

Austrian Requisition

YIV. 20 3477

Am. Jew. Cm. (789 41-46)

Box 2, File 1

COMMITTEE FOR JEWISH CLAIMS ON AUSTRIA

270 Madison Avenue

New York 16, N.Y.

(FAD=Foreign Affrs Dpt)

CONFIDENTIAL

November 25, 1953

MEMORANDUM

To: European Members, Joint Executive Board

From: Saul Kagan

The members of the Joint Executive Board in the United States met on November 24, 1953 to consider Chancellor Raab's letter to Dr. Nahum Goldmann, dated November 13, 1953. It was the sense of the meeting that this letter constituted an unequivocal rejection of all demands of the Committee involving heirless property and that it clearly made further negotiations by the Joint Executive Board impossible.

It was pointed out at the meeting that the Allies, principally the Government of the U.S., have in the past taken considerable interest and rendered important assistance in these negotiations and that it might therefore be opportune, before publicizing the break-off of negotiations, to give them another, last opportunity to intervene with the Austrian Government in an effort to bring about a change of the Government's position.

The meeting also considered the proposals put forward by the Joint Executive Board meeting in Paris on November 13th to the effect that if a negative reply were received from the Austrians on the heirless property issue, the Joint Executive Board should advise the Austrian Government that under these circumstances no agreement between the Austrian Government and the Joint Executive Board could be reached; at the same time advising the Austrian Government that in consideration of the Government's declared intention to improve existing legislation on behalf of persecutees, the Joint Executive Board was authorizing and requesting its member organizations representing individual Jewish victims in and from Austria to undertake negotiations with the Government toward that end -- such negotiations to have the full support of the Joint Executive Board but without the Joint Executive Board being party to any agreement which might be reached in this field. It was the feeling of the meeting that such a step would create a situation where there would be de facto negotiations on the legislative program, with the sanction of the Joint Executive Board, without parallel consideration of the heirless property problem. This might well be construed as a capitulation to the Austrian position and was considered to greatly weaken the position of the Joint Executive Board vis-a-vis the Austrian Government. It was further felt that such a placating proposal, far from furthering the legislative program, might weaken the position of

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the Jewish groups also in this respect that : **a firm stand-by** the Joint Executive Board would be in fact the best way to bring about an eventual satisfactory adjustment in that area. It was therefore the strong and unanimous opinion of the meeting that the position taken by the Joint Executive Board should be forceful and unequivocal and should reiterate that the only negotiations possible between the Jewish groups and the Austrian Government would have to cover both the legislative and the heirless property issues.

In the light of the foregoing considerations, the following procedural steps were decided upon by the meeting and are hereby recommended to the European members of the Joint Executive Board. Dr. Nahum Goldmann should as soon as possible dispatch a reply to Chancellor Raab's letter of November 13th, pointing out that the position taken therein was in direct contradiction to the position taken by the Austrian Government in the earlier phases of negotiations, and stating that unless the Austrian Government could see its way clear to alter this position there was no further purpose in continuing negotiations. The letter should point out that the Joint Executive Board was, for the time being, refraining from making public this exchange of correspondence. The letter will of course also deal with the substantive arguments raised in Chancellor Raab's letter of November 13th.

In the meantime no publicity would be given to this letter, which would give an additional period of several weeks to the Allied Governments for any representations they might be able to make. If after that no positive reply were received from the Austrian Government, the break-off of negotiations would then be announced publicly.

It would be greatly appreciated if you would indicate by cable whether you concur in the course of action outlined above.

Saul Kagan
Saul Kagan

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YIVO 26347.7.
AM. Jew. Com (FAO 41-46)
Box 2, File 2

C O P Y

(FAD=Foreign Affairs
Department)
Box 2 File 2

DEPARTMENT OF STATE
Washington

In reply refer to
WE

February 1, 1954.

Dear Dr. Loewi:

The receipt is acknowledged of your letter of January 22, 1954, concerning claims against Austria by persons who suffered Nazi persecution in that country.

The Department continues to believe that a just solution to these problems should be achieved. While it is not certain that this will be possible in the course of current meetings at Berlin, you may be assured that, as in the past, on every appropriate occasion efforts will be made to resolve these questions.

Sincerely yours,

For the Acting Secretary of State:

/s/ John Wesley Jones

John Wesley Jones
Director, Office of
Western European Affairs

Dr. Otto Loewi,
155 East 93 Street,
New York 28, New York.

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Alvin Karp
YIVO RG 347.7
American Jewish Committee
(FAD 41-46)
Box 2 File 2
January 22, 1954

The Honorable
John Foster Dulles
Secretary of State
U.S. Department of State
Washington, D.C.

Re:

The Government of Austria will petition the forthcoming Conference of the Big Four Foreign Ministers for full sovereignty and for restoration to an equal status among the nations.

As former Austrian citizens who were forced to leave Austria when the Nazis acceded to power, we should like to make ourselves heard on the issue of still unsatisfied Jewish claims against Austria. We do not plead our personal cause. We feel, however, that this issue involves a moral principle that should concern the present Austrian Government, especially at a moment when Austrian leaders are addressing their own appeal to the moral sensibilities of the world.

We can testify from our own on-the-spot experience that the Nazi movement in Austria was by far not exclusively of foreign origin, but that unfortunately a large segment of the Austrian population turned itself immediately into active supporters and collaborators of the Nazi regime and its criminal abuses.

Last spring, the Austrian Chancellor invited the Jewish organizations to negotiate a settlement of Jewish claims. This gesture, long overdue, was of course well received by the civilized world. It seemed that Austria's conscience had indeed reasserted itself and that the Austrian Government was eager to undo some wrongs committed in Austrian territory during the Nazi era.

What the Jewish groups demanded was the extension of present indemnification legislation to embrace, not only Jewish victims of Nazi persecution in Austria, but victims of all faiths, wherever they may now reside and whatever nationality they may now possess. Another demand was for a settlement of heirless Jewish property. The Jewish organizations were prepared to settle for a fraction of the estimated value.

The Austrian Government's subsequent change of mind on the basic issues under negotiation was, therefore, the cause of grave disappointment, particularly because the legislative demands affect persons of all faiths, deprived of their assets, ousted from their professions, eliminated from the Civil Service, denied pensions, and subjected to other forms of persecution and abuse under Nazi rule. This surprise reversal by the Austrian

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Government resulted in a breakdown of the negotiations.

The obligation of the Austrian Government to settle this issue is best illustrated by the fact that more than one-third of Austria's pre-Anschluss Jewish population of 190,000 perished under Nazi rule. The assets alike of those who perished and those who survived, accumulated through generations of creative and honest effort, were despoiled and sequestered. Although the Austrian Government has been remiss in passing satisfactory legislation to compensate former Austrian victims of Nazism, the Government has, on the other hand, taken firm steps, by means of special legislation, to restore status and property to former Nazis, thus establishing an unprecedented and appalling principle of priority for persecutors over persecutoca..

We are fully convinced that the belated implementation of Austria's moral obligation in conformity with the conscience of the Western World towards all victims of Nazi persecution would serve Austria's own interests.

Respectfully yours,

Dr. Otto Loewi

Alma Mahler-Werfel

Dr. Richard Schueller

Dr. Bruno Walter

Reply address:

Dr. Otto Loewi
155 West 93 Street
New York 28, N.Y.

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COMMITTEE FOR JEWISH CLAIMS ON AUSTRIA
270 Madison Avenue
New York, N.Y.

Austrian Restitution
YIVO RG 347.7
AJC (FAD 41-46)
Box 2 File 2

MEMORANDUM

January 18, 1954

To: Member Organizations of the Committee for Jewish Claims on Austria
From: Saul Kagan

On the occasion of the meeting of the Four Foreign Ministers in Berlin the Committee for Jewish Claims on Austria has sent a communication to the Governments of France, the United Kingdom, and the United States, urging them to use this occasion to secure a binding commitment on the part of Austria to settle without delay the claims presented by our Committee.

Attached please find the text of the letter to the United States Government. The letters to the French and British Governments are identical except for the necessary substitutions in the penultimate and last paragraphs.

In order to give the fullest emphasis to the urgency and importance of this matter it will be greatly appreciated if the respective organizations send, as soon as possible, letters associating themselves with the request of our Committee and urging prompt action in the following manner:

- 1) All organizations in the United States to the Secretary of State.
- 2) All organizations in England to the Foreign Secretary.
- 3) All organizations in the countries of the British Commonwealth to their respective Governments with a request for representations to the British Government.
- 4) Organizations in other countries to their respective Governments requesting representations to the Governments of France, the United Kingdom and the United States.

It will be greatly appreciated if copies of the letters to the Governments concerned will be sent to this office for our record.

Your prompt attention to this request is of the utmost importance. You are, of course, aware that this action had to be taken on rather short notice and therefore without opportunity for full consultation with all organizations concerned.

SK:mc
enc.

Saul Kagan
Saul Kagan

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YIVO RG 347.7
AJC (FAD 41-46)
Box 2 File 2

COMMITTEE FOR JEWISH CLAIMS ON AUSTRIA
270 Madison Avenue
New York 16, N. Y.

January 12, 1954

MEMORANDUM

To: Members, Joint Executive Board
From: Saul Kagan
Re: Representations to Allied Governments

CONFIDENTIAL

Reference is made to the memorandum concerning the visit of a delegation to the Department of State in Washington, which was received by Deputy Undersecretary Robert Murphy, on December 30, 1953.

Representatives of the British member organizations have called upon the Hon. Selwyn Lloyd, British Minister of State, on December 21, 1953. I am attaching a note on the interview, as well as the text of a detailed memorandum which was submitted to the British Foreign Office following the meeting.

Representatives of the French member organizations called on Mr. Maurice Schuman, Secretary of State for Foreign Affairs, on January 4, 1954. I am enclosing a copy of the memorandum which was submitted to Mr. Schuman at this occasion.

We have been advised that the Canadian Jewish Congress has made representations to the Ministry of External Affairs and has received assurances that the Canadian representative in Vienna will express the concern of his government to the Austrian authorities.

Saul Kagan
Saul Kagan

SK:AUN
Enc.

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Note of Interview with The Rt. Hon. Selwyn Lloyd, M.P.
Minister of State - Monday 21st December, 1953.

Mr. Barnett Janner, M. P. (member of the Executive of the Committee for Jewish Claims on Austria), together with Dr. F. R. Bienenfeld, Dr. C. Kapralik, Mr. Rowland H. Landman, and Mr. A. G. Brotman (British representatives of member organisations of the Committee) called by appointment at 11.0.a.m. on Monday, 21st December 1953, at the Foreign Office, to see the Minister of State.

Mr. Barnett Janner thanked the Minister for receiving the deputation at such short notice to raise with him the question of the apparent disinclination of the Austrian Government to shoulder their moral responsibility to give redress to the Austrian Jewish victims of Nazi persecution.

Mr. Janner made his representations on the basis of the attached document, and this was further elaborated by way of question and answer between the Minister and members of the deputation. The point was made inter alia that the sum finally claimed in respect of heirless and unclaimed property amounted to not more than £4,000,000.

Mr. Selwyn Lloyd, with whom was Mr. Stow of the Austrian Department of the Foreign Office, raised the question of a possibility of the matter being settled by some kind of agreement between the Germans and Austrians and also the extent to which the Luxembourg Agreement made provision for the relief and resettlement of all Jews who had suffered under the Nazis - including Austrian Jews.

Mr. Janner undertook in the course of a few days to send to Mr. Selwyn Lloyd a detailed memorandum together with a letter which Dr. Nahum Goldman, Chairman of the Committee for Jewish Claims on Austria, had sent in reply to Chancellor Raab.

Mr. Selwyn Lloyd said that he would consider sympathetically the representations made to him on which he would consult his colleagues in the Government.

He gave permission for a short communique indicating this to be sent to the press.

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MEMORANDUM ON THE NEGOTIATIONS BETWEEN
THE COMMITTEE FOR JEWISH CLAIMS ON
AUSTRIA AND THE AUSTRIAN GOVERNMENT

January 1954

As is known to the Foreign Office, negotiations took place in the Spring and Summer of 1952 at The Hague with the Federal German Authorities, which led to the conclusion, early in September 1952, of the Luxembourg Agreement between the Conference on Jewish Material Claims Against Germany and the Federal German Government. The Foreign Office had constantly been kept informed of the progress of the negotiations and also of the disappointing attitude of the Federal German Republic as regards compensation for the victims of Nazism from Austria. The German negotiators adopted the line that a very considerable proportion of the Austrian population enthusiastically welcomed the advent of the Nazis, participated actively in the excesses against the Jews and benefited from the anti-Jewish measures. There were Reichsministers of Austrian origin in the German Government and a number of Gauleiters were also Austrian; they made a reputation for themselves for particular brutality. There was no resistance movement, worth mentioning, in Austria as distinct from other occupied countries. The German negotiators, therefore, considered Austria to be a Successor State of the German Reich, in the same way as the West German Federal Republic, which Successor State had to bear the responsibility for what happened in Austria.

II.

Soon after the conclusion of the Luxembourg Agreement, representations were made to the Austrian Government by the Jewish bodies with a view to arriving at an agreement on Jewish claims for compensation and on Jewish heirless property in Austria. While stressing the view that Austria was a country forcibly occupied by the German Army and did not consider itself responsible for the events which occurred after March 1938, the Austrian Government in principle declared itself prepared to negotiate with the Jewish bodies. In consequence of the protracted Government crisis which broke out in the Autumn of 1952, it was only in May 1953 that an official invitation to take part in negotiations in Vienna was issued through the Austrian Embassy in Washington to the Committee for Jewish Claims on Austria. It is known to Her Majesty's Government that actual negotiations commenced in the second half of June 1953.

III.

In the negotiations the legal argument of the responsibility of Austria was purposely not pressed by the Jewish bodies in order not to create unnecessary difficulties. Moral and social questions were put into the foreground. The fact was stressed that relations between the State and its nationals are of a reciprocal nature. The citizen has to fulfil his duties towards the State and the State has to guarantee the security of the subject. If the Government is unable to protect a group of loyal citizens, the State at least has the obligation to make good, after the end of the occupation by a foreign power, the losses suffered by those groups

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MEMORANDUM FOR THE RECORD
 OF THE DISCUSSIONS OF THE INTER-DEPARTMENTAL
 NEGOTIATING COMMITTEE ON THE AUSTRIAN
 PROBLEM, 1945-1946

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of the population which were singled out for particular persecution and suffered to a greater extent than the rest of the population.

Moreover, in the discussions with the Inter-departmental Negotiating Committee appointed by the Austrian Government, it was also emphasized that a State has to bear responsibility for the actions of its population.

IV.

With the explicit consent of the Austrian Government, the following items were made the subject of the discussion:-

- (1) Removal of discriminatory measures against victims of Nazism who were forced to leave the country, which measures were mostly enacted by Austrian post-war legislation (see Note 1 to this Memorandum)
- (2) Compensation for loss of furniture, valuables and all forms of savings and securities (see Note 2 to this Memorandum)
- (3) Settlement of the problem of Heirless Property (see Note 3 to this Memorandum).

V.

We regret having to report that negotiations have reached a complete deadlock.

The Austrian Government declared itself willing to discontinue discriminatory measures against those who had to leave the country. This means, to quote the words of Sir Winston Churchill, spoken in a different connection, that they declared not to do things in future which they should not have done at all. The promise to discontinue discrimination is as yet unfulfilled, but we submit that this is a matter of elementary justice and cannot be considered as a concession.

The Austrian Government refused any measures of compensation, stating that this was the responsibility of Germany alone. Thus, the situation arises that both parties concerned, Germany and Austria, while in principle recognizing the justice of the claims of the victims for compensation, are throwing the responsibility from one to the other. There are at present approximately 15,000 emigrants from Austria in this country, most of them naturalized British subjects. They and the victims from Austria in other countries, numbering 100,000 are the only persecuted group west of the "Iron Curtain" who get no compensation at all.

While at the beginning of the negotiations, the Austrian Government declared itself prepared to discuss the question of a lump sum payment in respect of heirless property and only the figure to be paid was to be the subject of further discussions, this position has quite recently and unexpectedly been changed, and in answering a parliamentary question, Bundeskanzler Raab and Finanzminister Kamitz have declared that they are not in a position

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to discuss the question of heirless property until six months after the conclusion of the Austrian State Treaty.

The Austrian Government also contends that any payment in respect of heirless property will be tantamount to discriminatory treatment in favour of Jewish victims of Nazi persecution. Jewish bodies represented on the Committee take the strongest exception to the suggestion implied in Mr. Kamnitz's statement that they seek preferential treatment for Jewish persecutees. Although they represent only those of Jewish faith, they have constantly - at The Hague and on all other occasions - taken the view that all victims of Nazi oppression must receive equal treatment. It is a tragic fact that heirless property is chiefly Jewish property. This is known to the British Authorities in Germany from a comparison of the figures of recoveries of the Jewish Trust Corporation with corresponding figures of the General Trust Corporation and is the result of the wholesale massacre of the Jewish population. It is true that the Nazis put to death also many non-Jews whom they accused of political hostility, but the families of these victims were spared and the problem of heirless property hardly arose.

As stated in a letter to the Federal Chancellor Dr. Raab, of the 15th July last, it was intended to create out of the lump sum to be received in respect of heirless and unclaimed identifiable and non-identifiable property, a hardship fund to be used for assistance to victims of Nazism in Austria and abroad who cannot receive help from other sources. The refusal to pay a lump sum in respect of heirless property means that the Austrian Government would place no funds at all at the disposal of the Jewish bodies to relieve the direct necessities among thousands of Austrian Jewish emigrants in this country and in other countries, who are old and in need of support and who, as mentioned above, have at present no possibility of obtaining redress either from Germany or from Austria; this at a time, when the Austrian Government intends to restore to former leading Nazis their civil liberties and their property, to a large extent taken from Jews.

VI.

In view of the fact that the Austrian Government is apparently not prepared to make a genuine contribution towards the remedy of the wrongs suffered by the Jewish victims of Nazism and have suddenly changed their attitude on a fundamental point, the Jewish bodies have serious doubts what purpose the continuation of the negotiations would serve and have reluctantly come to the conclusion that there was no sincere intention on the part of the Austrian Government from the very beginning to solve the problem.

The Jewish Organizations and the Jewries of the World are in full sympathy with the fight of the Austrian Government for full freedom and independence. They believe, however, that those who demand justice must be prepared to exercise justice. If the Austrian Government is desirous of removing any doubt as to its being a democratic state based on justice, they must accord justice to the victims of persecution in Austria.

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The Jewish bodies appeal to Her Majesty's Government to use its influence with the Austrian Government in order to induce them to redeem without delay the promise to remove discriminatory treatment of emigrants, further to modify their present attitude and to give sincere and genuine proof of their desire to make good to a small degree what the victims from Austria suffered.

As, however, Germany too cannot deny responsibility for the misdeeds of the Nazi regime in Austria, in view of the occupation of that country by German armed forces, the Jewish bodies would be grateful if through the exercise of the good offices of Her Majesty's Government the Government of the Federal German Republic could be brought into consultation with the Austrian Government with a view to finding an agreed solution of the problem of just compensation for Jewish victims of Nazism from Austria. Such a solution could perhaps be linked with the settlement of the question of German property in Austria to a large extent created out of the proceeds of confiscated Jewish assets.

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NOTE VERBALE

Les organisations juives francaises soussignees, ALLIANCE ISRAELITE UNIVERSELLE, Section Francaise du CONGRES JUIF MONDIAL, CONSEIL REPRESENTATIF DES JUIFS DE FRANCE, toutes trois membres du "Committee for Jewish Claims on Austria" qui a son siege a New York et qui groupe 22 organisations d'argentine, d'Autriche, du Bresil, du Commonwealth des Nations Britanniques (Afrique du Sud, Australie, Canada, Royaume-Uni de Grande-Bretagne et d'Irlande du Nord), des Etats-Unis d'Amerique du Nord et d'Israel, ont l'honneur d'attirer la haute attention du Gouvernement francais sur le recent revirement d'attitude du Gouvernement autrichien ayant entraine un arret dans les negociations en cours depuis Juindernier entre ledit Gouvernement et le "Comite pour les demandes juives envers l'Autriche" deja cite ci-dessus.

Par une lettre Z 1 5-551 - Pr M/53 Monsieur le Chancelier de la Republique federale d'Autriche, s'adressant en date du 13 Novembre 1953 au President de notre Comite, M. le Dr. Nahum GOLDMANN, invoqua en effet une serie d'arguments nouveaux qui sont de nature a rendre impossible la continuation des pourparlers entre le Gouvernement autrichien et le Comite pour les demandes juives.

Après etude et deliberation, le Comite chargea son President, le Dr. Nahum GOLDMANN d'adresser a M. le Chancelier Julius RAAB une reponse, en date du 11 decembre 1953, laquelle repond point par point aux diverses objections formulees.

Cette lettre, en voie de transmission au Chef du Gouvernement autrichien, se trouve jointe a la presente a titre confidentiel, devant etre communiquee dans les memes conditions aux Gouvernements americain et britannique par les organisations americaines et britanniques ces jours-ci.

Les organisations soussignees seraient tres obligees a Monsieur le Ministre des Affaires Etrangeres du Gouvernement de la Republique de bien vouloir en faire tenir le contenu, en meme temps que la presente note, a Monsieur l'Ambassadeur de France, Haut Commissaire de la Republique francaise en Autriche.

Elles esperent qu'en perpetuant le bienveillant interet que le Gouvernement francais a constamment temoigne avec les autres Gouvernements allies occidentaux de Grande-Bretagne et des Etats-Unis, aux demandes juives envers la Republique federale d'Autriche, Monsieur le Ministre des Affaires Etrangeres voudra bien demander a son Ambassadeur et Haut Commissaire en Autriche de faire connaitre au Gouvernement autrichien la surprise causee par son changement d'attitude.

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En effet les negociations avaient ete entreprises depuis juin dernier, et un accord de principe avait ete manifeste publiquement a plusieurs reprises par declarations et communiqués de presse sur leur double portee, savoir celle d'une part d'une amelioration et d'une extension de la legislation deja promulguée en faveur des victimes de la persecution nazie; et notamment quant a l'elargissement de cette legislation en faveur des personnes ne residant plus en Autriche ou ayant meme perdu la nationalite autrichienne; d'autre part celle d'une indemnisation forfaitaire de la contre-valeur des biens abandonnes en faveur des organisations ayant entrepris hors d'Autriche la tache d'aider les victimes de la persecution a se retablir et a se reinstaller dans une nouvelle existence.

Or voici qu'apres de longs mois de conversations et apres la presentation de nombreux memoranda etayant les divers chefs de reclamations sur le detail desquelles il n'est pas possible d'entrer dans le cadre de la presente, le Gouvernement de la Republique federale invoque sur les deux chefs faisant l'objet des negociations en cours des arguments qui n'ont meme pas le merite de la nouveaute et dont le fait meme de l'ouverture des conversations en cours depuis juin dernier implique qu'on avait tacitement renonce a les invoquer.

1. - l'amelioration et l'extension de la legislation en faveur des victimes juives de la persecution porterait atteinte aux droits analogues des autres victimes de la persecution nazie. Le Dr. GOLDMANN repond dans sa lettre a cet argument.

2. - en vertu de la declaration de MOSCOW du 1er Novembre 1943 l'Autriche, pays occupe, ne serait pas responsable des actes de l'Allemagne, et ce serait a celle-ci de reparer ses crimes. Qu'il nous soit seulement permis, tout en nous referant a la discussion detaillee developpee dans la reponse ci-jointe du Dr. GOLDMANN, de rappeler qu'en vertu de l'Anschluss l'Autriche faisait partie du Reich allemand, a telle enseigne que le preambule du projet de traite d'Etat du 25 fevrier 1947 precise "expressis verbis" - "Considerant qu'a la suite de cette annexion l'Autriche a pris part a la guerre contre les Puissances Allieses et Associees et les autres Nations Unies en tant que partie integrante de l'Allemagne Hitlerienne, et considerant que l'Allemagne s'est servie a cette fin du territoire, des troupes et des ressources materielles de l'Autriche et que l'Autriche ne peut echapper a une certaine responsabilite (texte U.R.S.S.), a certaines responsabilites (texte francais), a certaines consequences (version U.S.A. et Grande-Bretagne) decoulant de cette participation a la guerre"; de rappeler aussi que des Autrichiens d'origine et de tous rangs tinrent leur place dans le nazisme a commencer par un certain Adolphe HITLER, sans oublier SEYSS-INQUART le gauleiter de Hollande et BALDUR von SCHIRACH le gauleiter d'Autriche qui mena a la mort 60,000 victimes innocentes juives d'emeures en Autriche; que le Tribunal de NUREMBERG constata en termes expres cette responsabilite dans son arret; qu'enfin et en tout etat de cause l'economie de l'Autriche profita de toutes les manieres des spoliations et du pillage, sans oublier les usines et autres ouvrages d'art edifies par des millions d'heures de travail de main d'oeuvre juive reduite en esclavage et astreinte au travail force sans remuneration.

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3. - le projet de traite d'Etat en date du 25 fevrier 1947 en son article 44 previeudrait l'Autriche de disposer avant signature, ratification, et expiration des delais, des biens abandonnes. Le seul fait de l'ouverture des negociations sur les biens abandonnes et sans maitre implique renonciation a cot argument. Au surplus cet article fait partie de ceux qui ont ete examines par les quatre Ministres des Affaires Etrangeres. Mais sur lesquels aucun accord n'a pu etre realise. Et il est fort peu probable, si jamais le projet de traite doit sortir effet, ou s'il doit aboutir a la signature d'un texte abrege et limite, que cet article y soit englobe. Et Monsieur le Chancelier invoquant cet article 44 parait meconnaitre sa premiere phrase: "pour autant qu'elle ne l'a pas deja fait, l'Autriche prend l'engagement de restituer lesdits biens, ou si cette restitution ou ce retablissement est impossible, d'allouer une compensation equitable pour les pertes effectives subies du fait meme de la depossession." L'Autriche n'est donc nullement prevenue de restituer; au contraire elle y est engagee, puisque le projet de traite l'oblige en son projet d'article 44 a restituer "pour autant qu'elle ne l'a pas deja fait".

En faisant savoir au Gouvernement autrichien l'interet qu'il porte aux demandes que les organisations juives formulent, le Gouvernement francais restera fidele aux principes appliques des 1946 et 1947 dans les traites de paix avec les Etats satellites de l'Allemagne, en faveur des victimes de la persecution nazie, et egalement aux principes appliques en zone d'occupation francaise en Allemagne par la promulgation de l'ordonnance No. 120 et de celles qui l'ont completee en vue de la creation d'une organisation successorale francaise pour la revendication des biens sans maitre et des biens abandonnes; il restera egalement dans la logique d'une attitude qui l'a determine a plusieurs reprises a opposer son veto contre plusieurs lois autrichiennes qui avaient pour but de favoriser l'amnistie, la rehabilitation et la restitution de leurs biens aux anciens nazis en Autriche.

Les organisations soussignees esperent que le Gouvernement de la Republique voudra bien en l'occurrence, d'accord avec les allies occidentaux, faire comprendre au Gouvernement autrichien que les conversations entreprises avec les organisations representatives des victimes juives de la persecution nazie ne doivent subir aucun nouvel atermoicement dans aucun de leurs elements, et ne doivent avant tout pas dependre de la signature improbable d'un projet de traite qui n'a pas pu aboutir a signature depuis bientot sept annees.

Elles seraient heureuses que le Gouvernement francais veuille bien egalement donner des instructions dictees par la meme generosite a ses representants a la prochaine Conference de Berlin des quatre Ministres des Affaires etrangeres fixee provisoirement au 25 Janvier 1954.

Paris, le 4 Janvier 1954

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(FAD=Foreign Affairs Dept)
Box 2 File 4

The Honorable,
The Secretary of State
Washington, D. C.

Austrian Desk

Sir :

The undersigned, all former bank officials from Austria, who had been forced to leave Austria during the Nazi rule in 1938 and the following years, immigrated to the U.S.A. They are now American Citizens by naturalization who feel entitled to ask for the protection of the Department of State respectfully submitting the following facts and informations for your kind consideration

We are in possession of the governmental draft of an Austrian bill, called Sixth Restitution Law. The draft was put at the disposal of certain Austrian unions for the purpose of pre-parliamentary examination and discussion.

The bill deals with the restitution of rights deriving from employment contracts, by which salaries and pensions of the employees have been fixed.

So far we could not make sure whether the above mentioned bill was already presented to the Austrian National Council to be passed as a law. However, the introduction of the bill is imminent. It is, therefore, very urgent to discuss the consequences of the provisions of this bill still before it becomes law as it would derive the claimants of a very considerable part of their legal and contractual rights and discriminate against them in an entirely unjust way.

We quote the gist of the bill's basic provisions.

The bill is supposed to be drafted within the principles of the London Declaration of the Allied Powers of January 5, 1943 and of the Austrian Federal Law of May 15, 1946, so that all transactions and legal deeds performed in Austria under Nazi rule shall be considered as null and void. Nevertheless, the author of the bill dares to confess that he likes to abstain from following this principle throughout the bill. As pretext the subterfuge is used that such contractual obligations could have been disposed of arbitrarily by the employers even without the imposed Nazi rules. This means that the bill is intended to legalize potential violations of the existing law and of valid contracts.

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In the light of this guiding principle it shall be fully understandable that the bill does not only not provide for the protection of the legal and contractual rights of the employees but, on the contrary, instead of becoming a restitution law in the sense of the Declaration of London is intended to restrict our rights and to consolidate the Nazi depreciations.

There are three categories of claimants as set forth in the bill:

1. Persons who have been deprived either entirely or partly of their salaries, wages or other kind of compensations.
2. Persons whose employment contracts have been dissolved regardless of legal or contractual rights of the employees.
3. Persons who have been deprived either entirely or partly of pensions which they had been entitled to under provisions of an employment contract or of a salary or pension scheme.

