank deposits which were not individually confiscated or forfeited, the situation is different because depositors residing outside of Austria are not accorded the same treatment as Austrian nationals or residents of Austria on April 27, 1945. The Austrian Fonoff referred our note concerning claims of depositors who are now American nationals to the Chief of its international law section, who agreed to endeavor to get the Ministry of Finance to change its

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2 VIENNA 690

previous ruling in the matter. Considerable delay occurred on account of the usual summer vacations and the retirement of the Chief of the Section of the Ministry of Finance concerned. Recently we were informed that the Ministry of Finance had advised the Fonoff that it has again rejected our contention that American nationals should be accorded the same treatment as Austrian nationals whose deposit accounts have been assumed by the Postal Savings Bank, but that renewed efforts would be made to have the ruling reversed. The main difficulty is that the Ministry of Finance fears that, if the accounts of American nationals not residing in Austria on April 27, 1945 are recognized, the accounts of all non-resident UN nationals, of whom Czech nationals particularly are involved, in great numbers and for substantial sums, will have to be assumed. Only one American claim, that is the claim of Gustav Szenkevits, referred to in Legdespatch No. 584 of June 27, 1950, on which this issue was raised, has come to our attention during at least the past two years. There may be some other non-resident Americans having similar claims but the total number and magnitude is doubtless very small.

We have made no further progress in the matter of retroactive payments of social security benefits and pension claims of former Austrian civil servants residing in the U.S. We transmit herewith, as Enclosure No. 1, a copy of our last letter dated October 31, 1951 to Dr. Margaretha, the Federal Minister of Finance, again requesting that he sponsor the necessary legislation to afford residents of the U.S. the same treatment as is afforded residents of Austria and Switzerland. We believe that it would be helpful if the Dept approached also the Austrian Legation in Washington on this subject, as suggested in the Dept's despatch.

For the High Commissioner:

Coburn Kidd
Coburn Kidd

Acting Deputy Commissioner

Enclosure: *att*

Copy Letter to
Dr. Margaretha,
dtd Oct 31, 1951.

SECRET

DECLASSIFIED
Authority NND 969002
By JK NARA Date 6/26/00

RG 59
Entry CDF, 1950-59
File 200.6241
Box 867

338327

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Enclosure No. 1 to Secret Despatch Vienna 690,
dated November 5, 1951

American Legation,
Vienna, Austria, October 31, 1951

My dear Mr. Minister:

I should much appreciate your reply to Mr. Dowling's letter of July 12, 1951, expressing the interest of the United States in the legislation and administrative measures required to lift the existing suspension of claims of residents of the United States for (1) social security benefits and (2) pensions owing them as former Austrian civil servants. As you know, the Sixth Amendment of the Social Security Transition Law, (BGBl. No. 175 of July 4, 1951) enables United States residents to obtain social security benefits only retroactively to May 5, 1950 and no cost of living bonuses, although such benefits are paid to residents of Austria, and, under the Austro-Swiss Social Security Agreements, to residents of Switzerland, retroactively to April 9, 1945, inclusive of cost of living bonuses.

I should like to repeat, as Mr. Dowling indicated in his letter, that the Department of State holds the view that persons whose emigration to the United States was forced by circumstances beyond their control should be entitled to the same treatment in these matters as residents of Austria or of any other country. The Government of the United States would be gratified if this view coincided with your own and would be pleased to learn that the necessary legislation and administrative measures will be adopted at an early date.

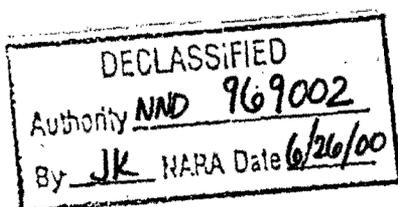
With the assurances of my highest consideration I remain,

Yours very truly,

Walter J. Donnelly
United States High Commissioner
for Austria

His Excellency
Dr. Eugen Margaretha,
Minister of Finance,
Vienna I, Himmelpfortgasse.

SECRET



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338328

AIR POUCH
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FOREIGN SERVICE DESPATCH

200.6241/1-752
XR 263.1141

FROM : VIENNA

To file L/GER
Rec 1/22/52 994
DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON.

January 7, 1952
DATE

REF : Legdespatch No 690 of November 19, 1951

1 For Dept.	ACTION L	DEPT. DCR EUR GER
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LEGAL ADVISOR

JAN 10 1952
L/GER

SUBJECT: Recent developments regarding restitution problems DEPARTMENT OF STATE

Enclosure No. 1 is a translation of the reply of the Minister of Finance, Dr. MARGARETHA, to my letter (Enclosure No 1 to reference Legdespatch) on the subject of social security and pension claims of United States residents. Enclosure No. 2 is my further letter to him regarding these matters.

Enclosure No. 3 is a copy of a letter dated Nov 24, 1951, received from Chancellor FIGL regarding the draft Eighth Restitution Law on tenancy rights and legislation concerning heirless or unclaimed property of victims of Nazi oppression. Enclosure No. 4 is my further letter to him on these matters.

Dr. Bluehdorn, the Chief of the International Law Section of the Austrian Foreign Office, has informed an Embassy Officer that the Ministry of Finance has at last agreed to revise its previous rulings and that we would be informed officially in a few days that the Austrian Postal Savings Bank will recognize the claim of Gustav SZENKOVITS (mentioned in the reference Legdespatch) to the full extent of his pre-1945 deposit account. Dr. Bluehdorn also said that similar treatment would be extended to any other Americans who may have such claims.

For the High Commissioner:

Walter Dowling
Walter Dowling
Deputy High Commissioner

Enclosures:

- 1. Ltr fr Margaretha
- 2. Ltr to Margaretha
- 3. Ltr fr Figl
- 4. Ltr to Figl

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JAN 25 1952

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REPORTER

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SECURITY RESTRICTED - SECURITY INFORMATION

Enclosure No. 3 to Restricted Despatch Vienna , dated January 7, 1951.

Page 1

Translation ex German.

REPUBLIC OF AUSTRIA
THE FEDERAL CHANCELLOR
Ref.No.65.873-2a/51

Vienna, 24th November 1951

To: The Hon. W.J. DONNELLY,
U.S. High Commissioner for Austria,
Vienna.

Mr. High Commissioner,

In your letters of 17th May last and 24th October last you have expressed your concern regarding the delay of the Austrian Federal Government in enacting legislation to restore tenancy rights alienated during the National Socialist regime.

With regard to this I should like to refer to the fact that the Government draft of the 8th Restitution Law concerning the restitution of tenancy rights was in the National Council referred to a committee which however did not proceed with it. In this stage the competence of any Austrian governmental agency does, under the Federal Constitution, no longer exist as legislation and administration are strictly separated. Now it rests with the legislative bodies to pass the draft submitted by the Federal Government either without or with alterations.

If you further state in your letter of 17th May last that no law was enacted to take under control heirless and unclaimed property, rights and interests of victims of National-Socialist oppression, with a view to the transfer of such property, rights and interests for the relief and rehabilitation of such victims, as provided in Article 44 of the Draft Treaty, I may first of all remind you that at present it is not yet possible to say which of the property to be restituted is heirless and/or unclaimed as the time limits to lay claims to restitution have not yet expired so that any prejudiced owner is at liberty to lay such claims before the expiration of the time limits at any time suitable to him. That this question has not escaped notice is proved by the fact that Par. 14, subp. 5, Third Restitution Law, shall rule who shall be entitled to lay claims to those properties for which no prejudiced owner exists or to which, without relinquishment of a claim, no claim has been laid. Two draft laws prepared to this effect have met fierce opposition by the chambers.

For the time being, as long as the State Treaty has not yet come off, only preparatory work can be done for the setting up a fund or any other agency which should have the task to collect the properties in question and prepare their administration. To issue any regulations for such agency would presuppose that - as Art.44 of the Draft Treaty referred to in your letter stipulates - this agency is appointed by the four Chiefs of the Missions in Vienna in agreement with the Austrian Government.

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Enclosure No. 3 to Restricted Despatch Vienna 994, dated January 7, 1952

Page 2

As the above quoted Article has been unanimously agreed upon it may be assumed that also the question of the organization to be entrusted with this task has been the object of an interchange of views and it is therefore requested to let the Austrian Federal Government have an information thereof so that a Draft Law relating to it might be prepared as soon as possible. I should like however to point out that fact that, on account of the danger of collision, it would be impracticable to entrust a public agency with the administration of the means prepared for this purpose.

If you say that the property restituted in this way should be as soon as possible made available for the relief of the victims of National-Socialist oppression I may point out that it is very questionable whether there will be any buyers for such properties as long as there is not guarantee that the acquirers of such properties are not once more exposed to restitution claims.

The necessary cash for the planned relief measures can however hardly be procured in any other way than by a sale of the collected properties.

Consequently either Article 42 of the Draft Treaty which provides for a renewed laying of restitution claims after the entry into force of the Treaty ought to be altered, or the acquirers of such properties ought to receive security that they will be fully indemnified in case claims to restitution should be laid.

The Austrian Federal Government therefore awaits a communication about the relative resolution of the four Chiefs of Mission in order to prepare a Draft Law to this effect.

You further express in your letter of 24th October 1951 the concern that the extension of the time limits expiring on 31st December 1951 for the filing of restitution claims provided only for specified groups of restitution claimants under the Draft Austrian Treaty. With regard to this I should like to point out that the Ordinance of the Federal Ministry of Finance concerning the extension of time limits for the filing of claims under several restitution laws, which is at present under consideration by the Allied Council, extends all time limits until 30th June 1952 and leaves then, beyond that, this time limit open for the filing of certain restitution claims. This regulation spells no deterioration for the interests of the restitution claimants in case the State Treaty should not be in force by 30th June 1952. A provision of the State Treaty, if any, by which the claims to restitution would come to life again would revive the expired time limits and together with them the expired restitution claims in so far as the provisions of a State Treaty concerned would provide for it. The now intended provisions concerning the expiration of time limits would in such a case be abrogated because the provisions contained later on in the State Treaty would repeal the previous provisions of the Ordinance concerning the expiration of time limits.

Vienna, 24th November 1951
sgd.: F i g l.

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Authority <u>NND 969002</u>
By <u>JK</u> NARA Date <u>6/26/00</u>

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Enclosure No. 4 to Restricted Despatch Vienna 994,
dated January 7, 1952.

(Page 1)

Vienna, December 27, 1951

Excellency:

Your letter No. 65.873-2a/51 of November 24, 1951 in reply to my letters to you of May 17 and October 24, regarding legislation required to provide for the restitution of tenancy rights, to take control of heirless or unclaimed property, rights and interests of victims of Nazi oppression, and to extend the time limitations for the filing of restitution claims, has been received.

I am aware that legislation is the prerogative of the legislative bodies but this does not gainsay the responsibility of the Austrian Government to see that the legislative bodies enact legislation to meet obligations which Austria is bound, or in good conscience ought, to assume. Such responsibility has hardly been fulfilled by "the fact that the Government draft of the Eighth Restitution Law concerning the restitution of tenancy rights was in the National Council referred to a committee which, however, did not proceed with it", as you seem to contend in your letter - particularly in view of the provision in Paragraph 30(2) of the Third Restitution Law of February 6, 1947 (54/1947) that such a law would be enacted, the obligation to restore such rights contained in the Draft Treaty, and the fact that the failure to enact such legislation has been called to your attention by the United States High Commissioners for Austria repeatedly during the past several years.

As regards heirless or unclaimed property, rights and interests of victims of Nazi oppression, I regret to advise that there has been no interchange of views between the Four Chiefs of Mission as to the designation of the appropriate agencies to whom such assets should be transferred pursuant to Article 44 of the Draft Treaty. I am also cognizant of the difficulties of identifying such assets and of making them available for the relief and rehabilitation of victims of National Socialist oppression prior to the expiration of the time limits for the filing of claims by the aggrieved owners or their qualified heirs, to which you refer in your letter.

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Enclosure No. 4 to Restricted Despatch Vienna 994,
dated January 7, 1952.

(Page 2)

Nevertheless I feel that legislation should be enacted establishing a Restitution fund as promised in Article 14 (Para 5) of the Third Restitution Law, or some other agency with authority to take such heirless or unclaimed property, rights and interests under its control and administration pending their transfer to the agencies which ultimately may be designated as provided in the Draft Treaty. I also believe it would be appropriate if the Austrian Government would take the initiative and submit its recommendations of the ultimate transferee agencies for the approval of the Four Chiefs of Mission in anticipation of the Treaty.

I have noted with considerable satisfaction the Ordinance of the Federal Ministry of Finance extending the time limit for the filing of restitution claims, which you mentioned in your letter.

Accept, Excellency, the renewed assurances of my highest consideration.

His Excellency
Ing. Leopold Figl,
Federal Chancellor,
Vienna I.

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Authority <u>NND 969002</u>
By <u>JK</u> NARA Date <u>6/26/00</u>

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AIR POUCH
PRIORITY

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(Security Classification)

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FOREIGN SERVICE DESPATCH *No action required*

FROM : Vienna
TO : THE DEPARTMENT OF STATE, WASHINGTON.
REF : Embdespatch 994 of Jan. 7, 1952

1045
DESP. NO. L/GER
file -
January 11, 1952
DATE

LEGAL ADVISER

JAN 15 1952

42 For Dept. Use Only ne	ACTION E	DEPT. I DCR N EUR F GER O OTHER	JAN 23 1952 DEPARTMENT OF STATE
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SUBJECT: Claim of Gustav SZENKOVITS.

Enclosure No. 1 is a translation of a Third Person Note dated November 19, 1951 and Enclosure No. 2 is a translation of another Third Person Note dated January 4, 1952, received from the Federal Chancellery, Department of Foreign Affairs on the subject claim which the Federal Ministry of Finance has now recognized and agreed that the Austrian Postal Savings Bank shall treat the same as if the claimant were an Austrian citizen residing in Austria. As stated in our reference despatch, Dr. BLUEHDORN, the Chief of the International Law Section of the Department of Foreign Affairs has informally advised an Embassy representative that other Americans who may present similar claims will receive the same treatment.

The Embassy is informing Mr. Gustav Szenkovits by letter of the recognition his claim.

For the High Commissioner:

Walter Dowling
Walter Dowling
Deputy High Commissioner

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Enclosures: *2*

1. Third Person Note from Dept. For. Affairs dated Nov 19, 1951.
2. Third Person Note from Dept. For. Affairs dated Jan 4, 1952.

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W. H. M.
REPORTER

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Enclosure No. 1 to Unclassified despatch Vienna 1045, dated January 11, 1952

Page 1

Translation.

Federal Chancellery
Department for Foreign Affairs
File No. 118.837-6. VII/51

Vienna,

Third Person Note.

Pursuant to its third person note of February 22, 1951, file No. 147.291-6A/51 and with reference to the personal call of Attache Mag on Minister Dr. Bluehdorn at the Federal Chancellery, Department for Foreign Affairs, relating to Mr. Gustav Szenkovits' claim for payment of his Postal Savings Bank account in Vienna in the amount of approximately 1000.- Austrian Schillings, the Federal Chancellery, Department for Foreign Affairs, has the honor to inform the Legation of the United States of America that the Federal Ministry of Finance does not consider the objections raised against its third person note of Feb. 22, 1951, sufficient to warrant a change of its negative point of view.

First of all it may be pointed out that the version, that the Austrian Postal Savings Bank, established on basis of the Postal Savings Bank Law of December 28, 1926, BGBl. No. 9/1927 is practically identical with the Austrian Federation, is not justified by the law. The fact, that the law conferred upon the then institution the status of separate legal entity plainly speaks against this version. Art. 1, para. 3 of the Postal Savings Bank Law moreover specifically provides: "The capital of the Austrian Postal Savings Bank constitutes an independent estate having the status of a legal entity (juridic person) separate from the capital of the Federation". With this version however also falls the argument based thereon that, in spite of the fact that in spring 1938 the German Occupation Power took the entire reserves of the said corporation, Austria shall be responsible for the liabilities of the said corporation as no debtor is liberated from his obligation because of losses sustained through third parties. Actually the debtor himself i.e. the former Austrian Postal Savings Bank perished, and its legal successor became the German Reichspost which is to-day solely responsible for the assets it took over. With the dissolution of the Austrian Postal Savings Bank and with the assignment of the latter's entire assets to the special estate of the German Reichspost according to the Decree of August 26, 1938, German RMBL. I, page 1061, The German Reich assumed the guarantee for the pecuniary obligations of the Austrian Postal Savings Bank. Art. 3 of the said Decree reads as follows: "The German Reich is liable in the special estate of the German Reichspost for all pecuniary obligations of the heretofore Austrian Postal Savings Bank."

Aside of the foregoing it must be borne in mind that to recognize the claim of Gustav Szenkovits would expose the Austrian budget to a severe burden because other countries might refer to such precedence in order to advance similar claims of their nationals against the Postal Savings Bank which would expose the Austrian finances to a severe burden in no proportion whatsoever to the advantage Mr. Szenkovits would achieve thereby.

The total credit balance of Gustav Szenkovits on his current account amounts to RM 4906.-. However the balance his account showed on March 13, 1938, amounted to only 1047.22 Schillings, i.e. RM 689.15, while the amount of RM 4208.44 accrued only during the German Occupation. In case the balance which originated prior to March 13, 1938, were taken over into the Austrian stock of deposits (oesterreichischer Guthabensblock) the effect for Szenkovits would be that according to the

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Enclosure No. 1 to Unclassified despatch Vienna 1045, dated January 11, 1952

Page 2

provisions of the Schilling Law of Nov. 30, 1945 (StGBI No.231) and the Currency Protection Law of Nov. 19, 1947 (BGBI No. 250) he would receive Federal Treasury Bonds with a face value of 250.- Schillings, which bonds have at present a market value of approximately 45 per cent.

The burden which a recognition of Szenkovits claim would constitute for the Austrian Federal Treasury may be figured as follows:

A segregation according to nationality of the owners of 12 million accounts set apart in the "Reichsmarkblock" is unfeasible since nearly all accounts were opened at the time giving the depositors domicile as being in Austria or Germany. No even halfway accurate estimate can be made as to what amount of deposits is due to nationals of the United Nations. Making a quite rough estimate one may figure with 150 million Reichsmark. However in view of the fact that numerous former Reichsgerman nationals are now citizens of a country which is a member of the United Nations the amount may even be considerably higher. Special reference must be made in this connection to the people of Alsace and Lorraine. According to newspaper reports also a large number of the 400,000 Poles who formerly lived as Reichsgerman citizens in the Ruhr District have moved to Poland and many former German nationals of Polish descent have remained in Upper Silesia now as Polish nationals.

If recognizing these deposits the Federal Treasury would have to compensate them with Federal Treasury bonds to the extent of 40 per cent.

The recognition of deposits of United Nations nationals would undoubtedly have the further consequence that also the more than 17000 accounts in-to which the wages which the "Ostarbeiter" (Laborers from the German occupied territories in the East, who were compelled to work in the war industries etc.) were paid and which showed a total credit balance of approximately 3.7 million Reichsmark as well as the accounts of the numerous Reichsgerman emigrants who acquired the nationality of a country now member of the United Nations, would have to be recognized.

Considering all these reasons the Federal Ministry of Finance is unable to deviate from the point of view set forth in its third person note of Feb. 22, 1951.

The Federal Chancellery, Department of Foreign Affairs, avails itself of the opportunity to express its high esteem to the Legation of the United States of America.

Vienna, Nov. 19, 1951.

(Seal of the Federal Chancellery
Department for Foreign Affairs.)

To the Legation of the United States of America.

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Enclosure No. 2 to Unclassified despatch Vienna 1045, dated January 11, 1952

Page 1

TRANSLATION

Federal Chancellery
Department for Foreign Affairs

File No. 140.020-6VR/52

Third Person Note

Pursuant to its Third Person Note of November 19, 1951, File No. 118.837-6VR/51 concerning Mr. Gustav Szenkovits claim for payment of his Postal Savings Bank account in Vienna, the Federal Chancellery, Department for Foreign Affairs, has the honor to inform the Embassy that the Federal Ministry of Finance, while maintaining the legal point of view which it has previously set forth and explained in detail and without prejudice to possible other cases, is prepared to exceptionally include in the Austrian Accounts category current account on his security deposit No. 2390, i.e. to treat the said account the same way as if Szenkovits were an Austrian citizen residing in Austria.

In accordance with the provisions of the Schilling Law and the Currency Protection Law, Federal Treasury bonds in the amount of 1950.-Schillings therefore now stand at Mr. Gustav Szenkovits' disposal at the Austrian Postal Savings Bank in Vienna.

The Federal Chancellery, Department for Foreign Affairs, avails itself of the opportunity to renew its expression of high estimation to the Embassy of the United States of America.

Vienna, January 4, 1952

(L.S.)

To the
Embassy of the United States of America
Vienna

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Authority <u>NND 969002</u>
By <u>JK</u> NARA Date <u>6/26/00</u>

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KZ

AMERICAN ASSOCIATION OF FORMER INMATES OF CONCENTRATION-CAMPS AND OTHER VICTIMS OF NAZI PERSECUTION

67 RIVERSIDE DRIVE NEW YORK 24, N.Y. - EN 2-1892

- Chairman**
Dr. Armand Eisler
- Co-Chairman**
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160 W. Burton Pl.
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Ludwig Klausner
102 Grandview Ave.
White Plains, N. Y.
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715 - 22nd Ave.
San Francisco 21, Cal.
Max Lassner, BSBA
2724 Hampden Court
Chicago 14, Ill.
Guido Schoenhof
806 West Erie Ave.
Philadelphia, Pa.
E. M. Wyman
11422 Orville Ave.
Cleveland 6, Ohio

LEGAL ADVISER

7/30/52 letter to Eisler
1952

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The Hon.
Secretary of State
Dean Acheson
Washington, D.C.

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DEPARTMENT OF STATE
GERMAN AFFAIRS
GER

Mr. Secretary:

We refer to the petition which we filed to you through the U.S. Embassy during your stay in Vienna.

We also trust that the Austrian desk of your department is familiar with our grievances.

In addition, we discussed the unsatisfactory conditions of indemnification of injuries inflicted upon the ex-Austrian victims of National-Socialism expelled to this country, with the Austrian Bundeskanzler Leopold Figl and recently with members of the Austrian Parliament, among them Otto Probst, secretary of the Socialist Party in Austria. Thousands of destituted claimants expelled from Austria are amidst our membership. They demand un-abridged and transferable pensions and compensations for the loss of life, freedom and opportunity of earning, caused by the persecution of the Nazis. These new Americans ask you, Mr. Secretary, for the diplomatic protection of their legitimate interests, and rights: Equality in granting benefits to both, the Austrian victims and those who have become new Americans.

They also demand to be represented through this Association as their trustees in the new body, in the so-called "Fonds fuer Wiedergutmachung" to be established in Austria for safeguarding just distribution, and implementation of reciprocity. It applies also for the claims on unherited or unclaimed property. This demand is particularly justified by the experience made with the so-called IRSO, the Jewish successor-organization which distributed its funds with utter disregard of the destituted American victims.

We use the opportunity to notify you of the protests which we lodged with Bundeskanzler Dr. Adenauer against the dealings in The Haag discriminating against the American victims represented by our Association.

Respectfully yours,
K.Z. American Association
for the Board:

[Signature]
Paul Stein
[Signature]
Armand Eisler

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In reply refer to
L/GER 262.1141/7-1952

My dear Dr. Eisler:

The receipt is acknowledged of your letter of July 19, 1952 concerning the claims of former Austrians, victims of Nazi persecution against the Government of Austria. There is enclosed for your information a copy of Department of State press release No. 588, which states the Department's position on the subject of interest to you.

With regard to the representation of your organization in the administration of heirless property funds in Austria, any decision on such representation and on the method of appointing representatives would seem premature in the absence of Austrian legislation setting up an heirless property fund.

Sincerely yours,

For the Secretary of State:

JMR
John M. Raymond
Assistant Legal Adviser

Enclosure:

✓ Department of State Press
Release No. 588, July 28,
1952.

Armand Eisler,
K. Z. American Association,
252 West 92nd Street,
New York 25, New York.

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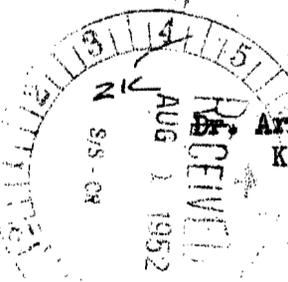
Paul Stern

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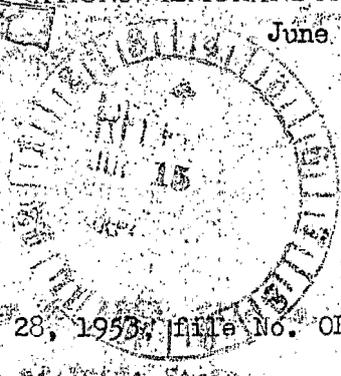
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FOREIGN SERVICE OF THE UNITED STATES OF AMERICA
OPERATIONS MEMORANDUM

June 11, 1953

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PROTECTIVE SERVICES
6-19-53 dll 328
JUN 16 1953
To Mr. Stein and file
DEPARTMENT OF STATE
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SECURITY: UNCLASSIFIED

TO: Department of State
FROM: AMEMBASSY, VIENNA
REF: Your transmittal slip May 28, 1953, file No. OP 263.1141
SUBJECT: Stein Henry/5-253
AMERICAN PROPERTY: case of Fritz Stein

The photostatic copy of Fritz Stein's letter to the President of May 2, 1953, forwarded to the Embassy, contains no facts on the basis of which appropriate investigations can be initiated.

According to our card index the property or property interests of which Fritz Stein was deprived during the Nazi regime formed the subject of correspondence between the Department and the Mission in the years 1945 and 1946. However, the archives containing the pertinent files were shipped to Washington some two years ago in accordance with the Department's instruction.

Mr. Stein fails to state in his letter which properties have been restituted to him in the meantime, which of his claims have not been adjudicated and who has brought action against him.

Unless Fritz Stein is able to furnish full particulars on the nature of his complaints, it is suggested that he give the names of the local lawyers who represented him but who, he asserts, gave up one after the other contending that they could not compete with the criminal methods which were being applied against their client.

As regards one Henry Stein reference is made to the Embassy's operation memorandum of April 7 and April 14, 1950 (subject: American property restitution claim of Henry and Else Stein) in answer to the Department's transmittal slip of March 14, 1950, file DS 263.1141 Stein Henry/1-2950.

JTS/FRODAKOWSKI/eg

236 - STEIN, Fritz

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263.1141 STEIN, HENRY/6-1153

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263.1141 STEIN,
HENRY/6-1153

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File 263.1141
Box 1807

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OP

In reply refer to
OP 263.1141 Stein,
Henry/5-253

May 28 1953

My dear Mr. Stein:

The receipt is acknowledged, by reference from the White House, of your letter of May 2, 1953, in which you set forth certain circumstances pertinent to your family's interests in Austria.

A copy of your letter has been forwarded to the American Embassy at Vienna for consideration and a report on the status of the case. Upon receipt of a reply in the matter, you will be informed.

Sincerely yours,

For the Acting Secretary of State:

Francis E. Flaherty
Assistant Director
Office of Protective Services

Mr. Fritz Stein,
12821 1/2 St. Clair,
Cleveland 8, Ohio.

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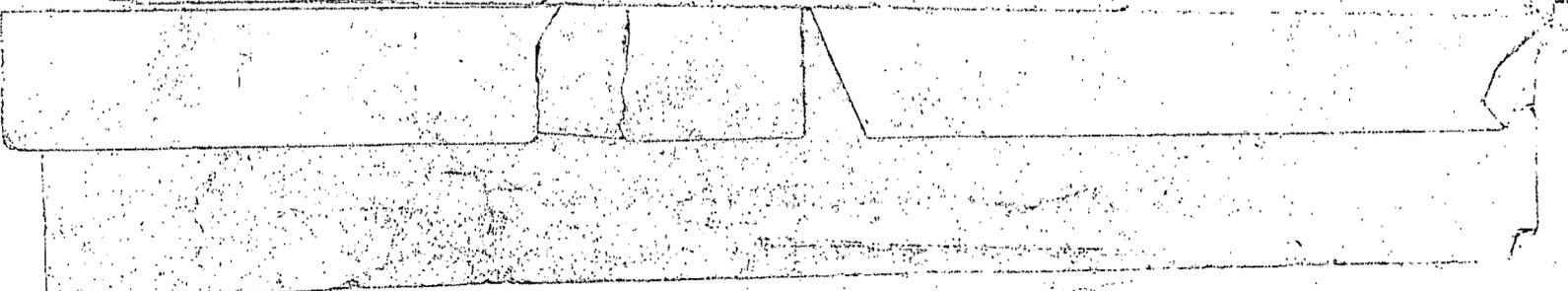
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File	263.1141 Stein
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OP 263.1141 STEIN, HENRY/5-253

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Father's in Austria

Honorable Dwight D. Eisenhower
President of the United States

RESPECTFULLY REFERRED TO THE OFFICE OF
PROMOTIVE SERVICES
MAY 1 1953
APR 5-26-53
MAY 7 9 39 AM '53
The Assistant to the President

Cleveland, Ohio
May 2, 1953

OP file

Dear Sir:

DEPARTMENT OF STATE

In these times of war, turmoil, and billion dollar budgets the grievances of one American family are minutely trivial. Nevertheless when a malignant hurt grows and apparently nothing, unless the highest authorities intervene, can be done about it, one must try.

Here is the grievance of my family. Fifteen years ago my father had extensive business enterprises in Austria. When the Nazis took over in 1938, they confiscated \$ 151,000 in cash plus some property, worth close to \$ 50,000 and goods being valued at over \$ 70,000. This was all verified by the U.S. government, but due to the war nothing could be done about it.

Shortly after the war my father started proceedings to recover at least part of the property and money which was rightfully his. Due to the wonderful efforts of congressman Bolton and the American consul at Vienna some of the property was returned four years ago and the rents were collected and deposited in my father's name in an Austrian bank. Two years ago the Austrian chancellor's office assured my father that proceedings were under way to return the rest of the money.

Since that time the following has taken place: Several members of the criminal group who originally stole my father's investments in Austria have been released from jail and they claim that their careers have been hurt by my father's case. Amongst them were lawyers and government officials. They have been suing and the amounts the Austrian government has been giving them for their "just" claims have eaten up the property and the rents deposited. The lawyers who worked in my father's pay have given up, one after the other. They say that they cannot compete with the new criminal methods that are being revived in Austria. Another matter now has come up against my father. Some of his faithful friends in Austria supplied him with information about ammunition concentrations and new factories. This my father reported to the U.S. government and the factories and ammunition depots were destroyed by the U.S. Air Corps. We were very happy to read about it in the American newspapers. Presently the Austrian government is holding that against my father and we have received letters, even from the chancellor's office, slandering the U.S. government as well as my family, despite the fact that the United States is pouring hundreds of millions of dollars into Austrian economy.

My father and mother have not been well these last few years and our financial situation has steadily become worse. I realize that personal intervention on your part is much too much to ask, but I believe we have tried about all other means and I assure you that a grievous wrong has been done an American family in this case.

Respectfully yours

Fritz Stein
Fritz Stein

Western Reserve University

12821 1/2 St. Clair
Cleveland 8, Ohio

Transmitted by Special Agent
Am Cont Vienna
For: [Signature]
By: *OP* Date: 5.26.53

2631141
HENRY/5-25

CSJEC

180426

RG 59
Entry COF 1950-54
File 263.1141
Box 1807

338342

In reply refer to
WE

NOVEMBER 4 1952

Central
files

My dear Mr. and Mrs. Stein:

Your letter of September 23, 1952, addressed to Mrs. Franklin D. Roosevelt, was referred by her to this Department for study and reply.

You state in your letter that your property, owned by you in Lower Austria before the Anschluss, was taken by the Nazis and that you engaged an attorney after the war to seek the return of this property. You imply that you have not, in fact, received back your former properties and that your assets appear to have been used up in defraying the costs of litigation, some of which were undertaken against your wishes, and that you have no control at all now over your properties.

Unfortunately, you give no specific information concerning any judgments which may have been rendered concerning your properties so that the Department is not able to give any particular advice. It is noted, however, that your properties are located in Lower Austria which is under Soviet occupation. The Soviet occupation authorities have so far denied the power of Austrian courts either to adjudge restitution cases or to grant restitution and it is believed that your difficulties may arise from this fact. If this is the case, then the Department will not be able to do more, until the conclusion of an Austrian settlement, than to cause an investigation to be made of the case upon receipt in duplicate from you of all relevant and specific information bearing on your claim.

Sincerely yours,

V. Lansing Collins, Jr.
Officer-in-Charge
Italian-Austrian Affairs

Mr. and Mrs. Henry Stein
9822 Hough Avenue
Cleveland 6, Ohio

L/GER:HLand:joc
10-31-52

Mr. Kennedy

263.1141 STEIN, HENRY

9-2952

CSJEC

263.1141 Stein, Henry
HENRY / 9-2952

S/S-CR
NOV 7 1952 PM

OK SA 6728

RG	55
Entry	LOP 2950-54
File	263.1141
Box	1807

338343

MAY 9 1950

263.1141 STEIN, HENRY /4-2750

In reply refer to
DS 263.1141 Stein,
Henry/4-2750

My dear Mrs. Bolton:

The receipt is acknowledged of your letter dated April 27, 1950 regarding the restitution claim in Austria of Mr. Henry Stein, 9828 Hough Avenue, Cleveland 6, Ohio. You enclosed with your letter copies of certain correspondence from Mr. Stein regarding the matter.

The Department has been in communication with the American Legation at Vienna in connection with Mr. Stein's restitution claim and there are enclosed for your information and for transmission to Mr. Stein, copies of a correspondence file which the Legation at Vienna received from Dr. Karl Kohlschuetter, who has been representing Mr. Stein's interests. It will be noted from the letter dated April 7, 1950 from Dr. Kohlschuetter, that he states that he is obliged to cancel the power of attorney which Mr. Stein gave him. In the event Mr. Stein desires to empower another attorney to represent his interests, there is enclosed without responsibility on the part of the Department or its representative in Austria a list of attorneys who are believed to be of good repute. You may also wish to inform Mr. Stein that the Department understands that the date for filing claims in Austria under the First, Second and Third Restitution Laws has been extended to June 30, 1950.

For your information and files there is also enclosed a copy of a communication dated April 7, 1950, which the Department received from the American Legation at Vienna regarding Mr. Stein's restitution claim. A

CS/H

263.1141 Stein, Henry
4-2750

copy

The Honorable
Frances F. Bolton,
House of Representatives.

OK SA 6728

nc

338344

RG	55
Entry	COF 2450-50
File	263.1141
Box	1807

copy of this communication was sent to Mr. Stein.

The enclosures to your letter are herewith returned copies of Mr. Stein's communications of February 2, and April 23, 1950 respectively, having been made for the Department's files.

Sincerely yours,

For the Secretary of State:

Edward E. Hunt

Edward E. Hunt
Chief
Division of Protective Services

Enclosures:

1. Dr. Kohlschuetter's correspondence file.
2. Dr. Kohlschuetter's letter dated April 7, 1950.
3. List of attorneys.
4. Mr. Stein's letters dated April 23, February 2, and January 29, 1950.
5. From American Legation, Vienna, dated April 7, 1950.

CON:DS:ICBentzel:njh

5-3-50

L/C

WE

OK SA 6728

338345

RG	59
Entry	COF. 1950-54
File	263.141
Box	1807

265.1141 STEIN, HENRY

nc

ACTION is assigned to

Jh

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
LEGAL ADVISER
WASHINGTON, D.C.

To DS for action
APR 23 1950

APR 23 1950
DEPARTMENT OF STATE

April 27, 1950

PROTECTIVE SERVICES
APR 27 1950

Mr. Benedict English,
Legal Adviser,
Office of International Claims,
Department of State,
Washington, D. C.

DEPARTMENT OF STATE
263.1141 Stein

My dear Mr. English:

I am sending you copies of correspondence I have had from Mr. Henry Stein, 9822 Hough Avenue, Cleveland 6, Ohio, who seeks to reclaim possession of his property in Austria. Mr. Stein has been a naturalized citizen of the United States since August 3, 1945.

The estimated amount of damage, according to Mr. Stein, is \$159,160 (Austrian schilling currency basis as of May 31, 1943): Bank balance, Bank of Eggenburg, Lower Austria, \$32,400; other accounts \$2,000; notes for merchandise sold \$6,400; bills receivable for merchandise \$20,000; machinery and equipment, \$26,160; 8 room building, \$22,000; real estate, \$52,000; mortgage outstanding on other property \$22,000. The Gestapo took over these items in March 1940 and I understand that Mr. Stein holds the receipt for everything taken. A detailed report concerning the matter was made to the Foreign Funds Control Division, Treasury Department, and given No. 91619. The Gestapo forced Mr. Stein to sign a paper at gunpoint, stating that he owed certain taxes, which was not true and in this way the property was taken.

Any cooperation or advice you can give will be deeply appreciated. I shall be interested in hearing from you in the matter.

Very sincerely,

000706

CLAIMS UNIT	
Att.	Frances P. Bolton, M.C.
Rev.	
Cat.	263.1141 Stein
Dist.	

FPB/v

450 HOUSE OFFICE BUILDING
WASHINGTON, D. C.

OK SA 6728

338346

RG	59
Entry	108 1950-54
File	263.1141
Box	1807

263.1141 STEIN, HENRY / 4-2750

263.1141 STEIN, HENRY

263.1141 Stein

MAY 11 1950

APR 20 1950

263.1141 Stein
4-2750

nc

April 23, 1950

The Hon. Frances P. Bolton
House of Representatives
Washington, D. C.

Dear Mrs. Bolton:

In reply to your communication of February 10, 1950, I have the following to say:

My letter to the Foreign Funds Control was answered immediately and the persons responsible for the delay in carrying out my claim were notified by the American Legation at Vienna. My attorney was asked to appear at the Legation. He gave an account of how my affairs were mishandled by former members of the Nazi party and, according to this account the American Legation at Vienna informed me to place the matter into more responsible hands. This, however, is rather difficult to do since I cannot tell from here whom I should trust.

An exchange of letters between the Legation, the U. S. Department of State, my attorney, and myself, covering a period of two months, has had absolutely no results. The situation remains the same as I outlined it to you in my letter of January 29, 1950.

Respectfully yours,

Henry Stein

9822 Hough Avenue,
Cleveland 6, Ohio.

263.1141 STEIN HENRY

OK SA 6728

nc

338347

RG	55
Entry	LOF 1950-54
File	263.1141
Box	1807

copied and compared in jh

February 2, 1950

The Honorable Frances P. Bolton
House of Representatives
Washington, D. C.

Dear Mrs. Bolton:

Being a citizen of this country since August 3, 1945, and having learned about the helpful hand you have given to so many refugees I would like to ask for your assistance in getting back all my registered property at Eggenburg, Bahnhofstrasse 412, Nieder-Oesterreich, Austria.

The Restitution Law which was decreed by the Austrian government several years ago is so extremely unfavorable for the refugees that they have to give up their property anyway and on top of that fact have to supply dollars for the legal proceedings. The officials who are most influential in such matters are strongly under pressure by the former Nazis if not Nazis themselves. The people who stole the properties in the first place are no more responsible for the return of such property, instead the legal owners have to buy properties back from the present owners.

In my case I was expelled so that I may not know who took all my property. Now that I have found out who was behind it all these persons sold my property and it looks as if the new owners must not return anything to me. It seems as if all these laws were made explicitly to rob the American citizen in spite of the Marshall Plan which is so helpful and like a gift from heaven for these people. Instead of giving the American citizen worthy treatment they steal from him and misuse him more than the Gestapo or Germans ever did.

With this I beg of you to intervene for me with our government at Washington, D. C., so that my stolen property, which is registered at the Treasury Department according to the last inventory, may be returned to me.

Could you please instruct me as to what action I have to take?

Respectfully yours,

Henry Stein
9822 Hough Avenue,
Cleveland 6, Ohio.

OK SA 6728

nc

338348

RG	59
Entry	LOF 1950-54
File	263.1141
Box	1807

SCS

October 12 1953

In reply refer to
SCS 263.1141 Loguay,
Beatrice/9-2853

*263.1141 Loguay
Beatrice/9-2853*

My dear Mrs. Loguay:

The receipt is acknowledged of your letter of September 28, 1953, regarding your desire to file a claim against the Austrian Government for property confiscated during the Nazi regime.

There is enclosed a copy of a general information sheet which sets forth the restitution procedure adopted in Austria in connection with property which was wrongly taken from its rightful owners during the Nazi regime. If you have failed to file your restitution claim in accordance with the restitution laws and by the designated dates, you should enlist the services of a legal representative in Austria who no doubt would be able to advise you regarding available legal resources in the Austrian courts. In of assistance there is enclosed without responsibility on the part of the Department or the American Embassy at Vienna a list of attorneys who are believed to be competent and reliable.

Sincerely yours,

For the Secretary of State:

Francis E. Flaherty
Assistant Director
Office of Special Consular Services

Enclosures:

- Information sheet.
- List of Attorneys.

DC/R
Ancl 69
R/R
GEB

Mrs. Beatrice Loguay,
1111 Capp Street,
San Francisco 10, California.

S/S - CR
OCT 9 1953 P.M.

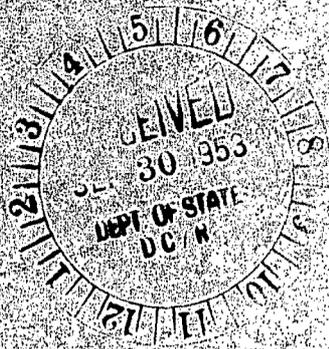
SCA:SCS:ICBentzel:mjp

10-8-53

This Document Must Be Returned to
 DC/R
 Central
 Files
 263.1141
 BEATRICE
 LOGUAY
 19-2853
 CS/GB

338349

RG	55
Entry	COF 1950-54
File	263.1141
Box	1206



OFFICE OF
SPECIAL CONSULAR SERVICES
DEPARTMENT OF STATE
10-4-53

SCS
ACTION
is assigned to
[Signature]

San Francisco, California, September 28, 1953

United States Department of State
Washington D. C.

Gentlemen;

Would you be so kindly and send me information in regards to filing a claim against the Austrian Government for property confiscated while the above mentioned Nation was under the rule of Nazie Germany.

I am a American Citizen and was at that time residing in Austria, the time or date was, April 1938.

Will you be so kindly and furnish me with information of where and how to file such a claim.

Very truly yours;

no ch
Mrs. Beatrice Loquay *me*
1141 Capp street
San Francisco, 10, Calif.

Beatrice Loquay

CS:GB

205704

DC/M
Anel *[initials]*
Rev
Cat

338350

RG 59
Entry COF 1950-54
File 863.114
Box 1206

Document Must Be Returned
DC/M 263.1141
LOQUAY
BEATRICE/9-2853

DEPARTMENT OF STATE
OFFICE OF
THE LEGAL ATTACHE CONSULAR SERVICES

Mrs. Beutzel

SCS JAN 27 1954

DEPARTMENT OF STATE

Rm. 118

SA-11
JCS/epb

There is another letter involving
Re "famed" Phoenix Insurance

① With respect to the matter
of expropriated securities ^{mentioned} in the letter:

securities of Austrian issue
were collected by ^{the} us ^{occupations} in Germany
and sent to Austria. If the
client's securities were thus
returned ^{by post} (and he can find out
by writing to Ambassador, Vienna,
giving a full description, incl.
numbers,) then he can file a
claim for restitution if he was

100-2111-11-21-54

DECLASSIFIED
Authority NND 873050
By JK NARA Date 7/1/00

RG 59
Entry CDF, 1950-54
File 262.1141
Box 1063

338351

deprived of his securities because
of Nazi persecution. If these
securities are not in Austria or
cannot be located he is out of
luck because the Aust. Govt.
has not enacted compensation
legislation to cover such losses.

If, as I assume, the
client is a former Austrian,
he cannot take advantage
of German General Claims
legislation, which might
perhaps otherwise be applicable.
(call + confirm w. Mr. MOORES,
GEA, x 4861) because he
did not reside in what is
now the Federal Republic.

⊗ This would be under Aust.
legislation + he would need
an Austrian lawyer.

DECLASSIFIED
Authority NND 873050
By JK NARA Date 7/4/00

RG	<u>59</u>
Entry	<u>CDF, 1950-54</u>
File	<u>262.1141</u>
Box	<u>1063</u>

338352

FORM DS-10 2-10-47	DEPARTMENT OF STATE	DATE 1-18
REFERENCE SLIP		
TO: <i>Mr. Land</i>		
<i>✓ L/CER</i>		
<input type="checkbox"/> ADVISE	<input type="checkbox"/> NOTE & FORWARD	
<input type="checkbox"/> APPROVE & RETURN	<input type="checkbox"/> NOTE & RETURN	
<input type="checkbox"/> AS YOU REQUESTED	<input type="checkbox"/> PER TELEPHONE TALK	
<input type="checkbox"/> ATTACH FILE	<input type="checkbox"/> PREVIOUS CORRESPON.	
<input type="checkbox"/> ATTENTION	<input type="checkbox"/> PRIORITY ACTION	
<input type="checkbox"/> COMMENT & RETURN	<input type="checkbox"/> RECONSIDER	
<input type="checkbox"/> CONSIDER	<input type="checkbox"/> RECOMMEND ACTION	
<input type="checkbox"/> COPYING	<input type="checkbox"/> RECORD	
<input type="checkbox"/> CORRECT	<input type="checkbox"/> REPLY	
<input type="checkbox"/> FILE	<input type="checkbox"/> RETURN TO SENDER	
<input type="checkbox"/> FOLLOW-UP	<input type="checkbox"/> REWRITE	
<input type="checkbox"/> FOR YOUR INFORMATION	<input type="checkbox"/> SEE ME	
<input type="checkbox"/> HOLD	<input type="checkbox"/> SIGNATURE REQUIRED	
<input type="checkbox"/> INITIALS NEEDED	<input type="checkbox"/> TAKE ACTION	
<input type="checkbox"/> INSTRUCT	<input type="checkbox"/> TRANSFER	
<input type="checkbox"/> INVESTIGATE & REPORT	<input type="checkbox"/> TYPE	
<input type="checkbox"/> JUSTIFY	<input type="checkbox"/> VERIFY	
<input type="checkbox"/> KEEP ME ADVISED	<input type="checkbox"/> REPLY FOR SIGNATURE OF	
<input type="checkbox"/> LEGAL MATTER		
<input type="checkbox"/> MEMO REQUIRED		
<input type="checkbox"/> NOT INTERESTED		
<input type="checkbox"/> NOTE & DESTROY		
<input type="checkbox"/> NOTE & FILE		
REMARKS: <i>I guess you can answer this -</i>		
FROM: <i>Robert L. ...</i>		

DECLASSIFIED
 Authority *NND 873050*
 By *JK* NARA Date *7/100*

RG 59
 Entry CDF, 1950-54
 File 262.1141
 Box 1063

338353

ACTION
is assigned to

~~GER~~

~~EUR~~
~~W~~

~~file~~
DC/R

LEGAL ADVISER

JAN 1 8 1954

DEPARTMENT OF STATE

January 7, 1954

EUR INDEX
JAN 18 1954

ALEX LINDOWER
COUNSELLOR AT LAW
261 BROADWAY
NEW YORK 7, N. Y.

WORTH 4-0878

RECEIVED
JAN 6 1954
DEPT OF STATE

State Department
Washington
D. C.

Gentlemen:

I represent a client of mine who had a life insurance policy in the Phoenix Life Insurance Co., Vienna, Austria, and a substantial number of securities in corporations located in Austria.

The life insurance company and the securities were expropriated by the German Reich. I understand that the German Reich then issued their loan marks to cover the insurance policy and securities.

I would appreciate your advice as to the procedure in filing claims against the Austrian Government and/or the West German Government to cover the value of the securities and the face amount of the life insurance policy. I would also appreciate your advice as to any other method or means to recover same.

My sincerest appreciation for your operation in this matter.

Very truly yours,

Alex Lindower
ALEX LINDOWER

AL:pb

262.1141/1-754

BUREAU OF
GERMAN AFFAIRS
GER

JAN 11 11 12 AM '54
W. J. ...
C. E. ...

262.1141/1-754
C. G. B.

DC/R
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Rev.
Cat.

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JAN 24 1954

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RG 59
Entry CDF, 1950-54
File 262.1141
Box 1063

338354

DECLASSIFIED
Authority NND 873050
By JK NARA Date 7/100

June 25 1954

In reply refer to
1/6 263.1141 Leitmann,
George/5-2454.

DC/R
Central
Files

263.1141 LEITMANN, GEORGE/5-2454
This Document Must Be Returned to

Dear Mr. Leitmann:

The Department has received by reference from the United States Information Agency your letter of May 21, 1954, in which you express a desire to obtain compensation for losses sustained as a result of forced sales by the German authorities in the years from 1938 to 1940, at which time you and your family were Austrian nationals.

It is not clear from the statements made in your letter where the losses were sustained. If they were sustained in Austria, you would only have such remedies as are open to you under the laws of Austria. A general information sheet concerning American property interests in Austria is enclosed.

If the losses were sustained in the territory of the Federal Republic of Germany, your attention is invited to the general claims law of the Federal Republic of Germany which came into force on October 1, 1953. This law provides a mode of redress for the victims of Nazi persecution. To be eligible, however, the claimant must satisfy certain requirements regarding residence in the German Federal Republic. The Department has no copies of the German law available for distribution but understands that the German Consulates in the United States law in a position to furnish information concerning the German law and procedure. You may, therefore,

care to

Mr. George Leitmann,
United States Naval Ordnance
East Station, Ingomar,
China Lake, California.