The undersigned are partly claimants as indicated above under 2) and partly under 3) whereas item 1) does not refer to them generally.

In order to specify the different cases of claims under numbers 2) and 3), the undersigned refer to a schedule drafted by the American Association of former Austrian Jurists on its comments of this bill.

The claimants are:

- a) Employees who had been receivers of pensions at the time when they were deprived of them by Nazi rule,
- b) Employees who at the time when they were dismissed from service by force were entitled to a pension on account of the duration of their employment but were not pension receivers at that time, for the only reason that they were still in active services.
- c) Employees who set aside their unlawful dismissal from service by Nazi rule would have been entitled to a pension in the future if lawful continuation of service had been possible. Such service contracts used to be concluded either for a certain number of years or for an indefinite time. In the latter case either dismissal of the employee was

- 3 -

allowed only for certain and just reasons (provided for by the contracts or by the employment laws) or dismissal was possible only when notice was given in due time.

- d) Employees who at the time of their dismissal by force would not have acquired title to pension even if the employment would have continued.

Under this schedule the undersigned belong partly to group a) and partly to group b) and c) i.e. one group had already been pension receivers in 1938, a second group continued service at that time, although they were entitled to retire and to receive pensions and a third group held title to a pension provided they would not have been prevented from continuing active service up to the time when their pension rights would come into force.

The employment contract of those who were still in active service at the time the Nazis invaded Austria was an uniform one, based upon a special law normalizing certain officers salaries paid by the Austrian banks and their affiliated industrial enterprises.

Under these contractual terms dismissal of employees could only take place in case the official violated elementary service duties or was unable to perform his duties on account of sickness. Pensions had to be granted after ten years of service, the amount of pension increasing by a certain percentage for each additional year of service, so that the maximum amount of pension was to be paid after 35 years of service.

To conclude the undersigned all with a long service record even in 1938 were either pension receivers or were all entitled to pensions, provided they continued service up to the contractual minimum time of 10 years.

These facts have to be recalled as against the provisions of the Sixth Restitution bill.

Section 2 of this bill rules as follows:

" Every employment contract whether a certain period was provided for or not which has been voided and cancelled arbitrarily by the employer under Nazi rule is now assumed of having been terminated at that time as if it had been dissolved by the employer under the notice terms of the then existing general law referring to services of salaried employees. "

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- 4 -

This means in the case of the undersigned practically that their contracts are supposed to have been terminated six months after the breach of these contracts.

Thus, the Nazi breach of the contracts is now going to be confirmed legally and the only indemnification granted consists of six months notice.

Ten and a half years have passed since these contracts have been voided, a period during which the surviving victims of Nazi persecution had to undergo all kind of hardships in order to rebuild their existence. They are now ten years older and the time ahead of them during which they will be able to work, is very short indeed.

As far as their title to pensions is concerned - the bill rules this way :

" If the employees would have had a title to a pension at the time at which under the assumption of the bill, the contract was arbitrarily voided (with a six months notice) they lose the amount of all pension payments due from the time of dismissal until the day this bill becomes a law. "

They do not get a penny for the last ten years.

In order to illustrate the importance of this provision for the undersigned it should be stated that as far as they had not been pension receivers in 1938 their service record showed at that date an average of 25 years of service. As a matter of fact, they were even at that time in an age when retirement is considered earnestly under normal conditions. They have been forced to leave the country, they have been deprived of their savings and personal property, they have been forced to start all over again and now they are flatly denied contractual compensation for these hard and long years.

The specific hardship involved in this rule is proved by the fact that the undersigned, like other bank employees, had been under obligation to contribute during their years of active service to the pension funds and that these payments were made as against the pension due to them in proper course. They have fulfilled their obligation, whereas the other contractual party shall now be released from its obligation in violation of the contract.

But this is not all.

There is one group quoted above as receivers of pensions in 1938. The bill does not state explicitly that this group is entitled to being indemnified for the unpaid pension since 1938 but anyhow, the author of the bill takes it as granted under the word-

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ing of the respective sections which do not annul the respective pension rights.

However, this rule - made to the approved old age group - is considerably weakened by the following rule :

" The employer may apply with the labor court for reductions of the amounts to be paid for the past, not only for pensions but for every kind of compensations, and the court may reduce the amounts due according to the economic conditions of the employer and the employee. Even installments may be granted."

The author of the bill elaborates this idea in the comments saying that there should be taken regard of the money the employee in question might have earned during the time he did not receive pension.

We do abstain of commenting on such tendencies to consolidate Nazi depredations of those elderly persons who had been deprived so viciously of their pensions and incomes and who had to undergo every kind of humiliation and hardship to the bitter end. It is shameful that the liberated old country refuses to protect their rightful claims for proper, just and fair restitution.

In case this Department should require any more information in this matter, the undersigned are ready to furnish all detailed information.

Thanking you in advance, for any assistance, we remain

Respectfully yours,

Dr. Frederick G. Dankovits
former Vice President of the
Allgemeine Oesterreichische
Bodencreditanstalt, Vienna
15 Washington Place, New York, N.Y.

Dr. E. Dankovits

Leo Fuerst
Former Vice President of the
Mercurbank A.G., Vienna
24 Stone Street, New York 4, N.Y.

Leo Fuerst

340394

Alexander Marton
Former Vice President of the
Allgemeine Verkehrsbank A.G.
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Alexander Marton

Dr. Hermann Oppenheim
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Board of Directors of the
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80 Wall Street, New York 5, N.Y.

Dr. Max Sokal

Dr. Richard Weiss,
former Vice President of the
Allgemeine Verkehrsbank A.G.
Vienna
181 Hawthorne Street, Brooklyn, N.Y.

Dr. Richard Weiss

COPY

THE AMERICAN JEWISH COMMITTEE
386 FOURTH AVENUE NEW YORK 16, N. Y.

PARIS OFFICE

30, rue La Boétie

Paris VIII

YIVO RG 347.7
Am. Jew. Com. (FAD 41-46)
Box 2, FILE 5

(FAD=Foreign Affairs Dept)
Box 2 File 5

MEMORANDUM

14 June 1949

To: Foreign Affairs Department

Subject: Report on Visit to Austria
May 31 - June 2, 1949

From: Max Isenbergh

The morning of May 31st was devoted to a meeting called by Mr. Harry Greenstein "for the purpose of coordinating the activities of Jewish organizations in Vienna in relation to restitution." In addition to Mr. Greenstein and Major Hyman, the following were present: Kurt Lewin, representative of the Israeli Government and of the Jewish Agency in Austria; Dr. Shapira, president of the Viennese Kultusgemeinde; Mr. Stiasny, representative of the World Jewish Congress in Vienna; Albert Einstein, legal advisor of Joint in Vienna; Dr. Sokol, legal consultant of Joint in Vienna; Miss Beatrice Vulcan, acting country director of Joint; Jerome Jacobson, European counsel for Joint; Messrs. Veldt and Teicholz of the Eastern European Association of Victims of the Axis; and myself.

Before the meeting in conversations with Mr. Greenstein and at the meeting, I took the position that formal organized coordination in Vienna was neither necessary nor, from our point of view, desirable. That a carefully coordinated program in the United States seemed necessary was never contested by me — indeed, I had urged it —, but that had been arranged. In Vienna, on the other hand, approaches to both Austrian and American officials had been made several times, and while there are always advantages in keeping the fire hot by further demarches, there appeared to be nothing in sight calling for highly organized joint activity. I should make it clear that I was in favor of an arrangement among all the interested agencies to clear with each other before making representations to the Austrian or American authorities in order that consistency of position would be maintained. It was clear that more than this was contemplated, however; indeed, when I asked that this proposition be put to a vote at the meeting, only Joint and ourselves were in favor of it, and the proposal was defeated. The final decision was to create a standing committee in Vienna of the major organizations. Since the AJC does not maintain an office in Vienna, the creation of a committee there could not as a practical matter result in regular participation by us, and in view of this practical exclusion from regular participation, it seemed to me that ad hoc informal clearance would be a better principle.

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After the agreement to create a committee, it was decided that it immediately call upon Mr. Krauland, Minister of Economic Planning, to express the complete dissatisfaction of all Jewish organizations as well as the Austrian Kultusgemeinde with the draft heirless property law now under consideration. I was delegated to arrange for the appointment through the good offices of the American Legation which had previously been so cooperative in this respect.

In the afternoon of May 31, the committee, representing Joint, World Jewish Congress, Jewish Agency, and ourselves, met to consider a proposed memorandum which the Kultusgemeinde had prepared for submission to Minister Krauland. Mr. Teicholz of the Eastern European Association of the Victims of the Axis also participated in our deliberations. The committee showed a fine spirit of unanimity in contrast to the rather sterile discussions of the morning. In a short time we agreed upon the points we thought should be added to the memorandum of the Kultusgemeinde, and I was delegated to dictate a memorandum recommending suggested changes and additions. I prepared such a memorandum after the meeting, it was transmitted to the Kultusgemeinde, and we were assured that the Kultusgemeinde would submit an appropriately amended memorandum to Minister Krauland soon.

Later in the afternoon, accompanied by Mr. Jacobson of Joint, I paid my respects to Mr. Walter Dowling, charge d'affaires of the American Legation, and Mr. Dowling agreed to make an appointment for representatives of the four organizations with Minister Krauland. In the evening, Mr. Dowling telephoned to say that an appointment with Minister Krauland had been arranged, and he added that Finance Minister Zimmermann wanted me to get in touch with him. Mr. Dowling indicated that he thought Dr. Zimmermann would have something interesting to tell me, a remark which, if I had been willing to indulge in optimism, would have led me to suppose that some consideration was being given to the proposed loan which I had discussed with Dr. Zimmermann and others in February and April.

On June 1, Mr. Stiasny of the World Jewish Congress, Miss Zuckerman of the Jewish Agency, Mr. Jacobson of Joint, and I called upon Minister Krauland. The discussion is set out fully in one of the attached memoranda. In brief, it resulted in Minister Krauland's undertaking to submit an alternate draft law on the disposition of heirless property which does not embody the defects of the present measure (e.g., an undifferentiated general fund for heirless property which would result in practical dilution of assets of Jewish origin among an unpredictably broad category of "victims of the axis.") At the close of the discussion, since it was clear that no legislative action on heirless property could be taken until after the election in the fall, I referred to the intensified need for the proposed loan of 25 million schillings. At that point Minister Krauland said that earlier in the day he and Foreign Minister Gruber had called Finance Minister Zimmermann and had told Finance Minister Zimmermann that "something had to be done about the loan right away."

The last remark of Minister Krauland coupled with Mr. Dowling's suggestions of the evening before gave me some reason to approach my meeting with Minister Zimmerman hopefully. When I called upon him late in the afternoon of June 1, he stated that since my last visit he had been trying to work out a method of advancing the loan but that his advisors had not yet been able to overcome the legal difficulty arising because the heirless property fund was not yet in existence. They had said that a loan could not be advanced against the security of a non-existent fund. I pointed out once again to Minister Zimmermann that if the heirless property fund were in existence, the need for the loan would disappear, and emphasized the cruelty of subjecting the surviving Jewish community to such a technicality. I also pointed out that the reference in restitution Law No. 3 to

to the intention of creating an heirless property fund should afford an adequate legislative basis for advancing the loan. Dr. Zimmermann assured me that he would take up the question at the next meeting of the Austrian Cabinet scheduled for the earlier part of the week beginning June 6, and I told him that I would telephone him from Geneva on the following Wednesday (June 8) to learn the result. (A memorandum on the conversation with Minister Zimmermann is attached.)

Since Foreign Minister Gruber had given the most unqualified assurances of his support to the loan during my last visit in Vienna, I thought it would be well to discuss the question with him in light of Dr. Zimmermann's observations, and immediately made an appointment. Accompanied by Mr. Jacobson, I called upon Dr. Gruber late in the afternoon of June 2. Dr. Gruber gave further assurances that he would give his utmost support to the loan project, pointing out, however, that in view of the financial straits of the Austrian Government, an immediate loan of the entire 25 million schillings sought would not be possible. He attempted to reach Chancellor Figl so that we could talk to him, but finding Chancellor Figl not available, he assured us that he would personally press Chancellor Figl to support this measure. He also suggested that it would be very helpful if, prior to the Cabinet meeting, some American diplomatic pressure were exerted upon the Chancellor. (The conversation with Dr. Gruber is set out in an attached memorandum.) In view of this suggestion, we went to the Legation immediately after leaving Dr. Gruber and asked Mr. Dowling to press this question with Chancellor Figl. He assured us that he would.

On June 2, prior to the meeting with Dr. Gruber, two other conversations were arranged. ~~With~~ Mr. Jacobson, Mr. Einstein, and I called upon Mr. Albert Loewy, legal advisor to the Army on this range of subjects, and from him we got confirmation of the absence of affirmative developments since my last visit.

The other major discussion was with General Balmer, Deputy United States Commissioner in Austria. Mr. Jacobson, who accompanied me, and I raised four points: (1) the position we had taken on heirless property, restitution of employment rights, and restitution of leaseholds; (2) the proposed loan; (3) pronazi, antisemitic newspapers in Austria; (4) the proposed extension of amnesty to further categories of ex-Nazis. In connection with (1) and (2), I expressed chagrin at having learned that the letter to Chancellor Figl, which had been prepared for General Keyes' signature and which supported all the positions we had been advocating, had not yet been sent. General Balmer assured us that although the letter had not been sent, informal discussions had taken place, and would continue to. We urged him to try to revive the letter, as we thought that a written communication would have more weight with the Austrian Government. Also, in view of the apparently more hopeful situation with respect to the loan, we urged him to make an immediate representation to the Austrian Government about the desirability of effectuating it. He assured us that he would talk to Ministers Krauland and Zimmermann the next day.

On Wednesday, June 8th, I telephoned Minister Zimmermann from Geneva, and was informed that the Cabinet had definitely decided to advance immediately an installment of 5 million schillings to the Kultusgemeinde. I suggested that I would urge Joint in Vienna to get in touch with him immediately in order to give the guarantee,

as I had proposed in our conversation, that the loan would be used for the agreed purposes. He stated that for the moment he preferred to deal with the Kultusgemeinde alone.

Although Minister Zimmermann seemed to be reporting an unequivocal decision, I was anxious, in view of the failure of past promises to materialize, to have clear confirmation. I therefore asked Minister Zimmermann to send me a letter of confirmation and I suggested — this now appears to me to have been a tactical error — that I would immediately advise New York in order that appropriate publicity could be given to this laudable decision. At that point Minister Zimmermann asked me if I would please refrain from giving the decision any publicity for a few days. After the telephone conversation, I sent a telegram of appreciation to Zimmermann and his colleagues on behalf of the AJC, and on Friday, June 10, upon my return to Paris, I telephoned Dr. Zimmermann again, intending to tell him that the Cabinet decision had been favorably received in New York and that it would be to the advantage of Austria to have this decision widely known in the United States. I was frustrated by the circumstance that only Dr. Zimmermann's assistant was available for the conversation, and he repeated Dr. Zimmermann's request to hold off publicity for the moment.

Until today, I was in the uneasy position of wanting to believe that five million schillings are shortly to be transferred to the Kultusgemeinde but of having nothing more than my telephone conversation with Dr. Zimmermann to rely upon. A telegram just received from Dr. Hartenau, Minister Zimmermann's assistant, affords the awaited confirmation, however:

"REFERRING YOUR TELEGRAM FROM GENEVA I WISH TO INFORM YOU ALL NECESSARY STEPS HAVE BEEN TAKEN TO DISBURSE SUM OF 5 MILLION TO ISRAELITISCHE KULTUSGEMEINDE VIENNA"

The condition of the Kultusgemeinde and the indispensable need for Joint to have a supervisory participation in determining how the loan is to be used, I shall report on later. Fortunately, Harold Trobe, country director of Joint, who is expertly informed on all facets of the problem, will be back in Vienna next week. He can be counted upon to give the best of attention to developments on the spot as they occur, and to continue the excellent cooperation we have had thus far.

Copy: Seymour Rubin

340399

June 8, 1949

Dr. Eugene Hevesi
American Jewish Committee
386 Fourth Avenue
New York, New York

Dear Eugene:

Re: Austria - Heirless Property

You and Moose will be glad to know that Monroe Karasik at the State Department yesterday told me that on June 6th, the Department had received the first "spontaneous" indication of sympathy and possible action by the Austrian Government. Apparently, the Legation in Vienna was informed by the Foreign Office that action may soon be expected.

I still have my fingers crossed, but it looks as if Moose's last visit to Vienna has produced results as well as promises.

Sincerely,

Seymour J. Rubin

SJR/raf

c.c. Mr. Wolfsom
Mr. Isenbergh

340400

Memorandum

on conversation with General Jesmond D. Balmer,
Deputy Commissioner of the United States in Austria

June 2, 1949, at 2:30 p.m., Headquarters United States Forces in Austria, Vienna.

Present: General Balmer, Mr. Jerome Jacobson of the American Joint Distribution Committee, and Mr. Max Isenbergh of the American Jewish Committee.

General Balmer was informed of the meeting of representatives of the four Jewish organizations with Minister Krauland, and was asked whether any formal communication had been made by the United States Military Authorities to the Austrian Government on the question of restitution and related matters. General Balmer replied that the letter prepared for General Keyes' signature to Chancellor Figl, endorsing the views which Mr. Isenbergh previously presented, had not been sent. He added, however, that these views had been given support in informal discussions between the American Military Authorities and representatives of the Austrian Government. Mr. Jacobson and Mr. Isenbergh urged that the informal representations be supported by a formal communication not only because of the greater weight a formal communication would be likely to have but also because, in view of the inherent technicality of the subject matter, a precise statement of views would be more effective. General Balmer stated that he would seek to have a formal communication sent to the Austrian Government.

General Balmer was informed of the conversation with Minister Zimmermann, and he agreed to support the loan project in conversations with Ministers Zimmermann and Krauland before the next meeting of the Austrian Cabinet.

Mr. Isenbergh then turned to the question of pronazi antisemitic newspapers which the American press had reported to be appearing in Austria. General Balmer stated that this question had been dealt with at the Allied Council Meeting of May 27, 1949. A decision had been reached to send letters warning that further publication of malicious materials would be severely punished to three newspapers: Der Ausweg, published in Linz, Der Alpenruf, published in Graz, and Die Neue Front, published in Salzburg. General Balmer said that if there were further violations by these papers, he was confident that the Allied Council would order them to suspend publication or even cease publication entirely.

On the question of the legislative proposal to extend amnesty to further categories of ex-Nazis, General Balmer explained that it was a political maneuver by the Peoples Party. He said that the measure required unanimous approval of the Allied Council to go into effect, and that everyone, including the Peoples Party, understood that such approval would not be given. By appearing to champion the Nazi element, the Peoples Party hoped that it would win the support of the Nazi groups which had been granted amnesty under previous measures.

General Balmer discussed generally with Mr. Jacobson the cooperation of the Military Authorities and the Joint Distribution Committee, and expressed his satisfaction that the projects of mutual interest were proceeding well.

340401

Memorandum
on conversation with Charles W. Yost, Counsellor of the
American Legation and Charge d'Affaires in the absence
of Minister Erhardt.

April 7, 1949, 11:30 a.m.; April 11, 3:30 p.m.; April 13, 9:30 a.m.;
At the Legation, Boltzmanngasse 16.

Present: Mr. Yost and Mr. Isenbergh.

April 7

My first conversation with Mr. Yost was merely a review of my previous conversations in Austria. He was familiar with them, and exhibited, as he did throughout, an attitude of genuine sympathy and cooperativeness. He explained that Mr. James, who had attended my previous conversations with Austrian officials, had left Vienna, and he called in Joseph R. Jacyno who was to perform a like function this time. Mr. Yost explained that Mr. Jacyno was probably more familiar than anyone else on the staff with questions of restitution and related matters. Arrangements were made at this meeting for my getting appointments with the various Austrian officials whom I later saw. [Mr. Jacyno, whom I met for the first time in Mr. Yost's office, proved to be a willing, able and amiable colleague.] Mr. Yost asked me to report back to him from time to time during my stay in Vienna.

April 11

The purpose of this meeting was my reporting to Mr. Yost on my discussions with Minister Maisel and General Balmer.

Mr. Yost said that the Legation had already sent recommendations to the Army, urging General Keyes to support our position with Chancellor Figl. In view of General Balmer's statement that he was awaiting the Legation's recommendations, Mr. Yost said that the Legation would repeat the recommendations immediately, and that it would urge that General Keyes both send a letter to Chancellor Figl and press our position informally with the Chancellor.

April 13

At this meeting I reviewed with Mr. Yost my conversations with Chancellor Figl, Minister Gruber, and Dr. Waldbrunner. I told Mr. Yost that I proposed to recommend to our people in New York and Washington that if the Austrian officials fail to take adequate action by a specified date, a program of political action should be started in the United States. Mr. Yost assured me that he would watch the situation closely and gave affirmations of the Legation's continued support.

Memorandum
on conversation with General Jesmond D. Balmer
Deputy Commissioner of the United States in Austria

April 11, 1949, at 2:30 p.m., Headquarters U.S. Forces in Austria, Vienna.

Present: General Balmer and Mr. Issenbergh

General Balmer said that the United States Army authorities had carefully studied the report I had submitted to him on my previous conversations in Vienna, and he assured me that there was both agreement with and a desire to support our demands. He said that the Army had asked the Legation for recommendations and while awaiting them the staff had prepared a letter to Chancellor Figl, embodying a formal request from the Army that the Austrian Government adopt our recommendations. He said that in view of the negotiations with the Austrian Government on the question of Austria's IRO subvention, it had been decided not to send the letter for the present, but he assured me that "at the first opportune occasion," which he expected would be rather soon, either the letter would be sent or some other form of vigorous representation would be made.

I expressed our gratitude to the General for his proposed support, and told him that we believed that vigorous support by the Army was our best weapon in Austria and that it could probably carry the day. I pointed out that further postponement of action by the Army would be prejudicial since, as the elections in Austria get closer, the prospects of action in this field by the Austrian Government necessarily would decline. General Balmer assured me that he was aware of this and that we could rely on vigorous and prompt action by the Army. As in my last discussion with General Balmer, I left with the impression of his sincere desire to be helpful.

340403

HEADQUARTERS
JEWISH RESTITUTION SUCCESSOR ORGANIZATION
APO 696A U. S. ARMY

Restitution
Route

4 April 1949

Mr. Max Isenbergh
30 Rue de la Boetie
Paris 8, France.

Dear Moose:

You probably have been informed by more reliable sources that a new draft of the law for restitution in the British Zone is ready and they are on the verge of putting it into effect. Apparently the British Foreign Office has it now and will send it to the Zone within the next few weeks. To everyone's surprise and delight they have included provisions for turning heirless or unclaimed Jewish property over to trust corporations to be established in a manner very similar to the provisions of MG Law 59.

We have received one copy of the law from the United Restitution Office in London and I understand that several of the interested Jewish organizations were invited to comment. There are a few technical points where improvement in the law is necessary but by and large I think it is a tremendous victory. I know that the Committee was responsible for the State Department submitting a note on the subject to the British Ambassador and that may have been the cause for this sudden change of heart. I understand that there was also a debate in the House of Commons which supported the Jewish position.

The attached extract from the monthly report of the Military Governor refers to the meeting which, I believe, you tried to join and it might be of some interest to you.

There is apparently some disagreement between the French, British and the Americans concerning the Equalization of Burdens legislation. The French and British are anxious to exempt property of all Allied nationals from taxation under the law. The Americans feel that property of Allies in Germany should receive no preferential treatment. The big corporations with German subsidiaries are of course the ones most interested and since there is a possibility of JRSO properties being taxed we are aligned with Big Business. (Save this for when I am brought up before the Dies Committee). You may have occasion to occasion to run into this problem somewhere and it is always good to know on which side of the bread the butter is and vice versa.

340404

-2-

I expect to be in Paris round the 8th or 9th and will give you a ring if you are in that part of the world.

Sincerely yours,



BENJAMIN B. FERENCZ

1 Incl.

340:05

31 March 1949

EXTRACT FROM THE MONTHLY REPORT OF THE MILITARY GOVERNOR
January 1949

A conference of the three Western Powers was held on 13 and 14 January for the purpose of working out a solution to the numerous interzonal problems arising because of the differences in the internal restitution practices in the three Western Zones. Included on the agenda were the following subjects: (a) reciprocal legal aid between the zones; (b) conflicts in the application of the rules of venue; (c) reciprocity in enforcing judgments and amicable settlements outside of the zone in which they were rendered; (d) transmittal of petitions, erroneously filed in any of the three zones, to the proper authorities; and (e) a uniform restitution law for the Western Sectors of Berlin. As a result of the conference, a subcommittee, composed of one member each from the American, British, and French elements, was appointed to give further consideration to the matters discussed.

No final conclusion was reached at the conference regarding the promulgation of a uniform restitution law for the Western Sectors of Berlin.

340406

Status of Restitution of Alienated Property
on 28 February 1949

I. Applications pursuant to the First Restitution Law

	Filed in February	Total filed	with- drawn or trans- ferred	Granted	Denied	Pending	Not yet considered
Vienna, Lower Austria & Bur- genland	92	6706	264	3215	333	1651	1243
Upper Austria	4	394	51	217	71	52	3
Styria	19	613	7	321	171	56	58
Salzburg	12	254	17	150	33	36	18
Carinthia	1	156	14	57	65	19	1
Tyrol	-	190	23	138	23	6	-
Vorarlberg	-	37	1	34	1	1	-
	128	8350	377	4132	697	1821	1323

II. Applications pursuant to the Second Restitution Law

	Filed in February	Total filed	with- drawn or trans- ferred	Granted	Denied	Pending	Not yet considered
Vienna, Lower Austria & Burgenland	10	384	-	88	7	179	110
Upper Austria	4	100	4	33	28	35	-
Styria	7	96	-	36	17	19	24
Salzburg	1	61	3	14	14	16	14
Carinthia	-	56	3	19	24	10	-
Tyrol	-	61	14	21	9	17	-
Vorarlberg	6	42	9	25	5	2	1
	28	800	33	236	104	278	149

Disposition of Appeals by the Federal Ministry of Justice

	First Restitution Law	Second
Total of appeals on 28 Feb 1949:	291	53
therefrom 1. granted	67	14
2. denied	163	13
3. withdrawn	24	5
4. pending	15	6
5. not yet considered	22	15
	291	53

340407

III. Applications pursuant to the Third Restitution Law

Authority	Filed in February	Total filed	with- drawn	trans- ferred	granted	settled	denied	pending
OGH	32	303	-	-	197	70	13	23
ROK Vienna	105	1772	24	28	1001	117	300	302
RK Vienna	223	13243	973	489	1425	1842	508	8006
ROK Graz	27	456	1	-	352	17	75	11
RK Graz	76	2450	328	71	278	395	384	994
ROK Linz	12	246	1	0	146	3	49	47
RK Linz	27	1826	156	141	289	113	156	971
ROK Inns- bruck	7	111	1	3	45	-	56	6
RK Inns- bruck	5	1039	95	21	111	117	102	593

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

Vienna	1250
Lower Austria	286
Upper Austria	96
Muehlviertel	46
Styria	153
Carinthia	200
Salzburg	64
Tyrol	97
Vorarlberg	43
Burgenland	28

2263

22 March 1949
For the Federal Minister
sgn. Nowak

For the correctness :
sgn. Wenninger

February 17, 1949

Dear General Balser:

It was very generous of you to permit me to discuss restitution of heirless property, the proposed loan to the Austrian Jewish community, and related matters with you in Vienna last week. I am very grateful. The sympathetic attitude you expressed was a most welcome encouragement to our hopes in this field.

Two sets of the promised notes on my conversations with Austrian officials are enclosed. Having checked them with Mr. Robert James of the United States Legation, who was present at each meeting, I believe they are accurate and comprehensive.

You may be interested to know that before leaving Vienna, I discussed the question of creating a successor organization to receive heirless property with Mr. Harold Trobe, of the American Joint Distribution Committee and with several leaders of the Vienna Jewish community. It is likely that such an organization will soon be created.

Respectfully yours,

Max Ikenbergh
Counsel for European Operations

General Jeannet D. Balser
Deputy Commissioner of the
United States in Austria
Vienna, Austria

340409

YIVO 126377-7
Am. Jew. Com. (RAD 41-46)
Box 2, Biceg

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WORLD JEWISH CONGRESS
55 New Cavendish St.

(FAD = Foreign Affairs Dept)
Box 2 File 6

21st November, 1950.

Mr. A. G. Brotman,
Board of Deputies,
Woburn House, W.C.1.

Dear Mr. Brotman,

COMMITTEE ON AUSTRIA

I first want to clarify the position as to the suggestion to urge the formation of a Jewish Rehabilitation fund on the lines applied in the American Zone.

As it stands, the suggestion cannot be realised for the following reasons:- The main point in Germany is that the heirless and unclaimed assets in the American and in the British zones were taken over by successor organisations registered in America or in Great Britain and are therefore American or British property. The reason for this is that Germany is at present not a sovereign State and further that all matters of restitution are reserved for the Allied Powers there. Austria, on the other hand, is an independent and sovereign State, as was recognised by all Allied Powers, and the occupation of Austria, in contrast to the occupation of Germany, is still maintained for reasons of security only. It is therefore not feasible that the heirless and unclaimed assets would be surrendered to a foreign corporation.

Moreover, the matter is rather far advanced, due to the joint efforts of the American Jewish Committee, of the American Joint Distribution Committee and of the World Jewish Congress which found the consent of the Jewish Agency and in particular of the Viennese Jewish Community. Every attempt to get rehabilitation funds in Austria, in spite of the resistance of the Austrian Government, must be based on Article 44 Para 2 of the draft Treaty with Austria, which para was unanimously agreed to by the Allied Powers. I enclose a copy of this Article.