DC/R
Ar: 68
[Signature]

263.1141 Leitmann
George/5-2454
OS/MS

338355

RG 59
Entry 10F 1950-54
File 263.1141
Box 1206

-2-

care to communicate with the German Consulate at 3450 Wilshire
Boulevard, Los Angeles, California.

Sincerely yours,

For the Secretary of State:

Joseph B. Matre
Assistant to the Legal Advisor

Enclosure:

✓ General information sheet
concerning American property
interests in Austria.

✓
S/S-CR
JUL 25 1954
HW

L:L/C:JEMatre:eg

6-25-54

338356

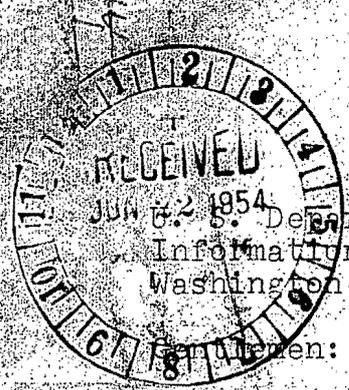
RG	59
Entry	COF. 1950-54
File	863.1M.V. 116
Box	1206

ADDRESS REPLY TO
COMMANDER
AND REFER TO NO. 1
John D. ...

U.S. NAVAL ORDNANCE TEST STATION, INYOKERN
CHINA LAKE, CALIFORNIA



JUN 18 1954



U.S. Department of State
Information Service

*DC/R ASC
David's
no record*

24 May 1954

WE

Code 5036
Research Department

ACTION
is assigned to

U.S. Department of State
Information Service
Washington 25, D. C.

*DC/R
no record*

LEGAL ADVISER
JUN 18 1954
DEPARTMENT OF STATE

I am seeking information regarding the possibility of undertaking steps to gain compensation for property lost due to punitive actions and forced sales by the German government or one of its organs. During the period from 1938 to 1940 my family and I suffered considerable losses of the kind indicated above. At that time we were Austrian citizens and loss of property took place in the form of confiscation, forced sales, and looting. No steps on my part have been taken prior to this time, since I understand that any compensation awarded is in the form of local (in this case Austrian) currency. However, for the next year or so I shall be in Europe on a scientific mission for the U. S. government (I am employed as a physicist by the Navy Department), and during that period I shall be able to utilize local currency.

Is there any way of applying for compensation? And if so, what are the necessary steps?

Sincerely yours,

George Leitmann
George Leitmann

236208

CS/MC

DC/R
Anal 39
Rev
Cat

AUG 3 1954

RECEIVED
DEPARTMENT OF STATE

JUN 16 PM 3:02

This Document Returned to
263.1141 LEITMANN,
GEORGE/5-2454

263.1141 LEITMANN,
GEORGE/5-2454

338357

RG 59
Entry COF 1950-59
File 863.1141
Box 1206

LAW OFFICES
LANDIS, COHEN, RUBIN AND SCHWARTZ
1832 JEFFERSON PLACE, N. W.
WASHINGTON 6, D. C.
STERLING 3-5905

February 6, 1956

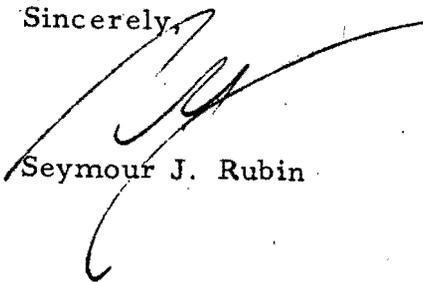
Mr. Richard B. Freund
Office of Western European Affairs
Department of State
Washington 25, D. C.

Dear Dick:

Enclosed is a copy of a translation of a letter received from the Austrian Ministry of Finance by lawyers in New York, who wrote in connection with Article 26 claims.

I'd appreciate the Department's comments.

Sincerely,


Seymour J. Rubin

Enclosure

*4/15/56
HHC - please see
you & you can
produce
267*

I., Ballhausplatz 1

55, you report property
tored and at the same
ered, referring to Article

try of Finance should
26, paragraph 1, of the
dition, Austria is obliged
or interests in Austria
ransfer under duress or
control because of the
such property shall be
with all appurtenances
that "where restitution
for damages suffered as a
ie extent to which it is
ationals in general."

es for such compensation
who have lost their
omb or other war damage

elling Reconstruction Law
atives and foreigners

ends, however, to make
ians who are now abroad
le measures during the
is shall be accomplished
political persecutees who
broad. The draft of the
ral Council (Nationalrat)
th by the Federal Council

blished as required and
which probably will be given attention by press and radio, respectively
the statutes of the fund will also regulate the time and the manner in
which claims may be filed. In any event, claims filed with some other
governmental authority or which are not filed at all, can not be
considered as claims under this fund and are thus entirely worthless.

Should, however, your personal circumstances be so favorable
that you do not qualify for such assistance, you will have to carry
these losses, which were inflicted on Austria by a foreign power, just
as Austrians who remained in the country carry the losses they suffered

RG 59
Entry COF, 1955-58
File 263.0041
Box 1098

338358

DECLASSIFIED
Authority NND 969003
By JB NARA Date 6-21

*W/ER
HHC - please advise
you & you can
produce.
2/27*

TRANSLATION

Republic of Austria
Federal Ministry of Finance

Vienna I., Ballhausplatz 1

With your petition of November 1, 1955, you report property that has been confiscated from you and not restored and at the same time you ask for compensation for damages suffered, referring to Article 26 S.T.V.

In this connection the Federal Ministry of Finance should first like to clarify that pursuant to Article 26, paragraph 1, of the Federal Treaty, to which you refer in your petition, Austria is obliged "in all cases in which property, legal rights or interests in Austria were - since March 13, 1938 - the subject of transfer under duress or of measures of sequestration, confiscation or control because of the racial origin or the religion of the owners, such property shall be restituted and such legal rights or interests with all appurtenances restored." The next sentence states, however, that "where restitution or restoration is not possible, compensation for damages suffered as a result of such measures shall be granted to the extent to which it is or will be given for war damage to Austrian nationals in general."

But there exists no law that provides for such compensation to Austrian nationals; accordingly Austrians who have lost their property or other possessions as a result of bomb or other war damage must carry these losses themselves.

Applications for loans under the Dwelling Reconstruction Law (Wohnhauswiederaufbaugesetz) may be made by natives and foreigners alike.

The Austrian Federal Government intends, however, to make available certain funds to those former Austrians who are now abroad and who are now needy because of the regrettable measures during the time of occupation between 1938 and 1945. This shall be accomplished through creation of a fund for assistance to political persecutees who have their residence and permanent domicile abroad. The draft of the respective law has been submitted to the Federal Council (Nationalrat) as a governmental bill and should be dealt with by the Federal Council in the near future.

This expected law, which will be published as required and which probably will be given attention by press and radio, respectively the statutes of the fund will also regulate the time and the manner in which claims may be filed. In any event, claims filed with some other governmental authority or which are not filed at all, can not be considered as claims under this fund and are thus entirely worthless.

Should, however, your personal circumstances be so favorable that you do not qualify for such assistance, you will have to carry these losses, which were inflicted on Austria by a foreign power, just as Austrians who remained in the country carry the losses they suffered

RG 59
Entry COE, 1955-59
File 263-0041
Box 1098

338359

DECLASSIFIED
Authority: NND 969003
By: JB NARA Date: 6-21

because of the war, e.g. likewise through a foreign power, in particular bomb damage.

The Federal Ministry of Finance regrets that it can not give you more favorable information and that it can not acknowledge your application.

For the Federal Minister

Signature illegible.

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Authority <u>NND 969003</u>
By <u>JB</u> NARA Date <u>6-21</u>

RG	<u>59</u>
Entry	<u>COF, 1955-59</u>
File	<u>263-0041</u>
Box	<u>1098</u>

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LANDIS, COHEN, RUBIN AND SCHWARTZ
1832 JEFFERSON PLACE, N. W.
WASHINGTON 6, D. C.

JAMES M. LANDIS
WALLACE M. COHEN
SEYMOUR J. RUBIN
ABBA P. SCHWARTZ

STERLING 3-5905
February 27, 1956

Mr. Richard Freund
Office of Western European Affairs
Department of State
Washington 25, D. C.

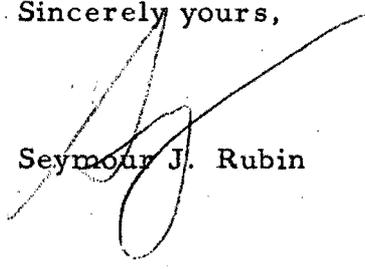
Dear Dick:

I think that my secretary has already been in touch with your office suggesting the possibility of a meeting on March 2 or some other mutually convenient date. The purpose of this meeting would be to continue the discussion which we began some time ago on the significance of Articles 25 and 26 of the State Treaty for Austria. You will recall that we have had some considerable and detailed discussions of these provisions and that the Department has issued a couple of releases on the subject.

Although other materials are available and will be furnished to the Department in due course, I think it would be appropriate in advance of such meeting as we might have to furnish you with copies of a letter addressed by Dr. Kamitz, the Austrian Minister of Finance, to Dr. Nahum Goldmann, under date of February 13, 1956. Although the letter is addressed to Dr. Goldmann in care of the Jewish Agency for Palestine, it is, in effect, sent to Dr. Goldmann in his capacity as Chairman of the Committee for Jewish Claims on Austria.

In my view, the letter from Dr. Kamitz raises substantial questions involving what I understand to have been both the American and the British interpretation, publicly announced, of Articles 25 and 26 of the State Treaty.

Sincerely yours,



Seymour J. Rubin

Enclosure

RG 59
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Box 1098

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Authority NND 969003
By JB NARA Date 6-21

T R A N S L A T I O N

The Federal Minister of Finance
Zl.225.893-34/56

Vienna, 13. February 1956

Dr. Nahum Goldmann
c/o Jewish Agency for Palestine
16 East 66th Street
New York 21, New York

Dear Mr. President:

With reference to your cable of January 14, I cabled you today that the Bundesrat has decided to raise no objections against the Assistance Fund Law. The law is still to be submitted for signature to the Federal President and will be published next week under #25 in the Federal Gazette.

In the meantime, I have already applied with the Ministry of the Interior for the granting of a juridical personality to the Assistance Fund and was advised that the appropriate decree will be issued in the next few days. It is intended to publish immediately an extract from the statutes so that the other interested organizations will be enabled to submit their proposals concerning the nomination of members to the Kuratorium. I would like to ask you to advise us as soon as possible of the names of the four members to be nominated by your group, as well as their four alternates. These statutes which were already approved by the Cabinet contain only one change from the version with which you are familiar, i.e. that the majority of the members of the Kuratorium must be Austrian citizens. This was a change requested in the Parliamentary discussions. Undoubtedly the representative of the Jewish community to be nominated by you will meet this requirement.

The Kuratorium will meet as soon as possible after its nomination and decide on the order of business on the basis of which an appeal to the interested persons can be issued.

Upon receipt of about 10,000 indemnification requests by Nazi victims based on Articles 25 and 26 of the State Treaty, it could be determined that a large part of these persons, upon advice of the Committee for Jewish Claims on Austria or the URO, had approached the Ministry for Finance with compensation claims, although it is clear from the content of the letters that only a grant out of the Assistance Fund could be in question.

May I ask you to urge the above organizations not to raise false hopes with those poor people by referring to the State Treaty.

In the negotiations in the last three years it was always explained that Austria is not obligated to pay compensation. This was also recognized by the elimination of the sentence on Austria's responsibilities - never recognize by Austria - in the Preamble to the State Treaty.

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By: <u>JB</u> NARA Date: <u>6-21</u>

Only on this basis was the Fund created and with it payments to persons who suffered damages.

It would, therefore, be advantageous, in order to avoid further disappointments and misunderstandings, if the two above named organizations were instructed to sharply distinguish between payments based on the State Treaty (restitution of traceable property) and the (voluntary) payments under the Fund and could issue a publication whose text might best be discussed in advance with my Ministry.

Sincerely yours,

Kemitz

RG 59
Entry COF, 1955-59
File 263.0041
Box 1098

338363

DECLASSIFIED
Authority NND 969003
By JB NARA Date 6-21

TRANSLATION

The Federal Minister of Finance
Zl.225.893-34/56

Vienna, 13. February 1956

Dr. Nahum Goldmann
c/o Jewish Agency for Palestine
16 East 66th Street
New York 21, New York

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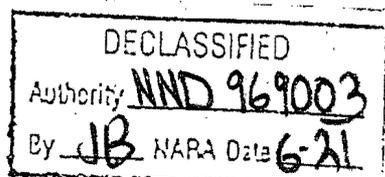
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Only on this basis was the Fund created and with it payments to persons who suffered damages.

It would, therefore, be advantageous, in order to avoid further disappointments and misunderstandings, if the two above named organizations were instructed to sharply distinguish between payments based on the State Treaty (restitution of traceable property) and the (voluntary) payments under the Fund and could issue a publication whose text might best be discussed in advance with my Ministry.

Sincerely yours,

Kamitz

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AIR POUCH

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FOREIGN SERVICE DESPATCH

~~263.1141A/5-1856~~
~~263.0041A/5-1856~~

FROM : AMEMBASSY, VIENNA

989

DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON

May 18, 1956

REF : Dept's Instruction A-410 May 1, 1956 L RSP

DATE

MAY 22 1956

LEGAL ADVISER

MAY 29 1956

DEPARTMENT OF STATE

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	5-28		

SUBJECT: Disposition of Heirless or Unclaimed Property Under Article 26 of State Treaty.

The Austrian authorities are working on a draft of a law for the implementation of paragraph 2 Article 26 of the State Treaty. The Austrian Government expects to have a first draft of the law within the next few weeks and will furnish the Embassy with a copy as soon as it is available.

Officials of the Austrian Government have advised the Embassy that the law will provide for the establishment of a collecting agency (Sammelstelle) which will have the function of collecting and taking under control all heirless and unclaimed property preparatory to the transfer in accordance with Article 26. It is contemplated that the law will also include provisions for the assertion of individual restitution claims which have not been filed up to this time under Austrian laws. The merits of such restitution claims are to be determined in coordination with the collecting agency. The details as to the manner in which this is to be accomplished have not been determined. The Austrian Government does not intend to extend the time for the filing of restitution claims under the existing Austrian restitution laws beyond July 31, 1956.

Under the administrator's law the Austrian Government is empowered to take under control property which was confiscated during the Nazi regime. A large number of such properties were taken under control during 1946 and 1947. Restitution claims were subsequently filed and adjudicated as to nearly all such properties. Most of the properties remaining under control which were confiscated and remain unclaimed stand in the name of the German Reich and are under control as alleged German property. The Austrian Government does not have accurate information as to the nature or extent of the properties falling within the terms of paragraph 2 but estimates that they consist mainly of real property in Vienna such as apartment houses. At the time of the negotiations with the World Jewish Organizations in 1954 the Austrian Government made a rough appraisal of the properties which were believed to be heirless and unclaimed and arrived at a value of about 25 million schillings (about \$1,000,000). (See page 2 Embassy Despatch 626 December 2, 1954) This value was reduced by additional restitution claims which were filed in the Soviet zone after the effective date of the Treaty. The Ministry of Finance believes the increase in property values may be equal to the decrease resulting from such individual claims. Specific information will only be available when the collecting agency takes the properties under control as a unit and prepares an inventory.

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Desp. No. _____
From _____

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Page 2 of
Desp. No. 989
From Vienna

Neither the British nor the French Embassies have given any consideration to the designation of appropriate agencies or organizations to receive the property. The Austrian Government advised they have not been approached by any organization or any of the four missions.

In informal discussions the French Embassy expressed the view that the designation is premature and in view of the scope of the language as to the type of organization to which the property is to be transferred considered it advisable to postpone any formal action, if possible, until the expiration of the 18-month period provided in Article 34 during which the Four Heads of Mission are to "act in concert". After that time the Heads of Mission can make arrangements with the Austrian Government on an individual basis.

The British Embassy does not favor an approach to the Austrian Government until the problems under paragraph 1 Article 26 have been solved as the nature of the property to be considered as heirless or unclaimed is affected by paragraph 1. The Austrians may be reluctant to give a liberal interpretation to paragraph 1 as to individual claims if like property and legal rights and interests for which no individual claim is filed may become subject to a claim by the collecting agency or the persecutee organizations. The British have a greater interest in the satisfaction of individual claimants than the transfer under paragraph 2. If the Austrian Government grants adequate relief under paragraph 1 to individual claimants, and the question of the effect on paragraph 2 is raised, they may not insist that unclaimed property which is no longer in existence be included under paragraph 2.

The Embassy is of the opinion that the French and British views have merit. The possibility also exists that the Soviet Union may designate the Communist Party or an organization of former concentration camp inmates which is communist dominated as an "appropriate agency" on the basis that the members were the "object of other Nazi measures of persecution". The Embassy anticipates that about 3 months will be required after the heirless property law is enacted for the collecting agency to take the properties under control and to make arrangements for their transfer to appropriate agencies.

By a letter dated January 31, 1956 to the Embassy Dr. Armand EISLER, Chairman of the KZ American Association of Former Inmates of Concentration Camps and Other Victims of Nazi Persecution, 212 West 92 Street, New York, offered the services of the organization in connection with paragraph 2. In its answer the Embassy expressed appreciation for the offer of the services of the organization and informed Dr. Eisler that the consideration of the agencies or organizations to be designated appeared to be premature. Dr. Eisler claimed his organization has thousands of members and appears to be opposed to the World Jewish Organizations (see Memorandum of Conversation, May 4, 1954, between Dr. Eisler and Department officials, entitled "Claims against Germany by the American Association of Former Concentration Camp Inmates"). This was the only application by an organization received by the Embassy.

When a copy of the draft of the heirless property fund law is received from the Austrian Government it will be forwarded to the Department.

Llewellyn E. Thompson
Llewellyn E. Thompson
American Ambassador

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DEPARTMENT OF STATE INSTRUCTION

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2260

FOR DC USE ONLY

NO.: A-495, June 22, 1956,

SUBJECT: Disposition of Heirless or Unclaimed Property Under Article 26 of the State Treaty

TO: The American Embassy, VIENNA

Reference is made to Embassy Despatch 989 of May 18, 1956

The Department has considered the views expressed in the Embassy's despatch reporting the tentative position of the French and British Embassies regarding the problem of heirless or unclaimed property. The Department has difficulty in understanding the basis for the French position that any action should be postponed until the expiration of the 18-month period so that thereafter the Heads of Mission could make arrangements with the Austrian Government on an individual basis. The Department cannot see how such a position is possible in view of the following clear language of the treaty:

"Austria shall transfer such property...to appropriate agencies...to be designated by the Four Heads of Mission in Vienna.... Such transfer shall be effected within eighteen months from the coming into force of the present Treaty.. ."

As we read this language it appears mandatory that the entire transaction shall be completed within eighteen months and that the French proposal of delay would be inconsistent with such provisions.

The Department believes that the British proposal is a sounder approach to the problem of avoiding, insofar as possible, any joint action with the Soviets in regard to this matter. It seems to the Department that the best approach to implementing the British proposal, however, is not to wait to see how the Austrians proceed under paragraph 1 but to arrange that there be little or no "heirless or unclaimed" property which would fall under Paragraph 2. Probably the best way of arranging this would be to insure that the definition of an heir/with respect to heirless or unclaimed property as specified in the proposed Austrian law on the implementation of Paragraph 2 is so phrased as to make it possible for the Austrian authorities to decide that someone or some organization is the "heir" or a proper "claimant" to the property. It appears possible that the Austrian authorities

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DRAFTED BY:

L/L/GER:DA Wehmeyer:ejs 5/1/56

APPROVED BY:

Richard D. Kearney

CLEARANCES:

L/GER-Mr. Kearney WE-Mr. Compton

S/S-CR

JUN 22 1956 P.M.

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No. A-495, Vienna, 6/22/56,

PAGE 2

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could by such action reduce the amount of property which would otherwise fall under Paragraph 2 to an insignificant amount.

The Embassy is requested to discuss the matter with the British and French Embassies again at an early date, and if agreeable to the British and French, discuss the matter on an informal and confidential basis with the Austrian authorities, explaining that it would appear desirable to avoid having a problem in this matter which would require the Four Heads of Mission to act in concert and, accordingly, ascertain whether they would be agreeable to an arrangement such as that proposed above.

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FOREIGN SERVICE DESPATCH

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FROM : AMEMBASSY, VIENNA

61

DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON

July 17, 1956

DATE

REF : Department's Instruction A-495, June 22, 1956

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LEGAL ADVISER
INLET TO Vienna File

JUL 27 1956

DEPARTMENT OF STATE

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SUBJECT: Disposition of Heirless or Unclaimed Property under Article 26 of the State Treaty.

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The Embassy has discussed the matters covered by the referenced instruction with the British and French Embassies. All Embassies agree that the language of Article 26 makes it mandatory that the transfer of heirless and unclaimed property, rights and interests should be completed within 18 months and that the French proposal of delay would be inconsistent therewith.

The Austrians are preparing a draft bill in implementation of paragraph 2 for the creation of a Sammelstelle (collecting agency) and have confined the functions of the Sammelstelle to the collection of heirless and unclaimed property, rights and interests restitutable under present restitution legislation. Although pressure on our part with respect to heirless and unclaimed property falling under paragraph 2 might lead to reasonable Austrian proposals as to the disposition of such property, the British Embassy fears that the Austrians would construe our acceptance of such proposals as an admission on our part that restitution legislation will satisfy the provisions of Article 26 as a whole. Moreover, the British Embassy believes that pressure under paragraph 2 would give the Austrian Government a chance to delay action under paragraph 1 until a settlement is worked out of the issues under paragraph 2.

The principal concern of the British Embassy is to have the interests of individual claimants satisfied (for domestic reasons) and they regard the transfer problems under paragraph 2 to be of secondary importance. Furthermore, they do not think that the Department's suggestions for enlarging the definition of "claimants" and "heirs" to include organizations is a practicable one, because (a) the Austrians are wedded to the idea of creating a Sammelstelle and (b) while it may be feasible to designate by law the Jewish Community as a direct claimant for heirless and unclaimed property which belonged to persons of Jewish faith, no equivalent organization could be designated, without political repercussion, as direct claimant for the heirless and unclaimed property which belonged to Christian Jews and purely political persecutors such as Communists, Socialists and Slovenes.

In return for adequate relief for individual claimants under paragraph 1, the British Embassy would ultimately consider letting the Austrian Government write its own ticket as to the type of heirless and unclaimed property to be transferred under paragraph 2 and permit the Austrians to limit such property to that which is covered by existing restitution laws. It has been estimated that the value of such property would be approximately \$1,000,000. The Department's suggestion that the

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Page 2 of _____
Desp. No. 61
From Vienna

definition of heirs and claimants be enlarged would, in the opinion of the British Embassy, defeat this plan. The British Embassy proceeds on the theory that the Austrian Government may be willing to increase the benefits to individual claimants under paragraph 1 if the cost of carrying out paragraph 2 would be correspondingly reduced or held to a minimum. However, if most of the "heirless" and "unclaimed" property, rights and interests under paragraph 2 were to be shifted to paragraph 1, as the Department proposes, these would of necessity be subject to the more liberal interpretation sought by us for the claims of individual claimants under paragraph 1. The result would be a further increase rather than a decrease in the cost of carrying out the provisions of Article 26.

The French are in accord with the foregoing views. The Embassy is of the opinion that the British position has merit and believes that it would be desirable that our immediate efforts be concentrated on obtaining an early and satisfactory reply to our Aide Memoire on the interpretation of paragraph 1. Should it transpire in the course of such discussions that the Austrian Government would be prepared to meet our interpretation of paragraph 1 if we were to agree to a restrictive definition of property, rights and interests under paragraph 2, the Embassy would appreciate receiving the Department's authority to express general readiness to examine such proposal sympathetically. The British and French Embassies have indicated that they would be willing to join with us in negotiating with the Austrian Government on this basis without, however, taking up the transfer procedures under paragraph 2 at this time. Although the last portion of paragraph 2 provides that the transfers thereunder "shall include property, rights and interests required to be restored under paragraph 1, some justification for this differentiation in treatment between paragraphs 1 and 2 would, from our point of view, be that under paragraph 1 we are acting primarily on behalf of living claimants who are our own nationals, while under paragraph 2 the beneficiaries would presumably be Austrians. Moreover, the Austrian Government has consistently taken the position that, in defining the scope of its obligations under Article 26, some account should be taken of the 550,000,000 schilling settlement under the Austrian Aid Fund Law for the relief of persecutees.

The British Embassy is of the opinion that transfer problems under paragraph 2 might be avoided entirely by permitting the Austrian Government, rather than the Four Heads of Mission, to "designate" the appropriate agencies or organizations. It believes that this could be achieved by the device of having the Austrian Government, shortly before the expiration of the 18-month period, submit to the Four Heads of Mission a letter specifying the agencies or organizations and the amount or percentage of property to be transferred to each. A provision similar to that used in Article 6 of the Control Agreement for Austria could be used, i.e. that it would be assumed that the Four Heads of Mission have given their approval to the Austrian plan if, before its effective date, the Four Heads of Mission acting in concert have not disapproved it. In this manner, affirmative action on the part of the Four Heads of Mission could be avoided entirely and the required designation by them could be effectuated by inaction or default. In order to insure that the Austrians will act reasonably in the matter, informal discussions regarding the identity of the organizations and the amount of property to be transferred to each could take place with them before the letter is drafted. For

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By Dept discuss with As how can they be dealt? tactical reasons, however, the British Embassy would not wish to discuss this with the Austrians before a settlement has been reached under paragraph 1. The French concur in this.

tactical reasons, however, the British Embassy would not wish to discuss this with the Austrians before a settlement has been reached under paragraph 1. The French concur in this.

Did not understand original purpose

The Embassy is of the opinion that under the arrangement proposed by the Department, combined action would not be avoided, because there would still remain some heirless and unclaimed property for disposition under paragraph 2. Although the device suggested by the British may serve to avoid such combined action, it is questionable whether the Austrians would be willing to adopt it or whether we shall be in a position to employ it. In order to avoid giving the Austrians an opening to dispose of the problems under paragraph 1 by means of a similar device, the proposal suggested by the British Embassy would have to be made after a settlement has been reached under paragraph 1. In view of the negative attitude the Austrians have taken thus far with respect to our position under paragraph 1, it is doubtful whether a satisfactory settlement of the problems under paragraph 1 will be reached reasonably in advance of the expiration of the 18-month period. If it appears that timely settlement under paragraph 1 cannot be reached, another procedure for avoiding combined action under paragraph 2 will have to be worked out.

The Embassy is continuing to explore the subject with the British and would appreciate receiving the Department's views regarding the foregoing.

Llewellyn E. Thompson
Llewellyn E. Thompson

via idea might be

cc: Ambassade, Salzburg

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263.0041-A/9-1157

In reply refer to L/GER

July 24 1957

Dear Mr. Celler:

I have received your letter of July 11, 1957 concerning claims against Austria. You indicated that you had received a letter from Mr. Fred Reiss of New York City with particular reference to claims under Article 26 of the Austrian State Treaty.

Although it is true that difficulties have been encountered in connection with certain types of claims against Austria, I believe it only fair to attempt to place the problem in proper perspective since the Austrians have made substantial progress in dealing with certain aspects of this major problem.

Following termination of hostilities in 1945, the Austrian Government enacted a number of restitution laws providing for the return of identifiable property in Austria to persons who had been deprived thereof because of the individual's racial or religious status. In view of the presence of Soviet forces in Eastern Austria, these Austrian measures were effective only in Western Austria until 1955 when following the signature of the State Treaty Soviet forces withdrew. Accordingly, it is the understanding of the Department that former persecutees who had been deprived of such property as real estate, or other items they could locate in Austria, have been in a position to sue for recovery of the property in Austrian courts and that in fact many claims have been settled by this procedure.

After the State Treaty came into force, discussions were begun with the responsible Austrian officials with regard to implementation of the various treaty articles, including Article 25, Article 26, and the related Agreement known as the Vienna Memorandum which deals with a special category of American claims. In so far as Article 25 (Claims of United Nations nationals) is concerned, claimants who were American citizens

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The Honorable
Emanuel Celler,
House of Representatives.

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citizens at the time they were deprived of their property have had their property restored in accordance with the treaty provision upon a proper showing of ownership. The Department has no knowledge of any American claimant under Article 25 who experienced any undue difficulty in obtaining return of property.

Article 26 of the State Treaty is a general restitution provision providing that "in all cases where property, legal rights or interests in Austria" were the subject of forced transfer because of racial or religious reasons, "the said property shall be returned and the said legal rights or interests shall be restored...". It further provides that "where return or restoration is impossible, compensation shall be granted for losses incurred by reason of such measures to the same extent as is, or may be, given to Austrian nationals generally in respect of war damage." This particular article has been a source of controversy because of the difficulty in interpreting the language "property, legal rights or interests" in terms of specific claims. As noted above, in the case of such things as houses, factories, and similar real estate, the Austrians have had no difficulty and such property has been returned. The problem which exists arises in connection with such items as former bank accounts, mortgages, insurance policies, tenancy rights and other similar claims. One difficulty is that the categories are not always considered "property, legal rights or interests", under Austrian law, whereas we might consider that they are properly so defined. Accordingly, Austrian representatives in such instances have a legal impediment to even discussing the category as being related to the treaty article. Another major difficulty exists in connection with claims based on bank accounts, mortgages and securities. The Austrians take the position that the German authorities required the Austrian banks to liquidate such holdings, delivering to the Germans the proceeds which were then physically removed to Germany. Under such circumstances the Austrians contend that the "property, legal rights or interests" if they are admitted to be such, are not presently in Austria and are not subject to "return or restoration". The most that can be said, the Austrians argue, is that a claim for compensation exists under the treaty language. Since, however, such compensation is dependent on payment of war damage claims of Austrian nationals, which have not been paid by their government, claimants for compensation under Article 26 are not at this time in a position to realize any benefit from such claims.

Accordingly, the principal difficulty regarding claims exists in respect to such disputed cases where a question arises as to whether a specific type of claim is a "property, legal right or interest". Where the matter is clear, the Austrians have settled claims. For example, one claimant formerly had a banking license

in Austria

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Authority NND 969003

By JB NARA Date 6-21

in Austria and he applied for restoration of the license under Article 26. The Austrians agreed that such a license clearly came under the treaty language and restored the license. Such matters as pensions have also been largely cleared up so that many American residents have recovered in respect to that type of claim. Considerable progress has been made in connection with insurance policies and many such policies have been restored in full or in part. Similarly, Austrian social security benefits were expanded by legislation in 1956 to include former persecutees in this country with retroactive effect.

The Department has been diligent in its efforts to resolve the difficulties existing under Article 26. The American Embassy in Vienna has been under instructions to pursue the problem on a priority basis and Embassy officials have met frequently with representatives of the British and French Embassies and with the Austrian authorities in an effort to find a solution. As you noted in your letter, efforts to press for settlement of these claims of American residents have also been somewhat complicated in view of the fact that our Government has not fully complied with the provisions of Article 27 of the State Treaty regarding return of Austrian property in this country.

In an effort to find a solution to the problem of claims under Article 26 the matter has been raised at the highest levels in the Austrian Government. The Minister of Finance was advised of the Department's concern during his recent visit to this country. The Austrian Cabinet very recently appointed a committee composed of the Finance Minister, the Foreign Minister, and the Minister for Social Affairs and instructed it to seek a solution to the problem.

As you indicated in your letter of July 11, representatives of the former persecutees recently proposed that efforts be made to avoid the controversy regarding categories of claims by means of a "lump sum" settlement. The Department considers that this approach has considerable merit and the Embassy in Vienna has been instructed to suggest such a possible solution to the Austrians.

In considering the matter of claims against Austria, I believe that due recognition should also be given to the fact that certain claims of former persecutees, including several thousand American residents, have been compensated from a special fund of approximately \$21,000,000 (AS 550,000,000) established to aid former Austrian persecutees who had emigrated. Payments from this fund are based on such factors as physical suffering, imprisonment, and present need, rather than on property losses.

Representatives of the persecutee groups have been informed on a continuing basis of the Department's efforts in connection with

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claims under the State Treaty. The Department will continue to press for an early resolution of this complex problem. A copy of your letter of July 11 has been forwarded to the American Embassy in Vienna with a request that it be brought to the attention of the Austrian authorities dealing with the claims in question.

Sincerely yours,

C. Burke Elbrick
Assistant Secretary

Dew
L:L/GER:DAWehmeyer:ejs 7/18/57

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DEPARTMENT OF STATE INSTRUCTION

1500

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NO.: A-58 August 15, 1956

SUBJECT: Disposition of Heirless or Unclaimed Property under Article 26 of the State Treaty

TO: The American Embassy, VIENNA.

Reference is made to the Embassy's Despatch No. 61 of July 17, 1956.

The Department has given further consideration to the problem of heirless or unclaimed property under Article 26 of the State Treaty. While the views set forth in the Embassy's Despatch No. 61 reflect some variation between the British approach and that which the Department had proposed, it is believed that in essence they are the same. The basic idea is to have as many claims as possible settled under Paragraph 1, thus reducing to a minimum the residual property which would have to be disposed of under Paragraph 2. The supplemental question then remains as to the technique of disposing of the property under Paragraph 2 without having a meeting of the four Heads of Mission.

Paragraph 2 of the despatch indicates the Austrians have confined the functions of the Sammelstelle to the collection of property restitutable under present restitution legislation, and the despatch comments that the British Embassy fears that discussion with the Austrians of the problem of property under Paragraph 2 would result in the Austrians' believing such action was an admission on our part that restitution legislation "will satisfy the provisions of Article 26 as a whole." The Department does not share this belief. In the third paragraph of the Aide Mémoire given to the Austrians on this subject, it was clearly stated that

"While the Department is hopeful that the majority of claims may be satisfied under the restitution laws, the United States Government is not of the opinion that the provisions of Austrian restitution legislation constitute a full and adequate compliance with the provisions of the State Treaty."

The Department cannot believe the Austrians would be left in any doubt with regard to what we would expect in legislation implementing

Article

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DRAFTED BY: L:L/GER:DW:meyer:ejs 8/9/56

APPROVED BY: L/GER - Richard D. Kearney

CLEARANCES:

WE-Mr. Tolbert

WE-Mr. Chapin

AUG 15 1956 P.M.

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Article 26 simply because of discussion of paragraph 2. If the draft bill is limited to claims under present restitution legislation, the Embassy should bring to the attention of the appropriate Austrian officials the above-cited statement in our Aide Mémoire. We do not wish to attempt to write legislation for the Austrians, but if the draft bill is for the purpose of implementing the State Treaty, it should be broad enough to implement the treaty and not some other Austrian legislation.

With regard to tactics in approaching the problem of distribution of the property remaining under Paragraph 2, the Department does not understand the British position that the matter should not be discussed with the Austrians until a settlement has been reached under Paragraph 1. If we wish to alleviate the problem under Paragraph 2 by encouraging a certain Austrian view with regard to property covered by Paragraph 1, it seems we would have to discuss the matter with the Austrians before they determine their policy under Paragraph 1. We believe that as long as we adhere to our basic proposition that we expect the Austrians to fulfill their obligations under the Treaty, we need not become too concerned about the matter of tactics in presenting our thoughts to the Austrian authorities.

The Department believes, however, that the suggestion of the British Embassy with regard to the technique by which joint action by the Four Heads of Mission might be avoided under Paragraph 2 is perhaps a useful one, although the Department believes certain modifications may be desirable. We shall be working within the following terms of reference:

"Austria shall transfer such property, rights and interests to appropriate agencies or organizations to be designated by the Four Heads of Mission in Vienna by agreement with the Austrian Government to be used for the relief and rehabilitation of victims of persecution by the axis powers . . ."

We believe that the provision that the transfer shall be by agreement with the Austrian Government provides a basis for the Austrians' taking the initiative in making a proposal such as the British Embassy has suggested. We believe, however, that the Austrian Government should "propose" the agencies or organizations to the Four Heads of Mission rather than by "designating" them as phrased in the Embassy's despatch. Our understanding is that the Austrian proposal would be sent in separate messages to each of the four Ambassadors ~~xxxx~~ who would respond unilaterally agreeing to (or 'designating') the agencies or organizations proposed. Such procedure could further be rationalized since it is the Department's understanding on the basis of a conversation with Mr. Seymour Rubin that Jewish groups in the United States expect the proceeds realized under paragraph 2 to be distributed to Austrian agencies or organizations rather than to foreign recipients. This agreement apparently was a by-product of the recent establishment of the Austrian Emigrants Assistance Fund and confirms the information reported on page 2 of the Embassy's despatch that "under

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paragraph 2 the beneficiaries would presumably be Austrians." In such a situation a proposal by the Austrian Government would appear in order. In any event, it appears that the possibility of obtaining Soviet concurrence to the Austrian proposal will depend in large measure on the nature of the agency or organizations designated. With respect to the "appropriate agencies or organizations" which might be proposed by the Austrians to be recipient of the property, it has occurred to the Department that the selection of a single agency might be preferable if this can be accomplished. We have in mind that it might be possible to obtain agreement on making use of the Curatorium of the Emigrants Assistance Fund to select the specific Austrian recipients of benefits under paragraph 2. The Department understands that the Austrian Government as well as the persecutees are in general satisfied with the committee designated to administer the fund established by the Austrian Government, and since the various religious and persecutee groups are believed represented, it might be that the curatorium could be utilized for the purpose of receiving and distributing the property which might remain under paragraph 2. If the Soviets do not object to use of the fund in Austria, it is possible that they would also not object to such designation of the Curatorium as the agent to accomplish distribution. The Department will appreciate the reaction of the Embassy to this suggestion as well as the thoughts of the British and French.

With respect to the Embassy's inquiry (second full paragraph, page 2 of despatch) whether the Embassy may indicate to the Austrians that we would agree to a restrictive definition of property under paragraph 2 in exchange for Austrian agreement to meet our interpretation of paragraph 1, the Department does not believe such an approach would be wise. We suggest it might be wise to indicate to the Austrians the problem we foresee in reaching four-power agreement on distribution of property under paragraph 2 and our view that they can facilitate resolution of the problem by reducing the property remaining by means of a liberal definition of claimants, etcetera, under paragraph 1, as suggested in A-495. To indicate that we would more or less "trade" paragraph 2 for a somewhat better interpretation of paragraph 1 seems to us to open the Department to attack by individuals or groups who might believe they could have claimed a benefit under the paragraph. Since the Austrians will in any event control administration of the claims procedures under paragraph 1 and we could only by considerable effort ascertain whether they actually lived up to such an understanding, it would appear to be trading a portion of whatever rights might ultimately exist under paragraph 2 for an uncertain consideration. Consequently, the Department does not believe we should attempt to reach such an agreement.

The Department believes that in view of the passage of time decisions as to the resolution of this problem should be made as quickly as possible, and, accordingly, the Embassy's views on the foregoing matters at an early date will be appreciated.

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AIR POUCH

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FOREIGN SERVICE DESPATCH

263.0041-A/9-1556
File

FROM : AMEMBASSY, VIENNA

244

DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON

September 15, 1956

DATE

REF : Embassy despatches 203, August 31, 1956 and 197, August 29, 1956;
Department of State Instructions A-495, June 22, 1956 and A-58, Aug. 15, 1956.

13 For Dept. Use Only	ACTION L-2	DEPT. RM/R-2 EUR-5
	REC'D 9-24	INFO OTHER

SUBJECT: Article 26 of the Austrian State Treaty

This Document Must Be Returned
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The Embassy transmits as enclosure 1 an English translation of the draft of the Fourth Restitution Claims Law and of the covering letter of the Ministry of Finance. German originals of both were transmitted to the Department under cover of despatch #203.

The Department will note that the draft law confines the functions of the Sammelstelle to the collection of property restitutable under existing restitution laws. This Embassy and the British Embassy have again orally informed representatives of the Foreign Office that this draft would not satisfy the requirements of Article 26.

The Embassy has learned that the Ministry of Finance has taken the official position that it need not satisfy existing claims under paragraph 1 Article 26 until it is compelled to do so by an implementation law. This attitude was expressed by the Minister of Finance in a letter dated August 29, 1956 dealing with the application of Dr. OFFENBERGER, an American citizen, for the restoration of his banking license of which he was deprived during the Naziregime. This claim was referred to in despatch 1087 of June 20, 1956. The pertinent portion of this letter, which was sent to Dr. Offenberger's representative, reads as follows:

"As regards the matter itself, I would like to refer to a decision of the Supreme Court of May 30, 1956, No. 30 b.252/56, in which it is ruled that Article 26 paragraph 1 of the State Treaty merely constitutes a programmatic declaration and that no individual claims may be derived therefrom without the enactment of a suitable implementation law. It is therefore not correct that on the basis of the provisions of Article 26 of the State Treaty alone Dr. Offenberger is legally entitled to have the license regranted. You may rest assured, though, that this matter will be dealt with in an absolutely objective manner and that Dr. Offenberger will certainly come into possession of all rights due to him. However, I am not in a position to bring about a decision on this prior to the completion of the discussions with the representatives of the Western Allies on Article 26 of the State Treaty."

The opinion to which the Minister of Finance referred was handed down by the Supreme Court of Austria for civil actions. It has not been published as yet and is therefore not available to the public. The Embassy has succeeded in procuring a

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REPORTER

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ACTION COPY—DEPARTMENT OF STATE

The action office must return this permanent record copy to DC/R files with all enclosures as soon as possible.

LEGAL ADVISER
SEP 25 1956
DEPARTMENT OF STATE

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From Vienna

copy thereof and encloses an English translation which it has marked "Official Use Only". A reading of the opinion fails to reveal that the Supreme Court has held that no claim may be asserted under Article 26 paragraph 1 without implementing legislation. (That was the opinion of the lower court.) The contrary, in fact, appears to be the case in view of the holding of the Supreme Court in this and other cases cited in its opinion that the State Treaty has become the law of the land and that no implementing legislation is required to give it effectiveness. The opinion on its face, nevertheless, appears to lend a measure of support to the theory expressed by Dr. KLEIN of the Ministry of Finance (see Enclosure 2 of Embassy despatch 197, August 29, 1956) that under the first sentence of paragraph 1 of Article 26 Austria need return or restore only that which Austria herself took and has, and not that which "others" had taken and Austria does not have. Upon careful analysis of the opinion, this interpretation appears to be unwarranted for the following reasons:

The Embassy believes that a distinction must be drawn between the obligations of the Austrian Government under the State Treaty vis-a-vis the signatory powers and its obligations vis-a-vis a plaintiff in the civil courts. The status of the Republic of Austria in a civil law suit is that of a private litigant whose rights and obligations are determined by municipal law. Under Article 26 paragraph 1 Austria undertook that all property, legal rights and interests which had been the subject of forced transfer, etc. shall be returned or restored. Under private law, a court cannot order a litigant, who is sued under a contract or applicable legislation, to return property or restore legal rights and interests which such litigant does not possess unless the litigant is specifically bound to do so by the express terms of the contract or municipal law. All the court can do in such cases is render an award for compensation or damages. By the same token, in enforcing the obligations of the Republic of Austria under Article 26 the court can do no more than direct the Republic of Austria to return that which Austria has and cannot order Austria to return that which it does not have. Insofar as compensation is concerned, that may not be awarded in view of the limitations imposed by the second sentence of paragraph 1. If it is contended that Austria has undertaken in Article 26 to compel and arrange for the return of property, legal rights and interests which it does not possess, all the court can do is look to the pertinent municipal legislation in this field. That would be the present restitution laws. If these are not adequate to satisfy the provisions of Article 26, the court is powerless to compel the Austrian Government to enact additional legislation. That is a political matter that must be left for the consideration of the cabinet and Parliament or for negotiation with the other signatory powers.

The Embassy expects to be confronted with this decision in its forthcoming negotiations under Article 26. The Embassy believes that the foregoing analysis may serve to demonstrate that the decision (while limiting the rights of claimants in Austrian courts) cannot circumscribe, or control, our negotiations which are being conducted on a governmental level and which concern Austria's obligations under international law, as a sovereign state and not as a private litigant, to carry out and, if necessary, implement its undertakings under the State Treaty. The Embassy also believes that the decision may serve as a basis for argument that further legislative and administrative action by the Austrian Government is needed in view of the helplessness of claimants in the Austrian courts.

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The Embassy has also discussed the subject matter of Department's Instruction A-58, August 25, 1956 with the French Embassy. The French are generally in accord with the views expressed by this Embassy in its despatch 197, August 29, 1956 on the matter of the composition of the Curatorium, the definition of claimants and the draft Sammelstelle Law.

With respect to the problem concerning Four Power agreement under paragraph 2, the French agree that it would be advisable to have the Austrians take the initiative and propose the organizations to the Four Heads of Mission after first consulting with the three Western Ambassadors. They share this Embassy's opinion that the requirement that the organizations should be "designated" by the Four Heads of Mission will be satisfied without a meeting should the Austrian Government receive an affirmative unilateral response to its note from each of the four Ambassadors.

The French regard the concern of the British Embassy with respect to Article 34 to be overly legalistic and believe that the "acting in concert" provision of Article 34 does not call for joint action, but only for unanimous action. As a practical matter, however, they realize that if the Russians should send a negative response, or should fail to respond at all, we would not be able to designate the agencies under paragraph 2 of Article 26. For that reason the French recognize that it will be necessary for us to get in touch with the Russians upon receipt of the note to find out what they propose to do and, if necessary, to confer with them then. This, in effect, would be "acting in concert" in the British sense and, as a practical matter, coincides with the latest British thinking on the subject. The British Embassy has not entirely crystallized its thoughts, but, after several conferences with the French and American Embassies, it has proposed the employment of the following technique:

Immediately upon receiving the Austrian note (which would be sent after consultation with the Western Embassies) Ambassador THOMPSON, as the senior Ambassador, will write an identical letter to each of the other Chiefs of Mission in which he would state that he has received the Austrian note, an identical copy of which he understands was sent to the other Three Heads of Mission; that the Austrian proposal is acceptable to him; that one of two courses of action are possible: either (a) that all Heads of Mission reply along the lines suggested in a draft reply which is enclosed, or (b) that he (Ambassador Thompson) reply on behalf of all four Heads of Mission along the lines suggested in another draft reply which is enclosed, if the three ambassadors desire him to do so, adding that he is sending identical letters to each of them and asking for a response. The French and British Ambassadors would immediately answer Ambassador Thompson (sending copies to the Russians) and each would state that the Austrian proposal is also acceptable to him and that he is satisfied with either course of action suggested by Ambassador Thompson and that he leaves it up to Ambassador Thompson to decide and inform him which procedure would be adopted in the light of the replies that would be received from the other two Chiefs of Mission. If the Russians accept course "(a)", the three Western Ambassadors would do likewise. If the Russians consent to course "(b)", Ambassador Thompson would act on behalf of all.

The procedure above outlined is still in a formative state and requires further consultation between this Embassy and the British and French. A further

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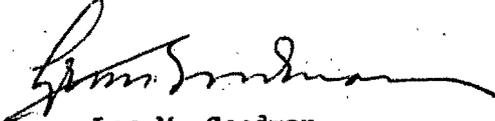
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consideration would be the matter of style and timing. It is the view of this Embassy, however, that the risk of a Four Power meeting would be minimized by such a procedure and that it therefore merits further study.

The three Western Embassies share the Austrian opinion that, unless the situation changes, the Russians will offer no objections to the Austrian note. Everyone recognizes, however, that if the Russians should want to hold a meeting or desire to make difficulties for us or the Austrians, there is no way of avoiding it.

The Embassy will hold further discussions with the British and French regarding the problem and would appreciate receiving the Department's views in the matter.

For the Charge d'Affaires, a.i.


Leo M. Goodman
First Secretary of Embassy

Enclosures: *107*

Draft law and covering letter
Decision of Supreme Court

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Translation ex German

Federal Ministry of Finance
Ballhausplatz 1, Vienna I.
No. 249.386-34/56

Transmittal of a draft of the 4th (5th)
Restitution Claims Law (Rueckstellungs-
anspruchsgesetz) prepared by the Ministry.

To the
Federal Chancellery (Verfassungsdienst)
Federal Chancellery - Foreign Affairs, and
all Federal Ministries.

The government draft of the 5th Restitution Claims Law, which had already been submitted during the 6th legislative period of Parliament and which had been re-submitted under #34 of the enclosures during the 7th legislative period, was not acted upon by Parliament during this legislative period either.

However, the enactment of this legal provision has now become urgent, since Article 26, paragraph 2 of the State Treaty provides for the establishment of a collecting organization (Auffangorganisation) and since the period provided for the transfer of the properties in question expires on January 27, 1957.

In general, the provisions of the previous draft could be retained; however, it will now be designated as 4th Restitution Claims Law, since the draft of the previous 4th Restitution Claims Law is no longer relevant because of the enactment of the Federal Law of December 20, 1955, Federal Law Gazette No. 269.

However, modifications were necessary insofar as certain provisions containing exceptions could not be maintained in view of the text of paragraph 1 of Article 26 of the State Treaty.

In Sections 8 to 10 it is attempted to take into account the wishes of those persons who either failed to meet the deadline for the filing of restitution claims or were excluded therefrom due to the restriction of the eligible heirs by the restitution laws.

The Federal Ministry of Finance requests that views on this draft be submitted as soon as possible, but by mid-September at the latest. If no answer is received prior to the expiration of this time limit, it will be assumed that your office has no objections to the wording of this draft.