The Austrian Government first introduced a bill (the so-called Krauland Bill) about two years ago, which provided for the formation of one Rehabilitation fund for the benefit of Jewish and Gentile victims. After the protest raised by the international organisations in Vienna, this bill was withdrawn and the Austrian Government drafted another bill, copy of which I enclose. This Bill had the defect that it laid down only the right of the Austrian Government to claim heirless and unclaimed assets, but left in its Article 5 the distribution to a future law. It cannot be expected that the Austrian Government will seriously pursue the claims against the present owners of heirless and unclaimed property because this would create political unrest and misgivings against them. The main point is therefore to get a law whereby the rehabilitation funds should have a direct claim against the present owners.

The American Jewish Committee, the American Joint Distribution Committee and the World Jewish Congress, with the consent of the Viennese

cont.

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- 2 -

Jewish community and the Jewish Agency, therefore drafted a counter-draft after thorough discussion between Mr. Jacobson of the Joint, Mr. Isenbergh (at that time adviser to the American Jewish Committee) and myself, copy of which I enclose. This draft was officially submitted to the Austrian Foreign Minister and to the Austrian Minister of Finance who is in charge of Restitution, and sent to the Allied representatives in Austria. No reply has yet been received. On the occasion of my visit to Austria Mr. Trobe, who is Chairman of the Viennese Committee of international organisations, sent an urgent letter to the Minister of Finance requesting that an immediate reply from the Austrian Government should be given.

The draft Bill of the Austrian Government and our counter-draft enclosed are in German and I trust you will translate them for the other organisations.

Yours sincerely,

/s/ F. R. Bienenfeld.

340411

THE



AMERICAN JEWISH COMMITTEE

386 FOURTH AVENUE, NEW YORK 16, N. Y. *Cable Address*, "WISHCOM, NEW YORK"

Telephone MURRAY HILL 5-0181

JACOB BLAUSTEIN, *President*
IRVING M. ENGEL, *Chairman, Executive Committee*
HERBERT B. EHRMANN, *Chairman, Administrative Committee*
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ALAN M. STROCK, *New York, Vice-President*
FRANK L. SULZBERGER, *Chicago, Vice-President*

March 7, 1950

To: Paris Office

From: New York Office

Subject: Restitution in Austria, reparations from Switzerland

The regrettable departure of Mr. Isenbergh from our midst raises the question whether it would not be desirable for you to provide some direct source of local information on restitution developments in Austria and on reparations, heirless property, etc., in Switzerland.

It seems to us that our local correspondents are not close enough to these developments to be able to alert us in time to the emerging need for action. Only persons actively and directly concerned with these matters could answer this need. I wonder, for instance, whether Dr. Sokal, the Vienna counsel for JDC, could not be used for this purpose in Austria. All that would be involved for them would be to send you occasional telegrams about important impending events. This limited service they may be prepared to undertake, perhaps even without fee. What is involved is the unpleasantness for the Committee to be regularly "scooped" by the WJC.

For instance, Bienenfeld now reported to the WJC here that the pigeonholed retroactive amendment to the Third Austrian Restitution Law has been, or will soon be, formally introduced by the Catholic People's Party. We have no way now to check the correctness of the information which we should have obtained ourselves in the first place. But we have to act upon unconfirmed WJC information.

Please discuss this tentative way out with Mr. Isenbergh, and kindly let us know your reaction, bearing, of course, in mind the budgetary difficulties.

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EH:ep

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

Adrian S. Fisher
YIVO 347.7
AJC (FAD 41-46)
Box 2 File 6

March 7, 1950

My dear Mr. Rubin:

Reference is made to the conversations between Messrs. Samuel Reber and Monroe Karasik of the Department and Mr. Max Isenbergh, European Counsel for the American Jewish Committee, which took place in London recently, between yourself and Messrs. Karasik and Metzger of the Department on February 7, 1950, and to your letter of February 15, 1950. These discussions related to a proposed Austrian restitution law dealing with heirless property, the position of successor organizations under that law, and the operation of that law with respect to Article 57 of the proposed treaty with Austria.

The Department wishes to confirm to you that the proposed restitution law should, in its opinion, be drafted with due regard for the provisions of Articles 44 and 57 of the proposed treaty. More particularly, the Department may confirm to you that the establishment of an Austrian judicial or semi-judicial tribunal, which will have the function of reviewing restitution claims made by properly designated successor organizations, and which will thus form a part of the procedures under which the decision of the Austrian Government will be made, does not appear to it to be in conflict with Article 57 of the proposed treaty as presently drafted.

The Department would of course be heartily in favor of immediate Austrian action with respect to restitution, looking toward transfer of properties or funds to successor organizations properly designated under the provisions of the proposed treaty.

Sincerely yours,

Adrian S. Fisher

Adrian S. Fisher
The Legal Adviser

Mr. Seymour J. Rubin
1822 Jefferson Place, N.W.
Washington, D. C.

340413

MEMORANDUM

TO: Seymour Rubin

DATE: 1 February 1950

FROM: Max Isenbergh

COPY TO: Foreign Affairs
DepartmentSUBJECT: Austrian Heirless Property
Legislation

In my memorandum of January 17th I referred to a conversation in London with Mr. Samuel Reber, Chief of the United States Delegation to the Council of Deputy Foreign Ministers. You will recall that he took the view that our proposed Austrian heirless property legislation would be inconsistent with article 57 of the proposed Peace Treaty. As I understand his argument, such an inconsistency would exist no matter what form of local remedy we proposed for the Successor Organization. Apparently, in his view, Article 57 would require that the only method open to a successor organization to vindicate its rights be an application to the Four Head of Mission, who in turn would refer it to an Special Commission.

It is hard for me to believe that the framers of the proposed treaty contemplated such a cumbersome mechanism for every dispute as an initial method of resolving differences. From our point of view the suggestion of heirless property legislation to the Austrians, without any provision for local judicial or quasi-judicial enforcement, would not make sense.

I am enclosing a copy of Article 57 of the treaty for you. If you could get some kind of assurance from the State Department that Mr. Reber's interpretation of it is not entirely correct, that would free us from a rather crippling difficulty when we resume negotiations with the Austrians. I do not suggest that we shall have to reveal Mr. Reber's attitude to the Austrian officials, and in not event would I do so. But I should like to be able to present a proposal to them with some degree of confidence that American authorities will not later say it is unacceptable. Since I should go to Vienna right away, your earliest possible attention to this will be greatly appreciated.

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M E M O R A N D U M

YIVO 347-7
AJC (FAD 41-46)
Box 2 File 6

From: Max Isenbergh

Date: January 17, 1950

To: Foreign Affairs Dept.
Copy to Seymour Rubin

Subject: Austrian heirless
property legislation

Last week in London I met with Mr. Samuel Reber, chief of the United States delegation to the Council of Deputy Foreign Ministers, and also had three conversations with Mr. Monroe Karecik, a member of the delegation. My purposes were: to discuss important technical aspects of the draft heirless property legislation for Austria prepared by Dr. Bienenfeld, Mr. Jacobson, and myself, with a view toward assuring its consistency with Article 44 of the proposed Austrian peace treaty; to get United States support for heirless property legislation in Austria along the lines of our draft; and to find out whether there were any reasons for further postponing formal submission of our draft to the competent Austrian officials.

The talks were most discouraging. At the very outset, Mr. Reber stated that the prospects of getting agreement on any peace treaty were worse than they had been for some time, and indicated his reluctance to complicate the situation by introducing questions of interpretation of Article 44. He said that if there were a treaty and Austria failed to comply with Article 44, the United States would intervene, but added that he did not think it feasible for the American delegation even to make anticipatory suggestions to the Austrians as to appropriate methods for carrying out the terms of Article 44.

I pointed out to Mr. Reber that in view of the Austrian attitude toward restitution generally, as disclosed during my last visit to Vienna, there was reason to expect the Austrians to show every tendency to construe Article 44 as ungenerously as possible with respect to the rights of successor organizations. I added that some indication in advance from the Americans as to the minimum requirements under Article 44 would afford a much greater assurance of realizing the objectives of the article than an attempt to cure deficiencies after the fact. In particular I called his attention to the second paragraph of Article 44 which provides that: "Austria agrees to take under its control all property, legal rights, and interests in Austria" which are heirless. Our draft proceeds on the assumption that Austria would be taking heirless property "under its control" if it passed legislation creating a central office charged with uncovering, locating, and getting possession of heirless property, and giving full legal assistance to successor organizations which themselves would have residual rights to proceed directly to acquire possession of such property if the central office failed to do so within a specified time. The purpose of this was to create a genuine adversary relationship between possessor and claimant to ensure that

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the marshalling of heirless assets would not be in the control of a government organization friendly to the Aryanizers and hostile to the successor organizations. Unless the successor organizations have a controlling voice in the marshalling of heirless property, only a small percentage of it will be recovered, since there will be heavy ~~xx~~ political pressure for half-hearted searches for the property and compromises favorable to the Aryanizers in possession if such functions are in the uncontrolled hands of an Austrian governmental instrumentality.

Mr. Reber seemed to understand this point thoroughly and even seemed to be completely sympathetic with our contention that a reasonable interpretation of Article 44 would require provision for a genuine adversary relationship along the lines of our draft, but he reiterated that he thought it appropriate for me to take up the issue again with Austrian officials and to ask the American Legation in Austria to intervene, rather than to seek support from the American treaty negotiators. He agreed with Mr. Karecik's suggestion that the phrase "all (heirless) property" as used in Article 44 afforded a clear textual basis to protest against any laxity on Austria's part in failing to provide a mechanism that would tend to assure comprehensive marshalling of heirless assets, but did not depart from his first indication of unwillingness to propose any particular mechanism to the Austrians at this time.

Mr. Reber glanced quickly at our proposed draft and raised only one objection. He said that the section creating an arbitration tribunal in which the rights of successor organizations could be vindicated would not be consistent with the general provisions for enforcement now embodied in the proposed treaty. Those provisions would set up a quadrupartite commission charged with enforcing adherence to the treaty. In his view, the provision of a remedy in an Austrian tribunal would somehow constitute a barrier to the operation of the quadrupartite commission in this field.

I was rather taken aback by this suggestion, since I could not imagine that the broad provision for enforcement of the treaty would as a matter of sound administrative practice be interpreted as requiring invocation of ponderous international machinery for settlement of every individual dispute related to a treaty provision. I expressed this view to Mr. Reber and pointed out that as a matter of law the provision of remedies in individual cases did not seem to be inconsistent with a general supervisory right of intervention by the allied powers to insure enforcement. Mr. Reber said that not being a lawyer, he could not give legal grounds for his conclusions but nevertheless he "felt" that no specific remedy for individual cases could be provided for in the Austrian legislation consistently with the treaty. To my great surprise, Mr. Karecik, who is a lawyer, agreed with him. I asked whether a copy of the enforcement provision of the treaty could be made available to me and Mr. Reber said he would send me one. As soon as I have it, I shall forward it to New York and Washington.

I also pointed out to Mr. Reber that in view of the great

uncertainty about the treaty, we had drafted an heirless property law which, while being in our view entirely consistent with the treaty, would also stand independently of it. In raising this matter with the Austrians, we wanted to present something which need not await a treaty for enactment, but which at the same time would permit the Austrians to be confident that the treaty would not require them to re-make their legislation in this field. Proceeding, as we must, on the assumption that there will not be a treaty in the immediate future, it is essential that any heirless property legislation presented at this time should contain within its own boundaries some workable enforcement machinery. Mr. Reber said he understood our dilemma but reiterated his view that any remedy in an Austrian tribunal could not be reconciled with the treaty requirements.

In a subsequent discussion of this problem with Mr. Karecik, Mr. Karecik admitted that on further deliberation and examination of the text of the enforcement provision, he thought Mr. Reber was wrong. Since Mr. Karecik is a rather close personal friend of mine, I told him that I was reluctant to write a contentious letter to Mr. Reber on this subject, and asked him how he thought we could get Mr. Reber to reconsider the question. He thought it would be best for Mr. Rubin to take up the question informally with the Legal Branch of the State Department in Washington, and I urge that Mr. Rubin do so as soon as possible.

While I have gotten the text of the treaty provision on enforcement only by ear, I am persuaded that Mr. Reber's views are erroneous, and I hope that, like Mr. Karecik, he will change his mind. Both Mr. Reber and Mr. Karecik thought that it would be advisable for me to approach the competent Austrian authorities on the question of heirless property legislation without delay, and I should like to go to Vienna again in a couple of weeks. Yet, until I learn that our proposals are not regarded as conflicting with the treaty by the American authorities, it will be very difficult to recommence negotiations in Vienna. In the circumstances, I should appreciate advice from Mr. Rubin as soon as possible.

Austria - Rubins

YIVO 347.7

AUGNE: REPUBLIC 0504 (FAD41-6)

CABLE ADDRESS: RUBINLEX

Box 2 File 6

RUBIN AND SCHWARTZ

ATTORNEYS AT LAW

SEYMOUR J. RUBIN

ABBA P. SCHWARTZ

1822 JEFFERSON PLACE, N.W.

WASHINGTON 6, D.C.

January 3, 1950

Dr. Eugene Hevesi
The American Jewish Committee
386 Fourth Avenue
New York 16, New York

Dear Eugene:

I inquired sometime ago and today had a lengthy conversation with Roswell Whitman with respect to the 25,000,000 Schilling advance from Austria.

Ross tells me that, as we knew, the first 5,000,000 Schilling advance from Army counterpart funds has already been approved. He further tells me that the figure mentioned with respect to a further amount was 15,000,000 Schillings, of which 5,000,000 was to come from one ECA account and the other 10,000,000 from another ECA counterpart fund. As to this 15,000,000, Ross says that no definite request has ever come from the Austrians. In reply to a tentative inquiry from the ECA Mission in Austria, the State Department and ECA have responded that they generally prefer to look at the entire program before disposition of ECA counterpart funds for the forthcoming year, rather than look at a part of it and on a piecemeal basis. This would seem to indicate that the people in Austria did not do a very good job of indicating that the 15,000,000 was to be a special amount, above and beyond what ECA might make available to Austria for the general purposes of the ECA counterpart fund. The State Department reply, according to Whitman, is not at all definitive and I judge from his statement that if further pressure results in affirmative action in Vienna, there will be a very good chance of State Department and ECA approval, provided a concerted effort is made at this end. I would therefore suggest that this information be communicated to Vienna and that at such time as action actually takes place there I be notified so that I can present the appropriate arguments here in Washington.

I am sending a copy of this letter to Eli Rock at the JDC, as well as to Moose.

Sincerely,

Seymour J. Rubin

cc: Mr. Eli Rock
✓Mr. Max Isenbergh

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Copy.

YIVO RG 347-7
Am. Jew. Com (FAA 41-46)
Box 3, File 2

(FAD=Foreign Affairs Dept)

16th January, 1948
92/1/AUS

Box 3 File 2

*Handed to me
by Dr.
Klein in
Vienna.
Feb, 1949.
M.L.*

21

**VIEWS OF PCIRO PROTECTION SECTION ON THE QUESTION
OF THE RESTITUTION FUND IN AUSTRIA.**

1. It is the policy of PCIRO that heirless assets of victims of German action should be used for the rehabilitation and resettlement of surviving victims as laid down in Part I, Article 8 of the Final Act of the Paris Conference on Reparations, and the Five Power Agreement of 14th June, 1946.
2. PCIRO is, therefore, not in favour of the plan that such property be used for the indemnification of individual victims. As, however, the indemnification of these persons is essential for their rehabilitation, they should be compensated from general funds which could include, but should not be limited to, confiscated Nazi property.
3. Beneficiaries to the fund should be victims of German action irrespective of the fact whether they reside in Austria or not. This is necessary in view of the fact that most of the surviving victims of Austrian origin do not at present reside in Austria.
4. Article 44 of the Draft Treaty with Austria provides that heirless and masterless property of victims should be taken under the control of the Austrian Government for transfer to appropriate organisations for the purpose of assistance to victims of persecution. These provisions are to be interpreted in the sense that Austria would not be required to make payments in foreign currency, or other transfers abroad which would constitute a burden on the Austrian economy.

Clearing arrangements could, however, be made enabling the application of paragraph 3 without causing a burden on the Austrian economy.
5. While there is no objection to Jewish organisations being given influence in the administration of Jewish masterless assets, PCIRO should have such influence in the control of the administration of the fund as in accordance with its status, responsibilities and the principle laid down in Part I, Article 8, of the Final Act of the Paris Conference on Reparations and the Five Power Agreement of 14th June, 1946.

PW/mpc

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Adviser to the Theater Commander on Jewish Affairs
Headquarters
U. S. Forces, European Theater
Office of the Commanding General
APO 757, c/6 Postmaster
New York, New York

Austria

YIVO 347.7
AJC (FAD 41-46)
Box 3 File 2

March 6, 1947

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

Dear Mr. Kenen:

I received yesterday your cable from the five organizations, concerning the Austrian law. I replied as per the attached.

As you know, I do not consider myself to be an authority on these matters. Therefore, I arranged with General Clark for Max Lowenthal to make an authoritative study and recommendations, concerning the Austrian law. If that had been done, some of the difficulties and differences could have been obviated. However, since it was not possible, I am dependent upon the best advice that I can get over here. In this case, there has been some degree of unanimity, which finds expression in my cable to you. Hyman, Robinson, Silber, Director of AJDC in Austria, and local Viennese community leadership, as well as our best friends in the military, all advise against pressure to veto this law, for the reasons given in my cable.

Also, I have received assurances from the new Chief of Staff in Austria, General Balmer, that everything possible will be done subsequently by the military to meet the wishes of the Jewish groups. In view of the fact, as indicated in my cable, that the American military will not pull out of Austria in 1947 and will probably remain during the better part of 1948, this assurance is of considerable value.

I am enclosing a copy of a memorandum on the proposed Austrian Third Restitution Law, dated 4 February 1947, prepared by Major Hyman in consultation with Dr. Nehemiah Robinson. This memorandum was submitted on 4 February 1947 to the Commanding General of the American forces in Austria.

With kind regards,

Sincerely yours,

(signed) RABBI PHILIP S. BERNSTEIN

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CABLE

5 March 1947

Kenen, American Jewish Conference

Discussed with American military authorities in Austria organization joint cable advising vetoing Second and Third Restitution Laws. After considerable work and study on Third Law Nehemiah Robinson and Hyman concluded that law as adopted by Parliament would be satisfactory if properly implemented. They left ^{with} military authorities memorandum containing suggestions that could be incorporated either in explanatory notes or in ordinance implementing the law. American military authorities promise to support most of recommendations in memorandum and to influence Austrian authorities to get recommendations adopted. Heirless and unclaimed property being considered in connection with Austrian treaty.

Memorandum mentioned above as well as full memorandum on minority group provisions in Austrian treaty follow. Received definite indications in Vienna that American troops will not withdraw from Austria in 1947. Hyman, Robinson, Austrian Jewish representatives and American military feel that present Austrian law is preferable to indefinite delay entailed in drafting of new law. Moreover since veto would have to be unanimous to be effective there is no assurance that American veto will block the law. Therefore my recommendation is that American authorities not be pressed to veto law.

Rabbi Philip S. Bernstein

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HEADQUARTERS
U. S. FORCES, EUROPEAN THEATER

YIVO 347.7
AJC (FAD 41-46)
Box 3 File 2
4 February 1947

SUBJECT: Comments on Proposed Austrian Third Restitution Law

TO: The Commanding General, United States Forces, Austria

1. This memorandum is submitted on behalf of Rabbi Philip S. Bernstein and at his request. Because of the urgency of the matter treated in this memorandum, he has asked me to submit it over my signature.

2. During the past week Dr. Nehemiah Robinson, representing the World Jewish Congress, the American Jewish Conference, the American Jewish Committee, the American Joint Distribution Committee, and the Jewish Agency for Palestine, and I, have made a study of the proposed Third Restitution Law and have participated in conferences on this law with both Austrian authorities and local military personnel. We have examined the final draft of the proposed law that, we are informed, will be submitted to the Parliament within a week, and are of the opinion that it represents a substantial improvement over the previous drafts submitted by the Austrian authorities. However, notwithstanding the improvement, the proposed draft falls short of what may reasonably be expected from a just restitution law.

3. The major objections to the proposed draft are three:

a. The law tends to favor the interests of the present possessors over those of the legal owners, by protecting even the mala fide possessors.

b. That law confers too much discretionary authority in the Restitution Commissions where there should be no room for discretion.

c. There is no adequate protection of the rights of Jewish victims.

4. The principal objections falling within these three categories are the following:

a. The definition of a bona fide purchaser, expressed in Paragraph 5 (1), is vague and would allow an interpretation resulting in the recognition of a large group of persons as bona fide possessors who should not enjoy that privilege.

b. As a consequence of 4 a, supra, such purchasers would be allowed to retain the profits from the dispossessed property.

c. Both mala fide as well as bona fide possessors are entitled to be compensated for their services rendered in the care and management of the dispossessed property.

d. The Restitution Commissions are granted the discretion to allow interest charges on sums to be repaid by the owner to mala fide as well as to bona fide purchasers. On the other hand, no such interest charges are allowed on the restitutable income from the property.

e. The draft provides for the repayment to mala fide as well as bona fide possessors of expenditures on the restituted property and regardless whether or not the expenditures have enhanced the value of the property.

f. Under the present draft the owner would be required to pay the purchase price he received regardless whether the property has deteriorated in value below the purchase price.

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g. The draft gives the Restitution Commissions too wide discretion to grant delays in the repayment of sums to the possessors. This discretion may be exercised in a manner as to result in great hardships to the persons entitled to restitution.

h. The draft grants the Restitution Commissions, in cases of hardship, the discretion to absolve the possessors, presumably the mala fide, of liability for the income received from the property.

i. Although Paragraph 6 provides that ^{the} owner shall be required to repay only such portion of the consideration over which he had the freedom of disposal, the same paragraph grants the Restitution Commissions certain discretion to order the refund of parts of the consideration that was confiscated.

j. The draft creates a presumption of confiscation in favor of those who were politically persecuted under National Socialism but does not explicitly mention those who were persecuted on racial or religious grounds.

k. There is no provision for mandatory representation of the Jewish victims on the Restitution Commissions in cases where Jewish claims are being adjudicated.

l. There is no provision nor assurance that the fund that will be created from the unclaimed and heirless property, formerly owned by Jews, will be employed for the benefit of that group.

5. In a conference with Minister Edward Ludwig, the Austrian member of Parliament who headed the sub-committee charged with the responsibility for drafting the Third Restitution Law, the Minister, on 3 February 1947, suggested that Dr. Robinson and I prepare a list of suggestions that would be incorporated into the explanatory notes accompanying the publication of the law or that could be embraced in the implementing ordinance to be published by the Ministry. Pursuant to this recommendation we prepared memoranda (Inclosures 1 and 2) which, by their very nature, could not deal with any basic change in the law proper. To the best of my knowledge no action has been taken on these recommendations and I have reason to believe that these recommendations will, in the main, not be considered unless the Austrian authorities are urged to do so by your headquarters.

RECOMMENDATION:

6. It is recognized that great strides have been made in the Third Restitution Law, due principally to the intervention on the part of members of your staff. However, it is believed that the present draft is still inadequate. It is, therefore, recommended that the objections made in paragraph 4 above as well as the recommendations contained in the attached memoranda be called to the attention of the appropriate Austrian Authorities with the view of having them change the present draft or, where proper, incorporate the suggestions in the explanatory notes or in the ordinance implementing the law.

(signed)

Abraham S. Hyman
ABRAHAM S. HYMAN,
Major JAGD
Legal Consultant to
Rabbi Philip S. Bernstein

2 Incls.:

- 1. Suggestion for explanatory remarks
- 2. Suggestion to enabling ordinance

340423

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

YIVO 347.7
AJC (FAD 41-46)
Box 3 File 2

American Legation Vienna,

November 13, 1946

Memorandum.

TO : Mr. Sydney L.W.MELLEN,
Political Division ,USACA

This despatch , which went into the Department about a month ago , is selfexplanatory. It has been cleared with the Legal Division , the Reparations, Deliveries and Restitution Division and the Austrian Ministry for Property Safeguarding and Economic Planning. After talking to Mr. Geier about the translation of the 2nd and 3rd Restitution Laws it was decided that you might like to read this despatch.

Laurence C. Frank
Consul General of the United States of
America.

Enclosure:
as stated.

340424

UNRESTRICTED.

American Legation Vienna,
October 14, 1946

No. 1868.

SUBJECT: Property Claims in the Light of Present
Austrian Restitution Legislation.

The Honorable
The Secretary of State,
Washington.

Sir:

I have the honor to refer to my despatch No. 1633, dated August 28, 1946, entitled "The Present Status of Austrian Restitution Legislation", and to report subsequent restitution legislation as follows:

No. 156. FEDERAL LAW OF JULY 26, 1946 ON THE
RESTITUTION OF CONFISCATED PROPERTY ADMINISTERED
BY THE FEDERATION OR THE FEDERAL LANDS (FIRST
RESTITUTION LAW.)

This law is the First Restitution Law, which was published in the Federal Law Gazette on September 13, 1946, and became effective September 14, 1946. The German text of the law and an English translation thereof are appended as Enclosure 1.

No. 167 EXECUTIVE ORDER OF THE FEDERAL MINISTRY
FOR PROPERTY SAFEGUARDING AND ECONOMIC PLANNING
IN COOPERATION WITH THE FEDERAL MINISTRIES CONCERNED
OF SEPTEMBER 15, 1946, IMPLEMENTING THE FIRST RESTI-
TUTION LAW!

This Executive Order which was passed in conjunction with the First Restitution Law, was published in the Federal Law Gazette on September 16, 1946, and became effective September 17, 1946. It is termed by the Legal Division of the United States Forces in Austria as the "Enabling Ordinance to the First Restitution Law", and contains further particulars with regard to the manner in which restitution claims shall be filed. The German Text of this order and an English translation thereof are appended as Enclosure No.2.

No. 10 LAW OF MAY 10, 1945, CONCERNING THE REGISTRATION
OF ARYANIZED PROPERTY OR OTHER PROPERTY TAKEN IN
CONNECTION WITH THE NATIONAL SOCIALIST ASSUMPTION OF
POWER.

340425

Despatch No. 1368
of October 14, 1946
Vienna, Austria

YIVO 347.7
AJC (FAD 41-46)
Box 3 File 2

The Law of May 10, 1945 is separate and distinct from the above laws. It pertains to the registration of aryanized and other properties seized in connection with the National Socialist assumption of power in Austria. This law was originally enacted by the Provisional Government of Austria, under Ex-Chancellor Renner (Federal Law Gazette No. 10 of May 1945) Although amended four times, the law did not go into practical effect until the enactment of an Executive Order which serves to implement the law by providing that all such property is to be reported within two months from the effective date of the Executive Order, and stipulating with which government agencies the reports shall be filed. The German text of the law as it was originally passed in May 1945, and of the four amendements thereto, and an English translation of the law in its amended form, are appended as Enclosure No. 3.

No. 166 EXECUTIVE ORDER OF THE FEDERAL MINISTRY FOR
PROPERTY SAFEGUARDING AND ECONOMIC PLANNING IN
COORDINATION WITH THE FEDERAL MINISTRIES CONCERNED
OF SEPTEMBER 15, 1946, IMPLEMENTING THE LAW CONCERNING
THE RECORDING OF ARYANIZED OR OTHER PROPERTY TAKEN AWAY IN
CONNECTION WITH THE NATIONAL SOCIALIST ASSUMPTION OF
POWER OF MAY 10, 1945, STATE LAW GAZETTE NO. 10
(REGISTRATION ORDER FOR PROPERTY OF WHICH THE OWNER
WAS DEPRIVED)

This is the Executive Order referred to above which implements the law of May 10, 1945. It was published in the Federal Law Gazette on September 16, 1946 and went into effect on September 17, 1946. The German text of this order and an English translation thereof are appended as Enclosure No. 4.

DISTINCTION BETWEEN FIRST RESTITUTION LAW
AND LAW OF MAY 10, 1945, AS AMENDED.

It is important to note the distinction between the First Restitution Law and the Law of May 10, 1945, hereinafter referred to as "Reporting Law". The law of May 10, 1945 as amended, concerns the reporting of property alienated for political or racial reasons by the persons now in possession of such property. It contains an optional provision whereby the wronged owners (deprived proprietors) may also report their losses, but these reports will in no manner constitute restitution claims.

The First Restitution Law governs the restitution of property which was taken away by the German Reich and is now being administered by Austrian Government agencies in accordance with the provisions of the Administration Transition Law of July 20, 1945 (as amended) Federal Law Gazette No. 94. Claims for the restitution of property in this category must be filed within one year from September 14, 1946, the effective date of the law, with the Finanzlandesdirektion, in whose district the property is located, or with the Government agency which is administering the property.

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A general extension of this period of limitation may be effected by order of the Ministry for Safeguarding Property and Economic Planning.

OPTIONAL FILING UNDER " REPORTING LAW".

It is stressed that the provisions of the Reporting law of May 10, 1945, as amended , concerning the registration of aryanized property or other property taken away in connection with the National Socialist assumption of power , are mandatory only as concerns those persons who are in possession of property ("holders of such property) which was taken away from a wronged owner (deprived proprietor) after March 13, 1938. Paragraph 6 of the Executive Order which was passed in conjunction with the Reporting Law states that the " deprived proprietors " and their representatives shall be at liberty to effect a declaration of property of the described kind although such declaration shall not be limited to the prescribed period . Confusion may result from this stipulation since the deprived proprietors who choose to make known their losses to the Austrian Government through the form prescribed by the Reporting Law and its executive Order may assume that the filing of that form will be recognized as a filing of a restitution claim. It must be understood that the reporting losses sustained in accordance with the provisions of the Reporting Law of May 10, 1945 , as amended , is in no way connected with the presentation of restitution claims under the First Restitution Law , and subsequent restitution legislation. The only purpose of the optional restitution clause in the Reporting Law is to allow the Austrian Government to check the completeness of the compulsory reporting by the holder of the alienated property and thereby to obtain a picture as accurate as possible of the extent of the property which will fall in the category of the forthcoming restitution laws. A copy of the form prescribed for reporting under the Law of May 10, 1945 as amended is attached as Enclosure No. 5 A supply of these forms has been sent by the Austrian Ministry for Safeguarding Property and Economic Planning to Dr. Ludwig Kleinwachter , the Austrian representative in Washington.

POSSIBLE MISUNDERSTANDING CONCERNING PREVIOUS
REPORTING

Section 8 of the Executive Order which implements the Reporting Law of May 10, 1945 as amended, specifically states that reports made outside of the period stipulated (two months after the effective date of the Executive Order) , at other offices , and in other than the prescribed form will not be recognized .As a temporary measure , until the Austrian Restitution Laws were promulgated , this office has been reporting property claims which were received from American citizens to the Austrian Ministry for Safeguarding Property and Economic Planning . These reports , according to the above provision, cannot be considered to have any value

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other than to have apprised the Austrian Government of the number and kind of claims which will be presented by American citizens. Since the Austrian Government , by the Executive Order to the Law of May 10, 1945 as amended , has prescribed the manner and form in which the deprived proprietor may report to the Austrian Government the extent of his claims to property in Austria , it is no longer considered incumbent upon this Legation to continue to report property claims to the Ministry for Safeguarding Property and Economic Planning.

Registration of property claims in accordance with the provisions of the Reporting Law must not be confused with the filing of restitution claims . Irrespective of previous reporting of property claims to the Reparations , Deliveries and Restitution Division of the United States Forces in Austria; the Property Control Sub-section , Headquarters , Vienna Area Command; this legation , or to any other office claimants will have to file their restitution claims with the competent Austrian Government agency in the manner stipulated by the First Restitution Law or contemplated restitution laws , as the case may be.

A misunderstanding also has arisen in connection with the ruling of the Treasury Department made in 1942 or 1943 which required that all American citizens file with the Federal Reserve Bank a form which set forth their foreign property holdings with more than \$ 500.- (TFR 500) It is not believed that the filing of this form was meant to constitute a legal claim to holdings abroad, but was ordered so that the United States Government would be able to estimate the foreign property owned by Americans for purposes of economic warfare. A number of persons who have recently acquired American citizenship are under the misapprehension that the United States Government , on basis of form TFR 500, will proffer a claim against the Austrian Government in their behalf.

LAND REGISTER ENTRIES NOT CONCLUSIVE.

In certain instances where property was taken over by the German Reich in accordance with the provisions of the Eleventh Executive order of the Reich Citizenship Law of November 25, 1941, by which property of emigrated Jews and deported Jews was declared forfeited in favor of the German Reich , no transfer of title was entered in the Land Register. Such omission may have been due either to oversight or pressure of work or other circumstances. In all cases where the house manager had to account for the receipts and expenditures to the Oberfinanzpraesident it is evident that the property was confiscated by the Reich. Therefore, the Austrian Government is taking the attitude that before restitution of these properties can be made restitution claims must be filed therefor under the First Restitution Law just as though the transfer of title had been made and the properties now stood in the name of the German Reich.

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of October 14, 1946,
Vienna, Austria

REQUIREMENTS FOR POWERS OF ATTORNEY .

Section 2 , paragraph 3 of the First Restitution Law specifically requires that authorized representatives may present restitution claims only if in possession of an authenticated power of attorney executed after April 27, 1945. In order to avoid any possible doubt concerning the official character of the notarization appearing on a power of attorney it would seem advisable to have the notary public's signature verified by the court from which he received his commission. It is considered important that persons now residing in the United States , who may have restitution claims which will fall either within the scope of the First Restitution Law or subsequent restitution Laws , designate representatives in Austria to prosecute these claims.

SEPARATE FILING OF CLAIMS

The restitution legislation may involve the filing of several claims on behalf of a single individual since each law will cover a different type of property, and as has been pointed out, under the First Restitution Law it is necessary to file claims for property located in several Finanzlandesdirektion. The Federal Ministry for Safeguarding Property and Economic Planning has agreed , as a courtesy to foreign claimants , to receive claims for forwarding to the competent Finanzlandesdirektion in cases where properties claimed by an individual are located in several Finanzlandesdirektion Districts, or if the claimant is unable to determine in which Finanzlandesdirektion District his property is located. It is desirable of course , that as far as possible claims be filed direct with the competent Finanzlandesdirektion in order to avoid extra handling and delay.

It is neither within the competence of this Legation, nor is the Legation equipped to handle the filing of individual restitution claims. In each instance it is advisable that the claimant designate attorneys , either at law or in fact , to prosecute his claim. Local attorneys will be able to give full attention to substantiating individual claims and will know with which Government agencies they should be filed.

It is desirable that a representative or attorney in fact , who is to be possessed of a power of attorney executed after April 27, 1945 be someone who comprehends the restitution laws and is capable of properly filing claims under these laws. From all standpoints it would be preferable if a lawyer were designated to make the proper representations.

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NEW LIST OF ATTORNEYS

It would not be physically possible for the eight or ten attorneys now standing on the Department's list of qualified attorneys in Vienna to handle all the restitution claims which must be presented however, and the Department and the Legation in Vienna possibly would be open to criticism if only a few attorneys were to share the profits which will accrue as fees for handling property claims. Therefore, a complete list of attorneys who have been approved by the Vienna , Graz , Linz , Salzburg , Klagenfurt , Innsbruck and Feldkirch Bar Associations is appended as Enclosure No. 6.

INSTRUCTIONS TO ISSUE TO INDIVIDUALS .

The Austrian Ministry for Safeguarding Property and Economic Planning is preparing a memorandum concerning the method of filing restitution claims under the First Restitution Law , as well as the method of reporting property under the Reporting Law of May 10, 1945, as amended. It is intended to send a copy of the memorandum to all persons who have called their property claims to the attention of this Legation, whether or not their claims fall within the provisions of the First Restitution Law. As future restitution laws are enacted , it is intended that similar memorandums of instruction will issue from this office to be sent direct to the persons concerned . It will be the responsibility of each individual to determine under which law his claims fall.

POLICY AND PUBLICITY.

It is hoped that the Department may be in a position to give wide publicity to the fact , that with the enactment by the Austrian Government of the above described legislation, the United States element will follow the policy of leaving all matter of internal restitution to be handled by the Austrian Government in accordance with Austrian legislation. Through the Foreign Property Holders' Association, facilities of the Department of Commerce, and in writing to individual claimants, it is suggested that the Department please stress the fact that no useful purpose will be served in directing restitution claims to this mission for presentation to the Austrian Government, but that claims for restitution of property or reparation of loss must be filed as provided for in the pertinent legislation of the Austrian Government direct with the competent Austrian Governmental agencies. This will best be accomplished through the local attorneys of the claimants. This office will, of course, render every possible facility and assistance to the designated agents of American citizens in Austria but it is not in a position to perform legal services for which competent local attorneys are available.

CLAIMS UNDER FUTURE LAWS.

Claimants whose cases do not clearly fall within the purview of the First Restitution Law should await the enactment of pertinent legislation before presentation of their claims to the Austrian Government.

Despatch No. 1868
of October 14, 1946,
Vienna, Austria

Losses resulting from political or racial discrimination but not falling within the scope of the First Restitution Law, for example, organized property, will constitute bona fide claims under future restitution laws, advice concerning which will be forwarded as each is enacted.

Respectfully yours ,

For the Charge d'Affaires:

Laurence C. Frank
Consul General of the United States
of America

File No. 350

Jensen :sb

To Department in
original and ozalid.

Enclosures:

1. First Restitution Law
2. Executive Order First Restitution Law
3. Law of May 10, 1945,
as amended.
4. Executive Order to Law
of May 10, 1945
5. Form prescribed by
"Reporting Law"
6. New List of Attorneys
(2 copies)

A true copy of the
signed original.

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Enclosure No.1.
to Despatch No.1888
of October 14,1946

Translation

Federal Law Gazette for the Republic of Austria, Year 1946
Issued September 13, 1946, Piece 47.

§§§ §§§§§§§§§§§§§§§§§§

No. 156 Federal Law of July 26, 1946 on the Restitution
of Confiscated Property Administered by the Federation or
the Federal Lands (First Restitution Law)

Sec.1.(1) Property which has been confiscated by the German Reich
in accordance with repealed laws and regulations enacted under
German Law (Section 1 par.(2) of the Juridical Transition Law)
or by administrative acts for reasons given in section 1 of the Law
of May 10, 1945, State Law Gazette No. 10 and which is now administe-
red by official agencies of the Federation or of the Federal lands
in accordance with the provisions of the Administration Transfer
Law , is to be restituted to the proprietors who have been deprived
of such property or to their heirs - hereafter called deprived
proprietors - according to the following regulations because of null-
ity of the former transfer of title.

(2) The property is to be restituted in its present condition; all
proceeds derived from such property which have accrued in the mean-
time and which are still in the country are likewise to be resti-
tuted.

(3) Real rights acquired by third persons after the confiscation
are void as far as the deprived proprietor does not acknowledge
them in the course of the procedure. Leases of indefinite term are
valid , leases of definite term are converted into such of indefinite
term.

(4) The deprived proprietor may prematurely sever leases of apart-
ments and shops of which the owner has been deprived , if required
for own purposes.

(5) Real rights entered in the Land Register on property mentioned
in Par.1. as security for Reichs Flight Tax and Jew Expiation Fine
in arrears are to be cancelled either ex offa or upon demand.

Sec.2.(1.). The Restitution claim shall be filed and evidenced by
the deprived proprietor at the Finanzlandesdirektion(Finance Depart-
ment of the Land) in whose administrative District the property is
situated ,or with the authority who is administering the property;
this has to be done within one year after the effective date of this
Federal Law.

This term may be extended generally by Order of the Federal Ministry for Property Safeguarding and Economic Planning. After the Expiration of this term the Federal Ministry for Property Safeguarding and Economic Planning has to take all property from which no restitution claim has been filed, into special custody.

(2) Among the heirs of law only wives and husbands, predecessors and descendants, brothers and sisters and the latter's children are entitled to claim restitution; other heirs at law only under the condition that they have lived in the same household with the deceased.

(3) Authorized representatives can file restitution claims only on basis of a power of attorney executed after April 27, 1945. The signature must be authenticated.

(4) A special law will designate who shall be authorized to demand restitution in cases where the deprived proprietor had been a juridical person who lost his juridical status according to measures of the kind mentioned in Sect. 1. and did not regain it.

Sect. 3. (1) The competent Finanzlandesdirektion decides by individual decree on the claims filed (Sect. 2) (1) If other authorities are administering the property they have to present the dossier to the Finanzlandesdirektion for decision.

(2) If the property is situated in the administrative district of several Finanzlandesdirektionen the Ministry of Property Safeguarding and Economic Planning decides which of them shall be competent to handle the matter and to issue the individual decree (Par. 1)

(3) In cases of rights entered in the Land Register the decree must state which encumbrances are to be cancelled (Sect. 1 (2)) because they are void.

(4) The general rules of civil law relating to the "conduct of affairs without instruction" shall apply to claims in respect of expenditures made on behalf of the alienated property. Such claims shall as far as possible be settled in the decree. In case such compensations are demanded the revenues of the property (Sect. 1. (2)) may be retained up to the amount of such compensation demands. Beyond this a lien may be entered in favor of the Republic of Austria, up to a maximum amount, as security for the demands resulting from the accounting.

(5) The individual restitution decree shall be deemed to be a public document on basis of which entries and annotations in the Land Register may be made.

Sect. 4 (1) For the procedure under the Federal Law of AVG (General Proceedings Law) is applicable.

(2) Appeal against a decision of the Finanzlandesdirektion to the Ministry for Property Safeguarding and Economic Planning is admissible; such appeal may also be made by the Finance Procurator who is a party to the case.

Sect. 5 (1) Claims for compensation which exceeds restitution (Sect.1.Par.1 and 2 cannot be presented until further legislation in this regard has been enacted.

Sect. 6.The legal proceedings , official acts , official decrees as well as applications , minutes, documents and certificates prompted by this Federal Law are not subject to any public fees.

Sect.7 The Federal Ministry for Property Safeguarding and Economic Planning in coordination with the Federal Ministries concerned is entrusted with the execution of this Federal Law.

Renner

Figl

Krauland

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Enclosure No. 2
To Despatch No. 1868
of October 14, 1946

Translation

Federal Law Gazette for the Republic of Austria,
Year 1946, Published September 16, 1946, Piece 49.

167. Executive Order of the Federal Ministry for Property
Safeguarding and Economic Planning in Coordination with the
Federal Ministries concerned of September 15, 1946, implementing
the First Restitution Law.

On basis of Section 7 of the Federal Law of July 26, 1946, Federal
Law Gazette No. 156 on the restitution of confiscated property
administered by the Federation of the Federal Lands (First Resti-
tution Law) - hereinafter referred to as "Law" - it is decreed
in coordination with the Federal Ministries concerned:

Section 1.

When restitution is made not only the revenues (assets)
that have accrued after April, 27, 1945, are to be restituted but
also those originating from former times as far as they are still
in this country. This also applies to sums delivered to a public
fiscal office.

Section 2.

(1) If the claim is presented by a legal representative
of the claimant the present residence of the claimant is to be
given and the authorization to do so evidenced.

(2) In case the deprived proprietor has died his heirs are autho-
rized to demand restitution only if the estate has been assigned
to them by the Probate court. If the deprived proprietor has
died and the estate has not yet been assigned to the heirs by the
court the claim has to be filed by the trustee of the estate or
by the person whom the court has entrusted with the administration
of the estate.

(3) A person is considered as having been accepted as a member of
the common household in the sense of Section 2, Par. 2 of the Law
if he or she has shared the apartment with the deprived proprietor.

(4) If the claimant is a juridic person the claim must be signed by
the representative organs authorized either by law or by the arti-
cles of the corporation or association in the form prescribed for
the signing of papers which shall bind such juridic person.
Societies when filing their claims have to prove their lawful
existence.

Section 3

(1) The demand for restitution has to contain the following
information:

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- 1) A description as detailed as possible of the property which is to be restituted;
- 2) Name and address of the proprietor on March 13, 1938, on the day of confiscation (forfeiture) the day the claim is filed.
- 3) The same information is to be given in regard to the claimant in case he was not the proprietor on the aforementioned dates.

(2) Documents serving to evidence the claim are to be appended to the application; especially in the case of real estate an extract from the Land Register has to be submitted showing all changes of title and liabilities since January 1, 1938.

Section 4

If the restitution claim was not filed at the Finanzlandesdirektion but at the authority administering the property the latter after having clarified the circumstances of the case has to refer its dossier as soon as possible with specific reference to the date under which the claim was filed to the competent Finanzlandesdirektion (Section 2.Par.1. and Section 3.Par.1. of the Law) for competent decision.

Krausland

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Enclosure No.3
to Despatch No. 1868
of October 14, 1946

Translation
of the Law No.10 of May 10, 1945, as amended.

State Law Gazette for the Republic of Austria, Year 1945, Published
May 28, 1945, Piece 3

10 Law of May 10, 1945 concerning the Registration of aryanized
property or other Property taken away in Connection with the
National Socialist Assumption of Power.

The Provisional State Government has resolved:

Section 1.

Subject of this law is the registering of property and
property rights which in connection with the National Socialist
assumption of power were taken away from the owners after March
13, 1938 for so-called racial or national or other reasons either
arbitrarily or on basis of laws or other regulations.

Section 2.

The holder of property and of property rights mentioned
in the Section 1 have to register them at the Federal Ministry
for Property Safeguarding and Economic Planning within a period
to be fixed by Executive Order.

Section 3.

Until the final decision concerning such property and
property rights the holders, provided no public administrators
have been appointed are obliged to carry on the administration
of such property and property rights with due commercial diligence.
Any change (increase or decrease) of property or property rights
surpassing the extent of normal business administration is to be
reported to the Ministry for Safeguarding Property and Economic
Planning.

Section 4.

All holders of property and property rights subject to
registration according to Section 2 are liable, from the day
this law has been published for any reduction of the property for
which they are culpable.

Section 5.

The Federal Ministry for Property Safeguarding and
Economic Planning may delegate by Executive Order to subordinate
authorities the powers conferred upon it by this law.

Section 6.

(1) The deliberate omission of registration or reporting
(Section 2) will be punished as a felony with imprisonment

from one to five years. In the event property or property rights of substantial value or of special economic importance are involved the punishment shall be severe imprisonment from five to ten Years.

(2) Whoever omits registration or reporting (Section 2) due to negligence will be punished for having committed a misdemeanor with ordinary jail from one to six months or in case of aggravating circumstances according to Par.1 with severe jail from one to six months.

(3) In addition to imprisonment according to Par.1 and 2 a fine up to an unlimited amount may be imposed.

Section 7

The execution of this law is entrusted to the Federal Ministry for Property Control and Economic Planning, in coordination with the Federal Ministries concerned.

Renner

Scherf	Figl	Zoplenig		
Bonner	Fischer	Geroe	Zimmermann	
Buchinger	Heinl	Korp	Boehm	Rasb

Enclosure No. 4
To Despatch No. 4
of October 14, 1946

Translation

Federal Law Gazette for the Republic of Austria, Year 1946, Issued
September 16, 1946, Piece 49.

166, Executive Order of the Federal Ministry
for Property Safeguarding and Economic
Planning in Coordination with the Federal
Ministries concerning of September 15, 1946,
implementing the law concerning the recording
of aryanized or other property taken away
in connection with the National Socialist
assumption of power of May 10, 1945, State Law
Gazette No. 10 (Registration Order for Property
of which the owner was deprived)

On basis of Section 7 of the Law of May 10, 1945, State Law Gazette
No. 10 as amended, on the recording of aryanized and other property
taken away in connection with the National Socialist assumption
of power it is hereby decreed in coordination with the Ministries
concerned:

Section 1. (1) There are to be reported all property or property
rights of which the proprietors (entitled persons) hereinafter
called "deprived proprietors" have been deprived after March 13,
1938, either arbitrarily or on basis of laws or other instructions
for so called racial, national or other reasons, in connection
with the National Socialist assumption of power.

(2) Any property which has been transferred since March 13, 1938
either with or without compensation to a third person, hereinafter
called "transferee" is subject to reporting in accordance with
this Executive Order, provided it cannot be presumed that the
transfer has been made by free accordance of will between the deprived
proprietor and the first "transferee". As far as reporting is con-
cerned such free accordance of will cannot be presumed especially
if the transfer has not been made by the deprived proprietor him-
self or by a person authorized by him or if there was a disproportion
between the price paid and the value or if it can be otherwise
presumed that the deprived proprietor was induced to transfer his
property through the National Socialist assumption of power.

(3) The report has to be made even though there are doubts concern-
ing the obligation to do so. The reasons for doubting such obli-
gation are to be mentioned.

(4) Exempt from reporting are household articles, the appraisal
value of which in March 1938 did not exceed the total of S 1000.-
In this connection, however the value of items acquired for one

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and the same household is to be added together even though they are at present kept in different places.

Section 2

(1) The reports have to be made within 6 months after this Executive Order becomes effective.

(2) If the person obliged to make the report does not acquire knowledge of the property which is to be reported until after the end of the said period he has to report within one month after acquiring such knowledge.

Section 3

(1) The report has to contain the following information:

1st Description of the property and its value on March 13, 1938.

2nd Name, citizenship and address of the deprived proprietor

(entitled person)

a) on March 13, 1938 and, if any respective changes have taken place, also

b) on the day on which the title to the property was transferred,

c) at the time the report is made.

If no such changes have taken place in regard to the deprived proprietor (entitled person) a statement that the name, citizenship and address have remained unchanged since March 13, 1938 suffices.

3rd Name, citizenship and address of transferee

a) on March 13, 1938 and, if any respective changes have taken place, also

b) on the day on which the title to the property was transferred,

c) on May 29, 1945,

d) at the time the report is made.

If no such changes have taken place in regard to the deprived proprietor (entitled person) a statement that name, citizenship and address have remained unchanged since March 13, 1938 suffices.

4th a) detailed description of the legal title for the transfer of the property.

b) value of the property at the time of the transfer.

c) Compensation, if any, with detailed information as to the form in which it has been made.

5th changes in the property between the time of transfer subject to reporting on May 29, 1945; investments, encumbrances and any legal contests are to be specially noted.

6th changes after May 29, 1945 surpassing the extent of normal management (sect. 3, last sentence of the Law)

7th Value of the day the report is made.

(2) if some of the required information cannot be furnished the reasons why have to be noted.

(3) The information demanded in Points 3 and 4 of Par. 1 is to be furnished also for all further transfer of title of such property.

Section 4

(1) The reporting is incumbent upon any holder of such property even if he had been at a previous date the owner (entitled person) If therefore, several persons should be obliged to report the property, it is sufficient that one of them does so.

(2) If a public administrator has been appointed the obligation to report rests with the latter. If the property is administered by a corporation established under public law the person in direct charge of the administration is obliged to report it.

Section 5.

(1) The report has to be made in triplicate to the District Administration Office which is competent. If there is more than one person on the part of the proprietor or on the part of the transferee an additional copy has to be submitted for each such person.

(2) The District Administration Office which is competent is the one in whose district the property to be reported was situated or where the deprived proprietor had his last legal residence. If neither of these two conditions are applicable the reporting has to be done with the District Administration Office in whose district the transferee resides.

(3) Reporting has to be written either on typewriter or in ink and has to be signed personally in ink by the person making the report (sect. 4)

Section 6 The deprived proprietors or their representatives are at liberty to make similar reports. This latter reporting is not limited to the period mentioned in Sect. 2

Section 7. Each report may include only such property as was and still is at present constituting one economic unit. As far as real estate is concerned which is situated in different court districts it has to be reported separately at all events.

Section 8 . Reports made outside of the aforementioned period (Sect. 2) at other offices or agencies, or in other form are not regarded as reports filed under the provisions of this law.

Section 9. The provisions relating to property apply appropriately to property rights.

Krauland



THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

YIVO 347.7
AJC (FAD 41-46)

This may be kept

Box 3 File 2

AMERICAN LEGATION

Vienna, Austria,

With reference to previous correspondence concerning your property interests in Austria, there is enclosed a general information sheet which has been prepared by the Austrian Ministry for Property Safeguarding and Economic Planning and which describes the present status of restitution legislation in Austria, and gives a brief picture of the intent of the Austrian Government with regard to the return to its rightful owners of such property and property rights still existent in Austria as were taken away during the National Socialist regime for so-called political and racial reasons. This memorandum was prepared at the suggestion of representatives of the American Legation and the Reparations, Deliveries and Restitution Division, United States Forces in Austria, in order that you may be able to determine for yourself whether your property claim is covered by the First Restitution Law or will be treated by future legislation.

In accordance with the enactment of the laws explained in the attached information sheet, the Austrian Government, through its Ministry for Property Control and Economic Planning, has assumed the responsibility for the protection and safeguarding of property, pending such time as a claim is filed and adjudicated in accordance with the

appropriate

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- 2 -

appropriate restitution law in each case. Therefore, although it is expected that the attached and subsequent memoranda will be sufficiently explanatory, should it be necessary for you to secure further information concerning your property claims in Austria, correspondence should be directed to the Austrian Ministry for Property Control and Economic Planning.

It should be noted that your restitution claim must be filed directly with the competent Austrian authority, either by you or your representative in Austria. This cannot be done by the Legation and it is suggested that you furnish an attorney or friend in Austria with a duly authenticated power of attorney so that he may be in a position to prosecute your claim without delay, and that you may fully benefit from Austrian Restitution Legislation.

Affidavits, letters, photostatic copies of papers establishing proof of ownership, or any other documents which may have been sent to the American Legation have been used as a basis of investigation and are now available in the files of the Legation for the use of your representative. It must be emphasized, however, that sending documents to the Legation or the Army authorities does not constitute the filing of a claim under the present or future restitution laws. You or your representative must file the claim with the appropriate Austrian Government office.

This office will continue to lend assistance to the prosecution of your claim when needed.

Very truly yours,

Ben D. Kimpel
Ben D. Kimpel
American Vice Consul

Enclosures:
as stated.

340443

(Memorandum of
June 1, 1947)

YIVO 347.7
AJC (FAD 41-46)
Box 3 File 2



THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

AMERICAN LEGATION

Vienna, Austria,

Agreeable to my memorandum of March 15, 1947, with which was transmitted "Allgemeines Merkblatt" and "Sondermerkblatt A and B" issued by the Austrian Ministry for Safeguarding Property and Economic Planning concerning the restitution program of the Austrian Government, I enclose herewith copies of "Sondermerkblatt C and D", also prepared by the Austrian Ministry for Safeguarding Property and Economic Planning pertaining to the Second and Third Restitution Laws which became effective on March 26, 1947. These information sheets give the texts of the laws and explain their operation.

The person whom you designate to file your restitution claim and to represent you at the hearings held by the Restitution Commissions must be in possession of a duly authenticated power of attorney executed after April 27, 1945. It will be necessary that he present with the claim appropriate data identifying the property which you lost and the manner in which you lost it.

Your representative may refer to the Land Register, the Commercial Register, and to the files of the former Jewish Property Control Office (Vermögensverkehrsstelle) which are now available at the Federal Ministry for Property Safeguarding and Economic Planning, to obtain the needed informations.

In substantiating your claim testimonial evidence should be presented, if possible, particularly if you belonged to the category of persons persecuted under

the

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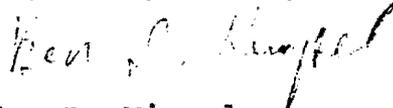
- 2 -

the Nazi regime for racial or political reasons, of the nature of the persecution or duress suffered.

Your especial attention is invited to the requirements mentioned in the information sheets concerning cases where the deprived proprietor has died and restitution is claimed by his heirs, should this be germane to your particular case.

You may be sure the Legation will be glad to assist your local representative by placing at his disposal your affidavits, proof of citizenship, if available, and any data obtained from previous investigations conducted in your behalf, and will otherwise assist him in so far as may be practicable and appropriate.

Very truly yours,



Ben D. Kimpel
American Vice Consul

Enclosure:
as stated.

340445

YIVO ARCHIVES
2K 347.7
Am. Jew. Committee
(FAS 41-46)
Box 22, File 2

(FAD=Foreign Affairs
Department)
Box 22 File 2

December 27, 1948

TO: Foreign Affairs Department

Subject: GERMAN TRIZONAL
CONSTITUTION & OCCUPATION STATUTE

FROM: Max Isenbergh

One of the purposes for which I recently went to Germany was to look into the question of the creation of the proposed trizonal state, with a view toward trying to make this event the occasion for comprehensive improvement of the restitution and indemnification laws in Western Germany. Fortunately, I was able to catch in Frankfurt Dr. Hans Simons, Chief of the Governmental Structures Branch of OMGUS and Deputy (to Dr. Litchfield) Liaison Officer with Germany for questions of the occupation statute, negotiations with the Parliamentary Council (constitutional convention) at Bonn, and changes in the boundaries of the Laender.

Dr. Simons, whom I had previously known only by reputation, appeared to me to deserve the high esteem he enjoys. As you may know, although an "Aryan," he chose to leave Germany in 1933 and became one of the mainstays of the New School for Social Research in New York. He told me that the Germans themselves participating in the deliberations at Bonn have no feeling that they should assume responsibility for the Nazi victimization of Jews and others. It is true that many of them were themselves in concentration camps and represent the small body of authentic resisters to Hitler. He pointed out also that they have become quite skilled in playing off the three occupying powers against each other and in taking advantage of the British and American Military Government attitude that the economic recovery of Germany comes first. Possibly, vigorous representations from Military Government that adequate restitution and indemnification are regarded by the occupiers as a requirement of the new state would influence them, but the fact is that there is no voice of this kind in OMGUS, and there is like indifference among the British and French.

I asked him whether it would be possible to enlist the aid of some German group by trying to convince them that decent restitution and indemnification measures originating with the Germans would pay for themselves in terms of winning good will. He thought that this might be possible, but when I asked him what German group to work with, he threw up his hands. (Since my return from Germany, Mr. Shuster and I have been in touch with Mr. Irving Brown, who is in Europe for the AF of L and who has very close associations with the Social Democratic Party (SPD). He gave us the names of SPD leaders most

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YIVO 347.7
AJC (FAD 41-46)
Box 22 File 2

likely to have sympathy for our aims, and Mr. Shuster and I plan to go to see them soon. Mr. Brown also assured us that he would vigorously press the question with them.)

I asked Dr. Simons whether the proposed occupation statute contained any provision on restitution and indemnification, and he told me that since the occupation statute is secret, he was not at liberty to discuss it with me. I learned later, however, that the occupation statute originally included a brief statement that restitution and indemnification would continue to be reserved for treatment by the occupying powers. I learned also that in view of the passage by the Laender of the American zone of an indemnification statute (discussed in an earlier memorandum), the words "and indemnification" were deleted from this statement.

In connection with the occupation statute, I asked Dr. Simons whether DPs would continue to be excluded from the jurisdiction of German courts. He told me that this was an open issue under the occupation statute in that the Americans are pressing for this exclusion but that "others," whom he refused to identify, thought that the time has come to permit the German courts to exercise jurisdiction over DPs.

In terms of what to do next, I emerge with the following conclusions:

1. On the German side, we are going to press as hard as we can to get the support of the SPD on the questions of restitution and indemnification. We recognize that there are no reasons to be optimistic on this issue, and that it would in any event be better to have the handling of these matters imposed from above by Military Government. Nevertheless, if we could get some indigenous voice to urge that the Germans themselves take responsibility for restitution and indemnification, that would probably impress Military Government a little and might reduce MG's resistance to imposing adequate measures on the Germans. More specifically, we shall seek to have a statement on the moral necessity for making restitution and indemnification included in the preambular phrases of the proposed constitution. A copy of the current version of the constitution is being sent to New York separately. As revisions are made, I shall try to send them to you.
2. It is essential that we arouse some force in the State Department in favor of extending the principles of the American restitution law to the other zones, and in favor of getting decent indemnification measures enacted in the American zone as well as in the others. In this connection, I learned in the course of conferring with the French Military Government people in Baden-Baden that the chiefs of the property divisions of the three zones are meeting in Frankfurt on December 28. While their meeting is for a different purpose, it affords a good occasion for the Americans to press the others on these issues. I have therefore telephoned to Mr. Rubin and have asked him to do his best to get a cable of instructions from the State Department to the American representatives at the meeting to press again for unification of restitution and indemnification measures. I propose myself to leave for Frankfurt tonight in the hope that by confronting the representatives of the three countries I may possibly exert an influence for the good.
3. As I recommended in another memorandum, a personal call on General Clay by our most impressive emissary or emissaries is much to be desired.