August 24, 1956
For the Federal Minister :
Dr. Klein

For the correctness
of the copy:
/s/ Illegible

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Translation ex German

3rd Ministry Draft

Federal Law of concerning the assertion of claims for restitution of property which were not filed in time (4th Restitution Claims Law). *)

The National Assembly has enacted:

Section 1

(1) Two "Sammelstellen entzogener Vermoegen" (collecting agencies for expropriated assets) (hereinafter referred to as "Sammelstelle") with the seat in Vienna will be established as juristic persons under private law. They shall be authorized to assert restitution claims within the meaning of the restitution laws, which were not filed within the time limit provided therefor or which could not be enforced on account of the limited group of claimants pursuant to Section 14 of the Third Restitution Law (Federal Law Gazette No. 54/1947). "Sammelstelle A" shall claim assets taken away from persons who on December 31, 1937 belonged to the Jewish faith (israelitische Religionsgemeinschaft); "Sammelstelle B" shall be authorized to assert claims for assets taken away from other persons. The "Sammelstellen" shall be under the supervision of the Supreme Auditing Office (Rechnungshof).

(2) The provisions of this Federal Law concerning wronged owners shall suitably apply to wronged interest holders (5th Restitution Law, Federal Law Gazette No. 164/1949) and to entitled persons (7th Restitution Law, Federal Law Gazette No. 207/1949).

(3) The "Sammelstellen" shall not be authorized to assert restitution claims if the wronged owner has disposed thereof by settlement or waiver prior to the expiration of the period provided for the filing of such claims.

(4) Within one month after the restitution claim of a "Sammelstelle" has been served upon him, the acquirer (of the property) shall be entitled to request the agency competent to render a decision on the restitution claim to inform the wronged owner - under the address indicated by the acquirer - of the proceedings, stating explicitly that within 2 months after this communication has been served upon him, he may confirm his tacit waiver of the restitution claim and thereby cause the denial of that claim. In such a case, however, the costs of the restitution proceedings shall be refunded by the acquirer.

*) 1st Restitution Claims Law Federal Law Gazette No. 256/1947,
2nd Restitution Claims Law Federal Law Gazette No. 176/1951,
3rd Restitution Claims Law Federal Law Gazette No. 23/1954.

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(5) Neither shall the "Sammelstellen" be authorized to assert restitution claims if the dispossessed owner of his legal successor either remained in possession of the assets or regained possession thereof prior to the day of the coming into force of this law; this applies also in case that he disposed thereof by will or legal transaction prior to the said day.

Section 2

(1) A time limit of one year is set for the filing of restitution claims by a "Sammelstelle"; otherwise the claim will be forfeited; this period will begin at the end of the time limit set for the assertion of restitution claims for the particular restitution claims, but at the earliest on the day of the first publication of the names of the members of the Kuratorium (Section 12, paragraph 2) of the respective "Sammelstelle" in the official gazette of the "Wiener Zeitung".

(2) During the time limit set for the assertion of restitution claims by the "Sammelstellen", the acquirer of assets, or the person or agency administering such property as trustee for the acquirer, may submit to the agency competent for the restitution proceedings an application for declaratory judgment to the effect that no restitution claim of the "Sammelstelle" exists.

Section 3

(1) Upon the coming into force of this Federal Law the two "Sammelstellen" shall become joint owners of the following assets administered by the Federal Ministry of Finance:

1. accounts originating from the liquidation of Jewish enterprises which were opened with domestic banks under the designations "Konto 93", "Konto 10" and "Konto 90";
2. those accounts and deposits which during the German occupation of Austria were opened in the name of the Geheime Staatspolizei or its agents and which originate from assets taken away from their owners, provided that on the day of the coming into force of this Federal Law the persons entitled to claim them are unknown.

These amounts shall be used in the first place to cover the joint administrative expenses (Section 16, paragraph 1). A separate Federal Law will provide for the distribution of the residual amount (Section 16, paragraph 2).

(2) Assets expropriated by the German Reich on the basis of repealed provisions of German Reich Laws (Section 1, paragraph 2 of the Law Transition Law) or by decree of administrative authorities for the reasons set forth in Section 1 of the Law of May 10, 1945, State Law Gazette No. 10, and at present under the administration of Federal or Provincial agencies pursuant to the provisions of the Authorities Transition Law (Section 1, paragraph 1 of the First Restitution

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Law, Federal Law Gazette No. 156/1946), for which the wronged owner has not filed restitution claims within the period provided therefor, shall be transferred - notwithstanding the provisions of paragraphs 3 and 4 of Section 23 of the Third Restitution Law - to the ownership of the competent "Sammelstelle", if so ordered by decree (paragraph 4), as of the date set forth in the decree, on the ground of nullity of the previous property transfer, without the "Sammelstelle" being required to file a restitution claim.

(3) In such a decree the competent Finanzlandesdirektion shall, in application of the provisions of the First Restitution Law, state ex officio that the conditions precedent exist. At the same time a uniform accounting and securing of possible claims for expenses shall be made for all such cases handled by one Finanzlandesdirektion; according to Section 3, paragraph 4 of the First Restitution Law a lien in a maximum amount securing claims resulting from the accounting may be recorded either against all the restituted assets collectively or only against certain assets individually.

(4) Such a decree shall be served upon each "Sammelstelle"; that "Sammelstelle" whose ownership is not established may take an appeal from such a decree. Such a decree shall be considered a public document on the strength of which entries and annotations may be recorded in the Land Register and as enforceable by execution within the meaning of Section 1 of the Execution Order.

(5) With respect to expropriated assets not listed in such a decree (paragraph 4) to which the provisions set forth in Section 1 of this Federal Law are applicable, the "Sammelstellen" may file restitution claims pursuant to the First Restitution Law.

Section 4

(1) The competent "Sammelstelle" (Section 1, paragraph 1) shall, moreover, be authorized to claim, within three years after the day of the first publication of the names of the Kuratorium (Section 12, paragraph 2) in the official gazette of the "Wiener Zeitung", the transfer of those assets which had at first been restituted to a guardian or to an estate. The claim for transfer shall cease to exist if the assets are transferred to the still living dispossessed owner or, pursuant to Letters of Distribution to his living testamentary heir or his living legal heirs or a legatee within 6 months after the filing of the claim; the transfer to a guardian ad litem, to an administrator of an estate, to a person entrusted by the court with the care and administration of an estate (Section 145 of the Law on Non-Litigious Procedure), or to a person who is not an authorized representative within the meaning of Section 14, paragraph 3 of the Third Restitution Law, shall not affect the claim for transfer.

(2) Within the period mentioned in paragraph 1, the competent "Sammelstelle" shall also be permitted to appear as a party in lieu of the wronged owner in pending proceedings on restitution claims filed by a guardian ad litem,

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an administrator of an estate or a person entrusted by the court with the care and administration of an estate (Section 145 of the Law on Non-Litigious Procedure), unless the dispossessed owner, his testamentary heir (legatee) or his legal heir intervenes in the proceedings within a period of six months after the coming into effect of this Federal Law; the intervening person must be alive at the time of the intervention.

Section 5

If a foundation or a fund was dissolved during the German occupation of Austria, a claim for restitution of assets which had belonged to such a foundation (fund) may be asserted by a "Sammelstelle" only if the authority competent for matters concerning the foundation or the fund established by decree that in connection with the dissolution of the foundation (fund) its property was no longer used for its original purposes.

Section 6

If an asset was the property of the Republic of Austria or of an Austrian Federal Province on March 13, 1938, a restitution claim may be filed by a "Sammelstelle" only if the latter furnishes a statement of that municipal corporation to the effect that it agrees to the filing of the restitution claim.

Section 7

The provisions of paragraphs 1 and 2 of Section 2 of the 2nd Restitution Claims Law shall also apply to the "Sammelstellen" with the proviso that the "Sammelstellen" are barred from asserting rights connected with the owner's personal needs and operations according to Section 1, paragraph 4 of the First, Section 1, paragraph 5 of the Second, and Section 12 of the Third Restitution Law.

Section 8

(1) The wronged owner shall be at liberty to notify the "Sammelstelle" within a period of two months after the coming into force of this Federal Law, but at the latest before the first hearing on the restitution claim or before a decision of the authority of first instance has been passed, lest he forfeit his claim, that in case the expropriated assets are restituted on the basis of the claim filed by the "Sammelstelle", he will claim transfer of this property from the "Sammelstelle".

(2) Litigations concerning such claims for transfer fall under the jurisdiction of the regular courts.

(3) Upon request of one of the parties or at its own instance the court may use as evidence the files on hand at the Federal Ministry of Finance, especially the applications filed under Articles 25 or 26 of the Austrian State Treaty.

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Section 9

(1) The notification (Section 8, paragraph 1) has the effect that the "Sammelstelle" is obliged to turn over the property received by it to the wronged owner within two months after the restitution of said property or the conclusion of an agreement with the defendant in the restitution proceedings; it is entitled, however, to make the transfer dependent on the simultaneous payment of a compensation for its efforts in the amount of 25% of the market value of the subject property at the time of restitution or conclusion of the agreement.

(2) In case the "Sammelstelle" is unsuccessful in the restitution proceedings, the wronged owner who has made a notification according to Section 8, paragraph 1, has to bear 50% of the costs incurred by the "Sammelstelle" in the said proceedings; the "Sammelstelle" is entitled to make the filing of the restitution claim or the continuation of the already instituted proceedings dependent on the prior depositing of an adequate security.

Section 10

The provisions of Sections 8 and 9 applicable to wronged owners shall also apply to those legal heirs who on account of the provision of Section 14, paragraph 2 of the Third Restitution Law were barred from effectively asserting a restitution claim.

Section 11

In the case of a restitution claim by a "Sammelstelle", the agency competent to render a decision shall inquire at the Federal Ministry of Finance whether a claim for the restitution of the assets in question has already been filed or whether a general application of the dispossessed owner has been made with reference to Articles 25 and 26 of the State Treaty.

Section 12

(1) Each "Sammelstelle" shall be represented and administered by a Kuratorium composed of eight members. At least half of the members must hold Austrian citizenship.

(2) The members of the Kuratorium of "Sammelstelle A" will be appointed and recalled by the Federal Government after consultation with the Austrian Jewish Religious Communities, those of "Sammelstelle B" after consultation with the organizations representing persons wronged by National Socialism. The names of the members shall be published in the official gazette of the "Wiener Zeitung". They shall exercise their functions until recalled.

(3) The Kuratorium shall elect from among its members a chairman and two deputy chairmen.

(4) The Kuratorium shall be represented by its chairman and in his absence by one of his deputies.

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(5) For each "Sammelstelle" the legally valid signature shall be executed by either the chairman or one of his deputies affixing jointly with another member of the Kuratorium their signatures to the designation "Sammelstelle ... (A or B) entzogener Vermoegen".

(6) The Kuratorium shall appoint at least two managers who shall be entrusted with the management of the "Sammelstelle"; their authority to sign shall be established under the business rules (Section 13, paragraph 1). The salaries of the managers will be fixed by the Kuratorium.

Section 13

(1) The Kuratorium shall set up its own business rules; they are subject to the approval of the Federal Government and after the approval has been given they shall be published in the official gazette of "Wiener Zeitung". Moreover, the business rules shall specify which acts of the managers require the prior approval of the Kuratorium in order to become valid.

(2) The Kuratorium forms a quorum if at least five members are present.

(3) The Kuratorium shall take its decisions with a majority; in case of an equally divided vote, the vote of the chairman, who always participates in the voting, shall be decisive.

(4) The Kuratorium as well as the managers (Section 12) are obliged to conduct their activities with the care of a proper businessman; they are not allowed to conclude transactions on behalf of the "Sammelstelle" with themselves or with their close relatives, neither directly nor through third persons (Section 10, paragraph 3 of the 1952 Administrator Law, Federal Law Gazette No. 100/1953), nor shall they or their close relatives participate financially in transactions of the "Sammelstelle". Transactions concluded contrary to this prohibition shall be null and void.

(5) The Kuratorium and the managers shall be liable, jointly and severally, to the "Sammelstelle" for which they have been appointed, for any loss caused by their incorrect conduct. The Kuratorium shall assert claims against its managers.

(6) Every year the Kuratorium shall draw up a financial statement as of December 31 according to business principles and publish it in the "Wiener Zeitung" not later than April 30 of the following year.

(7) Upon request of the Finanzprokuratur, the Vienna Commercial Court shall appoint a Kurator who shall represent a "Sammelstelle" in a claim against the responsible members of the Kuratorium.

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Section 14

(1) The "Sammelstellen" are entitled to inspect the applications filed with the administrative district authorities (Bezirksverwaltungsbehoerden) in accordance with the Ordinance concerning the Registration of Expropriated Property (Vermögensentziehungs-Anmeldungsverordnung) of September 15, 1946, Federal Law Gazette No. 166.

(2) All authorities competent to render decisions on restitution claims as well as all other authorities which are in possession of documents concerning the alleged fact of expropriation, are obliged to give such information to a "Sammelstelle" as the latter needs in order to determine whether it is entitled to claim restitution; the authorities can meet this obligation by allowing the perusal of their files, registers and other documents. However, insofar as authorities have to represent the interests of defendants in restitution proceedings, only the provisions of Section 28 of the Third Restitution Law shall be applicable to them.

Section 15

(1) Records, documents, correspondence and official acts caused by this Federal Law which deal with the transfer of assets to a "Sammelstelle" shall be exempt from turnover tax, real estate acquisition tax, revenue stamps, legal fees, court charges and judicial administrative fees as well as from administrative dues of the Federal Republic.

(2) Payments made to a "Sammelstelle" in accordance with Section 5 or on the basis of a restitution agreement shall not be subject to turnover tax, trade tax or corporation tax, as far as the "Sammelstelle" is concerned.

Section 16

(1) The "Sammelstellen" shall use the incoming funds for the payment of considerations due in restitution matters, for the debts assumed according to Section 4, for the discharge of any new liabilities undertaken for the purpose of maintenance and, notwithstanding the provisions of Section 3, paragraph 1, for the covering of administrative expenses.

(2) The distribution of the funds of the "Sammelstellen" will be regulated by a separate Federal Law, taking into consideration the provisions of Section 8, paragraph 3 of the Seventh Restitution Law of July 14, 1949, Federal Law Gazette No. 207.

Section 17

The Federal Ministry of Finance is entrusted with the implementation of this Federal Law.

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Translation ex German

3 Ob 252/56

In the Name of the Republic !

The Supreme Court as appellate court, through the First President Dr. Wahle as chairman and through the councillors of the Supreme Court Dr. Deutsch, Dr. Neuwirth, Dr. Dinnebier and Dr. Meyer-Jodas as judges, in the case of the plaintiff Dr. Hans Geiger, attorney at law at Fischerstiege 1 - 7, Vienna I., represented by Dr. Karl Postl Jr., attorney at law in Vienna, versus the defendant the Republic of Austria, represented by the Finanzprokurator, because of 798,000 S, pursuant to an appeal taken by the plaintiff from the judgment of the Superior Land Court Vienna as appellate court dated March 26, 1956, File No. 5 R 196/56, in which the judgment of the Land Court for Civil Affairs Vienna of January 31, 1956, File No. 40 Cg 143/55, was upheld against the appeal of the plaintiff, has ruled as follows in a session not open to the public:

The appeal is not granted.

The plaintiff is liable to refund to the defendant within 14 days the costs of the appellate proceedings, which are set at S 5,037.20.

Grounds for the Decision :

The plaintiff demands that the defendant be pronounced liable to 1.) obtain for him the issuance of an attorney's certificate by the Chamber of Attorneys for Vienna, Lower Austria and the Burgenland, dated November 3, 1932; 2.) to return to him the chief tenancy rights to the premises Neulinggasse 26, Vienna 3, Apt. 8, and to save him harmless from any compensation claims of the present possessor of this apartment; 3.) to furnish the premises, in particular to supply for a combination bed and living room one bed, one piano, one radio, one leather set (1 settee, 2 easy chairs), one American writing desk, one American bookcase, one small round table; for an office room one writing desk, one office typewriter; for a waiting room one large round table and six upholstered chairs; all large law editions of the most recent date published by Manz or the State Printing Office; 4.) as compensation for inability to exercise his profession during a period of 17 years the amount of S 200,000 plus 4% interest, beginning with the day the suit was brought; 5.) to free the realty EZ. 44 KG. Margarethen, building Baerengasse 3, from the present encumbrances recorded against it in the Land Register and to pay the profits therefrom accrued until August 1, 1955 in an amount of S 44,044.79 plus 4% interest starting with the day the suit was brought, and 6.) to pay a monthly amount of S 3000, payable on the first day of each month in advance, starting with the day the judgment becomes final, until the plaintiff is eligible for a pension within the meaning of the pension insurance for attorneys at law, on the ground that he was registered as attorney at law on November 3, 1932 in the

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list of the Chamber of Attorneys for Vienna, Lower Austria and the Burgenland, exercised this profession and was stricken on December 31, 1938 from the attorneys' list for racial reasons, had to emigrate from Austria and lost here his tenancy rights to the above mentioned apartment and the entire furniture, that he was registered after his return to Austria in October 1951 in the attorneys' list on December 19, 1951, that he was dispossessed of the realty EZ. 44 KG. Margarethen, which he owned and that, although it was restituted pursuant to the 3rd Restitution Law, he was not awarded any profits for the time during which it was expropriated and that he was ordered to repay the compensation he received in the amount of S 17,902.78 to the acquirer of the property, so that he was compelled, in the absence of any property, to contract for the purpose of paying this amount, a loan in the amount of S 40,000 from the Zentralsparkasse der Gemeinde Wien which, since he was unable to repay the loan, obtained an execution order and had the loan secured by mortgage against the realty pursuant to this execution order. He furthermore claims compensation for the inability to exercise his profession for a period of 17 years and payment of a monthly amount of S 3,000, since he became unable to work due to the excitement he suffered. On the basis of Art. 26, para 1 of the State Treaty, he alleges, the defendant was obliged to restore, that is to return, his properties, legal rights and interests.

The trial court dismissed the action.

It took the view that the State Treaty is an international agreement between States, which gives individual persons no direct right of action against the Republic of Austria; such a right of action presupposes an implementation law to the State Treaty, which has not yet been enacted.

The appellate court confirmed the judgment of the trial court. It stated that, although the State Treaty is an integral part of Austrian law and therefore binding for everyone and this State Treaty imposes certain obligations on the Republic of Austria, the provisions of Article 26, para 1 constitute only a programmatic declaration and that, in order to enable a plaintiff to derive actionable claims from Art. 26, more detailed legal provisions in the form of an implementation law would have to be enacted, in order to enable the individual citizen to enforce his rights resulting from Art. 26, 1st sentence of the State Treaty. Since the plaintiff, except for the reference to the programmatic declaration in the first sentence of Art. 26 of the State Treaty could not prove any legal grounds whatsoever for his action, the action was rightfully dismissed.

The plaintiff's appeal to the Supreme Court is taken from the judgment of the appellate court on the grounds of appeal set forth in Sec. 503 No. 4 Code of Civil Procedure, and requests that the judgment be set aside and that the appellate court be ordered to render a new decision on the appeal, or possibly to set aside the judgment of the trial court and to remand the case to the court of the first instance for a new trial and judgment.

The defendant contended that the alleged grounds for appeal did not exist and moved that the appeal be not granted.

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The appeal is not meritorious.

The Supreme Court as well as the Supreme Restitution Commission have in their practice always taken the standpoint (cf. case 1 Ob 690/55 - Juristische Blaetter 1956, page 231) that the State Treaty for the Re-Establishment of an Independent and Democratic Austria, which was approved by the legislative bodies and promulgated in the Federal Law Gazette No. 152/1955, was given, according to Articles 49 and 50 of the Federal Constitution, the same status as domestic laws and became effective in Austria on the day following its promulgation by virtue of general transformation into internal law. However, Article 26, paragraph 1 of the State Treaty, on which alone the claimant bases his claims, merely states that, in so far as such action has not already been taken, Austria undertakes that, in all cases where property, legal rights or interests in Austria have since 13th March 1938, been subject to forced transfer or measures of sequestration, confiscation or control on account of the racial origin or religion of the owner, the said property shall be returned and the said legal rights and interests shall be restored together with their accessories and, where return or restoration is impossible, compensation shall be granted for losses incurred by reason of such measures to the same extent as is, or may be, given to Austrian nationals generally in respect of war damage.

The plaintiff requests in the first place that an attorney's certificate dated November 3, 1932 be issued to him by the Chamber of Attorneys. The plaintiff himself admits in his complaint that he was already reregistered by the Chamber of Attorneys in the list of attorneys on November 9, 1951, so that according to his own statement the right to act as an attorney, of which he had been deprived, has already been restored. In the exercise of his profession the date of issuance of the attorney's certificate is of no consequence whatever. He did not even mention himself what disadvantages a certificate issued at a later date might have for him. Thus his request has no legal basis.

As regards the requested restoration of his tenancy rights, the Republic of Austria could under Art. 26, para 1 of the State Treaty only be obligated to restore this right if it were itself holding the tenancy right; Article 26 does not contain a provision to the effect that the Republic of Austria is obliged to get back for persons mentioned in Art. 26, para 1 of the State Treaty tenancy rights of which they were deprived by others. Therefore only the second sentence of the first paragraph of Article 26, namely the granting of a compensation, could be applicable. However, this presupposes that such compensations are generally granted to Austrian citizens in respect of war damage. Such a compensation law has not yet been enacted, however. Accordingly the said claim has not yet come into existence, that is to say become due. The same applies to the request for compensation for furniture and law books, for loss of earnings from the attorney's office, and damages for loss of earnings due to inability to exercise his profession.

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Finally, as regards the requested discharge of record of a mortgage and the turning over of the profits with respect to the real property which has already been restituted to the plaintiff, the plaintiff obtained from the Zentralspar-kasse (bank) the loan which is secured by the mortgage against the realty, according to his own statements only in order to be able to pay to the purchaser of the realty the purchase price, which he had been ordered to repay in the restitution proceedings. However, the obligation to repay the compensation he had received (the purchase price) is based on the provisions of Section 6, paragraph 1 of the 3rd Restitution Law, thus on a measure already taken for the reparation of damages suffered by persons subject to racial persecution. The causal connection which is necessary to establish an obligation of the Republic of Austria to restore rights which had been taken away does not exist between the obligation of the plaintiff to repay the purchase price, which is not based on a National Socialist measure but on an Austrian law, and the disadvantages caused to him by having mortgaged his real property; there is no legal basis for such an obligation of the Republic of Austria either, as no such obligation results from Article 26 of the State Treaty, which merely says that the Republic of Austria must return expropriated property and restore legal rights or interests in Austria. The same applies to the profits from the real property, since according to the 3rd Restitution Law such profits must only be turned over by the acquirer of the property if the rules of honest business were not observed in the transaction. Since the State Treaty neither modified nor amended the substantive provisions of the 3rd Restitution Law, the latter claim is also without legal foundation.

Therefore the appeal lacks merit on all counts.

The decision on the costs of the appellate proceedings before the Supreme Court was rendered pursuant to Sections 41, 50 Code of Civil Procedure.

Supreme Court, Department 3
Vienna, May 30, 1956

/stamp/ Dr. Karl Wahle
For the correctness of the copy
the Chief Clerk:
/s/ Illegible

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From: Amembassy, Vienna

Desp. No. 319

To: The Department of State, Washington

Date: October 10, 1956

Ref: Emb D-756, Mar. 8, 1956; Emb D-1087, June 20, 1956; Emb D-197, Aug. 29, 1956; and subsequent;
Dept. Instr. A-421, May 15, 1956; Deptel 3419, June 11, 1956; and subsequent

REC'D ACTION 10-22 1-2 5
N G RM/R-2 REPZ EUR 5 SCS-2 E-4

Subject: Claims under Article 26 State Treaty - US Aide Memoire of June 18, 1956.

This Document Must Be Returned to
R/R 263.004/A/10-1056

Formal discussions concerning our Aide Memoire of June 18, 1956 were held between the Western Embassies and the Austrians on October 5 and 6, 1956. The session on October 5 was limited to the presentation of the Austrian position, the same being set forth in an informal memorandum in German, an English translation of which is attached hereto as Enclosure 2. The second session on the following day was limited, by agreement, to the clarification of the Austrian position. Minutes of these conversations are attached as Enclosures 1 and 3 respectively.

As anticipated, the Austrian position basically is that the existing residential laws constitute full compliance with the provisions of Article 26. They also look upon their voluntary contribution of 550 million schillings to the Aid Fund as an act of generosity which goes beyond any obligations they may have under the Article, and they believe that we should give this humane and unselfish gesture due recognition. Nevertheless, and without compromising their fundamental position, the Austrians say they are prepared to make certain concessions to us for the sake of maintaining harmonious relations.

The extent to which they are willing to meet our demands is as follows:

1. Tenancy Rights

They will not agree to restore residential or commercial tenancy rights. The only concession they will make is to assure us that claimants who return to Austria will be given preferential treatment in the allocation of residential and business accommodations for their personal use and that such accommodations will be as equal as possible to those they lost.