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4. On the question of protecting DPs from the possibility of being subjected to the jurisdiction of German courts, it is essential that the most vigorous representations be made to the State Department immediately. The occupation statute is under consideration right now in Washington, and we should not run the risk that in the absence of vocal pressure the State Department may retreat from the protective attitude toward DPs which the American occupation representatives have thus far championed.

The foregoing was dictated hurriedly since I wanted you to know as soon as possible the lines along which I am working. When I return from Germany, I shall prepare a more detailed memorandum, setting forth more fully the substantive issues I briefly outlined by telephone to Mr. Rubin.

oOo

Copy: Mr. Seymour Rubin

340448

December 24, 1948

TO: Foreign Affairs Department
FROM: Max Isenberg
SUBJECT: Indemnification law passed by German Laender in the American Zone.

I had a long discussion with Dr. Haber and Major Hyman on the draft indemnification law for the American zone. This draft has been passed by the parliamentary bodies of the Laender and is presently before General Clay for consideration. I regret that I have only one copy of the law here, and that it is too long to be copied immediately (44 pages). As soon as possible, I shall prepare and send along a summary.

Theoretically, General Clay may (1) approve the law; (2) reject it and send it back with recommended changes, in which case he will have to await further action by the Laender; (3) reject it and promulgate a Military Government law on indemnification, of the same status constitutionally as Law 59. Alternatives (2) and (3) could be combined. That is, General Clay could send the law back with recommended changes and a statement that if a satisfactory law is not passed by a specified date, a Military Government law will be promulgated. The third alternative or the combination of (2) and (3) would be a clear way of demonstrating to the Germans that if they do not assume the responsibility themselves of making adequate indemnification, it will be imposed upon them by the Americans. Unfortunately, in spite of the overwhelmingly strong moral basis for the last-mentioned alternatives, I am informed by Dr. Haber that General Clay cannot be prevailed upon to pursue them. In this connection, I feel there would be immeasurable value in having our biggest brass talk turkey to General Clay personally, and in any event, Mr. Rubin ought to begin propagandizing the State Department in Washington in the hope that some dent can be made upon the immoral indifference which Military Government now shows toward getting relief for the worst victims of our enemies.

At the present time, everything seems to be secondary to restoring Germany economically. Although 90,000,000 marks a month, for example, are being paid for unemployment relief in Berlin — the amount needed for a decent indemnification program would doubtless be smaller — when it comes to a question of making fractional amends to Jews, Military Government takes the position that the

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German economy cannot be forced to bear the economic burden.

I attach a copy of Dr. Haber's memorandum on the proposed bill. Personally, I feel that a more evident tone of indignation would be in order, but Dr. Haber and Major Hyman can certainly be relied upon to judge the best method of approaching their audience. On the merits, the memorandum correctly emphasizes the following major deficiencies in the present version: (1) Failure to include DPs residing in DP camps as beneficiaries; (2) Use of a conversion ratio which reduces benefits to one-tenth of the real value they should have; (3) Failure to transfer heirless claims to a successor organization; (4) Imposition of arbitrary ceilings upon certain categories of awards.

Major Hyman has assured me that when Dr. Haber and he discuss the bill with Dr. Litchfield — General Clay's man on such matters — I shall be invited to participate. Incidentally, while I was in Germany, I tried to get to Berlin to see General Clay, but the transportation difficulties entailed so much delay that I was forced to postpone the meeting for another time. I repeat the necessity of sending a gray-haired and august delegation to the General, but *faute de mieux*, I propose to talk to him myself on these and other questions.

I am convinced that there is no chance of getting Dr. Litchfield to recommend to General Clay that he should send the law back to the Laender with the threat that if they do not improve it, they will have an adequate law imposed upon them. It may even prove impossible to persuade Litchfield to recommend that the law be sent back with a mere request that it be corrected in accordance with Dr. Haber's memorandum. Possibly, Dr. Litchfield will merely consider the alternative of outright acceptance or outright rejection.

Many German Jewish leaders with whom I spoke while in Germany (for example, Epstein, Auerbach, Warschar) said that it would be much better to have no law than the indemnification law in its present form. They argue that the rights of the individual Jew under the general German law of tort are greater than those which the new law would create. In my innocence of the German legal system, I cannot have a confident judgment on this point. I should add that German Jews in the French zone and certain German Jewish lawyers in Paris have a different view. While recognizing that the present bill would give only a bare fraction of the relief it ought to, they feel it is far better than would be reliance on the general provisions of German law under which damages could be sought.

If the law is approved in its present form, the Germans will be able to point to the fact that they have made some provision for indemnification, and will probably make a lot of this as a good will gesture. I think they should not be allowed to get by this cheaply, and therefore tend to side with those who say no law is better than this. I realize, however, that my personal pique should not permit me to be influenced toward a decision which may be economically prejudicial to the interests of the claimants for indemnification. I hope that in our discussions with Dr. Litchfield we will never come to the point of having to make this difficult decision.

The relevance of the trizonal constitution, the occupation statute, and the general question of unification to the problem of indemnification, I shall discuss in another memorandum.

MI:RS

Enc.

c.c. - Seymour J. Rubin

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Y

December 10, 1948

YIVO 347.7
AJC (FAD 41-46)
Box 22 File 2

MEMORANDUM

SUBJECT: Comments on "Draft Law Concerning Redress
of National Socialist Wrongs (General Claims Law)"

TO: Mr. Edward H. Litchfield, Chairman
Legislation Review Board
Office of Military Government for Germany (U.S.)
Berlin
APO 742 US Army

I. GENERAL COMMENT

In view of the interest in the proposed law, both among the German Jews living in Germany and abroad, and among the Jewish displaced persons who were confined in concentration camps and ghettos under the Nazi regime, I met with representatives of these groups and solicited their views on this law. During these conferences the proposed legislation was discussed in great detail and a deliberate attempt was made to balance the equities between the potential claimants and the Laender. I am convinced that the proposed law falls far short of its apparent aim; namely, to indemnify those who sustained injury to person and property under National Socialism.

II. SPECIFIC OBJECTIONS

a. Relative to the substantive part of this law

1. Article 6. Foremost among the objections is exclusion of DPs residing in DP camps from the benefits of the law. Those close to the framers of the law stated that the reason the in-camp DPs were excluded is that this group allegedly enjoys extra-territoriality in Germany and therefore is not the responsibility of the Germans. Whatever the reasons may be, it strikes me as unconscionable to disregard the elementary rights of the pitifully small handful of people who survived the ordeals of concentration camp and ghetto life. There may be ample reason for the failure to provide for those who, having been interned during the Nazi regime, remained in or returned to the country of origin. As to these, it may be presumed that their rights will somehow be protected in a peace treaty, by way of reparations. However, the displaced persons by their mere residence in Germany on 1 January 1947 indicated clearly that they do not intend to return to their native countries. Unless their right to indemnification is recognized by this law, they will get no redress for the injuries they sustained or for the loss of liberty.

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By the terms of the Article under consideration, refugees assigned to the Laender are entitled to indemnification. It is difficult to understand the rationale for the preference given to such refugees as against in-Camp DPs. The DPs who were incarcerated in the concentration camps and ghettos enriched the Third Reich by their labor and whether on 1 January 1947 these DPs were in camps or out of camps in Germany, should not be the criterion for eligibility to compensation. As best it is impossible to put a monetary value on the loss of human liberty and certainly 150 DM for each completed month of detention is a mere pittance. In my opinion the exclusion of the in-camp DPs from the benefits of the law would be a serious reflection on the quality of the conscience of the German people. Moreover, to the extent that the United States authorities would sanction a law that failed to make provision for this group, the United States, would in my opinion, fall short in fulfilling its occupation mission. If the Laender comprising the U.S. Zone of occupation are going to be permitted to announce to the world that they have righted the wrongs of National Socialism, through a law that has our approval, they should at least be prepared to acknowledge their debt to the people who were interned and tortured in the concentration camps.

Recommendation

It is recommended that Article 6 be amended to extend the benefits of the law to the displaced persons residing in authorized IRO assembly centers.

2. Article 3 (1). This Article provides that monetary claims for the period prior to 21 June 1948 be computed in Reichsmarks and converted into Deutsche Marks at the ratio of 10:1. It is questionable whether this is an equitable provision even with respect to contract claims. For example, in the case of claims for loss of salary, pensions, insurance, etc., had the claimant received his funds as and when they became due, he would presumably have purchased goods for the RM's when they had substantial purchasing power in Germany. If the indemnification law is to be more than a mere token display of sympathy for the victims of National Socialism, it must endeavor, as far as possible, to put the claimant in status quo. The most equitable approach to the problem would be to supply the victim with the present purchasing power equal to the purchasing power of the monies and economic advantage he lost by reason of his persecution. However, since this will admittedly lead to a great deal of speculation, the groups interested in this law feel that the ratio of 10:3 as provided in an earlier draft of the law should prevail. This, they contend, would still result in substantial losses to the victims but would at least come closer to a fair settlement of their claims. What is true of contract claims is even more cogent when applied to claims of tort nature. There is no rule

of reason or law that would justify the computation of a tort claim on the basis that Article 3 (1) provides. An elementary rule of law is that the tortfeasor must pay the injured person the monetary value of the damages, computed as of the time the wrong was committed. This rule is predicated on the assumption that the economy is fairly stable and that even if the obligation is discharged at a later date, the money will have approximately the same purchasing power it had when the wrong was committed and would therefore place the claimant in status quo. Underlying this principle is the premise that the claimant must, when he is awarded damages, be in a position to repair or replace the damage or destroyed property. The Article under consideration ignores this principle completely and it does little more than throw a crumb to those whose property was either confiscated or destroyed in connection with their persecution under National Socialism.

Recommendation

It is recommended that Article 3 (1) be amended to provide for a ratio of 10:3 or in the alternative, that the section be entirely deleted, in which latter case the ordinary civil law pertaining to damages will prevail and the courts would have to decide each case on its merits.

3. Articles 8, 9, 10. These articles provide that the Laender shall succeed to all claims that are not asserted within the proper time limit, to claims in cases where the person entitled to indemnification died without leaving heirs of the first or second degree and to claims of dissolved juridical persons, institutions, property, or unincorporated associations which have no successor. The objection to this feature of the law is amply covered in the memoranda submitted to the Office of Military Government by Mr. Benjamin Ferencz, Director General of the Jewish Restitution Successor Organization, by the Jewish Agency for Palestine and by the American Joint Distribution Committee. I merely wish to invite attention to the following extract from the United States State, War and Navy Departments' Directive on U. S. objectives and basic policies in Germany:

"It is the policy of your government that persons and organizations deprived of their property as a result of National Socialism persecution should either have their property returned or be compensated therefor and that persons who suffered personal damage or injury through National Socialism persecution should receive indemnification in German currency.

With respect to heirless and unclaimed property subject to internal restitution you will designate appropriate successor organizations." MGR 23-2050 paragraph 17d.

Elementary justice requires that the heirless and unasserted claims to restitution shall not inure to the benefit of the Laender but that they should be made available for the rehabilitation of the survivors of the group to which the persecutees belonged. There is no reason for the distinction between the proposed law and MG Law 59 in this respect and what Law 59 stipulates relative to the devolution of the right to heirless, unasserted claims should be approved in this law.

Recommendation

It is recommended that Articles 8, 9, and 10 be amended to provide that heirless and unasserted claims become the property of duly recognized successor organizations as prescribed in Military Government Law 59.

4. Article 11. This Article provides that except for claims whose assignment is forbidden under Part II (Claims to annuities (Article 13 (s) 3) and claims for detention in concentration camps, etc. (Article 15 (5)), claims for restitution can only be transferred, pledged or attached with the approval of the restitution agency. While this provision has merit in that it affords protection to the claimant against the importunities of speculators, it actually constitutes an unwarranted limitation on the property right represented by the claims. In view of the peculiar nature of annuities, designed as they are to benefit and protect a special class, it is proper that such claims shall not be transferable. The annuities are in a sense gifts of the State to those dependent upon the deceased persecutee for their maintenance. It is therefore logical that such gifts should be available only to those who depend upon the annuities for their support. On the other hand, there is nothing in the nature of the claim for the loss of liberty that would indicate that it should not be subject to transfer. To deny such claimants the right to transfer is to deprive them of an important attribute of their right to indemnification.

Recommendation

In order to safeguard the claimants against their own gullibility or indiscretion, it is recommended that the right of free transfer of all claims shall exist as between the claimant and relatives in the

ascending scale and those in the descending scale up to and including the second degree, and as between the claimant and duly recognized successor organizations. As between all other parties (except in the case of annuities which as I indicated shall remain non-transferable and non-inheritable) the contemplated assignment should be allowed only with the approval of the restitution agencies.

5. Article 15 (2). This Article purports to define compensable "political imprisonment."

Recommendation

It is recommended that enforced hard labor be included among the forms of deprivation of liberty for which the persecutee would be compensated.

6. Article 17 (2). This Article provides for a maximum of 75,000 DM as the limit of the liability of the Laender for damage to the possessions and property of the persecutee. In the opinion of the representatives of the interested groups, this provision would in many instances be confiscatory. Every one who has given the proposed law any thought appreciates Germany's present economic plight and realizes that it cannot at this time or in the immediate future reimburse the persecutees in full for the loss they sustained. However, this is no reason for the failure to provide for a measure of damage, which will represent a true indemnification for such losses. Rather than set a limit on the liability of the Laender it would be equitable to provide for a longer period of amortization of the amount determined to be the claimant's loss.

Recommendation

It is recommended that the limit of 75,000 DM be deleted and in lieu thereof some formula be worked out for the discharge of the determined losses that will not unduly burden the German economy.

7. Article 22 (4) This article fixes 25,000 DM as the maximum liability of the Laender for loss of salary of civil servants dismissed in connection with their persecutions.

Recommendation

The comments and recommendation of Article 17 (2) supra are applicable to Article 22 (4).

8. Article 38. This Article establishes the priority of pay-

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ment under the law and places the claims for deprivation of liberty at the bottom of Class I. Moreover, it provides that claims in this category are to be honored only to the extent of 50% and not to exceed 3,000 DM, with the permission to pro-rate this sum for the calendar year 1949, and places the balance in Class II, which may be discharged in five years. It is my opinion that the claim for the loss of liberty through detention in concentration camps, ghettos, etc. should be given the highest priority after the discharge of the obligations for medical treatment of the persecutees and the annuities to the survivors of persecutees. In a sense the indemnification to the former inmates of the concentration camps, ghettos and prisons represents their loss of earnings during that period. It is not clear why this should not be given preference over pensions to civil servants and over payments to employees and workers not reemployed, especially since the latter claims are not those of people who were subjected to the torture and ordeals of life in the detention centers.

Recommendation.

It is recommended that total indemnification for deprivation of liberty be listed as paragraph 3 of Class I under Article 38 and that it be provided that the entire sums be discharged within the calendar year 1949.

9. Article 39 (3) This article provides that all payments within categories II and III shall be made "if and as far as the necessary funds become available by the equalization of financial burdens." It is urged by the interested parties that the indemnification law should in no way be related to the law for the equalization of burdens. In my opinion they justly feel that the racial, religious and political persecutees should not be required to bear the onus of being the principal beneficiaries of a tax as unpopular as the equalization burdens tax will be.

Recommendation.

It is recommended that all reference to the equalization of burdens tax as a source for the discharge of the indemnification claims be deleted from the law.

b. Relative to matters of procedure

In order to insure fairness in the implementation of the proposed law it is recommended that Article 49 and Article 67, paragraph 2a, b. and c, of Military Government Law 59 be incorporated into the proposed law.

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S U M M A R Y

Although all of the foregoing objections are deemed to be worthy of consideration, it is obvious that they are not of equal importance. At the present time there is uniform disappointment with the proposed law among the largest single group of the victims of National Socialism. The people who comprise this group believed that their patience in waiting three and one-half years for indemnification for their staggering losses would be rewarded with more than a law which they consider to be giving mere lip service to the idea of restitution.

I fully agree with this view and feel that the United States should not sanction the law in its present form. I particularly feel that way about objections 1, 2, 3, 6 and 7. The removal of these objections should be the minimum that the U.S. military authorities should insist upon, when the proposed law is re-referred to the Laenderrat.

WILLIAM HABER
Advisor on Jewish Affairs
to the Commander in Chief.

340457

INTERNATIONAL REFUGEE ORGANIZATION
U.S. ZONE, GERMANY

2525 - Ext. 134

7th November, 1948

TO: General Lucius D. Clay
Military Governor
Office of the Military Government for Germany (US)
APO 742 - U.S. Army
BERLIN

SUBJECT: General Claims Law

On 28th September, 1948, the Laenderrat in Stuttgart passed the "General Claims Law," which - after promulgation of the "Restitution Law" (MG Law No. 59) on 10th November, 1947, by OMGUS - was expected to solve the second part of the general problem of indemnification of political, racial and religious persecutees for sufferings, injuries and damages inflicted by the Nazi Regime.

It was generally understood from the very beginning that on the basis of the German Civil Code (BGB), these persons were legally entitled to compensation greatly exceeding that provided under the present Law. Nevertheless, the German State-Commissioners of Persecutees and IRO were prepared to agree to compromise which reduced to a minimum the scope of the Law even before it was submitted by the Drafting Committee to the Laenderrat General Assembly (Directorium). Finally, however, the Laenderrat, by effecting additional changes and modifications reduced the scope of the Law still further before accepting and finally passing the Law in its present form.

As part of the reduction of the scope of the Law, eligibility has been so restricted as to deny any compensation to persecutees living in IRO Assembly Centers. This is discussed in detail in the Appendix under "Eligibility." The basic discrimination against a group equally eligible, and to which the German Land Governments have the same obligations, is a matter which should receive particular attention in the OMGUS review of this Law.

According to official estimates made by the financial experts of the three Land Governments prior to the deletion of the paragraph concerning DP/Refugees living in Assembly Centers, the compensation of claims coming under Paragraph 38, Category I, which enjoy top priority (among other compensation for confinement) will require 150,000,000 DM (110 millions for Bavaria, 17 millions for Wuerttemberg-Baden, and 23 millions for Greater-Hesse). Proposals were submitted to the Laenderrat for the reduction of this figure to 77,000,000 DM or 55,000,000 DM, but it was generally agreed that such a cut would not be justified and that the original estimate of 150,000,000 DM could, and should, be met. This decision clearly indicates that funds were

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available to meet the settlement of claims under paragraph 38, category I ("Injuries on life and body compensation for confinement"). Therefore, the intention of the German authorities, which appears in various provisions of the law, to reduce or to postpone this basic and most essential objective by making reference to alleged financial difficulties, is a clear indication of lack of good faith and should be firmly rejected.

Now that the "General Claims Law," as passed by the Laenderrat, is being forwarded to the competent OMGUS authorities for final approval before its promulgation, this Headquarters, in an endeavor to fulfill the responsibilities vested in this Organization by the United Nations Organization, requests the revision of the final resolution of the Laenderrat in order that certain deficiencies of the law should be corrected, and to prevent a new discrimination against DP?Refugees, which the law in its present form would sanction.

The proposals and recommendations submitted in the attached Appendix are in essence based on the last draft of the law prepared and approved by the Drafting Committee, which was apparently acceptable, not only to the specialists of the Committee and to the ~~press~~ representatives of the three Laender, but also to the President and many representatives of the Parlamentarischer Rat of the Laenderrat. Considering the great importance of this problem, it is respectfully submitted that the recommendations and proposals of this Organization (Appendix I) should receive favorable consideration and action.

PHILIP E. RYAN
Chief of Operations

Encl.

340459

5 November 1948

SUBJECT: Indemnification or General Claims Law

TO : Property Division, OMG Hesse
Property Control Branch
APO 633; U.S.A.

Attn: Mr. Porter

1. This office has received a draft of the Indemnification or General Claims Law (Entschädigungsgesetz) recently submitted to Military Government for approval. Without desiring to impede in any way this important and necessary piece of legislation your attention is invited to certain apparent deficiencies in the law.

2. Article 9 of the Indemnification Law provides that where a person entitled to indemnification died, his heirs of the 1st and 2nd degree acquire the claim. It is the unfortunate truth that the extermination program against the Jews was so devastating that in most cases even potential heirs were liquidated. The result of the law as it now stands, therefore, is that the class which suffered most is compensated least. M.G. Law 59, in providing for a successor organization recognized the principle that no benefit should be derived from the fact that whole families rather than one person were exterminated and that an organization representative of the entire class should acquire the rights of those who died heirless, in order to use the assets for the relief and rehabilitation of survivors of that class. This principle was ignored in the Indemnification Law.

3. It is true that this new law provides that heirless claims revert to the Land for the benefit of a special indemnification fund, but the Land being liable for most claims will surely not sue itself. Nor would it be justifiable for the Land to use the claims of murdered Jews in order to fulfill its obligations towards other victims of Nazi persecution. For these reasons as well as for consistency in policy it is submitted that provision should be made to enable the JRSO to acquire those claims which would have been made by survivors if the extermination policy against the Jews had not succeeded.

4. Article 10 of the Indemnification Law provides that claims of associations or institutions may be enforced by other associations which in view of their composition and objectives may be regarded as successors of dissolved institutions. Article 8 of M.G. Law 59 on the other hand provides that the successor organization is designated by Military Government. This difference in the two laws will produce many situations whereby the successor recognized by Law 59 will hold the plot of land and still another successor recognized under the Indemnification Law will claim for damages to the structure on the land. This inconsistency will undoubtedly produce serious administrative difficulties.

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5. Article 11 of the law limits the category of persons to whom claims may be transferred. Claimants should be permitted to transfer their claims to a charitable successor organization rather than forfeiting their rights to the German state by their departure. In fact the proceeding draft, dated 26 August, did provide that claims could be freely transferred to a successor organization designated under M.G. Law 59, and this provision should be reinserted in the law.

6. Article 38 by providing that half of the compensation for confinement be paid over a five year period would serve to penalize those who desire to emigrate.

7. The law appears to be particularly defective in Article 6 concerning the eligibility of D.P. persecutees living in IRO assembly centers. This clear discrimination against those who have borne the heaviest burdens of Nazi persecution seems to be wholly without justification.

8. The law now provides that claims will be accounted in Deutsche Marks at the conversion rate of 10 to 1, ignoring the fact that the claim only comes into existence after the date of the law, and that the determination of damages can only be evaluated or assessed in accordance with present Deutsche Mark standards and not with Reichmark standards. This provision would therefore without reason reduce the claim to 1/10th of its value. Furthermore Article 3, Para. 1, provides that the amount may be increased if the money is available, thus indicating clearly that the amount is not controlled by the conversion law.

9. Since this organization may be materially affected by the terms of the Indemnification Law, we have taken the liberty of drawing your attention to these inadequacies in the hope that appropriate corrective action will be taken.

BENJAMIN B. FERENCZ
Director General

340461

SUBJECT: Indemnification or General Claims Law

Property Division, OWBSS
APO 742, F.O. Army

Attn: Mr. Porter

New File
Indemnification - U.S.
Zone - Germany

1. This office has received a draft of the Indemnification or General Claims Law (Entschadigungsgesetz) recently submitted to Military Government for approval. Without desiring to impede in any way this important and necessary piece of legislation your attention is invited to certain apparent deficiencies in the law.

2. Article 9 of the Indemnification Law provides that where a person entitled to indemnification died, his heirs of the 1st and 2nd degree acquire the claim. It is the unfortunate truth that the extermination program against the Jews was so devastating that in most cases even potential heirs were liquidated. The result of the law as it now stands, therefore, is that the class which suffered most is compensated least. U.S. Law 59, in providing for a successor organization recognized the principle that no benefit should be derived from the fact that whole families rather than one person were exterminated and that an organization representative of the entire class should acquire the rights of those who died heirless, in order to use the assets for the relief and rehabilitation of survivors of that class. This principle was ignored in the Indemnification Law.

3. It is true that this new law provides that heirless claims revert to the land for the benefit of a special indemnification fund, but the land being liable for most claims will surely not see itself. Nor would it be justifiable for the land to use the claims of murdered Jews in order to fulfill its obligations towards other victims of Nazi persecution. For these reasons as well as for consistency in policy it is suggested that provision should be made to enable the AJCC to acquire those claims which would have been made by survivors if the extermination policy against the Jews had not succeeded.

4. Article 10 of the Indemnification Law provides that claims of associations or institutions may be enforced by other associations which in view of their composition and objectives may be regarded as successors of dissolved institutions. Article 8 of U.S. Law 59 on the other hand provides that the successor organization is designated by Military Government. This difference in the two laws will produce many situations whereby the successor recognized by Law 59 will hold the plot of land and still another successor recognized under the Indemnification Law will claim for damages to the structure on the land. This inconsistency will undoubtedly produce serious administrative difficulties.

5. Article 11 of the law limits the category of persons to whom claims may be transferred. Claimants should be permitted to transfer their claims to a charitable successor organization rather than forfeiting their rights to the German state by their departure. In fact the preceding draft, dated 2 August, did provide that claims could be freely transferred to a successor organization designated under U.S. Law 59, and this provision should be reinserted in the law.

6. Article 78 by providing that half of the compensation for confinement be paid over a five year period would serve to penalize those who desire to emigrate.

7. The law appears to be particularly defective in Article 4 concerning the eligibility of P.O. persecuted living in the assembly centers. This clear discrimination against those who have borne the heaviest burdens of Nazi persecution seems to be wholly without justification.

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8. The law now provides that claims will be accounted in Deutsche Marks at the conversion rate of 10 to 1, ignoring the fact that the claim only comes into existence after the date of the law, and that the determination of damages can only be evaluated or assessed in accordance with present Deutsche Mark standards and not with Reichsmark standards. This provision would therefore without reason reduce the claim to 1/10th of its value. Furthermore article 3, Para. 1, provides that the amount may be increased if the money is available, thus indicating clearly that the amount is not controlled by the conversion law.

9. Since this organization may be materially affected by the terms of the Indemnification Law, we have taken the liberty of drawing your attention to these inadequacies in the hope that appropriate corrective action will be taken.

Benjamin S. Perencez
Director General

Mr. Seymour Rubin

November 2, 1948

Eugene Nevasi

General Claims Law in the United States Zone of Germany

This law is the last piece of legislation enacted (on September 28) by the German parliament of the U.S. zone, which probably will never meet again. While subject to military review, the necessary amendments would most probably have to be worked through a bi- or tri-zonal German legislation, which would mean incomparably tougher going.

The most obnoxious provision is that while the law provides for indemnification to victims of persecution in general, - for a satisfactory list of state-inflicted ills, for the various lengths of time these ills had been endured, - it simply and arbitrarily excludes from these benefits refugees and DP's who have lived in DP and refugee assembly centers on and after the cut-off date of January 1, 1947. This flagrantly unjust exception excludes practically all of our people from the operation of the law.

Another objectionable feature is that if a persecutee was killed in a Nazi concentration camp, neither his legal heirs, nor any successor organization has the right to claim succession to the benefits that ought to accrue under the law.

It is obvious to me that some of our military people have agreed in advance to this discriminatory piece of legislation in order to save money for the German economy.

The JDC has already approached the IRO in this matter. They indicated willingness to take the lead in protest. However, so far, no result is known here.

We propose to ask Dr. Haber to intercede with General Clay. The question is what could be done state-side to bolster the effect of these two intercessions.

Since, at least on paper, not only Jewish but all DP's are affected by the discriminatory provisions, perhaps joint action with the Protestant and Catholic DP and welfare agencies may be possible.

It would be important to have the benefit of your thinking. The final text of the law is not yet available here. The attached draft represents an earlier stage but it indicates the trend of the law.

340464

COPY

October 20, 1948 *file*

THE AMERICAN JEWISH COMMITTEE
386 FOURTH AVENUE NEW YORK 16, N. Y.

YIVO 347.7
AJC (FAD/41/46)
Box 22, File 2
Restitution - American Zone

MEMORANDUM

Abbreviations:

C: Conversion Law (U.S. Law 63)
R: Restitution Law (U.S. Law 59)
U.N.N.: United Nations National

RM: Reichsmark
DM: Deutsche Mark

I.

The Conversion Law provides that "in principle" credit balances in Reichsmark shall be converted at the ratio of 10 RM for 1 DM. (C 16, 1), provided that a ratio up to 10 RM for 2 DM may be allowed under German Regulations, to be approved by Military Government (C 16, 2). Since this conversion results in heavy losses for all RM creditors, an exemption was provided in favor of U.N.N., who may (C. 13, 4; 15):

either: refuse a payment tendered or made by a German debtor
or: object to the conversion by a declaration made to the debtor on or before October 20, 1948.

Refusal or objection make the claim "unenforceable" until a general settlement of the RM debts due to U.N.N. (C 15, 4); which means until after the conclusion of the Peace Treaty with Germany.

These provisions have given rise to a number of questions and complexities.

1) While the refusal to accept is without time limit, objections must be filed almost before the creditors could familiarize themselves with the law and its implications (originally the law provided for objections to be filed not later than August 21, 1948). Of course, the creditor may forego objections and wait for a tender from his German debtor; but he may also wish to settle his affairs at a time of his own choosing. Moreover, as we shall presently see, Conversion and Restitution are clearly interrelated; in the U.S. Zone claims for restitution may be filed until December 31, 1948; in the French actions for restitutions may be brought until May 10, 1949, while in the British Zone a Restitution Law has yet to be enacted.

It is suggested therefore that the time for declaring objections be coordinated with the time provided in the Restitution Laws for filing claims or starting actions.

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THE AMERICAN JEWISH COMMITTEE
386 FOURTH AVENUE NEW YORK 16, N. Y.

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2) In many cases the German debtor is the Deutsche Reich, or a defunct "Land" (f.i. claims for salaries or pensions by former Government employees, claims for the refund of discriminatory taxes, losses from discriminatory transfers of money,) To whom should be addressed?

It is suggested that a Trizonal Agency be designated for such purpose.

3) The privileged class of U.N.N. creditors is limited to those who had the status of a U.N.N. already on May 8, 1945 (cessation of hostilities in Europe) which excludes the majority of the "refugees from Central Europe," who suffered the most grievous losses from German hands. It may be believed that the restriction originates from a rule of the International Law, under which a country may not intercede on behalf of a claimant who was not a citizen at the time, when the claim was on its inception. But as long as this rule was already mitigated in favor of nationals of a friendly country and persons nationalized before May 8, 1945, it is hard to understand why the law discriminates against subsequent naturalizations, in particular since it is a well known fact that naturalizations were retarded during the war, and even suspended in several jurisdictions until after the cessation of hostilities. At the same time, an ex-Quisling will find his financial interests in Germany fully protected under the Conversion law.

Refugees from Italy and from Eastern Europe seem to be in a similar plight. While the Peace Treaties with the countries "confer the status of a U.N.N." to those who during the war were treated as enemies by their Home Governments, this recognition is not retroactive to May 8, 1945.

It is suggested therefore that the privilege of refusal and objection should be accorded to all those who were bona fide residents of one of the United Nations on May 8, 1945.

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II.

Other problems, similarly or even more complex, stem from the fact that the Conversion Law and the Restitution Law have not been properly coordinated. To the superficial observer no connection seems to exist between the two laws; the Conversion Law deals only with claims for money (C 13 ff), while the Restitution Law is limited to "identifiable property" (realty, businesses, mortgages, securities, etc.) and normally excludes money. (R 1 and 20). This, however, is mere theory; in practice both laws frequently cut across each other, and the lack of correlation and supplementation will be found a serious defect. Any claims for restitution of an identifiable property, such as realty can be converted into a claim for compensation in cash (R 16, 1), mortgages are collaterals for a monetary claim. Still more frequently claims for money are incidental to claims for restitution of property seized or sold under duress. While the claimant is entitled to the profits during the interim period (R 32, 1), he must refund the purchased price received of which he was free to dispose (R 44), compensate the restitutor for expenditures and work (R 34, 32, 2), whereby normally claim and counterclaim could be offset against each other.

1) A claimant, not a privileged U.N.N. national, having chosen compensation instead of restitution (because he did not care to join his former partners, or does not wish to own damaged property in a foreign country) may wish to reconsider on account of what he thinks a ruinous conversion. It is suggested that he ought to be empowered to change his plea.

2) A claimant, a privileged U.N.N. is confronted with a serious dilemma due to the fact that a refusal or objection would make the monetary claim "unenforceable" (C 15, 4). The result would be that his claim for compensation instead of restitution would have to be suspended, and that all cases for restitution involving refunds of purchase prices, profits and compensations would be at least most seriously affected, because no decision is possible in relation to these incidental monetary claims.

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It is suggested therefore that it should be provided that all restitution cases should be continued and decided by the restitution agencies, provided only that the determination of the money award for incidental claims and counterclaims be left to the future. It may be assumed that the local restitution courts and agencies are eminently better capable to decide claims under the Restitution Law than the agencies in charge of the Peace Treaty.

3) A claimant, privileged U.N.N., who has chosen compensation instead of restitution, should be given the right to change his plea, because he may prefer an early restitution to delayed compensation in cash. Such right should also lie where the German debtor tenders or makes payment during the pendency of the case.

4) A claimant, privileged U.N.N., can avoid the conversion ratio of 10 to 1, but not his German debtor in regard to his counterclaims for compensation. The result may be arbitrary and even not equitable. Provision should be made to straighten out such cases.

5) Only a limited number of claims or actions in restitution matters have been filed up to now. A claimant, a privileged U.N.N., would be confronted with a strange dilemma. If he files his claim with the restitution agencies, he faces rejection in toto or in part that his claim has become "unenforceable"; if he fails to file this claim, it may expire at the time provided in the zonal laws, and the Peace Treaty agencies may refuse to accept an unexpired claim. A proper adjustment should be provided.

6) Claims under the Restitution Laws are amply protected by seizures, sequestrations or trusteeships ordered by the Military Governments. Under ordinary concepts of the law, such orders must be vacated, if the claim becomes "unenforceable". Provision should be made that these orders remain in force at least wherever continued protection seems warranted.

7) In the realm of real estate liens, it should be noted that mortgages (Hypotheken) are covered by the Conversion, but not Mortgage bonds (pfandbriefe) although the latter are issued secured by mortgages. Furthermore the German law had developed a lien on realty where a personal debt or a personal debtor does not exist (Grundschild or land charge) and where consequently the applicability of the conversion law may be doubtful, unless properly amended. Another type - the Rentenschuld or Annuity - Charge, though no longer frequent, presents the complication that payment prior to June 21, 1948 are convertible - and subject to objection or refusal by a privileged U.N.N., while subsequent payments are payable in their full face value in DM.

YIV 20 347.7
Mr. Jew. CTR (200 41-46)
Box 22, File 3

(FAD=FOREIGN AFFAIRS
DEPARTMENT)

HEADQUARTERS

JEWISH RESTITUTION SUCCESSOR ORGANIZATION
APO 696 A

U. S. ARMY

Box 22 File 3

5 December 1949

RM/eta

Mr. Jerome S. Jacobson
American Joint Distribution Committee
119, rue St. Dominique
Paris (7^e)

Hq. JASO Paris Letter No. 121

Dear Jerry,

We received an invitation to attend the IRO conference on the General Claims Law on 29 November, and although I had not planned to attend, because we had a staff conference at the same time, your cable prompted us to advance our own conference and to proceed to Mittenwald in time to discuss the problem with the IRO.

The chairman at the conference was an American named Hinchcliffe, who had come from Geneva together with a Mr. E. Zytphen-Adelar, Legal Adviser at the Department of Protection, Mandate and Reparations IRO Hq., Geneva. Mr. A. de Linthay, Zone Legal Officer, and Mr. McDevitt, Director of the IRO Voluntary Societies, were also present together with about 50 DP lawyers representing various national groups. The conference was on a very low level indeed, since it was immediately apparent that the chairman had no idea what the General Claims Law was about or what work was required in Germany. He read an IRO directive which had been issued from Geneva and which stated that the IRO lawyers were not to handle the individual general claims cases. They would limit their assistance to general advice only. On the basis of a mimeographed memorandum also issued by the IRO Headquarters, Mr. Hinchcliffe stated that the IRO would handle all the claims here. When I asked him which IRO he was referring to, it appeared that he knew nothing more than what was contained in the mimeographed memorandum.

Albert Einstein and Dr. Erensbarger were also present and with their consent I stated the position of the Joint and the Jewish Agency. (I promised Al that I would assume full responsibility for any errors). I requested the IRO to assume responsibility for the handling of general claims cases but stated that the Joint and the Jewish Agency together were prepared to set up a special office under IRO jurisdiction to handle the Jewish claims. I had in mind a setting up of the IRO with IRO sanction and logistic support and without the requirements for any additional licences. The chairman was not in a position to take any stand on the matter.

The representatives of the various national groups (Mr. Halenki for the Ukrainians, Mr. Thomschewski for the Poles, etc.) all made statements requesting full IRO support in the handling of individual claims. They pointed out that they have no funds to help their national groups and that such assistance was essential.

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I left before the end of the meeting, but I am confident that nothing of any greater significance occurred. It seems to me that before the IRO can take a firm hand in this matter, it would be necessary to reverse the policy issued from Geneva. The arguments of the national groups support this reversal. If that can be done and IRO sanction given to the establishment of the new office under Joint and Jewish Agency control, as voluntary agencies, I think we will have a sound basis for handling the claims here. Whether this can in fact be achieved, I do not know and the answer can only be found in Geneva.

You may want to raise this matter with IRO Headquarters in order to determine their final attitude. You probably recall that Max Isenbergh spoke to Mr. Kingsley about this and Max indicated that Kingsley was favorably inclined.

In the event that IRO will not reverse its present stand, we are back where we were before.

With best regards.


BENJAMIN E. PERSOFF

CC: Mr. Eli Rock
Mr. S. Haber
Mr. Max Isenbergh

340471

Max Isenbergh
05 7000

October 27, 1949

Dear Ben:

I have just gotten back from Sweden where, among other things, I tried to do some business on heirless property. It would have been more fun to practice those coin tricks and possibly just as profitable, but I live in hopes.

While in Switzerland the week before last, I raised the question of IRO's running a legal aid service in connection with the General Claims Law. As Jerry Jacobsen may have told you, there is considerable support for the idea among staff. Indeed, it was thought that a letter to Mr. Kingsley by the four organizations (and others if they could be found) might be enough to put the project over. Jerry seemed to have reservations about the desirability of pressing for this, and unless they are resolved, I assume that the idea is not going to be promoted.

I am very grateful for the materials you and Saul have sent me about the procedure under the General Claims Law. I shall try not to burden you with further questions for a little while. Soon after our last conversation in Germany, I sent a discreet communication to Washington about the "constitutional" framework of your operations. The enclosed confidential memorandum is all that I got in reply. Although it seems to make no exciting revelations, I ask you to respect its confidential quality.

Each time I come back from a trip I find my new house more closely approaching a civilized degree of organization. We are already prepared to receive you and Gertrude and Carol Ann whenever you can make it. We hope it will be soon.

Sincerely,

Max Isenbergh
Counsel for European Operations

Benjamin B. Ferencz
Jewish Restitution Successor Organization
APO 696A
Nuremberg, Germany

mi:ss

340472

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U. S. DEPARTMENT OF JUSTICE

U. S. DEPARTMENT OF JUSTICE

YIVO 347.7
AJC (FAD 41-46)
Box 22 File 3

Indemnification
Kennedy
US Gov

WESTERN UNION TELEGRAM

NIGHT LETTER

July 21, 1949

HONORABLE DEAN ACHESON
SECRETARY OF STATE
DEPARTMENT OF STATE BUILDING
WASHINGTON, D.C.

JUL 28 1949

THE UNDERSIGNED RESPECTFULLY REQUEST OPPORTUNITY TO CALL YOUR ATTENTION TO SITUATION NOW EXISTING IN CONNECTION WITH PENDING GENERAL CLAIMS LAW, AMERICAN ZONE, GERMANY. ALTHOUGH WOULD PREFER OPPORTUNITY TO DISCUSS MATTER WITH YOU PERSONALLY, UNDERSTAND POSSIBILITY OF DEFINITIVE ACTION THIS QUESTION IMMINENT AND THEREFORE SETTING FORTH BELOW PRINCIPLE CONSIDERATIONS WHICH IN OUR OPINION MERIT EARLIEST POSSIBLE APPROVAL, GENERAL CLAIMS LAW. FIRST, THE PRINCIPLE OF INDEMNIFICATION TO PERSECUTEES FOR INJURIES AND DAMAGES OTHER THAN THOSE COVERED BY RESTITUTION LAWS WAS ENUNCIATED AS FAR BACK AS 1945 IN DIRECTIVES ISSUED TO U.S. MILITARY GOVERNMENT AND HAS CONSISTENTLY BEEN RECOGNIZED SINCE THEN AS A BASIC ELEMENT IN THE PROGRAM OF RIGHTING SOME OF THE WRONGS OF HITLER REGIME ON PERSECUTED MINORITIES. IN SPITE OF THIS CONSISTENT ESPOUSAL AND CONTINUOUS PREPARATION DISCUSSION NUMEROUS DRAFTS LAW STILL NOT PASSED FOUR YEARS AFTER END OF WAR. SECOND, PRIOR TO HIS DEPARTURE GENERAL CLAY HAD REJECTED A DRAFT PREPARED BY GERMAN LAENDERAT ON GROUND IT TOO WEAK IN CERTAIN RESPECTS AND HAD RETURNED IT WITH INSTRUCTIONS GERMANS MAKE STRENGTHENING CHANGES. LATTER THEN DID SO AND GENERAL CLAY THEREUPON INDICATED TO JEWISH REPRESENTATIVES HE APPROVED LAW BUT SINCE HE UNABLE IN SHORT TIME PRIOR DEPARTURE TO CARRY OUT MECHANICS OF INSURING FINAL ENACTMENT THIS WOULD BE DONE AFTER HIS DEPARTURE. THIRDLY, ACCORDING OUR INFORMATION LATTER STEPS NOT TAKEN BY GENERAL CLAY'S MILITARY SUCCESSOR AND ON THE CONTRARY, FOLLOWING DISCUSSIONS WITH BRITISH REPRESENTATIVES HE RETURNED LAW TO GERMANS INDICATING THAT IT SHOULD BE HANDLED BY LATER GERMAN REPUBLIC, THIS IN SPITE OF FACT THAT SIMILAR UNILATERAL LEGISLATION THIS FIELD ALREADY IN EXISTENCE BRITISH AND FRENCH ZONES. FOURTH, WE CONVINCED AND WE ARE INFORMED SAME OPINION PREVALENT IN GERMANY THAT THIS REFERRAL TO GERMAN REPUBLIC WILL RESULT IN INDEFINITE DELAY AND LIKELY DEATH OF LAW, THAT ALL EARLIER COMMITMENTS AND DIRECTIVES ON THE SUBJECT WILL THUS BE NULLIFIED AND THAT GERMAN GOVERNMENT WILL THEREBY EMERGE WITH THIS ELEMENTARY OBLIGATION TOWARDS THE INDIVIDUALS WHO SUFFERED BY FAR THE MOST AT THE HANDS OF HITLER, COMPLETELY IGNORED. FIFTH, ALTHOUGH LAW DOES NOT OFFER SUFFICIENT COMPENSATION TO THESE VICTIMS HITLER IT DOES CONTAIN MINIMUM BENEFITS AND ESTABLISHES THE PRINCIPLE OF INDEMNIFICATION WHILE AT THE SAME TIME CONFINING THE

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WESTERN UNION TELEGRAM

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GERMAN GOVERNMENT'S OBLIGATION TO MAKE PAYMENTS WITHIN THE LIMITS OF ITS FINANCIAL ABILITY TO DO SO. SIXTH, WISH TO EMPHASIZE THAT LAW AS WELL AS HAVING APPROVAL OF GENERAL CLAY WAS APPROVED BY THE LAENDERAT, REPRESENTING THE MINISTER-PRESIDENTS OF THE FOUR LAENDER UPON RECOMMENDATION OF THE PARLIAMENTARY COUNCIL WHICH IN FACT REPRESENTS THE POLITICAL PARTIES THROUGHOUT THE AMERICAN ZONE. SEVENTH, THUS FURTHER DELAY IN RECOGNITION AND IMPLEMENTATION OF INDEMNIFICATION PRINCIPLE COULD ONLY BE REGARDED AS REPUDIATION OF LONG-ESTABLISHED AMERICAN POLICY AS WELL AS DEPARTURE FROM TRADITIONAL AMERICAN CONCEPTS OF JUSTICE AND FAIR PLAY. ON EVERY GROUND - MORAL, LEGAL, EQUITABLE AND POLITICAL - URGE EARLIEST POSSIBLE APPROVAL GENERAL CLAIMS LAW.

340474

July 20, 1949

TO: American Jewish Committee
American Joint Distribution Committee
Jewish Agency for Palestine
World Jewish Congress

I am certain you will be interested in having a report on a conference that I attended in Berlin on July 18, at Mr. McCloy's invitation. I am deliberately giving you a "blow by blow" account of the discussion as it progressed because only in this way can I transmit to you the "feel" of the meeting, at which basic attitudes were revealed on the part of the participants. I do not know what the ultimate outcome on the General Claims Law will be but I am sure that you will agree with me that Mr. McCloy at least starts with a personal philosophy that is commendable. I hope that he sustains it during his service as High Commissioner.

Mr. McCloy opened the meeting with a statement that he wanted to discuss two problems: (1) the Economic Council Ordinance #71 (Equalization of War Burdens) and (2) The General Claims Law, for the US Zone, Germany.

Discussion on Economic Council Ordinance #71
(Equalization of War Burdens)

General Hays announced that he felt strongly that the ordinance should be approved as it now stands and that it would be a serious mistake to extend to the political, racial or religious persecutees, who, though residents of the United Nations, were not citizens of these countries on May 8, 1945. You will recall that the ordinance

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exempts from the tax UN nationals who had that status on May 8, 1945. Mr. McCloy revealed that the British were very much opposed to any further exemptions being granted and that he was certain they would not go along with any additional modification. This point of view was strongly supported by Mr. McCloy's staff, who emphasized that if the exemption requested by the Adviser on Jewish Affairs were granted, it would add to the difficulties of administering the law, in that men could reasonably differ on the issue as to who are persecutees. The point was further made that this ordinance should be regarded only as a stop-gap emergency measure, to meet certain immediate problems, and that when the major problem of the equalization of burdens is later treated, it could then be determined, what, if any, further liberalization should be recognized.

I elaborated on the argument contained in my memorandum on this subject which I had presented to General Hays on May 23, 1949, stressing the moral aspect of the question, and urged Mr. McCloy to approve the amendment requested. While he made no final decision, Mr. McCloy indicated that he was inclined to agree with his staff and that he did not feel he could recommend any further amendments to the ordinance. (See Note on Page 9)

Discussion on General Claims Law

Mr. McCloy called upon his advisers for their point of view in regard to the General Claims Law. Without exception they stated

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that they felt that the action of General Hays in returning the law to the German Laender with the recommendation that it be referred to the Western German State was the wisest course to be followed. In supporting this position General Hays made the following points:

1. That the law had never been passed by the legislatures of the different Laender and that it represented merely a declaration of policy on the part of the Ministers President.
2. That the Ministers President went far beyond their terms of reference in recommending that Military Government approve the Law.
3. That it would be a serious mistake on the part of the US to approve such a law for the US Zone, Germany when neither the French nor the British had approved such legislation for their respective zones.
4. That it would be most unwise for the US to endorse this law on the eve of the creation of a Western German State and that if such a law is to be passed, it should apply to all three zones and not merely to the US Zone.
5. That the application of such a law to the US Zone, Germany alone would impose an unfair financial burden on the Laender in the US Zone.

After the others had spoken in the same vein, Mr. McCloy called upon me. I stressed the fact that all of the arguments that had been advanced thus far had been known during Clay's administration,

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and yet, two days before he gave up his office, Clay had assured me (1) that the law would be approved, (2) that he had discussed this with General Hays and there was no need for concern about it, and (3) that the only reason Clay himself had not approved the law was that he had already delegated to General Hays his official responsibilities.

General Hays replied that Clay had not reviewed the Law with him nor had he, prior to his departure, made any recommendations to him with regard to its approval. Mr. McCloy stated that General Clay had discussed this subject with him and informed him, in Washington, that the law had his approval, and that, he, McCloy, should consider himself fortunate that at least one problem, restitution, had been solved.

I continued that when General Clay had been presented with the law, he returned it to the Laender with only one expressed criticism; namely, that it excluded in-camp DPs. Since the Laender had revised the proposed law in line with Clay's wishes, it would be unfortunate if the US authorities, at this late date, refused to approve it.

I added that the US had taken the lead in insisting that there be indemnification for the losses sustained by the victims of the Nazi regime and now that the German Laender themselves were willing to make some gesture in that direction, we certainly should not put obstacles in their path; that the Military Government's decision,

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in not approving the law would certainly evoke widespread protests and indignation, not only from the Jews in Germany but from Jews all over the world; that once the law was approved for the US Zone, it would be much easier to secure approval of similar action in the other zones, and that on the other hand, if the US Zone did not approve the law, there was little hope for action by the Western German State and certainly no possibility of getting the other zones to pass any legislation on this subject; and that I was certain that the referral of this law to the Western German State meant not only interminable delay but would in fact, kill the possibility of any action being taken.

At this point Mr. McCloy asked what were the chances for favorable action by the Western German State. To my utter amazement, General Hays admitted that he shared my doubt that the Western German State would adopt such legislation. From that point on McCloy took the initiative and exposed the weakness of Military Government's position. "The action taken", he argued, "meant that restitution was being permitted to go down the drain". He then asked whether restitution was one of the powers reserved to the occupying forces in the basic law of the Federal German Republic. When General Hays replied that he doubted whether internal restitution was within the reserve powers, and that in his opinion, jurisdiction over this matter was exclusively that of the Western German State or its Laender, Mr. McCloy reiterated that this was the best argument for approving the General Claims Law, since admittedly

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the course followed meant the abandonment of any hope that such a law would be passed.

General Hays stated that he felt that the approval of such a law by the Laender in the US Zone would saddle them with too great a financial burden and would, therefore, make it more difficult for them to rebuild their economy. Mr. McCloy replied that this was a budgetary argument, but the fact remains that if we followed this course, we would be abandoning the whole concept of restitution, insofar as the German responsibility was concerned. He elaborated, saying it was a serious mistake to permit the new Western German State to come into being, relieved of any financial debt or obligations, without the necessity of maintaining any military establishments, with the US pouring money into the country for economic rehabilitation, and relieved of any financial responsibility for the wrongs committed under the Nazi regime. If, as has been pointed out, there is little likelihood of the Western German State passing a restitution law, then, in fact, the new state would be starting out in an atmosphere of moral degradation.

He took this occasion to illustrate this point by relating a conversation that he had only a few days ago with a high ranking German official, who had said to him, "Mr. McCloy, I hope that in assuming your new post as High Commissioner, you will forget about the past and about the Auschwitzes and the Dachaus and think primarily in terms of a new and reborn Germany". Mr. McCloy replied, "I do not think the Germans ought ever to be permitted to forget

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the Auschwitzes and the other concentration camps, and that if they did, it would merely contribute to their moral degeneration."

I concluded by stating that I felt that the basic issue involved was whether or not the US authorities had any real conviction on the subject and if so, there was no alternative but to approve the General Claims Law, regardless of all the other considerations and arguments which had been advanced.

General Hays then stated that he felt it would be most unfortunate, after all the efforts which had been made by the US authorities to get the Germans to put their budget in order, to permit a law to be passed in the US Zone which would make it difficult, if not impossible, for the German Laender to meet their financial burdens. This, he maintained, would be another example of the Germans being permitted to pass a law without thinking through how they would provide for ultimate payment of the financial burdens involved. He also emphasized the point that he felt it was a mistake to permit only the four German Laender in the US Zone to pass such a law and that the least we should do would be to insist that the other seven Laender in the French and British Zones do likewise, so that such a law would be applicable to all of the western zones. He concluded his argument with the statement that regardless of Mr. McCloy's conviction on the subject, he would be unfair to himself and to the other two High Commissioners, if, as a matter of procedure, he did not consult with them before taking any action in the matter. Mr. McCloy agreed and indicated that he would consult

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with the British and the French High Commissioners before reaching a final decision.

Mr. McCloy then asked General Hays to read the letter which he had sent to the Laender in returning the law to them. Mr. McCloy's reaction to the letter was that General Hays had, to all intents and purposes, made it almost impossible to do anything about this without repudiating the action already taken and that this presented a very difficult situation. By way of conclusion, Mr. McCloy stated that while he was not making any decision, he wanted his advisers to know that he was very much inclined to approve the law, as submitted by the Laender, and that the only thing that troubled him was how he could take this action, without repudiating General Hays.

After the meeting was over, I had an opportunity to talk with McCloy privately and told him how tremendously impressed I was with the point of view that he expressed, and how very much I hoped he would be able to see his way clear to approve the Law. I stated further that I realized only too well the delicate position in which Mr. McCloy found himself but that I hoped Mr. McCloy's strong convictions on the moral principles involved would be the overriding consideration that would guide him in reaching his decision.

When I returned to Heidelberg, I wrote to Mr. McCloy, thanking him for his understanding and sympathetic attitude. A copy of the letter is attached herewith.

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On Tuesday, July 19, the day following the above conference, Mr. McCloy telephoned from Berlin and informed me that he had just talked to General Robertson, British High Commissioner and told him how eager he was to approve the General Claims Law for the US Zone. He reported that General Robertson expressed some concern and said that he would get in touch with his advisers and then report their reaction to Mr. McCloy. Mr. McCloy stated that he was still of the opinion that he had expressed at the meeting on July 18 and that unless serious resistance developed, he hoped to be able to follow his inclination to approve the law.

On Wednesday, July 20, I talked to McCloy to find out whether he had heard from General Robertson. He advised me that General Robertson had just telephoned him, that after consultation with his advisers, he had decided to refer the matter to the British Foreign Office for policy decision. Mr. McCloy again assured me that he would do everything in his power to see that favorable action is taken and promised to keep me fully advised on developments.

HARRY GREENSTEIN
Adviser on Jewish Affairs

Note: In the course of the discussion of the Equalization of Burdens Law, it was agreed by those present that this law would not apply to the JRSO and that this organization, as a charitable organization and as a US corporation, would be treated as a UN national that had that status on 8 May 1945. This is in accordance with interpretation from the State Department.

340483

REPORT OF FIRST CONFERENCE BETWEEN JOHN J. McCLOY,
NEWLY APPOINTED HIGH COMMISSIONER FOR GERMANY, AND
HARRY GREENSTEIN, ADVISER ON JEWISH AFFAIRS, AT
FRANKFURT, JULY 10, 1949

My appointment with Mr. McCloy was the last one on his calendar and he asked me to drive with him to his home at Bad Nauheim so that we could have a leisurely and relaxed discussion. It soon became apparent that Mr. McCloy was quite uninformed of the duties and functions of the Office of the Adviser on Jewish Affairs, and I accordingly took advantage of this opportunity to review with him how the office came into being, mentioned the names and the length of service of the previous advisers and described the present activities of this office.

He asked me how long I intended to remain in Germany. I replied that I expected to continue until October 1. He then wanted to know what were the possibilities of extending my stay. I replied this was completely out of the question. We then discussed the future of the office and I stated that unless the situation changed radically, it was my hope that the office could come to an end by December 31, 1949. We agreed to review this situation in greater detail at a later date.

Heidelberg Meeting July 31, 1949

I extended a cordial invitation to Mr. McCloy to attend the meeting I was calling in Heidelberg on Sunday, July 31 on "The Future of the Jewish Communities in Germany". He agreed that this would provide an excellent opportunity for him to meet the leaders of the Jewish communities and to express his point

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of view on the situation of the Jews in Germany. He must be in Bonn for an extremely important meeting on Saturday, July 30, but stated that I could count on his presence, provided no unforeseen developments in Bonn made it impossible for him to attend.

Liquidation of the Jewish DP Camps

On the basis of the present schedule which had been worked out, I advised Mr. McCloy that all of the Jewish DP camps should be closed by the end of September, with the exception of a few of the camps which must be retained for the physically disabled, for persons who were being processed for the US and those who were as yet undecided when and where they would emigrate. Mr. McCloy expressed his gratification that this sad chapter in Jewish history was now coming to an end.

General Claims Law

The rest of the conference was devoted to a discussion of the General Claims law. Mr. McCloy read very carefully the memorandum I submitted to him, copy of which is attached. He stated that he would like to approve the law but that he was in an embarrassing position in view of the fact that it had already been returned to the Chancellor, prior to his arrival, with the recommendation that it be referred to the Western German States for consideration and action. I mentioned that General Clay had given me his personal assurance two days before he left Germany that the law had his complete approval and that we need

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have no concern about it; also that some of the Luender had actually disbursed funds on the assumption that the law was certain to be approved by Military Government.

I stressed the fact that neither the Jews in Germany nor the Jews of the world would possibly be able to understand the refusal of the US authorities to approve this action taken by the German Luender in the US Zone, and that I was certain there would be widespread protests if the present position was maintained.

Again Mr. McCloy replied that he was completely sympathetic with my viewpoint but that he did not quite know how he could reverse the previous position taken by General Hays.

Mr. McCloy advised me that he would like to discuss this further with me in Berlin and asked me to hold myself in readiness to meet with him and his economic and financial advisers.

Mr. McCloy could not have been more sympathetic or understanding of the problems presented to him and I was very much impressed with his obvious desire to do everything he could for the Jewish displaced persons.

C O P Y

July 19, 1949

Dear Mr. McCloy:

I want you to know that I was tremendously impressed with the position you took at the meeting held in your Berlin office on July 19, in relation to the General Claims Law. In my judgment you put your finger on the fundamental issue involved when you stated that the referral of this law to the Federal German Republic may result either in delay or in no action whatsoever. I personally appreciate the delicate position in which you now find yourself, in view of the definitive action already taken by Military Government in returning the law to the Laenderrat. Nevertheless, after even more careful reflection, I am still of the opinion that while the embarrassment to you in reversing a decision may be temporary, the injustice to the victims of Nazism will be permanent if the present decision is permitted to stand.

Fundamentally, as you so very well put it, the issue is a moral one. I am confident that respect for the principle involved will be the overriding consideration that will guide you in reaching your conclusion on this important question.

I am deeply grateful for the opportunity you gave me to meet with you and your staff and to present in person what I had to say.

With kindest regards, I am

Sincerely,

HARRY GREENSTEIN
Adviser on Jewish Affairs

Mr. John H. McCloy
High Commissioner
US Zone, Germany
Berlin
APO 742 US Army

340487

16 July 1948

MEMORANDUM

SUBJECT: Proposed German General Claims Law for the US Zone, Germany

TO : Mr. John J. McCloy

1. I consider it of extreme importance that the background and history of the General Claims Law, and the implication of the non-approval by the US authorities be reviewed in order to determine whether the action taken by Military Government is sound.