2. Pension Rights

They are willing to dispose on a satisfactory basis of two outstanding groups of pension claims involving emigre doctors formerly employed by social insurance institutions and former employees of the Vienna municipality. They are also ready to discuss sympathetically other claims in this field if brought to their attention.

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LEGAL ADVISER
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DEPARTMENT OF STATE
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3. Bank Accounts

They will not agree to restore confiscated bank accounts and are under strict instructions to make no concessions here.

4. Securities

They will not agree to restore lost securities but are prepared to apply Austrian schilling securities which will be unclaimed under the Austrian Securities Validation Law to satisfy the outstanding claims under this category.

5. Life Insurance Policies

They will see to it that all beneficiaries of Jewish non-confiscated OEVAG policies are duly notified that the policies are still valid. They are unwilling to take any action to restore individually confiscated policies, of OEVAG and other companies, but may reconsider this decision.

6. Mortgages

They believe that the Third Restitution Law provides an adequate remedy for aggrieved mortgages and they will not restore mortgages which have been paid off. They are willing to consider special cases on their merits.

7 & 8. Money and Amounts Paid as Discriminatory Taxes

They will not agree to restore any of these items and will make no concessions under these categories.

In consideration of the foregoing concessions, the Austrians would like us to agree not to support diplomatically claims which go beyond these concessions or fall outside the categories to which they relate.

Embassy Views and Recommendations

Since the Austrians have expressed a willingness to negotiate and these proposals constitute only their first offer, the Embassy believes that the possibilities of achieving a workable settlement are good.

The Embassy has already expressed its views with respect to the categories of claims set forth in our Aide Memoire, in its Despatch 756 of March 8, 1956 and 921 of April 27, 1956. The Embassy's additional comments and recommendations with respect to the foregoing items follow:

1. Tenancy Rights

Because of the tenancy protection laws and the acute housing shortage which called them forth, the Austrians face an insurmountable political and social

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problem here and cannot be expected to give in to our demands. Furthermore, it would be unreasonable for them to shift families or businesses from one place to another merely to allow some claimants who reside abroad to use the leaseholds for speculative purposes. The British Embassy has received instructions from its Foreign Office not to press demands for restoration of tenancy rights and we shall accordingly receive little support from the British on this point. The British are prepared to accept the Austrian proposal and are recommending it to their Foreign Office.

Under the circumstances, the Embassy recommends that the Austrian proposal be accepted in principle, with the possible added proviso that in the case of business properties allocation of similar accommodations will also be made to non-returning claimants who desire to use the premises to operate their own business enterprises therein.

2. Pension Rights

The matter of doctors' pensions appears to be on the verge of settlement independently of these negotiations, although the dates to which the pensions will be made retroactive may have to be clarified. The Embassy believes that reasonable arrangements can be made here and has good grounds to hope that a satisfactory settlement can also be negotiated with respect to the former municipal employees of the City of Vienna. If the Department knows of any other groups of claims which should be considered in this category the Embassy would appreciate being informed thereof. The British share the views of the Embassy under this item.

3. Bank Accounts

The Embassy is of the opinion that every effort should be made to obtain the reconstitution of confiscated bank balances. This view is shared by the French representative and by the British Embassy. The Austrians have stated that the total amount involved is less than 400 million Reichs Mark. By virtue of the currency conversion laws, Austria's liability would thus be less than 160 million schillings and would be payable in 2% government bonds. This may however constitute a heavy burden upon Austria, in view of her present financial position and her additional liability of 550 million schillings to the Aid Fund (see Ambassador Thompson's Memorandum of Conversation with Finance Minister Kamitz of August 28, 1956 transmitted to Mr. Torbett).

Although the Austrian representatives have stated that they are under firm instructions not to give way here, one of them suggested privately that it would be helpful if representations were made directly to the Minister of Finance who has been adamant on this point. It may therefore become necessary for the three Ambassadors to take up the matter of bank accounts with the Minister of Foreign Affairs and the Minister of Finance at the appropriate time. While the Embassy will make strenuous efforts to obtain a satisfactory settlement under this category, it is possible that the negotiations with respect to bank accounts may be so difficult and protracted as to delay a general settlement of the remaining categories under the Aide Memoire. The Embassy would therefore appreciate receiving the views of the Department whether it could, under such circumstances, remove bank accounts from the general discussion and deal with them separately, in order to facilitate the conclusion of a general settlement with respect to the remaining items.

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INTERNATIONAL ARCHIVES

4. Securities

While the Austrian proposal does not amount to a straightforward execution of their commitments under Article 26, it appears to be a practical solution of the problem and should therefore be acceptable in principle. This view is shared by the British and French. The Embassy, however, would be reluctant to accept the Austrian proposal unless it could be assured that the value of the unclaimed securities will be adequate to give substantial satisfaction to the claimants. Since the value of the unclaimed securities will not be known for some time, careful draftsmanship will be called for here.

5. Life Insurance Policies

The Embassy is confident that the comparatively minor problem involving OEVAG unconfiscated policies should be disposed of without difficulty. The real problem involves the individually confiscated policies which the Austrians are reluctant to revive. The Embassy has gained the impression that the Austrians may give way on this point and has some hopes that this may be achieved without the intervention of the Ambassadors. Since the total surrender value of these policies will be less than 15 million schillings and the claims are easily susceptible of proof, the Embassy believes that a real effort should be made to extend the Austrian concessions to them.

6. Mortgages

In its Despatch 756 of March 8, 1956, the Embassy noted the difficulty involved in restoring a confiscated mortgage that had been paid off by the mortgagor and recording it against the property. The British take the position that we are on very weak ground here and prefer to discuss the few meritorious cases which they have on an ad hoc basis. They have accordingly informed the Austrians that they are willing to exclude mortgages from any general arrangement and take up individual cases on their merits. The Embassy declined to do so in view of its present instructions. The French showed no interest in the subject and took no position. The Embassy sees no prospect of achieving success under this point. It therefore recommends that we be prepared to give way on the question of mortgages (as well as cash and discriminatory taxes, see below), provided the Austrians meet our other demands, particularly under bank accounts, insurance policies and securities.

7 & 8. Money and Discriminatory Taxes

Unless the confiscated money was placed in a bank account, the Embassy considers the Austrian position on seized cash to have some merit. The Embassy also considers the Austrian position with respect to discriminatory taxes to have some merit for the reasons set forth in Embassy Despatch 756. The British are convinced that we are on weak ground here and have expressed the desire to eliminate these items from our negotiations at an early date. They have agreed to maintain these claims for tactical reasons in order to maneuver the Austrians into a more amenable position with regard to the other categories of claims in which we are primarily interested.

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From Vienna

The Embassy is of the opinion that the Austrian statement - that they would make their concessions only if we agreed not to support diplomatically claims falling outside the categories to which their concessions relate - was merely an unsuccessful trial balloon and that it will eventually be withdrawn. In rejecting the Austrian suggestion, we pointed out that the groups listed in the Aide Memoire had been employed because they were susceptible of general classification and agreement and made it clear to them that any arrangements entered into with regard to these groups would not preclude the assertion of other types of claims properly falling under Article 26.

The foregoing, summarized, means that a possible settlement at which we may realistically aim could be shaped along the following lines:

I. We would obtain:

- (a) Assurance of preferential treatment on residential accommodations for persons returning to Austria and on business space for persons who will use the space in the conduct of their own business enterprises,
- (b) Satisfactory arrangements covering the payment of pension claims of former doctors of social insurance institutes and former employees of the City of Vienna and possibly other claims in the pension or social insurance field which may be brought to our notice,
- (c) Commitment to restore confiscated bank accounts, provided the Ambassadors are successful in their intervention (or eliminating this item from the general settlement and discussing it separately),
- (d) A practical arrangement for the satisfaction of confiscated security claims out of unclaimed Austrian securities under the validation laws,
- (e) Satisfactory arrangements for the payment of unconfiscated OEVAG life insurance policies and a commitment for the revalidation of individually confiscated policies.

II. In return we would:

- (a) Recognize that the Austrian Government is not legally liable to restore seized money (as distinguished from bank accounts which are a matter of record and easily susceptible of proof) or to refund the discriminatory taxes, and
- (b) Accept the Austrian position on tenancy rights subject to I(a) above.

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- III. Claims with respect to confiscated mortgages will not be included in the settlement and will thus become the subject of individual representation on a case to case basis.
- IV. The settlement could take the form of an exchange of notes between the Austrian Foreign Office and the three Embassies, in which the Austrians would declare their intention to carry out the arrangements under I (a) to (e) and their position with respect to the categories under II (a) and (b). We in turn would declare the Austrian proposals, when carried out, relative to the categories under I (a) and (b), to constitute a reasonable compliance with Austria's obligations under Article 26 with respect to those categories; accept the Austrian position with respect to the categories under II (a) and (b); and state our intention not to support claims under II or claims under I which go beyond the scope of the Austrian proposals. II

The Embassy has discussed the foregoing with the British and they are in accord with this plan. The French have only a limited number of claims. They involve principally art objects sold at auction which they plan to take up separately with the Austrians. The French therefore are not particularly concerned with the categories of claims we have listed and are generally willing to support whatever course of action the British and we agree upon. The Embassy has learned in strict confidence that the view prevails among some of the lower officials of the Foreign Office in London that since Article 25 of the State Treaty is the article which primarily concerns the interests of allied nationals, and not Article 26, the manner in which Austria implements Article 26 should not be closely scrutinized.

The British are extremely concerned about the timing of our negotiations and are anxious to bring them to an early conclusion. While they acknowledge that full agreement on bank balances, life insurance policies and possibly securities may not be reached easily, they are of the opinion that pressure should be applied in order to achieve this sooner. They feel that our position is fundamentally a weak one because the Austrians know that we would not invoke Article 34 or 35 of the Treaty. They also fear that if our negotiations should drag out our bargaining position will become weaker, since we shall be confronted with the Austrian draft law on heirless and unclaimed property under paragraph 2 of Article 26, which law is confined to the collection of restitutable property under existing restitution legislation. If the Russians accept the law - and there is no reason to assume otherwise now - it will be difficult for us to reject it. And once Parliament approves the law, it will be much harder for us to obtain a more liberal interpretation of paragraph 1 of Article 26. Since action under paragraph 2 is called for in January of next year, the British feel it is essential that we come to a settlement in our present negotiations by the end of this year. They are accordingly asking their Foreign Office to send them comprehensive instructions at the earliest possible date. The Embassy shares the British desire for an early settlement and is of the opinion that the passage of time will make a satisfactory agreement more difficult of attainment.

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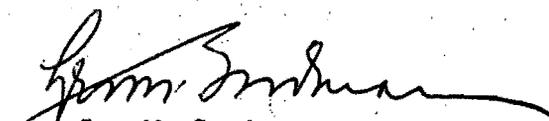
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The Embassy will make every effort to resume discussions with the Austrians before the end of this month after their return from Munich. The Embassy would therefore appreciate receiving the Department's views and instructions as soon as possible.

For the Ambassador:


Leo M. Goodman
First Secretary of Embassy

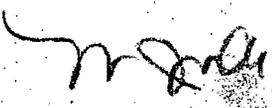
Enclosures: 

1. Memorandum of Conversation of October 5, 1956.
2. English Translation of Austrian Memorandum of October 5, 1956, Discussing the 8 Items Listed in U.S. Aide Memoire of June 18, 1956.
3. Memorandum of Conversation of October 6, 1956.
4. English Translation of Decision of The Presidial Committee of the Central Association of the Austrian Social Insurance Institutes.

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MEMORANDUM OF CONVERSATION

October 5, 1956

PARTICIPANTS: Austria:
Dr. Kirchsclaeger, Head, International Law Section,
Foreign Office;
Ministerialrat Dr. Harrer, Treaty Expert of the Ministry
of Finance;
Ministerialrat Dr. Klein, Restitution Expert of the
Ministry of Finance;
Dr. Loebenstein, Legal Advisor, Federal Chancellery,

and two junior officials, one from the Ministry of Finance
and the other from the Foreign Office.

British Embassy:
Mr. Blair.

French Embassy:
M. Tisseau.

American Embassy:
L. M. Goodman.

SUBJECT: Claims under Article 26 State Treaty - US Aide Memoire of
June 18, 1956.

Dr. Kirchsclaeger, who headed the Austrian delegation, opened the meeting by stating that it is the Austrian view that both the letter and the spirit of Article 26 have been satisfied by Austria's extensive restitution legislation, which is universally acknowledged to be a model of fairness and generosity. He pointed out that, in creating the 550 million schilling Aid Fund, Austria had in fact gone beyond her treaty commitments and he expressed the hope that this voluntary gesture on her part would receive appropriate recognition. Despite Austria's firm conviction that she had adequately fulfilled her obligations under Article 26 by means of her restitution laws, Austria has been, is, and will be, prepared to find practical solutions to the existing problems under this Article, without prejudice, of course, to her basic position. In doing so, Austria would be motivated by a desire to maintain good and friendly relations between herself and the other signatories to the Treaty.

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Dr. Kirchsclaeger thereupon proceeded to state Austria's position with respect to each of the categories of claims enumerated in our Aide Memoire of June 18, 1956. The statement was a summary of a written memorandum of which we received copies. A translation of this memorandum is attached.

The meeting was then adjourned until the next day in order to give the three Western representatives an opportunity to study the Austrian memorandum and to agree upon questions to be jointly put to the Austrians for the purpose of clearing up any ambiguities in their position.

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English Translation of Austrian Memorandum of October 5, 1956 Discussing
8 Items Listed in U.S. Aide Memoire of June 18, 1956.

The Aide Memoire of the Embassy of the United States of America dated June 18, 1956 was carefully examined by Austria. With respect to the 8 items mentioned in the said Aide Memoire the following position is taken by Austria:

Re Item 1) Restoration of Tenancy Rights:

Between 1938 and 1945, as well as after 1945, housing space in Austria was strictly controlled, after 1945 on the basis of the Austrian "Wohnungsanforderungsgesetz" (Housing Space Requisition Law). Particularly under the provisions of that law numerous tenancy rights were extinguished or created in the course of the years. An attempt to reassign apartments to former tenants would generally constitute an unjustifiable interference with existing properly acquired rights of third parties, and is therefore impossible for this reason alone. But even a restitution, which would otherwise be possible, would have no legal effect in most of such instances, since the premises were subject to housing space control at the time the State Treaty took effect. Finally it should be mentioned that another act of State interference in the field of housing, after almost 20 years, would necessarily have incalculable political consequences.

Re Item 2) Restoration of Certain Pension Rights under the Social Security System, Civil Service System and other Pensions, including those under Private Contracts:

The restoration of pension rights has already been made - as far as such restoration is possible - on the part of Austria, partly by the Public Servants Transition Law and the 7th Restitution Law, and partly by the recent resolutions of the Presidential Committee of the "Hauptverband Oesterreichischer Sozialversicherungstraeger", which make a granting of a pension possible. Austria is prepared to examine concrete demands in individual cases.

Re Item 3) Bank Accounts:

The restoration of bank accounts is impossible for the reason that the relevant monies are no longer on hand, that is to say, they were taken out of the country.

The US Aide Memoire obviously infers from Article 26 an obligation of the Republic of Austria to make available an appropriate amount for accounts which were taken away or turned over to the German Reich, so that the wronged party can

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open a new account with this or another bank. No obligation to make such compensation was ever imposed on the Republic of Austria by the State Treaty. For every creation of a private right which would be effected by the purchase of a like object or by monetary payments, is not a restoration within the meaning of Article 26, paragraph 1, 1st sentence, but a compensation within the meaning of Article 26, paragraph 1, 2nd sentence. This follows from the entire meaning and context of the individual sentences of Article 26 of the State Treaty. It would be paradoxical to obligate Austria to make full compensation for lost rights to accounts or for the expropriation of securities, whereas e.g. for household articles and other essential objects compensation need only be granted within the restrictions of Article 26, paragraph 1, last sentence. It would also be incomprehensible that the State Treaty should place a heavy financial obligation on Austria just for the kinds of claims enumerated in the Aide Memoire, while damages for physical injuries, for unlawful detention and the like, compensation for which would be of quite another urgency, were not imposed on Austria.

Re Item 4) Loss of Securities:

Even though the above statements made under Item 3 apply as a matter of principle to securities, so that payment of compensation by the Republic for the purpose of the acquisition of securities and the like cannot be considered, Austria would, irrespective of its legal position, nevertheless be prepared to discuss in this field the possibility of taking measures, within the framework of existing circumstances, with a view to finding a solution for persons dispossessed of securities.

Re Item 5) Life Insurance Policies:

By far the largest part of the life insurance policies which were forfeited under the 11th Ordinance to the Reich Citizens Law concerned OEVAG (Phoenix). The latter has honored such policies, despite the fact that it made a payment of 6 million Reichsmarks to the German Reich for policies which were forfeited, and its further legal obligation was therefore very doubtful in the absence of an individual accounting. In the course of the financial reconstruction of insurance (companies) the Republic of Austria also allocated the funds for this purpose and has thus rendered services in this field which exceed its obligation under Article 26 of the State Treaty.

Re Item 6) Mortgages:

To the extent that restoration of mortgages within the meaning of Article 26 of the State Treaty is to be regarded as possible, the restoration could be made by way of restitution proceedings.

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Re Items 7) and 8) Money, "Judenvermogensabgabe" and "Reichsfluchtsteuer" :

These cases - as well as cases of extinct mortgages the restoration of which is not possible under the restitution laws - do not involve the return or restoration of rights but the payment of damages, which Austria, as already mentioned under Item 3, is not obliged to make.

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MEMORANDUM OF CONVERSATION

October 6, 1956

PARTICIPANTS: Austria:
Dr. Kirchsclaeger, Head, International Law Section,
Foreign Office;
Ministerialrat Dr. Harrer, Treaty Expert of the Ministry
of Finance;
Ministerialrat Dr. Klein, Restitution Expert of the
Ministry of Finance;
Dr. Loebenstein, Legal Advisor, Federal Chancellery,

and two junior officials, one from the Ministry of Finance
and the other from the Foreign Office.

British Embassy:
Mr. Blair.

French Embassy:
M. Tisseau.

American Embassy:
L. M. Goodman.

SUBJECT: Claims under Article 26 State Treaty - US Aide Memoire of
June 18, 1956.

I opened the meeting by stating that we were happy to note that the Austrian Government would be moved by a spirit of friendliness and cordiality in its efforts to arrive at a just solution of the problems that confronted us. I assured them that we, too, would be working in the same spirit and expressed the hope that our common efforts would come to a successful conclusion. At the outset, I said, it should be made clear that we are unable to accept the Austrian view that the enactment of restitution legislation has satisfied Austria's obligations under Article 26. While we regard the Austrian memorandum to be unsatisfactory, I stated, we would not discuss its merits, since the meeting had been arranged solely for the purpose of enabling us to put questions to the Austrian delegation in order to clarify their proposal.

Mr. Blair then propounded the questions we had agreed on in a tripartite conference last night, following our meeting yesterday with the Austrians. In response to these questions the Austrians explained their position under each item as follows:

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1. Restoration of Tenancy Rights:

Dr. Kirchsclaeger stated that the Austrian position on the impossibility of restoring tenancy rights applied to residential quarters as well as business premises. He sees no legal distinction between claimants who intend to return to Austria and those who do not intend to return. The Austrians would, however, be prepared to give us an assurance that any person who returns to Austria will be granted preferential treatment in the allotment of residential and business accommodations for his personal use. While they could not promise that such accommodations would correspond in size and quality to those which had been lost, they indicated they would do their best to bring this about. The manner of achieving this would require further study and discussion.

2. Restoration of Certain Pension Rights under the Social Security System, Civil Service System and other Pensions, including those under Private Contracts:

The decision of the Presidial Committee of the Central Association of the Austrian Social Insurance Institutes, to which the Austrian memorandum refers, concerns emigré doctors formerly employed by health insurance institutes, whose pension rights are based on contractual arrangements (as distinguished from the Austrian social insurance system). The decision provides that these doctors now have a right to their pensions, provided reciprocity exists with the country where-in they reside. An extract of this decision is attached hereto. The decision still lacks the necessary approval of the Ministry of Social Administration, but Dr. Kirchsclaeger said that the Foreign Office would undertake to secure such approval if our negotiations should be successfully concluded. While the decision would apply to emigré doctors residing in the United States, it would not affect those residing in France and the United Kingdom, because the latter two countries have not yet concluded reciprocity arrangements in this field with Austria, although they hope to do so in the near future.

Dr. Kirchsclaeger explained that when they had said in their memorandum that they were prepared to examine "concrete demands in individual cases", they had meant to say "individual groups of cases". Both he and Dr. Klein agreed that the failure of the City of Vienna to abide by the arrangements made by the Austrian Government to pay pensions ex gratia retroactive to May 1, 1950 to non-resident former federal civil servants regardless of their present nationality, was unfortunate (EMDESP 448, October 13, 1954). They said that representations have been made to the mayor of the City of Vienna by the Minister for Foreign Affairs and by the Vice Chancellor, but that these have thus far been without avail. Nevertheless, Dr. Kirchsclaeger was hopeful of obtaining a change in the attitude of the Municipality as a consequence of our present negotiations.

3. Bank Accounts:

We told the Austrians that we looked upon a confiscated bank account as a right and interest which is capable of restoration and that the re-establishment

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of such account did not constitute the payment of compensation as suggested in their memorandum. Dr. Kirchs chlaeger replied that the Austrian representatives were under strict instructions to reject our claims with regard to bank accounts as a matter of principle and indicated that he saw no possibility of discussing this item at the working level.

When we asked how much the confiscated Reichsmark accounts amounted to, the Austrians answered that they had "no information". To Mr. Blair's question whether a figure of 400 million Reichsmark was high or low, Dr. Klein, with apparent certainty, replied it was definitely too high. When I asked how much money the German Reich or its agencies had left behind in bank accounts in Austria, the Austrians similarly professed ignorance and said that these accounts had been insignificant and had been inadequate to meet the claims chargeable against them.

4. Loss of Securities:

We asked the Austrians to clarify their treatment of this point, which we felt was particularly vague, and to describe to us the "measures" to which they had alluded in their memorandum. Dr. Harrer stated that under the Austrian view the legal objections pertaining to the restoration of bank accounts applied with equal force to securities. Further, it would be improper, he said, to deprive a bona fide holder of securities which he had purchased in good faith. Nevertheless, but without prejudice to their basic position, the Austrians were prepared to satisfy the claims in this category in a practical way. He informed us that in the course of the validation of Austrian securities under the Austrian Securities Validation Law, Federal Law 188 of 1954, (EMDES 601, November 23, 1954) a number of securities remain unclaimed, while others are being or may be claimed by a curator for a German bank. The bank in question was the German collecting agency for securities confiscated from Jews and these securities had been looted by the Russians from the bank in 1945 in Berlin. Pursuant to Section 19 of the Validation Law all unclaimed securities are being retained in the custody of the Austrian Kontrollbank pending the enactment of legislation providing for their disposal. Dr. Harrer stated that the Austrian Government proposes to use these unclaimed securities as well as the securities claimed by the German bank curator to satisfy Article 26 claims under this category. Dr. Harrer could not tell whether these securities would be sufficient to satisfy all such claims, since all issues have not as yet been called up for validation. He was of the opinion that the surplus of some issues might be less, while the surplus of others might be in excess of the Article 26 claims to the respective issues. He said they had not thought out all phases of this problem and did not believe that it could be resolved until the end of next year, when the validation procedures will be completed. He added that the Austrian proposal on this point would not extend to securities denominated in foreign currencies, since their validation is covered by special international agreements.

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5. Life Insurance Policies

Ministerialrat Harrer stated that by virtue of unusual circumstances which occurred during the German occupation of Austria, certain life insurance policies issued by Oesterreichische Versicherungs Aktiengesellschaft (OEVAG) were still in force and effect. All property of Jews who left the territory of the German Reich by way of emigration or deportation was confiscated under the 11th Ordinance to the Reich Citizen Law. In connection therewith all insurance companies were instructed to report to the German authorities the details of all life insurance policies of which Jews were the beneficiaries. As soon as these returns were rendered, the insurance companies received individual confiscation orders relating to specific policies with instructions to transfer the surrender value to the German authorities. For some reason OEVAG failed to make the returns and, as a result, it paid over the surrender value to the German Reich only in those cases where the German authorities had managed to obtain information regarding a Jewish OEVAG policy by some other means and had issued instructions for its forfeiture. In 1944 the German authorities threatened to prosecute the directors of OEVAG for their failure to make the returns. The matter was dropped when OEVAG paid over a lump sum of 6 million Reichsmarks to the German authorities without reference to specific policies, and promised to make the required returns. Because of the chaotic conditions which existed during the closing days of the war, the returns were never rendered. Consequently no specific confiscation orders were issued with respect to the OEVAG policies. These policies have subsisted to this day and are being honored by OEVAG.