History and Background of the Law:

2. From the end of hostilities to 20 September 1948, the question of the indemnification of those who had sustained economic losses, physical injury or loss of liberty as a result of action taken by the National Socialist regime, was under study of the Laender in the US Zone, Germany. During this period many drafts of remedial legislation were worked over and finally on 28 September 1948, the Laenderrat approved a draft which it submitted to Military Government for approval. With respect to one class of beneficiaries, namely, the Displaced Persons, this proposed law was a compromise between the extremes of excluding all of them, or including all of them. In essence, it provided that only the Displaced Persons living in the German economy could claim indemnification. Those living in camps were excluded. Every major organization that represented people who had a stake in this law, took exception to this provision. In addition to this glaring deficiency, these organizations felt that the proposed law was inadequate in at least two other major respects: (1) Despite the Military Government currency regulations, the proposed law provided that all claims for damages, including unliquidated claims, should be computed in Reichsmark and discharged in Deutsche Marks at the conversion rate of 10 - 1. (2) It accepted the principle of escheat with respect to heirless claims. These objections were advanced and thoroughly aired at a meeting of the Legislation Review Board, COMUS, held in Berlin on 18 and 19 January 1948.

3. The understanding reached at this meeting was ultimately reflected in a staff study prepared by the Legislation Review Board in which it was recommended that the proposed law be returned to the Laenderrat for further consideration, and that at the same time, the Laenderrat's attention be directed to the foregoing deficiencies and other shortcomings of lesser importance. It is my understanding that General Clay felt that the detailed action recommended by the staff study would be interpreted by the Laenderrat as an invasion of its legislative domain, and, therefore, the General merely directed that the proposed law be returned to the Laenderrat and that it be advised that he would not approve an indemnification law that excluded

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in-com Displaced Persons from the class of beneficiaries. This action was taken by General Clay on 15 March 1949.

4. Although the Laenderrat never received a copy of the staff study nor the letter that the study recommended should be sent to it, pointing out the inadequacies of the law, the Laenderrat managed, somehow, to learn of its contents and between 15 March 1949 and 28 April 1949 made an earnest attempt to reconcile its views with those expressed in the staff study. As a result, on 28 April 1949, the Laenderrat re-adopted its former draft with the following basic changes: (a) Thelincamp DP's were included as beneficiaries; (b) the Successor Organisation designated by Military Government, and entitled to claim property Military Government Law 59, could assert claims for damages to that property in place of the deceased claimant; (c) The conversion rate of all claims accruing prior to 21 June 1948 was fixed at 10 - 2. It is essential to point out that this draft of the law was determined to be satisfactory by every group that had interposed objections to the earlier draft of 28 September 1948.

5. On 5 May 1949 the draft of 28 April 1949 was submitted to Military Government for approval. Again the Legislation Review Board met and prepared a staff study, dated 1 June 1949, in which it recommended that the law be approved.

6. At this juncture it is relevant to mention that I discussed this matter with General Clay in Berlin on 29 April 1949, at which time he informed me that he had given the entire matter the most careful consideration and that the law had his complete approval. He added that in view of his imminent departure he could not formally approve the law. However, he assured me that he had communicated his endorsement of it to the appropriate military authorities and that I need have no concerns about its speedy approval.

7. I am informed that while the staff study prepared by the Legislation Review Board was being circulated for concurrence among the interested divisions in OMGUS, a draft copy of the law was, as a matter of form and courtesy, submitted to the other Western Occupation Powers for examination. It was then that the issue was formally raised by one of the occupying powers that the proposed law had profound tri-sonal implications, that it dealt with a problem that should be treated by the Federal Republic of Germany, and that it would be imprudent to approve the law as a sonal measure. I am further informed that this viewpoint has prevailed in OMGUS, and that recently the law was returned to the Laenderrat with comments in line with this conclusion.

Arguments Asserted Against the Proposed Draft and Comments Thereon.

8. Two principle arguments have, I understand, been advanced to justify the non-approval of the law, and the ultimate reference of

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the subject to the projected Parliament of the Federal Republic of Germany. The first of these arguments is that what was submitted to Military Government for approval was not in fact a law, but a mere statement of policy on the part of the Minister Presidents of the three Laender in the US Zone of Occupation. It is maintained that the Minister Presidents, constituted as the Laenderrat, did not have the requisite authority to legislate for their respective Laender in this field. I am inclined to differ with this view.

9. By its own terms, the draft law states that it was adopted "Pursuant to Articles II and III of Proclamation No. 4 of Military Government for Germany (US), dated 1 March 1947, and to Proclamation No. 2 of Military Government for Germany (US), dated 10 September 1945, after hearing the Parliamentary Advisory Council (representative of all the political parties in Germany)."

10. Article III of Proclamation 2, provides that "until such time as it is possible to establish democratic institutions, it will be sufficient for the validity of State Legislation that it be approved and promulgated by the Minister President". Proclamation 4 acknowledges the adoption of democratic constitutions by the three Laender and provides that the legislative, executive, and judicial powers of these Laender shall be discharged in accordance with their constitutions, subject to three specifically enumerated reservations. One of the three relates to powers reserved for Military Government in order to effectuate basic policies of occupation. With respect to the reserved field it is provided that "the authorities of Military Government and of the Minister Presidents thereunder continues in force as provided in Military Government Proclamation No. 2".

11. I am of the opinion that the subject matter of the proposed law presents a matter of basic policy of the US Military Government in Germany and it was, therefore, appropriate for the Minister Presidents, constituted as the Laenderrat, to adopt this legislation. On 15 July 1947, the US State, War and Navy Departments issued a directive on the US objectives and basic policies in Germany (NSR 28-2060). Among the provision which the Commanding General of the US Forces of Occupation in Germany was enjoined to implement was the following:

"It is the policy of your government that persons and organizations deprived of their property as a result of National Socialist persecution should have either their property returned, or be compensated therefore, and that persons who suffered personal damage or injury through National Socialist persecution should receive indemnification in German currency. (Par. 17d, NSR 28-2060)"

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12. As a matter of policy it might be decided that the subject law presents a problem that should be the concern of the Parliament of the Federal Republic of Germany. However, it is clear that in view of the above mentioned Proclamations and Directive, and view of Section 9, Article 74 of the Basic Law for the Federal Republic of Germany (in which is provided that concurrent legislative powers extend to "war damages and compensation (Wiedergutmachung)", the Laender had the legal right to propose the law and the Minister Presidents had the legal power to act on behalf of the Laender.

13. It is pertinent to mention that not only has the proposed law legal validity as a local measure but, from the standpoint of policy, it has already been determined in the British Zone that local legislation in this field is appropriate. Thus, on 11 February 1949 Land Nordrhein-Westfalen, with the approval of the British authorities, promulgated a law "relating to Compensation for Deprivation of Liberty for Political, Racial and Religious Reasons". I am informed that this month the other Laender in the British Zone adopted similar laws which are presently under consideration by the British.

14. The second argument advanced against the law is that it imposes too great a financial burden upon the Laender in the US Zone. I have not been able to secure an estimate of the financial implications of this measure. The Annex to the proposed law speaks of the additional burden of 180 million Deutsche Marks to Bavaria alone by virtue of the inclusion of in-camp DPs as beneficiaries. No estimates of the total burden is ventured. Even assuming that the law does impose a heavy burden upon the Laender in the US Zone, Germany, there are at least several reasons why that should not be a controlling factor in presently deferring the adoption of this legislation.

15. In the final analysis, governments, like individuals, must choose between competing demands on their income. I know of no claim on Germany's resources that has a higher priority than the claim that the proposed law seeks to honor. The critics of post-war Germany have indicted her for not taking a single voluntary step that reflects an admission of its indebtedness to its chief victims. This, it is logically urged, is the first prerequisite in the moral regeneration of Germany. Under the circumstances, it would seem most appropriate and in harmony with the spirit of our occupation policy to applaud and support the action taken by the Laenderstat.

16. Experience indicates that once a law is adopted that calls for the expenditure of funds, ways and means are found to raise the funds to discharge the obligation. The postponement of the adoption of the law, which its reference to the Federal Parliament will necessarily involve, will not improve the ability of the Laender in the US Zone to meet this obligation. In fact, it is as likely as not that its ability to discharge this obligation may be appreciably weakened by other commitments that it may make during the intervening

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period, and that the assets now earmarked for this purpose (confiscated property of former Nazis) will be dissipated for much less worthy objectives.

17. Finally, there is the "saving" clause in the law in which it is provided that all payments are contingent upon the availability of funds (Article 38, Sec (1), Article 39, Sec (3)).

Implications of its non-approval

18. I should like to list what I regard to be some of the consequences of the action taken by GOUSS in returning the law to the Landerrat without approving it:

a. First. the decision that the subject be referred to the Federal Parliament means an inevitable delay of not less than one or two years in the adoption of this important legislation. It would be compounding an injustice to cause the beneficiaries of the law to wait so long for the now overdue redress against the wrongs of National Socialism.

b. Second. the non-approval of the law plays into the hands of those in German government to whom the law is anathema. It may be expected that this element will take full advantage of the delay and will mobilize every effort to eventually block the adoption of the measure by the Republic.

c. Third. it must appear quixotic to the German authorities to find themselves in the position where they are first told that the US authorities would not approve the law until certain objections are removed and shortly thereafter are informed that the revised law which adequately meets the criticism cannot be approved. This sudden reversal of policy can only lead to bewilderment, if not confusion, in the minds of the German authorities as to what our policy really is. Unless there are compelling reasons in its favor, and I see none in this case, such reversal of policy, which must necessarily lessen our prestige with the German authorities, should not occur.

d. Fourth. on the strength of the tacit understanding that the law would be approved by Military Government if the specific objections were removed, all the three Laender started to pay the most needy of the beneficiaries certain sums on account of the amount due them under the law. Obviously, this will have to be stopped and the only impression that the persecutees can have is that the US authorities blocked the laudable efforts of the German officials who were beginning to honor the high priority claims in advance of the anticipated approval of the law by Military Government. This impression, not entirely unjustified, cannot raise our prestige either with the German officials or with the persecutee element in the German population who have looked to us for leadership in seeing that Germany's debts to the chief victims of National Socialism be discharged.

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6. Fifth. It is now more than four years after the end of hostilities. If the delay caused by the action taken by Military Government does not, in fact, result in the ultimate defeat of the measure, it will certainly cause the postponement of relief that the law affords by at least one or two years. Not only is this a grave injustice to the victims of National Socialism, but those victims who to this date have shown amazing patience, in seeing their interests totally neglected while Germany is honoring its debts to those who were wounded in the war and to the survivors of those who were killed, will deeply resent the unfair treatment. It is morally certain that when they realize the full impact of the decision of Military Government they will unite in raising their voices in protest against this act of injustice.

Conclusion

18. In view of the action already taken by Military Government, I recognize that the recall of the law for the purpose of approving it will, in a measure, involve some embarrassment. Nevertheless, I would urge that Military Government avoid maintaining a position that it would be difficult for it to defend in the forum of world opinion.

HARRY GREENSTEIN
Adviser on Jewish Affairs

HG/rs

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Indemnification

14.1

Paris Letter No. 3138

July 13, 1949

To: AJDC NEW YORK - Attention Mr. Eli Rock

From: AJDC PARIS - General Counsel

Re: Indemnification - Germany

Dear Eli:

I am enclosing copy of a letter of July 11, 1949, which Max Isenbergh sent to his New York Headquarters presenting his point of view of what considerations should be given on the indemnification question in Germany.

There is obviously no disagreement among any of us with Mr. Isenbergh's objectives, nor is there any room to quarrel with his position as an abstract matter. Restitution and indemnification are severable, and on all the grounds of justice and morality which can be marshalled they should be treated separately. The difficulty is, can we rely upon the three High Commissioners to do this, and probably more important, can we rely upon the German Laenderrat? These are the imponderables which are inherent and which Mr. Isenbergh concludes cannot be evaluated with confidence. Yet, such an evaluation, regardless of the conclusions which one achieves, is an essential prerequisite to deciding what position to take, namely whether to press for the approval of the indemnification law of the U.S. Zone, or seek a better one on a tri-zonal basis.

I have felt the need to resolve an attitude with respect to these imponderables. We know that both the French and British are not friendly to our position. The French have already made indemnification a derivative of the headless property fund. The British are on the fence but we cannot rely upon them. Hence, there is little prospect of getting an ideal indemnification law tri-sonally.

Can we get the U.S. unilaterally to compel a better indemnification law for the U.S. Zone as is suggested as the second alternative in Mr. Isenbergh's position? Hardly. The U.S. authorities have not rejected the present draft indemnification law for inadequacy, nor have they even considered doing so in this context, but are merely holding the law for tri-zonal consideration. On the other hand, no matter how remote a possible threat to the U.S. restitution law exists under the new tri-zonal authority, if the question of the use of restitution funds for indemnification receives any support or advocacy from the French and British, then the best we can hope for is a disagreement on the part of the U.S. authorities and the maintenance of the status quo in the U.S. Zone. I would prefer not to see us gamble on this issue but drive home the principle of the U.S. Zone

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as soon as possible that indemnification is a burden upon the German States and not upon the assets of victims of persecution. This principle at least is inherent in the indemnification law drafted for the U.S. Zone and would provide a strong buttress for supporting our position against the French and British.

Are we prejudiced in pressing for this law on the basis of this principle? I think not. The law in question is not bad because it denies indemnification but is questionable because it is indefinite in assuring payment of the indemnification. We would not then be prejudiced in having supported this law when we press at a later date that revision is necessary because the Germans are not carrying out the intent of this law. Under the present law a substantial number of claims are eligible for immediate payment and ought to receive payment upon its adoption.

Moreover, if we should avoid pressing for the immediate passage of this law and pursue Mr. Isenbergh's suggestion of seeking a better one which commits immediate full payment on a tri-zonal basis, we must at the same time be prepared to come to grips squarely with the question from the occupation authorities; where will the funds come from for immediate full indemnification? We cannot answer this except to say; it is Germany's problem.

I doubt that we can get anywhere even with the U.S. authorities, let aside the French and British, in saying that this claim must have priority over any other obligations of the German Government. It is not a matter of convincing ourselves that it should have priority but of convincing the occupation authorities. I do not think that the U.S. will agree in the light of its heavy contributions to Germany and its policy to resisting Communist infiltration there.

Thus, confronted with the morality of our position, assuming it is agreed to, and the inability to find the funds immediately, the best this dilemma could produce would be no action at all. We would not then be better off but would be obliged to retreat to an acceptance of this law which Mr. Isenbergh suggests as the third ultimate position.

Time unfortunately is urgent because it runs against us. There is less and less interest and sympathy in our problems even among our friends, while the anti-Semitism of the Germans grows bolder and more outspoken. We must, therefore, make the best of our situation, and we are obliged to move as fast as we can and take the most that we can get.

I thought it would be helpful in your discussions with the four organizations on this complex problem to give you these views.

Jerome J. Jacobson
General Counsel

JJJ/hf

Enc.

cc: M. Isenbergh
B. Ferencz
H. Greenstein
S. Rubin.

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YIVO 347.7
AJC (FAD 41-46)
Box 22 File 3

2 July 1949

Mr. Eli Rock
American Jewish Joint Distribution Committee
270 Madison Avenue
New York 16, New York

Hq. JRSO N.Y. Letter # 141

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

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Dear Eli:

On June 27th I went to see General Hays in order to verify the unofficial reports we had received concerning the Indemnification Law. General Hays who is a very able artillery officer, explained that the German legislation was not being approved because he felt that such matters should not be imposed by decree but should be left to German legislation. He was very definitely of the opinion that such matters should not be dealt with by a single zone but should be handled by the Federal Republic of Germany. He was very firm in his opinion and it was immediately apparent that any efforts on my part to change that conviction would be futile.

It is therefore clear that although for the past several years it has been the declared policy of the US that persons who suffered injury through Nazi persecution should receive indemnification the chances for that policy being carried out are practically nil. The United States State, War and Navy Department directive on US objectives and basic policies in Germany of 15 July 1947 specifically informed Military Government of that policy (see MG Regulation 23-2050) and has never been rescinded. For the past two years MG has strongly urged the Germans to enact legislation which would fulfil that US objective. The German Laenderrat enacted an Indemnification Law (called "General Claims Law" or "Law Concerning the Redress of National Socialist Wrongs") which was submitted to General Clay on 28 September 1948. The draft law was carefully studied by the Legal, Finance, Property and Civil Administration Divisions of OMGUS following which General Clay cabled the Laenderrat that he could not approve that law since he considered it discriminatory against DPs. The Laenderrat then revised the law to include DPs and certain benefits for the JRSO and to increase the rate of payments. As far as the JRSO was concerned it meant a claim against the German Laender for about 2-3 million DM. One paragraph of the draft law provided that payments would only be made insofar as funds were available.

We have received rumored reports that the British requested General Hays to table the law pending action by the German Republic. Although these rumors have not been officially confirmed it is my opinion that they are probably correct. The Civil Administration Division together

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with the OMGUS Control Office were further of the opinion that the German Laender did not have funds adequate to meet the obligations anticipated under the General Claims Law. In fact the Law itself provides the safety gap by limiting its liabilities to the availability of funds and in fact the German Laender have assumed obligations to pay things as pensions to Wehrmacht officers and their widows and other former Nazi officials. Furthermore, the basic law for the Federal Republic of Germany specifically makes war damages and compensation (Wiedergutmachung) a matter which may properly be legislated by the Laender. (Art. 74 Section 9).

Jerry Jacobson has pointed out a possibility that there may be an attempt to use restitution funds to meet the indemnification obligations. Although this is a possibility I personally consider it rather remote as far as the US Zone is concerned. It is hardly conceivable that Jewish funds would be taken from the Jews by the US government and used to discharge an obligation of the German State. The possibility is not nearly as remote for the other 2 zones. I share Jerry's view that there may be efforts to use the common fund for such purposes.

In any event I consider the present status of the Indemnification Law in the U.S. Zone as utterly disgraceful. I strongly urge that this matter be taken up with the Secretary of State, Congress and the Press.

I do not consider it advisable for me to make my first approach to Mr. McCloy in this matter, since the JRSO has only a comparatively slight interest in it. I think it would be better for our future relations if my first conference with him was merely an informative one.

There is no doubt in my mind that on the indemnification question the Jewish groups morally, legally, politically and logically have a very powerful case.

Sincerely yours,

/s/

BEN

BENJAMIN B. FERENCZ

CC:

Mr. H. Greenstein
Mr. M. Isenbergh
Mr. J. J. Jacobson
Mr. N. Robinson

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Paris Letter No. 3074

June 25, 1949

To: AJDC NEW YORK - Attention Mr. Eli Rock
From: AJDC PARIS - General Counsel
Re: U.S. Indemnification Law

You are doubtless advised of Moe Beckelman's discussion in Friday's telephone call regarding the urgent plea from Ferencz for Washington pressure on General Hayes to approve the indemnification law on his desk. The facts reported are these:

The Laender sent the proposed infemnification law to OMGUS on April 29. General Clay approved of it but in the wind up left it for General Hayes to take formal action. Ferencz reports that the British have definitely requested General Hayes to hold up issuance until the German Republic takes over on grounds that they may have an interest in the problem.

Moe advises me that the reaction in New York to Ferencz's request did not view the problem seriously, and the feeling was that General Hays delay was routine in connection with holding up numerous other matters until McCloy arrives. I view the problem more seriously and have called Ferencz to check his views which concur with these.

During the past week I have written you on June 22, Paris letter #3042, on June 23, Paris letter #3054, and on June 24, Paris letter #3060, all of which tie together and have a bearing on restitution problems generally. Summarizing the situation, this is how I view it.

While the British have passed a restitution law which would permit a Jewish successor organization to be created, we learn from various sources that the British in Germany are opposed to such a successor organization and are in favour of a single trust corporation embodying the common fund conception. This has been reported by the URO representative from London, by a conference had in the British Zone with Property Control people, and by a U.S. staff member working with the four Ministers conference in Paris.

You are already familiar with the pattern of French Zone Ordinance #120 establishing a common fund and French Zone Ordinance #164 which earmarks heirless property in the common fund for the indemnification of the claims of Nazi victims. The indemnification objective is clearly tied up in the common fund approach to dealing with heirless property.

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I need not belabour you with all of the things wrong with this approach. However, during the phase in which we felt that the British would emerge with a Jewish successor organization there was ample room to feel that if the French did not fall into line on their own initiative, then a means still existed through the action of a majority of the High Commissioners. I have already called your attention to the provision of Article 7 of the Occupation Statute which would make for codification of legislation based upon reserved powers. My feeling was that in the last analysis in dealing with the French we could rely upon Article 6 of the Tripartite Controls Agreement which provides that on all other matters action of the High Commissioners shall be by a majority vote. I have construed this to mean, and you will recall that in one of his letters Ferencz agrees, that two thirds of the High Commissioners could effect the unification of restitution laws for the three zones. At this juncton, with the British attitude what it is, I am seriously concerned lest the same majority be turned around so as to embarrass us in the U.S. Zone through a consolidation of the French and British position. I do not feel that the existence of the restitution law in the U.S. Zone as it now stands and the recognition accorded to JRSO serve as unassailable foundation upon which our position remains secured, if nowhere else at least in the U.S. Zone. As I see it, it would be possible to retain the form of the U.S. restitution law and JRSO as a functioning agency and still undermine our purposes and divert the assets of JRSO for indemnification.

Certainly an effective smokescreen can be built up by the British and French along these lines. They would argue that JRSO has received a substantial amount of heirless property, and the question then is for what use have they received this property. The answer naturally is for the relief, rehabilitation and resettlement of the surviving Jewish victims of Nazi persecution. To which the British could then reply: very well, the surviving number of victims is exceedingly small and the property should be used as well for the indemnification of those victims. The purpose of indemnification is likewise to provide relief and rehabilitation for the victims. Certainly, indemnification is not advocated in order to exact punitive damages nor as an attempt to measure suffering inflicted. No claims of any of the Allies are being considered as punitive claims or to impose a penalty, particularly since the three Powers, and especially the United States, are in fact pouring large sums of money into Germany.

I admit that this is not an airtight argument nor would I pretend that it has clear moral and equity strength, but I urge that this is an effective smokescreen argument, and when the problem arises in the context of Trizonia and an objective of consolidation among the Powers, the serious question is

/...

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-3-

how strongly will the United States resist these arguments from the British and French. I don't think we can answer this question quickly or with assurance because the answer, as I see it, depends upon many factors, such as the extent to which the U.S. would be willing or compelled to bargain this in exchange for some other proposition which it also favours; the interest not alone of the High Commissioner but of the other important authorities under the High Commissioner; the question whether or not the principles of equity to Jews will outweigh "the expedience" of attaining other objectives.

It is in the context of the larger pattern of things which can develop from the Trizonia arrangements emerging that I feel the urgency of pushing the U.S. Zone indemnification law across at this junction. If it has no other purpose it can then ensure the present status of law #59 and JRSO's function for the end results we contemplate. It establishes the principle of responsibility for indemnification in the German Laender themselves and therefore closes the avenue for a claim against Jewish property to meet this responsibility. In stiffening then the position and line of the U.S. authorities it can assure sufficient resistance to the British and French, so that, if we cannot turn the tide with either the British or the French, we can at least avoid codification and unification in this area of legislation.

I am at the same time exploring every possible avenue and trying to encourage every possible pressure to turn the tide in the French and British Zones before a finalization of the British attitude emerges in the form of a regulation under Article 9 providing for a single trust corporation.

In brief, I feel Ferencz's plea must be acted upon not for any gain that we may hope to find in an indemnification law but in order to protect what we already have achieved in the U.S. Zone.

I am certain that Isenbergh's views of this whole problem are the same as mine and those of Ferencz. Unfortunately, he left Paris right after our meeting with Grumbach yesterday and this call from Ferencz came later. He was uninformed and I am asking his office to pass the information along to him when he calls in.

Jerome J. Jacobson
General Counsel

JJJ/hf
cc. M.W. Beckelman
B. Ferencz
M. Isenbergh

340500

YIVO 347.7
AJC (FAD 41-46)
Box 22 File 3

HEADQUARTERS
JEWISH RESTITUTION SUCCESSOR ORGANIZATION
APO 696 A U. S. ARMY

*Indemnification
US Zone*

31 May 1949

JUN 8 1949

Mr. Max Isenbergh
American Jewish Committee
30 Rue La Botie
Paris, France

Dear Max:

Please add this item to your chapter on "Budgetary Priorities"
of the German Laender:

Extract from semi-monthly Military Government Report No. 113:

Re: Indem

"At their meeting on 30 April the three Western Military
Governors agreed, subject to restrictions to be developed
by the Military Security Board, that the Laender Governments
may pay maintenance grants to ex-Wehrmacht personnel."

The Indemnification Law passed by the Laenderrat in Stuttgart
makes payments contingent upon availability of funds.

This may be of interest to our people at home.

Sincerely yours,

Saul
SAUL KAGAN
Director

Plans and Operations Board

340501

Re: Indem

YIVO 347.7
AJC (FAD 41-46)
Box 22 File *transmit to Dearburgh*
Copy.

Box 22
File 3

as requested
pass
23 May 1949
Subclassification
necessary

Mr. Shepherd Morgan
Finance Adviser
to the Military Governor
and Commander-in-Chief
APO 757, US Army.

Dear Mr. Morgan:

It has just been called to our attention that the Bizonal Economic Council is about to submit the first ordinance on the Equalization of War Burdens (Economic Council Ordinance # 71) to the Bipartite Board for its final approval. This ordinance may incorporate the instructions of the US and UK Military Governors dated 29 April 1949, one of which requires the exemption of United Nations nationals and companies from the burdens of that law, provided that the said individuals and companies enjoyed UN status on 8 May 1945.

The effect of this date if ultimately approved would be to exclude from the exemption thousands of victims of Nazi persecution who were forced to leave Germany for racial, religious or political reasons, and who though residents of the United Nations, were not citizens of those countries on 8 May 1945. In many countries naturalization proceedings were suspended during the war and only after 8 May 1945 could these refugees have become citizens of their adopted countries.

It is common knowledge that, if property was owned by a persecutee in Germany, it was confiscated or had to be sold under duress. The restitution laws enacted in the US and British Zones seek to return such properties to their rightful owners or their successors. US Military Government has designated the Jewish Restitution Successor Organization to receive the heirless Jewish assets. These measures though most laudable cannot be expected to restore more than a small fraction of the values lost. Yet the proposed ordinance would serve to even further decrease assets so recovered.

The United States and the United Kingdom in the proposed ordinance recognize that it would be morally indefensible to require United Nations nationals to compensate the Germans for burdens arising out of war damages and the repercussions of the war. An exception was therefore made specifically exempting the property of citizens of countries having fought against Nazi Germany. Yet for purposes of this special tax a large number of persecutees are being treated as Germans rather than as the Allies with whom they fought against their Nazi oppressors.

340502

- 2 -

Previous Control Council legislation as well as laws and regulations in the United States and the United Kingdom have recognized the special status of victims of Nazi persecution. Control Council Law # 5 of 30 October 1945 provides that external assets of German nationals who were deprived of full rights of German citizenship are to be exempted from vesting. Public Law # 671 enacted by the United States Congress in 1946 enables political and racial persecutees, even though resident in Germany, to secure the release of their assets in the United States. It is apparent, therefore, that the present draft of the Equalization of Burdens ordinance fails to accept the principle recognized in other US and UK legislation, namely that the assets of victims of Nazi persecution are not to be classified and treated in the same manner as those of other German nationals.

The moral, legal and factual circumstances recommend a revision of the present draft, to specifically exclude from this taxation at least those victims of Nazi persecution and their successors who were deprived of the rights of German citizenship.

Sincerely yours,

BENJAMIN B. FRENCH
Director General

Phone: Muernberg 26291

340503

THE



AMERICAN JEWISH COMMITTEE

386 FOURTH AVENUE, NEW YORK 16, N. Y. Cable Address, "WISHCOM, NEW YORK"

Telephone MURRAY HILL 5-0181

YIVO 347.7
AJC (FAD 41-46)
Box 22 File 3
Handwritten notes and signatures

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IRVING M. ENGEL, *Chairman Executive Committee*
VICTOR S. RIESENFELD, *Chairman Administrative Committee*
ALBERT H. LIEBERMAN, *Treasurer*
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ALAN M. STROOCK, *New York, Vice-President*
FRANK L. SULZBERGER, *Chicago, Vice-President*

May 4, 1949

Dear Moose:

Sy was right in calling your memorandum on the problem of indemnification in the U.S. Zone impressive. It gives us, indeed, a workmanlike technical basis for an attempt to convert Washington to the idea of enactment in the form of a military law. But beyond that, nothing seems to be able today to change the impact of the prevailing political constellation. In that respect, the obstacles are formidable here in the way of achieving the buck-passing suggestion of your recent important interlocutor to try our luck in Washington. The fact is that we are just as much out of luck at the present time here as with COMGUS. In the days of Bonn, the idea of new military zonal laws on highly controversial subjects like this, is being considered here as rather anachronistic.

I must, therefore, agree with the conclusion of Sy's letter to you of April 21, that precious little can be done in this matter in Washington at the present time, and there is little likelihood that the new Western German situation would offer us much better opportunities in this respect.

I wonder what is behind the enclosed mysterious dispatch by JTA of April 28. We haven't heard anything here about this alleged new German law which, if the confusing dispatch meant anything, would provide indemnification also to DPs, which may mean camp inmates.

I am looking forward with great interest to your detailed news on your Austrian discussions, and to your suggestions with regard to the intended public campaign. I agree with you that the situation is fast becoming ripe for a more outspoken effort. It seems that there is little to lose.

As ever,

Eugene
Eugène Hevesi

Mr. Max Isenbergh
American Jewish Committee
30, rue La Boétie
Paris 8e, France

340504

Germany - Indemnification
U.S. Zone

Box 22
File 3

To: Dr. Eugene Nevessl

Date: May 3, 1949

From: Seymour J. Rubin

Subject: Germany - Indemnification

On May 2 I had lengthy conversations with Messrs. Wesley Haroldson, Henry Koch and George Baker of the Office of German Affairs in the Department of State and with Mr. Leonard Meeker of the Legal Adviser's Office.