Mr. Blair pointed out to Dr. Harrer that OEVAG had frequently taken the position in the past that its Jewish policies had become void as a result of the general confiscation order under the 11th Ordinance to the Reich Citizen Law and that it had accordingly refused to honor them. In view of this we urged that all OEVAG beneficiaries, including those whose claims had been rejected, be informed that their policies are still in force and effect. Dr. Kirchsclaeger said he would give this request favorable consideration.

We then raised the question of policies which had been individually confiscated, namely those issued by insurance companies other than OEVAG and the small number of OEVAG policies which had been declared forfeited. At first the Austrians took a firm position and said they would pay no "compensation" for them. When I pointed out to them that no compensation was involved, but merely a restoration of legal rights and interests as provided for in Article 26, they agreed to review the matter and to study it sympathetically, provided we arrive at a global settlement of all our problems in these negotiations. When asked what the total surrender value of these confiscated and voided policies would be (having regard to value reductions made in all Austrian insurance policies under the Insurance Transition Law and the Insurance Reconstruction Law; see EMBDESP 452, November 10, 1955) they estimated it at approximately 10 million schillings.

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6. Mortgages:

Dr. Kirchsclaeger took the position that the 3rd Restitution Law had afforded an adequate remedy to aggrieved mortgagees and that the vast majority of cases have already been taken care of thereunder. Those mortgages which have been paid off, he said, are not possible of restoration. Nevertheless, he was willing to examine any specific claim we had on an individual basis. Mr. Blair (who had informed me last night that he would do so) stated that he was willing to exclude confiscated mortgages from any general agreement and take each case up individually. M. Tisseau was not interested in the subject and made no remarks. I pointed out that I was unable to join Mr. Blair in his position and could not agree to the exclusion of confiscated mortgages from the discussion. Nothing tangible was achieved under this item except that we were assured that confiscated Jewish mortgages which were cancelled upon the transfer of the mortgaged property to the German Reich would be restored if the property is unclaimed or heirless and that the mortgages would devolve to the Sammelstelle under the forthcoming Sammelstelle Law.

7. and 8. Money, "Judenvermoe gensabgabe" and "Reichsfluchtsteuer".

The Austrians were firm in their position that they would assume no liability under these items. In the case of cash, they said, most cases involved acts of spoliation or common theft carried out by individual Nazi or SS hooligans about which little evidence has survived. Where cash was confiscated by the police authorities of the German Reich in a more orderly fashion, it was deposited in a bank account in the name of the person from whom it was taken and such money would fall under the category of "bank accounts". No attempt was made by the Austrians to go into any details with respect to the Jewish Property Tax and Flight Tax, since they regard it to have been a Reich tax pure and simple. When asked how much these taxes amounted to, Dr. Klein said that, according to Austrian records, the total amount of Jewish Property Tax collected in Austria was 147 million Reichsmark and the total amount of the Reich Emigration Tax collected in Austria was 181 million Reichsmark.

Before the close of the meeting Dr. Kirchsclaeger stated that, if our negotiations were successful, the Austrian Government hoped to obtain an agreement from us in which each of the three Western Powers would declare that the arrangements concluded constitute an adequate and satisfactory implementation of the provisions of Article 26, and that the Western Powers would not give diplomatic support to any other claims under the Article. We flatly rejected this suggestion and pointed out that the groups listed in the Aide Memoire were merely illustrative and had been employed by us because they were susceptible of general classification and general agreement. We explained that if any arrangements were entered into with regard to these groups, they would necessarily be confined to such groups and would not preclude the assertion of other types of claims properly falling under Article 26, e.g. the restoration of licenses. I suggested that if the Austrians desired to include other categories of claims in the proposed arrangement, we could broaden

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our discussion to cover them as well. Dr. Kirchsclaeger responded that it was his opinion that since the Austrian Government had committed itself to expend 550 million schillings in creating the Aid Fund, we could see our way clear to confine the entire arrangements under Article 26 to the eight points enumerated in our Aide Memoire. A suggestion was then made that a measure of protection could be secured by Austria if a time limit were set for the filing of claims. Dr. Kirchsclaeger appeared to accept the limited scope of our discussion and admitted later privately to Mr. Blair that he had, in fact, not expected any other reaction from us.

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English Translation of Decision of Presidial Committee of the
Central Association of Austrian Social Insurance Institutes _ _

The Presidial Committee of the "Hauptverband der oesterreichischen Sozialversicherungs traeger" has resolved to alter the service regulations for physicians who were former employees of the Social Insurance companies. The alteration provides that those formerly employed physicians, who between March 4, 1933 and May 9, 1945 had been forced to move to foreign countries for political reasons (with the exception of National Socialist activities), or for religious or racial reasons, and did not return after the re-establishment of the Republic of Austria, shall have a legal claim for the remittance of the pension which they would receive if they had not emigrated, provided they belong to the groups of persons benefiting by the 9th Part, Chapter IV, General Social Insurance Law, and a social insurance agreement or reciprocity exists with the State in which they have their residence. The alteration in the service regulations for formerly employed physicians still requires the consent of the Federal Ministry of Social Administration.

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TO : THE DEPARTMENT OF STATE, WASHINGTON.

October 19, 1956
DATE

REF : EMBDESP 244, September 15, 1956. L-EUR-

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SUBJECT: Article 26, Paragraph 2, Austrian State Treaty - Draft of 4th Restitution Claims Law.

The Embassy has discussed with Dr. Klein of the Ministry of Finance the possibility of extending the draft Sammelstelle Law to cover categories of claims falling outside the purview of the restitution laws and encloses a Memorandum of this conversation.

Mr. Seymour J. Rubin, who is visiting Vienna, has left with the Embassy a memorandum of "proposed amendments" to the draft Sammelstelle Law, a copy of which is enclosed for the Department's consideration. Mr. Rubin has also suggested the possibility of interesting the Austrian Government in exploring with the Swiss Government the utilization of unclaimed assets in Switzerland of deceased Austrian persecutees to supplement the fund to be established under Article 26, Paragraph 2 of the State Treaty for the relief of surviving persecutees. Mr. Rubin made reference to arrangements concluded between Switzerland and Poland in 1949 along similar lines and stated that he would discuss the matter at greater length with the Department upon his return to Washington at the end of this month.

The views of the Department with respect to the draft Sammelstelle Law would be appreciated, in order that they may be conveyed to the Austrian authorities.

FOR THE AMBASSADOR:

Leo M. Goodman
First Secretary of Embassy

Enclosures:

1. Memo of Con dtd Oct 16, 1956;
2. Memo of proposed amendments.

Legal Adviser
YCF
OCT 25 1956
DEPARTMENT OF STATE

L:LM Goodman:smk
REPORTER

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Page 1 of
Encl. No. 1
Desp. No. 360
From AMEMBASSY VIENNA

MEMORANDUM OF CONVERSATION

October 16, 1956

PARTICIPANTS: Dr. Klein, Federal Ministry of Finance;
L. M. Goodman, American Embassy.

SUBJECT : Article 26, Paragraph 2, Austrian State Treaty -
Discussion re the Fourth Restitution Claims Law Draft
(EMIDES 244, September 15, 1956)

In the course of discussing a number of matters under Article 26 with Dr. Klein, the latter asked me what I thought of the draft of the 4th Restitution Claims Law (the so-called Sammelstelle Law), of which he is the author. I replied that I had sent a copy of the draft to the Department and was awaiting the Department's comments. I said that, while we do not wish to attempt to write legislation for the Austrians, I know that the Department does not consider the draft bill to satisfy Austria's obligations under Article 26 of the State Treaty. Dr. Klein then said that he is anxious to get the draft enacted in order to enable some of the people who have failed to file their claims under the restitution laws to take advantage of the provisions of this bill. I told him that I would let him have our views with respect to specific details of the draft as soon as I hear from the Department. I added that I have been primarily concerned with the fact that the bill, as drafted, is limited to claims under the restitution laws and ignores the fact that we are about to conclude an agreement extending the categories of claims under Article 26 beyond those covered by the restitution laws. In view of this, I wondered whether a way could not be found to amend the draft law to provide for the collection of such additional categories of claims by the Sammelstelle. Dr. Klein said that would be difficult but thought that a way could be found to bridge the gap by making an appropriate explanation with respect to this in the explanatory notes to Parliament which would accompany the bill. He said he would prepare such an explanatory paragraph and show it to the State Secretary of the Ministry of Finance and, if the latter concurs, he would send me a copy for transmittal to the Department. I said I would appreciate receiving it and would make appropriate recommendations to the Department if it is sufficiently broad to achieve the desired purpose.

Leo M. Goodman

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Page 1 of

Encl. No. 2

Desp. No. 360

From AMEMBASSY, VIENNA

Proposed Amendments to the 3 Referentenentwurf (third provisional draft) of the 4. Rueckstellungsanspruchsgesetz (Law on the Collecting Agencies under Art.26(2) of the Austrian State Treaty) - Appendix to Zl. 249.386-34/56.

(1) Under Par. 1 of the Bill, the Collecting Agencies may file only such claims as come within the purview of the (existing) restitution laws - claims which were not filed within the dead-lines provided for in the law or because of the inheritance restrictions imposed by these laws. This provision is in contradiction to Art. 26(2) of the State Treaty which uses the same language as Par. 1 of the same Article, viz. "property rights and interests"; therefore the Collecting Agencies must be authorized to claim all property, rights and interests which remain unclaimed and not only those to which the right to claim had already been granted under the (restricted) restriction laws.

The discrepancy could be remedied by replacing the words "im Sinne der Rueckstellungsgesetze" with the words "fuer Eigentum, Rechte und Interessen im Sinne des Art. 26 Abs. 1".

(2) Under Par. 1, the Jewish Collecting Agency may claim only the property of persons who on Dec. 31, 1937 belonged to the Jewish religious community (Religionsgemeinschaft). This represents an unwarranted limitation on the claims of the Jewish Collecting Agency because the property of Jews who left the Jewish religious community without conversion to another religion would be assigned to the non-Jewish Collecting Agency, while these persons never stopped to be Jews.

(3) Under Par. 3(1) of the Bill certain assets which are all (or at least in their overwhelming majority) Jewish are to be assigned jointly to both Collecting Agencies and used to cover the expenses of both of them. In this way Jewish funds will be used to finance the activities of the non-Jewish Agency. It is suggested that these funds be distributed between the two agencies according to former ownership.

In this connection it must be said that, under Art. 26 of the State Treaty, Austria "agreed" to take the unclaimed assets under her control which cannot be interpreted otherwise than that Austria has to cover the expenses involved in collecting the assets. To burden the Agencies with these expenses, is contrary to Art. 26(2).

(4) Par. 8(2) of the Bill would involve the Collecting Agencies in court proceedings (through three court instances). It is suggested to limit them to one (the Landesgericht in Zivilsachen).

(5) Par. 14(2) is too narrow - there will also be the need for the inspector of records in banks, pawnbrokers, insurance companies and notaries public.

(6) The reference in Par. 16(2) of the Bill to the Seventh Restitution Law has no basis in Art. 26(2) and is to be eliminated.

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Page 2 of

Encl. No. 2

Disp. No. 360

From AMEMBASSY, VIENNA

(7) Par. 16(2) provides for the enactment of a law sine die. It is suggested that the law on the distribution of the funds should be enacted within a year from the effective date of the law on the Collecting Agencies.

(8) It is further suggested that it might be wise to allow a reasonable period for individuals to claim property recovered by the Sammelstelle, if they can prove ownership. A period of three months might be reasonable.

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FOREIGN SERVICE DESPATCH

004/A/11-956
263.1141A

FROM : AMEMBASSY VIENNA 418
TO : THE DEPARTMENT OF STATE, WASHINGTON
REF : EMBDESP 319, October 10, 1956

November 9, 1956
DATE

GER
File

For Dept.	ACTION 2	DEPT. IN R	KW/R-2 REP-2 EUR-5 SCS-2 E-4
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SUBJECT: Claims under Article 26 State Treaty - U. S. Aide Memoire of June 18, 1956

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The British Foreign Office has sent the following instructions to the British Embassy regarding the Austrian position with respect to our Aide Memoire of June 18, 1956:

- Tenancy Rights: The Foreign Office regards the Austrian proposals to be acceptable, but notes that "it is natural to be suspicious of Austrian proposals having unofficial rather than legal force".
- Pension Rights: The Foreign Office agrees with the British Embassy that the Austrian proposals are acceptable providing a satisfactory settlement is obtained of the two outstanding groups of claims affecting former doctors of health insurance institutes and former municipal employees of the City of Vienna.
- Bank Accounts: In view of the number of persons affected and the amount involved, the Foreign Office regards a settlement of this question to be an "essential pre-condition for general arrangements". If necessary it should be taken up by the Ambassadors.
- Securities: The Foreign Office finds the Austrian proposals acceptable but believes that "it would be necessary to make certain that a claimant for a holding for which the Government unclaimed fund is inadequate suffers no injustice".
- Life Insurance Policies: The Foreign Office agrees that an effort should be made to obtain Austrian agreement for the payment of individually confiscated life insurance policies.
- Mortgages: The Foreign Office agrees that mortgages should be eliminated from the scope of the general agreement and left, if necessary, to representation on an individual basis.
- Money (Cash): The Foreign Office agrees that this should be eliminated from the negotiations at an early date.

8. Amounts Paid as Discriminatory Taxes: The Foreign Office agrees with the view of the British Embassy that the Austrian Government should not...

LMGoodman/baf
REPORTER

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2 of
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From Amembassy Vienna

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Page _____ of
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From _____

these taxes, that the claims should be formally maintained for tactical reasons only and that they should be given up entirely when a satisfactory general arrangement is reached.

The Foreign Office informed the British Embassy that it is inclined to follow the principle of allowing the Austrians some measure of discretion for the fulfillment of Article 26 in other respects than simply tenancy rights and that another instance of the application of this principle would be abstention from pressing such things as money (cash) claims. The Foreign Office adds that it would be unsuitable, however, to inform the Austrian authorities thereof.

In its communication to the British Embassy the Foreign Office asked what form an eventual agreement would take. It suggested the following possibilities:

- a. Informal exchange of notes.
- b. Memorandum of understanding which would not be registered with the U. N. but which could be quoted in public, e.g. in Parliament.
- c. A fully fledged agreement or exchange of notes.

It stated that it would prefer "c".

It is clear that the Austrians will insist upon a reciprocal arrangement under which we would (a) accept the eventual terms agreed upon as constituting reasonable compliance with Austria's obligations under Article 26 with respect to the categories of claims involved and (b) undertake to refrain from supporting claims which go beyond the scope of the arrangement with respect to such categories of claims. In discussions with the British Embassy, officials of this Embassy have expressed concern whether the eventual disposition or settlement of the questions raised by our aide memoire could properly be embodied in any formal agreement or exchange of notes, in view of the fact that such an arrangement may have the effect of circumscribing or ignoring possible vested rights and interests under Article 26 and would serve to deprive such claimants of their government's support vis-a-vis Austria. The British Embassy has informed the Foreign Office of this, and has also advised the Foreign Office that it would prefer to incorporate any settlement in an exchange of notes which would be registered with the U. N.

FOR THE AMBASSADOR:

Walter Q. Loehr
Walter Q. Loehr
First Secretary of Embassy

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By JB NARA Date 6-21



DEPARTMENT OF STATE INSTRUCTION

943 943

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FOR DC USE ONLY

NO.: A-185 December 12, 1956

SUBJECT: Article 26(2) Austrian State Treaty

TO: The American Embassy, VIENNA

Reference is made to Embassy's despatch no. 244. The Department has now reviewed with Mr. Leo Goodman the British proposal set forth on page 3 of the referenced despatch with regard to the procedure by which consultation would be achieved with regard to the designation of an agency to receive property under Paragraph 2 of Article 26. The Department concurs in the proposal and the Embassy is authorized to present the proposal to the Austrian authorities in conjunction with the British and French. The Embassy is requested to take this matter up with the Austrians immediately and to report to the Department whether the Austrians concur in the proposal and the agency which they propose should receive the property and the composition of such agency. The Embassy should point out to the Austrian representatives that the type of agency to be proposed and its composition may have an important bearing upon its acceptability to the Soviet authorities.

Bearing in mind that an agency or organization must first be "designated" under paragraph 2 before the Austrians can comply with the requirements imposed upon them to transfer the property to such agency, the Department believes that this aspect of the over-all problem should be settled forthwith. Accordingly, it is suggested the Embassy deal with the matter on a priority basis, and seek to obtain Austrian agreement on this point at the earliest possible time.

A second matter which has been reviewed and appears to be one of urgency is the requirement that Austria transfer "such property, rights and interests" to the agency or organization to be designated within eighteen months from the coming into force of the treaty. We believe that the Austrians should take the required legislative and administrative action in this respect as soon as the agency has been designated. (We are particularly interested in the Austrians meeting the time provisions of the treaty in order to prevent possible compromise of the time provision of the Vienna Memorandum) Realizing, however, that the unresolved questions with respect to

what constitutes

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CLEARANCES:

Handwritten initials and signatures: DAW, Goodman, hnd, NACWE

5/5-CR
DEC 12 1956 P.M.

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what constitutes "property, rights and interests" under paragraph 1 of this Article may cause the Austrian authorities to oppose prompt action, the Department suggests that the Austrian obligations to transfer the property could be met without prejudicing the definition of this clause by their putting into effect provisions along the following lines:

"In accordance with the provisions of paragraph 2 of Article 26 of the Austrian State Treaty, all property, legal rights and interests in Austria of persons, organizations or communities which, individually or as members of groups, were the object of racial, religious or other Nazi measures of persecution which remain heirless or unclaimed, in the case of persons, for six months after the coming into force of the State Treaty, or where in the case of organizations and communities such organizations or communities have ceased to exist, as well as property, legal rights or interests in Austria which have since 13 March, 1938, been subject of forced transfer or measures of sequestration, confiscation or control on account of the racial origin or religion of the owner and have remained heirless or unclaimed for six months after the coming into force of the State Treaty, are hereby transferred to the (agency or organization designated) pursuant to paragraph 2 of Article 26." thus

It is believed that by making the language of the Treaty ~~legally~~ effective the Austrian authorities would avoid any political, legal or administrative difficulties since they would thereby be assuming nothing more than the obligations already existing under the treaty.

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L FROM: VIENNA

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RMR TO: Secretary of State

EUR NO: 2277, DECEMBER 27, 7 PM

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CIA DEPTTEL 2915.
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MINFIN STILL HOPES TO PASS SAMMELSTELLE LAW ACCORDING DRAFT TRANS-
MITTED EMBDESP 244. WHEN GOODMAN POINTED OUT DRAFT LAW FAILED TO COVER
ALL CLAIMS ARTICLE 26 (SEE MEMO ENCLOSURE EMBDESP 244) DR.
KLEIN SUGGESTED OTHER CLAIMS COULD BE LEFT TO ALTER LAW. KLEIN
MAINLY INTERESTED IN EXPEDITING ENACTMENT LAW COVERING PARA 2
AND ESTABLISHING SAMMELSTELLE TO TAKE OVER UNCLAIMED PROPERTY
AND WANTS DRAFT BASED ON RESTITUTION LAWS TO BE PASSED AS FIRST
INSTALMENT. SECOND LAW WOULD INCORPORATE EVENTUAL AUSTRIAN COMMITMENT
AS TO CATEGORIES MENTIONED AIDE MEMOIRE. NO DRAFT PREPARED.

EMB DOUBTFUL SECOND LAW WILL RECEIVE SERIOUS CONSIDERATION UNTIL
AUSGOV GENERALLY APPROVES PLAN AS TO SCOPE OF CLAIMS TO BE RECOGNIZED
UNDER PARA 1. FONOFF HOLDING UP APPROVAL DRAFT SAMMELSTELLE LAW
UNTIL OBLIGATIONS UNDER PARA 1 ARE CLARIFIED. EMB WILL INFORM
FONOFF DEPT VIEWS AT MEETING ON SUBJECT MATTER EMBTEL 2261.

THOMPSON

CC

*2 Ad. necessary
action taken!*

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FROM: VIENNA

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RMR TO: Secretary of State

EUR NO: 2261, DECEMBER WU, 2 PM

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REFERENCE A-185.

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EMBASSY IN CONJUNCTION WITH BRITISH AND FRENCH EXPLAINED DEPT INSTRUCTIONS TO FOREIGN OFFICE AND EMPHASIZED NECESSITY TO MEET TIME LIMIT. FOREIGN OFFICE KNEW OF NO SUITABLE ORGANIZATION TO PROPOSE EXCEPT SAMMELSTELLE WHICH DOUBTFUL COULD BE CREATED AND ESTABLISHED WITHIN TIME LIMIT BY REASON OF CLEARANCE REQUIRED FROM GOVERNMENT AGENCIES UNDER AUSTRIAN LEGISLATIVE PROCEDURE PRIOR ENACTMENT OF LAW. BRITISH SUGGESTED EXISTING AID FUND ALSO POSSIBLE SOLUTION WHICH COULD HOLD PROPERTY IN TRUST PENDING FURTHER DISPOSITION. FOREIGN OFFICE AGREED TO CALL MEETING OF INTERESTED MINISTRIES TO CONSIDER PROPOSALS EARLIEST DATE AND REPORT TO EMBASSIES. AUSTRIANS CONSIDERED EARLIEST POSSIBLE MEETING DATE JANUARY 3.

THOMPSON

JCK

*Noted necessary
action taken
Dad* 4602

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We are increasingly concerned over failure Austrians act decisively regard their obligations under Article 26 State Treaty which we believe reflect lack attention this point by responsible officials. Our concern was mentioned briefly to Figl during recent visit but he expressed off hand view matter was "for courts" indicating he unaware problem is courts apparent lack jurisdiction until administrative and legislative action taken. ~~Provided~~ ~~Recording~~ you concur believe matter should be raised immediately with Figl, emphasizing that less than month now remains for them to comply with treaty requirement and that Austrian technicians have not moved at speed which would indicate they will meet deadline without high level intervention.

Believe you have recent expressions our general position various aspects this problem namely specific categories property covered para 1 (see advanced copy A-193 delivered Loehr by Torbert), designation of agency and compliance with transfer provision under para 2 (see A-185 and Deptel 2915).

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Anal 33
Re:
cc

Dulle
(J.F.)

DULLE

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Drafted by: ZEPPEL/GER: D Wehmeyer/ld 12/27/56

Telegraphic transmission and classification approved by: John Wesley Jones

Clearance:

WE - Mr. Torbert

L/GER - Mr. Kearney

S/S-CR

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TO: Secretary of State

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FIGL NOT AVAILABLE UNTIL TODAY WHEN WE CALLED ON HIM PURSUANT DEPTTEL 2948. EXPRESSED CONCERN OF DEPT AND NECESSITY FOR LEGISLATIVE AND ADMINISTRATIVE MEASURES TO IMPLEMENT ARTICLE 26 AND IMPORTANCE OF MEETING TIME LIMIT. FIGL STATED THAT AFTER CONVERSATION WITH TORBERT ATTEMPTED TO CALL MEETING OTHER MINISTERS BUT THEY WERE NOT AVAILABLE DURING HOLIDAYS AND WILL CALL MEETING INTERESTED MINISTERS JANUARY 7. FIGL STATED AUSTRIA INTENDS TO CARRY OUT OBLIGATIONS UNDER TREATY AND APPROACH AT THIS TIME HELPFUL FOR HIM AS HE CAN TELL MINISTERS ABOUT OUR CALL ON HIM AND THAT HE WAS URGED BY U. S. TO TAKE ACTION.

THOMPSON

JCK

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FROM: VIENNA
TO: Secretary of State
NO: 2374, JANUARY 3, 7 PM

Control: 1388
Rec'd: JANUARY 3, 1957
3:12 PM

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JAN 4 1957

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REFERENCE A-185 AND EMBTEL 2261.

IN MEETING FOREIGN OFFICE WITH BRITISH AND FRENCH TODAY FOREIGN OFFICE PROPOSED SENDING NOTE TO FOUR HEADS MISSION PROPOSING SAMMELSTELLES TO BE CREATED IN FUTURE LAW BE DESIGNATED AS ORGANIZATIONS TO RECEIVE PROPERTY UNDER PARAGRAPH TWO ARTICLE 26. AUSTRIAN PLAN IS TO ENACT SIMPLE LAW CREATING SAMMELSTELLE A AND B AND IN SAME LAW TRANSFER PROPERTY RIGHTS AND INTERESTS MENTIONED PARAGRAPH TWO BY MAKING REFERENCE THERETO. DO NOT INTEND TO INCORPORATE VERBATIM LANGUAGE AS SUGGESTED A-185 BUT SAME CONCEPT BY REFERENCE TO PARAGRAPH TWO. RESTITUTION CLAIMS PENDING COURTS WILL BE EXCLUDED FROM TRANSFER TO PREVENT LEGAL INTERFERENCE SUCH CLAIMS. LAST PARAGRAPH LAW WILL STATE DETAILS AS TO PROPERTY TRANSFERRED AND PROCEDURES FOR IMPLEMENTATION OF LAW WILL BE SUBJECT OF LATER LAW. LAW WILL NOT RPT NOT BE ORIENTED PREVIOUS RESTITUTION LAWS AS PROVIDED DRAFT TRANSMITTED EMBASSY DESPATCH 244 BUT SUBSTANCE LANGUAGE AS TO SAMMELSTELLES AND CATEGORIES OF ASSETS TO BE TRANSFERRED TO RESPECTIVE SAMMELSTELLES WILL BE USED.

DRAFT LAW AND NOTE MUST BE COMPLETED JANUARY 5 TO BE PLACED ON AGENDA COUNCIL MINISTERS JANUARY 8 FOR APPROVAL. FOREIGN OFFICE INTENDS TO CALL IN SOVIET REPRESENTATIVE ON TECHNICAL LEVEL AND SHOW HIM DRAFT NOTE ON JANUARY 9. AUSTRIANS EXPECT SUBMIT LAW PARLIAMENT JANUARY 22 OR FEBRUARY 5 DEPENDENT ON RESPONSE AS TO TIME AND CONTENT BY HEADS MISSION AS LAW WILL NOT BE ENACTED UNTIL DESIGNATION OF FUTURE SAMMELSTELLES IS MADE.

BRITISH AND FRENCH REPRESENTATIVES CONSIDER PLAN SATISFACTORY.

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L -2- 2374, JANUARY 3, 7 PM, FROM VIENNA - CORRECTED PAGE 2

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EMBASSY RECOMMENDS NO OBJECTION BE RAISED TO PLAN. ONLY QUESTION IS PROVISION OR LATER IMPLEMENTATION OF GENERAL PROVISIONS OF PROPOSED LAW. EMBASSY RECOMMENDS ACCEPTANCE AS INSISTANCE UPON SPECIFYING PROPERTY AND PROCEDURES WILL AGAIN RAISE COMPLEX QUESTIONS ON WHICH AUSTRIANS COULD NOT AGREE INTERNALLY IN TIME TO MEET TREATY DEADLINE. IF NOT ENACTED UNTIL FEBRUARY 5 LAW CAN SPECIFICALLY MAKE TRANSFER RETROACTIVE TO JANUARY 26. DEPT VIEWS APPRECIATED SOONEST IF POSSIBLE BEFORE JANUARY 5 WHEN WE HOPE AUSTRIANS CAN SHOW US NOTE BEFORE PLACING ON AGENDA COUNCIL MINISTERS.

MESSAGE UNSIGNED

ABL

*Ad. Kesner
action taken
DWS*

LEGAL ADVISER
JAN 4 1957
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SENT TO: Amembassy VIENNA NIACT 3061

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Embtel 2374

Embassy authorized indicate approval Austrian course outlined reftel; Dept not entirely clear however effect proposed exclusion pending restitution claims from transfer. We believe this should be so worded as constitute temporary exclusion only pending final restitution decision and that if and when such claim disallowed title would then pass sammelstelle. We assume/absence such provision separate law would be necessary ~~include~~ ^{transfer} such property sammelstelle ~~and~~ and we would assume point could be handled by proper drafting present law.

Embassy ~~and~~ should make clear to Austrian authorities that ~~rely~~ rely their good faith implementing treaty provisions and therefore assume their subsequent law re types property covered, procedures for implementation as well as ultimate disposition property by sammelstelle will be in accordance reasonable interpretation Article 26. We expect them move promptly carry out subsequent steps mentioned reftel and assume it unnecessary indicate we understand sammelstelle receiving

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Drafted by:

L/GER-DAWenmeyer

Telegraphic transmission and classification approved by

WE-John Wesley Jones

Clearance:

L/GER-Mr. Kearney (Substance) ^{ROK}

WE-Mr. Torbert (Draft)

L-Mr. Raymond ^{mun}

Ex: S/S-CP

NIACI ^{purified}
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By: JB NARA Date: 6-21

338429

gram to VIENNA

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title property only interim basis and that ultimate disposition will
be accordance para 2 for relief and rehabilitation persecutees.

Dulles

(Signature)

DULLES

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1:19 PM

31
Action
L FROM: VIENNA
Info TO: Secretary of State
RMR NO: 2412, JANUARY 5, 6 PM
EUR
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OLI
CIA REFERENCE: EMBTEL 2374

File
LEGAL ADVISER
Tel to Vienna
JAN 7 1957
L GEN. R. D. Kearney
DEPARTMENT OF STATE

DCL DRAFT NOTE MADE AVAILABLE EMBASSY BY FOREIGN OFFICE OFFICIAL ON
ICA PERSONAL AND CONFIDENTIAL BASIS AS DRAFT NOT YET APPROVED BY
FONMIN. OFFICIAL OF OPINION NO CHANGES WILL BE MADE. TEXT
FOLLOWS:

QUOTE:

ARTICLE 26 PARA 2 OF THE STATE TREATY CONCERNING THE RESTORATION
OF AN INDEPENDENT AND DEMOCRATIC AUSTRIA OF MAY 15, 1955 PROVIDES
THAT AUSTRIA WILL TRANSFER BY JANUARY 26, 1957 THE PROPERTIES,
RIGHTS AND INTERESTS DESCRIBED IN GREATER DETAIL IN ARTICLE 26,
PARA 2 OF THIS TREATY TO THE AGENCIES OR ORGANIZATIONS TO BE
DESIGNATED BY THE FOUR HEADS OF MISSION BY WAY OF AGREEMENT
WITH THE AUSTRIAN GOVERNMENT.

BY INSTRUCTION OF THE AUSTRIAN GOVERNMENT I HAVE THE HONOR TO
PROPOSE TWO COLLECTING AGENCIES AS SUCH AN ORGANIZATION. TO
"COLLECTING AGENCY A" ARE TO BE TRANSFERRED ALL CLAIMS TO THOSE
PROPERTIES, RIGHTS AND INTERESTS WITHIN THE MEANING OF ARTICLE
26, PARA 2, OF THE STATE TREATY WHICH WERE TAKEN AWAY FROM PERSON
WHO ON DECEMBER 31, 1937 BELONGED TO THE JEWISH RELIGIOUS
COMMUNITY. TO "COLLECTING AGENCY B" ARE TO BE TRANSFERRED ALL
CLAIMS TO THOSE PROPERTIES, RIGHTS AND INTERESTS WITHIN THE
MEANING OF ARTICLE 26, PARA 2 OF THE STATE TREATY WHICH WERE
TAKEN AWAY FROM OTHER PERSONS.

BOTH COLLECTING AGENCIES WILL BE MADE LEGAL ENTITIES BY VIRTUE
OF A FEDERAL LAW TO BE ENACTED AS SOON AS POSSIBLE AND WILL BE

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By JB NARA Date 6-21

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-2- 2412, JANUARY 5, 6 PM FROM VIENNA

OBLIGATED BY THIS LAW TO USE THE ASSETS TO BE DULY TRANSFERRED TO THEM FOR AID AND ASSISTANCE TO VICTIMS OF PERSECUTION BY THE AXIS POWERS AND FOR REPARATION TO SUCH VICTIMS.

I HAVING THE HONOR TO SUBMIT AN IDENTICAL COPY OF THESE PROPOSALS OF THE AUSTRIAN GOVERNMENT TO THE HEADS OF MISSION OF THE FOUR ALLIED AND ASSOCIATED POWERS FOR THE REACHING OF AN AGREEMENT WITH THE AUSTRIAN GOVERNMENT WITHIN THE MEANING OF ARTICLE 26, PARA 2 OF THE STATE TREATY MAY EXPRESS MY CONFIDENCE THAT YOU, MR. AMBASSADOR, WILL BE IN A POSITION TO GIVE YOUR APPROVAL TO THE PROPOSAL CONCERNING DESIGNATION OF THE TWO COLLECTING AGENCIES AS RECEIVING ORGANIZATION.

THE AUSTRIAN GOVERNMENT WILL UPON APPROVAL OF THE HEADS OF MISSION WITHOUT DELAY SUBMIT A CORRESPONDING DRAFT LAW TO THE AUSTRIAN NATIONAL ASSEMBLY.

END QUOTE.

EMBASSY POINTS OUT NOTE OMITTS WORD "LEGAL" IN CONNECTION WITH RIGHTS AND INTERESTS WHICH MAY BE SIGNIFICANT IF NOT INCLUDED IN LAW AND MAY PREJUDICE NEGOTIATIONS ON PARA 1. FONOFF OFFICIALS NOT AVAILABLE UNTIL MONDAY TO DISCUSS THIS POINT AND ASCERTAIN WHETHER MISSION INTENTIONAL. EMBASSY CONSIDERS DRAFT NOTE OTHERWISE SATISFACTORY. DOES DEPT CONSIDER OMISSION SIGNIFICANT FOR PURPOSES OF NOTE?

DEPT NEW OR
THOMPSON

VMM

REC'D

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1957 JAN 7 PM 5

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EMBTEL 2412. ^{263-0041-A}₅₅₇

Draft note satisfactory except on following points.

Would prefer deletion QUOTE religious UNQUOTE from phrase QUOTE Jewish religious community UNQUOTE in second sentence second paragraph on ground that Jewish persecutees might not necessarily have been practicing members Jewish religious community.

DEPT also considers desirable that word QUOTE legal UNQUOTE discussed last paragraph REFTEL be included in law in order avoid prejudicing negotiations on paragraph 1.

If timing such that changes not practicable attempt should be made secure agreement with Austrian officials that law will be interpreted so that QUOTE Jewish religious community UNQUOTE equivalent to QUOTE Jewish community UNQUOTE and omission of QUOTE legal UNQUOTE is not limitation with regard to rights and interests concerned.

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Stamp: 33
AT 31
JAN 7 1957

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Dulles
(RDA)

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1957 JAN 7 11-557

Drafted by:

L:L/GER:RD Kearney:ejp 1/7/57

Telegraphic transmission and classification approved by:

L:L/GER:Richard D. Kearney

Clearance:

WB - Mr. Torbert

S/S-CR

JAN - 7 1957 P.M.

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TO: Secretary of State
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DEPTEL 3106

Control: 5189
Rec'd: JANUARY 9, 1957
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462
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Tel. to Vienna
JAN 10 1957
462 P. D. [unclear]
DEPARTMENT OF STATE

FOREIGN OFFICE INFORMED WORD "LEGAL" ADDED TO NOTE.

FOREIGN OFFICE ADVISES LAW INTENDS TO EXCLUDE NON-PRACTICING MEMBERS JEWISH RELIGIOUS COMMUNITY AS OF 1937 FROM SAMMELSTELLE A. QUESTION OF STATUS CHRISTIAN JEWS AND OTHERS BROUGHT UP IN COMMITTEE AUSTRIAN PARLIAMENT ABOUT TWO YEARS AGO WHEN FIFTH RESTITUTION (HEIRLESS PROPERTY) LAW DISCUSSED. SUCH CLAIMANTS OBJECTED TO SINGLE SAMMELSTELLE AS THEY WOULD HAVE NO INFLUENCE IN JEWISH RELIGIOUS COMMUNITY. PLAN FOR TWO SAMMELSTELLES DEVELOPED TO MEET THESE OBJECTIONS. FOREIGN OFFICE ANTICIPATES PROCEEDS FROM SAMMELSTELLE A WILL PROBABLY BE USED TO REBUILD RELIGIOUS AND RELIEF ESTABLISHMENTS FROM WHICH NON-MEMBERS WOULD NOT BENEFIT. STATUS EASILY DETERMINABLE AS AUSTRIANS REQUIRED TO REGISTER RELIGIOUS AFFILIATION UNDER AUSTRIAN GOVERNMENT REGULATIONS.

BRITISH STRONGLY OPPOSED TO CHANGE AND OPINION NON-MEMBERS HAVE GOOD CASE AND IS AUSTRIAN INTERNAL PROBLEM.

EMBASSY CONSIDERS WILL BE DIFFICULT TO CHANGE PLAN AND CONSIDERS MERIT TO AUSTRIAN POSITION. IN LIGHT AUSTRO-BRITISH VIEWS EMBASSY RECOMMENDS WE NOT INSIST ON CHANGE THIS POINT IN PROPOSED LAW.

OKY

THOMPSON

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FOREIGN SERVICE DESPATCH

263.0041A/1-2857
XR 663.001

FROM AMEMBASSY, VIENNA

700
DESP. NO.

TO THE DEPARTMENT OF STATE, WASHINGTON.

January 28, 1957
DATE

REF Embassy despatch 690, January 25, 1957

JAN 30 1957

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	L-2	RMR-2			
	2-4	CIA-12			TR-3 OAP-3

SUBJECT: Article 26 (2) Austrian State Treaty - Draft Implementation Law

1/28

Enclosure 1 is a draft prepared by the Austrian Government of a law in partial implementation of Article 26, paragraph 2 of the State Treaty. This draft was furnished to the Embassy today on a confidential and informal basis by an official of the Foreign Office. Ordinarily draft laws are not made available until they have been approved by the Council of Ministers.

FOR THE AMBASSADOR:

Walter Q. Loehr
Walter Q. Loehr

First Secretary of Embassy

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Enclosure:
1. Draft law

LEGAL ADVISER

FEB 4 1957

DEPARTMENT OF STATE

FEB 8 1957

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Translation ex-German

Encl. 1
Page 1
Despatch 700
Amembassy, Vienna

Enclosure A
to No. 200.519-34/57

D r a f t

Federal Law of 1957 concerning the Creation of Collecting Organizations according to Article 26, Paragraph 2 of the State Treaty, Federal Law Gazette No. 152/1955.

The National Assembly has enacted:

Section 1

The properties, legal rights and interests in Austria designated in Article 26, Paragraph 2 of the State Treaty for the Re-Establishment of an Independent and Democratic Austria, Federal Law Gazette No. 152/1955, will be transferred as of January 26, 1957 to two "Collecting Agencies", which will be established as juristic persons under private law, in accordance with the following provisions.

Section 2

(1) To "Collecting Agency A" all claims for properties, legal rights and interests within the meaning of Article 26, Paragraph 2 of the State Treaty will be transferred, which were held by persons who on December 31, 1937, belonged to the Jewish religious community.

(2) To "Collecting Agency B" all claims to properties, legal rights and interests within the meaning of Article 26, Paragraph 2 of the State Treaty will be transferred, which were held by persons other than those designated in Paragraph (1).

Section 3

The manner of asserting and the extent of the claims resulting from the transfer (Section 1) will be regulated by federal law.

Section 4

(1) Each "Collecting Agency" will be represented and administered by a "Kuratorium" (board), which will consist of eight members. At least three quarters of the members must hold Austrian citizenship.

(2) The members of the "Kuratorium" of "Collecting Agency A" will be appointed and recalled by the Federal Government after hearing the Jewish religious communities of Austria, the members of "Collecting Agency B" will be appointed and recalled by the Federal Government after hearing the organizations of persons wronged by National Socialism. The names of the members shall be published in the official gazette of the "Wiener Zeitung". They shall carry on their functions until recalled.

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Page 2
Encl. 1
Despatch 700
Amembassy Vienna

(3) The "Kuratorium" shall elect from its members one chairman and two deputy chairmen.

(4) The "Kuratorium" will be represented by the chairman or, if he is unable to do so, by one of his deputies. Details will be regulated by the rules of procedure (Section 5, paragraph 1).

(5) The legally binding signature for each "Collecting Agency" shall be executed in the following manner: either the chairman or one of his deputies jointly with another member of the "Kuratorium" shall affix their signatures to the designation "Collecting Agency A" or "Collecting Agency B".

(6) The "Kuratorium" shall appoint at least two managers, who are in charge of the "Collecting Agency's" business operations; their authority to sign shall be established by the rules of procedure. The salaries of the managers will be determined by the "Kuratorium".

Section 5

(1) The "Kuratorium" will issue its own rules of procedure; they require the approval of the Federal Government and shall be published in the official gazette of the "Wiener Zeitung" after such approval has been granted. The rules of procedure shall furthermore regulate which legal actions of the managers require the previous consent of the "Kuratorium" in order to become valid.

(2) There is a quorum of the "Kuratorium" if at least five members are present.

(3) A majority of the votes is necessary for the "Kuratorium" to make decisions; in case an equal number of votes are cast, the vote of the chairman (deputy chairman), who always participates in the voting, will be decisive.

(4) The members of the "Kuratorium" as well as the managers (Section 4) are obliged to carry out their activities with the care of a proper businessman; they are not permitted to conclude on behalf of the "Collecting Agency" legal transactions with themselves or their close relatives (Section 10 Paragraph 3 of the Administrator Law 1952, Federal Law Gazette No. 100/1953) either in person or through third parties, or to participate themselves, or have close relatives participate, financially in legal transactions of the "Collecting Agency". Legal transactions concluded contrary to this prohibition shall be null and void.

(5) The "Kuratorium" shall prepare annually as of December 31 a financial report according to business principles, and publish it in the "Wiener Zeitung" by the 30th of April of the following year at the latest.

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By <u>JB</u> NARA Date <u>6-21</u>

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Page 3
Despatch 700
Amembassy Vienna

(6) Upon request of the Finanzprokuratur the Commercial Court Vienna shall appoint a curator who shall represent the claim of a "Collecting Agency" against the responsible members of the "Kuratorium".

Section 6

(1) The "Collecting Agencies" are entitled to inspect the registrations filed in accordance with the Property Expropriation Registration Ordinance of September 15, 1956, Federal Law Gazette No. 166, which are on file with the District Administrative Authorities.

(2) All authorities competent to render decisions on restitution claims and all other authorities having records concerning the alleged facts of expropriation are obliged to give to a "Collecting Agency" all the information it needs to form an opinion on the question as to whether it has a claim within the meaning of Section 2 of this federal law; the authorities may comply with this obligation by permitting inspection of their files, registers and other records. However, as far as authorities have to represent rights of defendants in restitution proceedings, the provisions of Section 28 of the 3rd Restitution Law (Federal Law Gazette No. 54/1947) shall apply to them.

Section 7

(1) The records, documents, writs and official actions caused by this federal law or by laws enacted on the basis of the provisions of Section 3 of this federal law, which concern the transfer of properties, legal rights and interests to a "Collecting Agency", shall be exempt from turnover tax, ground acquisition tax, revenue stamps and legal fees, court and justice administration fees and federal administrative charges.

(2) Monies to be paid to a "Collecting Agency" shall not be subject on the part of that agency to turnover tax, to trade tax, or corporation tax.

Section 8

The distribution of the funds of the "Collecting Agencies" will be regulated by a separate federal law, in consideration of the purposes for which they are to be used according to Article 26, paragraph 2 of the State Treaty and of the provisions of Section 8, Paragraph 3 of the 7th Restitution Law, Federal Law Gazette No. 207/1949.

Section 9

The Federal Ministry of Finance shall be entrusted with the implementation of this federal law.

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PRIORITY
FOREIGN SERVICE DESPATCH

263.0041A/2-857

FROM : AMEMBASSY, VIENNA

757

DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON

February 8, 1957

DATE

REF : EMBDESP 690, January 25; 700, January 28, 1957

12

7 For Dept. Use Only	ACTION 2-2	I N F O	DEPT AMIR-2	OTHER CIA-12 TR-3
	REC'D 2-13			

SUBJECT: Article 26(2) Austrian State Treaty - Draft Implementation Law

The draft heirless and unclaimed property law (EMBDESP 700, January 28, 1957) was approved by the Council of Ministers on February 7, 1957 and has been forwarded to Parliament. The law should be enacted in about 30 or 40 days if the ordinary course of legislative procedures is followed and no objection is raised in Parliament to the proposed law.

FOR THE AMBASSADOR:

Walter Q. Loehr

Walter Q. Loehr
First Secretary of Embassy

263.0041A/2-857

LEGAL ADVISER

FEB 15 1957

DEPARTMENT OF STATE

WQLoehr/baf

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*223 0041-A/1-2857
XR 663 51*

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Despatch 700.

Request report whether Sammelstelle law has been approved proposed by Council Ministers and if so present status/law.

Also request report present status claims negotiations envisaged A-193. *263 0041/1-952*

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263.0041-A/1-2857 CS/F

DULLES

Dulles (over)

Ann. 33

Drafted by: L/GER-DAwehmeyer

Telegraphic transmission and classification approved by: L/GER-Richard D. *Richard D. ...*

Clearance: WE-Mr. *Chapin*

S/S CR
FEB 11 1957 P.M.

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JAMES M. LANDIS
WALLACE M. COHEN
SEYMOUR J. RUBIN
ABBA P. SCHWARTZ

WASHINGTON 6, D. C.

STERLING 3-5905

February 28, 1957

*LTW to Mr. Rubin
HGER: D. Wehmeyer
3/4/57*

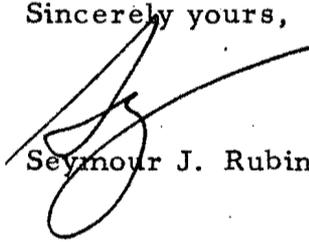
Mr. Donald Wehmeyer
Office of the Assistant Legal Adviser
for German Affairs
Department of State
Washington 25, D. C.

Dear Don:

I'd be grateful for any word you may have re
Article 26 of the Austrian Treaty, both as to (a) progress
re the Sammelstelle law and its interpretation (can the
Sammelstelle enforce existing restitution laws?), and
(b) progress re the substantive aspects of Article 26.

Best regards.

Sincerely yours,


Seymour J. Rubin

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Authority <u>NND 969003</u>
By <u>JB</u> NARA Date <u>6-21</u>

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338441

In reply refer to L/688

MAR 4 1957

Dear Sir:

This is in response to your letter of February 28, which I have just received.

With regard to progress on the Samalstalle law, the latest information we have is a despatch dated February 8, 1957, reporting that the law was approved by the Council of Ministers on February 7, 1957 and has been forwarded to the Parliament. The Embassy indicates that the law should be enacted in about thirty or forty days if the ordinary course of legislative procedure is followed and no objection is raised in Parliament to the proposed law.

With regard to the interpretation to be placed on Section 3 of the law regarding enforcement of existing restitution laws by the Samalstalle, which point you raised in your letter of February 15, we have asked the Embassy to look into this matter and to let us know how the Austrians would likely interpret that section of the law. We have not yet heard from the Embassy on this point, but I will let you know as soon as we hear something from them.

With regard to progress regarding the substantive aspects of Article 26, the latest information we have was contained in a despatch dated February 1, 1957. The Embassy reported that in discussing Article 26 with officials of the Foreign Office on January 29, Embassy officials proposed that negotiations on Article 26(1) be resumed and brought to a conclusion as soon as possible. The Austrians suggested that active negotiations in which other interested ministries would have to participate should be postponed until the draft Samalstalle law is submitted to Parliament. These officials expressed concern that questions might be raised about the draft law by other sections of the Government and attempt made to delay enactment until Austrian obligations under paragraph 1 are clearly ascertained, since paragraph 2 of the treaty

refers

Mr. Seymour J. Rubin,
Law Offices,
Lundis, Cohen, Rubin and Schwartz,
1832 Jefferson Place, N. W.,
Washington 6, D. C.

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By: JB NARA Date: 6-21

refers indirectly to claims under paragraph 1. The Embassy reported that although the Embassy wishes to bring these negotiations to a conclusion as soon as possible, it considered it advisable to avoid opposition to the draft heirless property law. The British Embassy concurred in this view.

The Department is of the view that the position taken by the Embassy is correct and that we should wait until the Sammelstelle law is firmly fixed as Austrian legislation before we press ahead with negotiations. Such negotiations will be undertaken at the earliest possible moment, as we certainly wish to reach some sort of final understanding on this problem.

Sincerely yours,

Donald A. Wehmeyer
Assistant to the Legal Adviser

DAW
L:L/GER:DAWehmeyer:ejs 3/4/57

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DEPARTMENT OF STATE INSTRUCTION

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358

358

FOR DC USE ONLY

NO.: A-272 March 5, 1957

SUBJECT: Article 26(2) Austrian State Treaty - Draft Implementation Law

TO: The American Embassy, VIENNA.

Reference is made to the Embassy's despatches 700 and 728.

Upon receiving the Embassy's despatch no. 757 indicating that the draft property law had been approved by the Council of Ministers the Department made the text of the proposed bill available to Mr. Seymour Rubin. The Department has now received a letter from Mr. Rubin regarding the proposed law, which raises the following question:

"Could you tell me what you make of Section Three? I had thought that the present law would give the Sammelstellen the right to collect whatever was restitutable under (a) present Austrian law, and (b) whatever further and other law would be enacted in further implementation of the substantive provisions of Article 26. But Section Three seems to me to be ambiguous on this point. Is a new substantive law required before the Sammelstellen can collect even what is restitutable under existing Austrian law -- a large part of which is already, as I understand it, in the hands of one governmental agency or another? Could this point be clarified with the Embassy?"

The Embassy is requested to provide the Department with information on which to base a reply to Mr. Rubin's inquiry.

DULLES



MAR 5 1957 A.M.

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DRAFTED BY: L:L/GER:DAW:meyer:ejs 3/4/57

APPROVED BY: R. W. Kearney L:L/GER:RDKearney

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