In these conversations I dealt with the legal problem raised by General Clay in his conversations with Mr. Isenbergh and with General Clay's "legal" position that he did not have authority to issue a military government indemnification law. All of these gentlemen agreed with me that there was no basis for this position, but all of them also raised serious policy objections to the issuance of a military government law on the subject of indemnification.

I explained that I did not wish to argue the merits of the matter in detail at this time but that I did feel that it was desirable to clear the illusory issues out of the way so that the matter could be decided on the basis of the real issue; that is, the policy issue. I suggested that it might be possible for the Department to write me a letter clearing the legal issue out of the way. In response to the suggestion that such a letter would have to be cleared with the military and with General Clay, I suggested that I would write a letter making no reference to the previous conversations in Germany. The Department could then write me without it being necessary to clear with Clay or with the Department of the Army and could say that there were no legal problems involved, that there were policy problems and that these policy problems might be explored either with the Department, with the Department of the Army or with General Clay.

It would be realized by the Department, of course, that such a letter might be used by the Committee in connection with any further discussions, but it seemed to me that there should be no difficulty with the letter since the policy questions would be postponed and the legal issue was a clear one. It was agreed that this procedure would be followed and I propose to hand Mr. Koch a letter within the next day or so.

cc: Mr. Wolfsohn
Mr. Isenbergh

340505

HEADQUARTERS
EUROPEAN COMMAND
Office of the Commander in Chief
Civil Affairs Division
APO 403, c/o PM, US Army

*Indemnification
Germany*

January 25, 1949

Dear Max:

Thanks for your letter of January 12 and the enclosures.

Although you have not invited my comments, I would say that you appear to be doing an outstanding piece of work on behalf of the Committee. If the Committee will be unsuccessful in bringing its influence to bear upon the problems falling within the sphere of your activity, it certainly will not be because of any lack of information on its part. Your reports are both lucid and complete. I want you to continue to share these reports with our office.

Last week I was in Berlin where on the 18th and 19th I attended a conference of the Legislative Review Board, at which the proposed German indemnification law was considered. I tried to have an invitation extended to you but the reaction of the Review Board was that the meeting was not to be an "open forum". The only people who attended are representatives of the various branches of Military Government and EUCOM, whose official duties were in some way related to the subject matter of the proposed law.

I am sure that you will be interested in the results that were achieved at this conference. By way of introduction I want to say that except for the objections urged by our office, the other criticism was relatively of minor importance. I found that for nearly two solid days I had to lead the attack on the proposed law. I hasten to add however, that among the dozen men who attended this meeting, there were several who were sympathetically predisposed to our position and were of great help to us.

The conference wound up with the following recommendations:

- a. The law was unacceptable in its present form.
- b. The chief but by no means the only deficiencies in the law was that it: (1) excluded in-camp DPs from its benefits; (2) made no provision for a successor organization; (3) provided for an inadequate rate of conversion as applied to all claims.

Specifically, the Board would recommend to General Clay that he enter into immediate negotiations with the German authorities, with a view of having the objectionable features removed. If General Clay accepts

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the Board's recommendations, he will urge the Laenderrat to amend the law so that no distinction is drawn between in and out of camp DPs. The law will further provide that the successor organization that is entitled to property under Law 59 will have the same right to damages against the Laender that the individual persecutee would under the law have, if he were the claimant.

Finally, as to liquidated claims such as pensions, the claims will be computed in Reichsmarks and paid in Deutsche Marks, at the rate of 10:1. However, tort claims damages will be estimated on the present replacement value of the property damaged or destroyed and will be computed in Deutsche Marks. In other words, (as to damages to property the ratio of 10:1 will not apply.

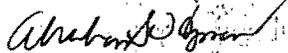
These recommendations involve some compromise. However, we who are working with this problem realize that it was a decided victory to have had the Legislative Review Board go along with us as far as it did. If General Clay adopts our views and succeeds in getting the German authorities to incorporate our recommendations into the new draft of their indemnification law, it will be all that we can hope from the Germans.

I might add that the Board was not inclined to recommend to General Clay that it either force the German authorities to amend their law in line with our recommendations or to suggest to General Clay that if his efforts with the German authorities fail, that he issue a Military Government law in lieu of what the Germans may propose. It is my conviction that under no circumstances will General Clay repeat what he did in the case of Military Government Law 59. All we can possibly look for is a more reasonable modification of the present draft of the law.

I will keep you in touch with the developments on this issue.

I hope that you and Shuster have had a pleasant and profitable trip to Austria. With best wishes to you and Zach, I am

Sincerely yours,



ABRAHAM S. HYMAN

Major JAGD

Assistant to the

Adviser on Jewish Affairs

Mr. Max Isenbergh
Counsel for European Operations
The American Jewish Committee
Paris 8

340507

YIVO Archives
RG 347-7
Am. Jewish Committee
(RAO 41-46)
Box 30, File 5

(FAD=Foreign Affairs
Dept)

also same in a published
article
valuable here for its
marginal comments

Published in:
Federal Bar Journal, Vol. X, No.1
October 1948, pp.3-31.

RESTORATION OF THE LAW
AND PROPERTY RIGHTS
AFTER WORLD WAR II

*A Study of the Removal of United States
Controls Over Foreign-Owned Property*

by
ISADORE G. ALK
and
IRVING MOSKOVITZ



For presentation to the Second International
Conference of the International Bar Association,
The Hague, Netherlands, August 16-21, 1948, as
part of the Symposium: "Restoration of the Law
and Property Rights After World War II."

July 15, 1948

340508

I

INTRODUCTION

The actions and policies of the United States Government with respect to the restoration of property rights of foreign nationals after World War II must be considered in the light of the unprecedented and all embracing freezing controls over foreign-owned property imposed by the United States long prior to its entry into the war.

Much has already been written on the origin and the objectives of these novel controls.¹ The first Freezing Order was issued on April 10, 1940, blocking Norwegian and Danish accounts. By June 14, 1941, the freezing regulations had been extended not only to all of the countries occupied by Germany, but also to Germany itself and its satellites, and to the neutral countries of Switzerland, Sweden, Spain and Portugal.

Although the freezing regulations are couched in highly technical language and prescribe certain categories of specified transactions, the practical effect of the regulations was to "freeze" or "block" the assets within the United States belonging to the countries designated in the freezing orders, and their nationals.² These assets could not be

¹ For an excellent summary, see Reeves, *The Control of Foreign Funds by the United States Treasury*, XI Law and Contemporary Problems, p. 17.

² The technical language of the freezing regulations arises from the fact that they were issued under a Statute (Sec. 5(b) of the Trading with the Enemy Act as amended) which was designed for other purposes. In order to make certain that all powers conferred by the Statute were utilized, the freezing orders followed the exact terms of the Statute. When Section 5(b) was amended after the United States formally entered

(Continued)

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transferred, withdrawn or otherwise dealt with, except pursuant to United States Treasury license.

The blocking of foreign-owned property was of such broad impact that as of June 14, 1941, the amount of blocked assets approximated \$8,000,000,000 in value. Of this amount, more than \$3,000,000,000 of assets were held in the names of persons in enemy-occupied countries while only about \$358,000,000 of assets were identified as belonging to nationals of Germany and Japan.²

Until the United States became a belligerent in World War II, there was no authority to take over or vest the assets of foreign nationals. There was only the blocking power exemplified by the freezing orders. However, upon the entry of the United States into the war, the provisions of the Trading with the Enemy Act authorizing the seizure of enemy property became operative. Very shortly thereafter, Section 5(b) of the Act was amended so as to authorize the vesting of the property of all foreign nationals.

Persons residing in countries occupied by the Axis were technically "enemies" under the Trading with the Enemy Act. Nevertheless the great bulk of their dollar assets was never vested but remained blocked under the freezing regulations. The major exception to this non-vesting policy was in the field of patents, copyrights and trademarks. Property held in the name of a person either within or without an enemy-occupied coun-

into war so as to confer broad authority to deal with all aspects of foreign-owned property, it was believed that practical construction of the freezing orders had been so well established that there was no necessity of revising the language.

² *Census of Foreign-owned Assets in the United States*, United States Treasury Department, Washington, D. C., 1945.

try, if believed to be owned or controlled by real enemy interests, was also vested.⁴

As country after country was freed of enemy occupation, the major problem of the United States Government was the method and circumstances under which blocked property should be released from the freezing controls.

In this connection, it is interesting to note that the purposes underlying the freezing orders were never officially clearly stated. This was not entirely by accident, since the United States Treasury Department felt that it thereby achieved greater flexibility in administration, even while it recognized that the absence of stated purposes caused the unfortunate result of keeping the public in the dark as to the standards which were applied in making decisions. The Treasury Department admittedly was thereby enabled to avoid being bound by the force of precedent—to such an extent that controls which originally were conceived to be primarily protective, later became the keystone of a program of economic warfare and more recently have been utilized, in furtherance of the European Recovery Program, as an instrument for forcing the disclosure of ownership.

⁴ The terms "vesting" and "seizure" are synonymous under United States law relating to the Trading with the Enemy Act. In both cases, the title to the property is taken by the United States. In "blocking," the title remains in the private owner, but transfers and other dealings in the property are proscribed. Under the property control system in effect in the United States, the authority to deal with foreign-owned property is distributed between the Treasury Department and the Alien Property Custodian (now the Department of Justice). Originally, the distribution of power was along functional lines—assets which required active management or seizure were placed under the control of the Custodian, while assets which merely required regulation were under the jurisdiction

(Continued)

II

RELEASE OF BLOCKED PROPERTY

Long before the defeat of Germany, the United States Government began to formulate a program for terminating its freezing controls over blocked assets.

The problem was obviously complicated by the fact that blocking was intended to achieve diverse objectives. For example, in the case of the occupied areas, freezing was primarily protective in nature; in the case of the neutrals, it was considered as an act of defense; while in the case of the enemy countries it was an instrument of economic warfare and tantamount to complete immobilization as a preliminary step to formal vesting. Notwithstanding these varying objectives, one over-all pattern for unblocking was adopted which was applied to most of the liberated and neutral blocked countries. As will be discussed in detail later, the pattern adopted for ultimate unfreezing was the certification procedure.

Before the stage of unblocking was reached, however, a number of preliminary steps were taken.

A

Reopening Communications

After the United States became a belligerent in World War II, the areas under enemy control

of the Treasury Department. See Executive Order No. 9103, July 8, 1942 (7 F. R. 5205). As will be discussed *infra*, arrangements are now being made whereby the control of all blocked property will be transferred from the Treasury Department to the Department of Justice.

were included in the designation of "enemy territory" and persons within these areas were treated as "enemy nationals." Under Treasury General Rule No. 11, all forms of business or commercial communications with "enemy nationals" were prohibited except pursuant to Treasury License.⁵ In practice extremely few licenses were issued, so that there was a complete stoppage of communication with the enemy and enemy-occupied countries.

The first step in terminating the war time controls and in restoring normal business relations was the removal of each liberated area from the category of "enemy territory," which in turn automatically freely permitted business and commercial communications between the liberated country and the United States.⁶

⁵ See General Ruling No. 11, issued March 18, 1942 (7 F. R. 2108); amended November 8, 1942 (7 F. R. 9110); Sept. 3, 1943 (8 F. R. 12287); June 30, 1944 (9 F. R. 7370). This regulation adapted the old 1917 Trading with the Enemy Act restrictions against war time trade and communications to the requirements of World War II and substituted the concept of "enemy national" for the old "enemy" and "ally of enemy" terminology of the last war. See Treasury Press Release No. 30-79, March 18, 1942.

⁶ General Ruling No. 11 was amended on November 4, 1944, to delete France from the definition of "enemy territory" (9 F. R. 18190); February 2, 1945, to delete Belgium (10 F. R. 1430); February 16, 1945, to delete Finland, Poland and other Baltic areas (10 F. R. 1256); March 6, 1945, to delete Greece (10 F. R. 2576); April 10, 1945, to delete Luxembourg (10 F. R. 3904); May 20, 1945, to delete the other liberated areas (10 F. R. 6313). Generally speaking, before an area was removed from the category "enemy territory," assurances were obtained that adequate machinery had been established whereby outgoing instructions, transfer and payment orders, powers of attorney, and the like would be screened to insure that they did not involve war time transfers effected under duress or other unlawful means and did not permit the completion of transactions of benefit to or on behalf of enemy interests.

By May 1945, commercial and business communications with all of the formerly occupied European countries and Italy had been fully restored. Similar action was taken thereafter with respect to Bulgaria, Rumania and Hungary. Finally, notwithstanding Germany and Japan were still regarded as enemy countries, the restrictions on communication with those countries were removed, so that today all forms of communication between the United States and the rest of the world are free from restriction.⁷

B

**Resumption of Current Business
and Financial Transactions**

The reopening of business and financial communications did not alter the freezing status of blocked property in the United States and Treasury Department licenses were still required to effect any financial or property transactions on behalf of or involving persons in blocked countries. Moreover, any new dollars accruing to blocked nationals from these transactions were frozen. It was obviously essential that procedures be established under which trade and other current transactions could be freed from these restrictions to a maximum extent.

⁷ The ban on commercial communication with the allied occupied portions of Italy was lifted on October 17, 1944, by the issuance of Public Circular No. 25 (9 F. R. 12580). Similar treatment was extended to Bulgaria, Hungary and Rumania on October 2, 1945, by an amendment to Public Circular 25 (10 F. R. 12425). Germany and Japan were included within the scope of the Public Circular on March 4, 1947 (12 F. R. 1450).

By the fall of 1945, the second major step in restoring normal business and financial relations with the liberated countries was completed. This was the removal of all freezing restrictions on trade and other current business and commercial transactions and the release of all dollars accruing from such transactions, so that all new dollars were "free" dollars.

It will be recalled that after the liberation, the re-established governments of the countries devastated by the Germans were busily engaged in the restoration of their laws and in putting their houses in order. Practically every country took action against enemy collaborators and established internal controls to prevent the carrying on or completion of transactions for the benefit of enemy interests. Although the United States traditionally was opposed to supporting and to giving extraterritorial effect to exchange controls, nevertheless, it was felt that until the former occupied countries had had a reasonable opportunity of effectively establishing their own controls, the United States should cooperate by instituting interlocking controls so as to channel new business through the governmental controls of these countries.

Consequently, the first licenses permitting trade with, or remittances to, the liberated countries generally contained so-called "conduit" clauses which authorized transactions only after they had been screened and approved by the designated agencies of the countries involved. This procedure for international cooperation was exemplified by the first general licenses issued in April and May 1945, authorizing trade with France and Belgium. These licenses, known as General Licenses No. 90 and No. 91, contained such conduit clauses, which

April, May, 1945

enabled the respective foreign governments to obtain control over the dollars accruing from trade and other authorized current transactions. By their control over the dollar proceeds the French and Belgian Governments ostensibly screened and prevented undesirable transactions.⁸ In practice, this resulted in the application of exchange controls to all "new" dollars.

General Licenses No. 90 and No. 91 appear to be the first instances where the Treasury Department gave post-war public support to the foreign exchange controls of blocked countries over the dollar resources of their nationals.⁹ However, it should be observed that this apparent public sup-

⁸ General License No. 90, applying to trade transactions with France, was issued on April 14, 1945 (10 F. R. 4003), after assurances had been received from France that transactions covered by the license would be screened to guard against any benefits accruing to collaborators or other persons acting for enemy interests. It authorized all trade transactions between France on the one hand, and the Western Hemisphere and the United Kingdom on the other, provided that any dollars accruing from exports from France should be deposited in blocked accounts. The blocked accounts could be debited only for payments in connection with trade transactions or for transfers to the Bank of France or approved banking institutions in France. General License No. 90 was followed on May 15, 1945, by General License No. 91 (10 F. R. 5573), extending similar treatment to Belgium. This license contained the same formula of interlocking controls under which dollar balances were channeled into the Banque Nationale de Belgique.

⁹ In channeling dollar proceeds into the accounts of the French and Belgian control banks, the Treasury apparently followed the pattern prescribed in General License No. 82A (9 F. R. 1581) as it was originally issued. This license provided for remittances to Sicily and Italy to be channeled through "A. F. accounts." The dollar funds accruing into these accounts were later used to meet essential import needs of Italy and Sicily. The technique of the "conduit clause" was dropped when current transactions with all of these areas were authorized under General License No. 94.

port was deemed by the Treasury Department to have been unavoidably incidental to the main purpose of the general licenses, viz., to provide a vehicle under which it would not be necessary for the Treasury Department to examine transactions screened and approved by the French and Belgian Governments.

After the issuance of General Licenses No. 90 and No. 91, consideration was given to the issuance of similar licenses covering other liberated areas of Europe. By the fall of 1945, however, it was felt that the various governments had had sufficient time to establish their own internal controls so that the possibilities of any benefits accruing to the enemy from current transactions were extremely remote; that the treatment of collaboration with the enemy was the problem of the liberated countries and not that of the United States; and there no longer was any necessity for complementing the exchange controls of the foreign governments. In addition, the Treasury Department was reverting to its original pre-war policy that it was not its function to assist foreign governments to control the foreign exchange assets of their nationals.

Accordingly, beginning with France on October 5, 1945, successive steps were taken to lift all freezing controls over current transactions, so that today there are no blocking restrictions on current financial and commercial transactions with any country in the world (except Portugal).¹⁰

¹⁰ Current transactions with France were permitted without restriction under General License No. 92, issued October 5, 1945 (10 F. R. 12599). Similar treatment was accorded to Belgium on November 20, 1945, through the issuance of General License No. 93 (10 F. R. 14289). These licenses were revoked since they were superseded by General License No. 94.

General License No. 94, first issued on December 7, 1945, unblocked all current transactions and new dollar assets.¹¹ Under this license, all trade and other current transactions may be freely carried on. The dollar assets accruing from such transactions are completely free from United States controls. No interlocking controls or other arrangements in this or any other license or regu-

¹¹ General License No. 94, issued on December 7, 1945 (10 F. R. 14814), removed all freezing controls over current transactions with all countries except Portugal, Spain, Sweden, Switzerland, Liechtenstein, Tangier, Germany and Japan. After Switzerland had agreed to seek out German assets in Switzerland, it was amended on November 30, 1946 (11 F. R. 13959), to include Switzerland and Liechtenstein. On March 4, 1947, it was extended to Germany and Japan (12 F. R. 1457); on March 28, 1947, to Sweden (13 F. R. 2051).

Tangier was completely unblocked on June 25, 1947, and Spain on May 29, 1948, by inclusion of these areas in the generally licensed trade area as defined in General License No. 53, thereby making General License No. 53A applicable.

The sweeping scope of General License No. 94 was described in the accompanying press release (U. S. Treasury Press Service No. V-155) as follows:

"The Secretary [of the Treasury] emphasized that the general license issued today permits the immediate resumption of normal financial and commercial relations with the licensed countries so far as the freezing regulations are concerned. United States banking facilities may be used to finance all transactions between the licensed countries and between those countries and any non-blocked countries. Financial instruments and documents, currency and securities, and instructions relating to property interests may be sent to the licensed countries. Persons in those countries may buy and sell dollar exchange, and exchange of the countries may be freely dealt in by persons in the United States. No limitations remain on the amount of money that may be remitted to the licensed countries nor on the purposes or method of the remittances. In addition to having the unrestricted use of all dollar assets hereafter accruing, persons in the licensed countries may also use their presently blocked accounts for any purposes authorized under outstanding Treasury licenses without having to effect such transactions in any prescribed manner."

lation under which foreign countries are assisted in locating or mobilizing these assets were prescribed.

No controls in the United States require reporting of free foreign-owned assets. It is still the official United States position that "effectively to search out and take control of these free assets would require exchange controls and other measures which would do maximum violence to our position as a world financial center and to our policy of keeping the dollar substantially free of restrictions."¹²

C

The Certification Procedure for Release of Blocked Property

General License No. 94 does not free any dollar assets which, on the effective date of this license, were blocked. These assets, and the income accruing therefrom, continued to be subject to the Treasury freezing restrictions.¹³

¹² Letter from Secretary of the Treasury Snyder to Senator Vandenberg, Chairman of the Senate Foreign Relations Committee, February 2, 1948. The United States has officially stated that it does not contemplate taking any action directed toward assisting the beneficiary countries under the European Recovery Program to locate and utilize free dollar assets. See U. S. Treasury Department Press Release No. S-746, May 29, 1948.

¹³ Paragraph (1) of General License No. 94 contains the following proviso:

"(a) any property in which on the effective date hereof any of the following had an interest: (i) any blocked country (including countries licensed hereby) or person therein; or (ii) any other partnership, association, corporation,
(Continued)

Please whether this filing will stand unmodified.

The official reason for retaining controls over blocked property was "to insure that camouflaged enemy assets are not released."¹⁴ This statement, however, was even then an oversimplification of the problem and ignored other existing considerations.

The United States and the other members of the United Nations were of course greatly concerned over the necessity of dealing with war-time transfers effected during enemy occupation. The freezing controls had effectively prevented the enemy from obtaining possession of dollar assets physically located in the United States. There was evidence that substantial transfers of dollar assets, particularly of bearer securities, had taken place during the occupation. There was good reason to believe that many of these transfers had been effected under duress or through other illegal devices and that the liberated countries would be required to trace ownership and control, to restore looted property to the lawful owners, and to deal generally with the problem of war time transfers and the restoration of the law.

Under the Inter-Allied Declaration of January 5, 1943, regarding forced transfers of property in

or other organization, which was a national of a blocked country (including countries licensed hereby) by reason of the interest of any such country or person therein; or

"(b) any income from such property accruing on or after the effective date hereof

shall continue to be regarded as property in which a blocked country or national thereof has an interest and no payment, transfer, or withdrawal or other dealing with respect to such property shall be effected under, or be deemed to be authorized by, this paragraph."

¹⁴ U. S. Treasury Press Release, December 7, 1945 (Press Service No. V-155).

See Copies

*against the
Suspension*

enemy-controlled territory, and Resolution No. VI of the United Nations Monetary and Financial Conference at Bretton Woods, New Hampshire, 1944, the United States was committed to supporting an international program for "preventing the liquidation of property looted by the enemy, locating and tracing ownership and control of such looted property, and taking appropriate measures with a view to restoration to its lawful owners." The blanket and complete unblocking of assets which may have been subjected to the looting practices of the enemy would not, it was felt, be consistent with such a program.

The Treasury Department had taken the position that under its regulations, unlicensed transfers could not be the basis for the assertion or recognition of any rights in any blocked property. Serious legal questions would undoubtedly arise as to the effect of the freezing regulations on such transfers in the event of a complete and unconditional unblocking. Certain transfers should be invalidated while others might well be recognized. The United States, it was thought, should continue to extend cooperation to the formerly occupied countries in their efforts to restore law by preventing the consummation of war time transfers of dollar assets effected under duress. To unblock completely these assets would make the judiciary the only avenue in the United States for protecting the victims of the acts of dispossession practiced by the enemy. This avenue was difficult and expensive for those adversely affected and of doubtful protection where the victims were missing or dead. Moreover, American financial institutions should be shielded against litigation based on adverse claims arising from war time trans-

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fers and changes of ownership during the enemy occupation.

Finally, the extent of enemy ownership through other countries was unknown. It had already been ascertained, however, that there were substantial enemy assets in the United States camouflaged under non-enemy names and it was believed that the amount of concealed enemy assets was substantial. It was desired that a system of unblocking be devised under which as yet unrevealed enemy interests would be uncovered and vested.¹⁴

¹⁴ See statement by John S. Richards, Director, Foreign Funds Control, Treasury Department, Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, Eightieth Congress, 1st Session, on the Supplemental Appropriation Bill for 1948, p. 181:

"The Germans were most adept at cloaking their interest in property in the United States by concealing it in the names of trusted intermediaries in other countries. We have believed that German owned property should not escape our control simply by being held in the names of presumably friendly or neutral persons. At the same time, we have been anxious to unfreeze the legitimate non-enemy assets of neutral and liberated countries. This problem has been handled by negotiating defrosting agreements with governments of the countries concerned."

It was the view of the interested executive agencies of the U. S. Government that Japanese and German enemy property should be vested and that there should be no provision for return to the former owners. This view is incorporated in the War Claims Act of 1948, recently enacted by the Congress. Section 12 of this Act added a new section to the Trading with the Enemy Act providing:

"Sec. 35. No property or interest therein of Germany, Japan, or any national of either such country vested in or transferred to any officer or agency of the Government at any time after December 17, 1941, shall be returned to former owners thereof or their successors in interest, and the United States shall not pay compensation for any such property or interest therein. . . ."

X
except as provided by
Section 32.

These considerations, among others, persuaded the Treasury Department and other interested agencies that there should not be a general program of blanket unfreezing of blocked assets. Instead, it was concluded that an unblocking procedure be maintained which would provide for separate examination of each case. It was then decided that the primary responsibility for investigating and ascertaining the true ownership of blocked property and for determining the effect to be given to war time transfers should rest upon the foreign governments involved and not upon the United States. In reaching this decision, the Treasury Department concluded that, basically, it was not in a position to pass upon the real ownership of property held by residents of foreign countries and that in most instances the evidentiary documents would emanate from abroad. The foreign government of which the alleged owner was a resident would be in the best position to examine the evidence presented and, through its own investigation, to determine the weight to be given to any documents or representations. Moreover, there was the pressure to liquidate war time controls, to reduce functions and personnel and to avoid the maintenance of a large organization needed to scrutinize unblocking applications.¹⁵

¹⁵ See Richards, *op. cit.*, p. 184.

"It should also be kept in mind that the certification procedure places on the foreign government the principal expense in connection with the unblocking of property of their residents, thereby avoiding a substantial increase in expenditures which it would otherwise be necessary for the Congress to provide if this Government were to find the cloaked enemy property without the cooperation of the foreign government."

Add:
The assumption of
responsibility for feasibility
for determining whether
present a person is a
national of a particular
country is properly a
determination for
that particular
country.

The unblocking procedure was therefore predicated upon an investigation and certification by the foreign government of which the owner was a resident and is incorporated in General License No. 95 as supplemented by the accompanying exchange of letters between the Secretary of the Treasury and the Ministers of Finance of the various foreign governments which embodied the respective certification agreements.¹⁷

In essence the certification procedure provides for the unblocking of specified assets upon the receipt by the American bank or other depository of a certification by the designated agency of a country specified in General License No. 95 that no person who is ineligible for certification has any interest in the assets. Upon receipt of the certification, and without consulting the Treasury Department, the American depository is authorized to release the assets. Thereafter they become free assets and no longer are subjected to Treasury control. While in theory the assets thereafter are free, in practice, the procedure results in subjecting these assets to the exchange controls

¹⁷ See, e.g., Letter from French Minister of Finance Ploven to Secretary of the Treasury Vinson, September 26, 1945 (U. S. Treasury Press Release No. V-76); Letter from Netherlands Minister of Finance Liefstink to Secretary of the Treasury Vinson, January 22, 1946. Similar letters were received from the other enemy occupied countries.

Certification agreements have been negotiated with France, effective October 5, 1945; Belgium, November 20, 1945; Norway and Finland, December 29, 1945; The Netherlands, February 13, 1946; Czechoslovakia and Luxembourg, April 25, 1946; Denmark, June 14, 1946; Greece, October 16, 1946; Switzerland and Liechtenstein, November 30, 1946; Poland, January 7, 1947; Austria, January 16, 1947; Sweden, March 28, 1947; Italy, August 29, 1947.

and foreign exchange decrees of the foreign government involved.

Under the several certification agreements, the foreign governments assumed the responsibility for carrying out the certification procedure and gave assurances, *inter alia*, that:

- (1) No property would be certified until its ownership had been investigated;
- (2) No certification would be issued which would facilitate the completion of transactions furthering the interests of an enemy or of persons acting upon behalf of an enemy;
- (3) No certification would be issued which would change the *status quo* of blocked property in which an enemy has interest, direct or indirect;
- (4) If a person residing in another eligible country has any interest in the assets, a certification would be issued only after an assurance, or sub-certification, is obtained from the other country that such interest is not held for or on behalf of an enemy.

Mechanics of Certification

The mechanics of certification may be illustrated by the following:

A resident of the Netherlands, regardless of citizenship, who owns dollar assets, may apply to De Nederlandsche Bank for unblocking. If satisfied with the proofs submitted, De Nederlandsche Bank would issue and transmit to the person or

institution in the United States with whom the foreign account is maintained, or, in case of American securities held in Holland, would attach to the security, a certificate reciting that no blocked country or national thereof, other than a country specified in General License No. 95 or its nationals, had, at any time on or since the effective date of the freezing order, any interest in the specified property. Upon receipt of such certification, the American depository, or the American issuer in the case of securities, was authorized immediately to unblock the property without any further reference to the Treasury Department.

A resident of France, regardless of citizenship, who beneficially owns property in the United States through ownership of the stock of a Swiss Holding Company, could apply to the Swiss Office of Compensation of Switzerland for unblocking. Even though the most thorough investigation is made, the Office of Compensation may issue a certification only after a sub-certification from the Office de Change of France is received, stating that the interest of the French resident is eligible for certification. The French beneficial owner may, if he chooses, first apply to the Office de Change for the certification, in which case a sub-certification would have to be obtained from the Swiss Office of Compensation.

A corporation organized in the Netherlands, but more than 25% owned by French and Belgian residents, has assets in the United States which are held in the name of a Swiss Bank. De Nederlandsche Bank may issue the certification but only after sub-certifications are obtained from the appropriate agencies of France, Belgium and Switzerland. Conversely, certifications could be applied

for in France or Belgium or Switzerland, with sub-certifications from the other countries involved.¹⁸

D

Treatment of Securities

One of the most difficult problems arising from the enemy occupation was that relating to war time transfers of United States securities located abroad. Under General Ruling No. 5, the Treasury Department maintained import controls over securities, but it was recognized that these controls could not be maintained indefinitely. Registered securities did not present any substantial problem since they were blocked on the books of the issuing companies. The immense amount of dollar bearer securities militated against any registration program and it seemed to be generally agreed that the problem of bearer securities, if it was to be dealt with at all, would have to be handled by the foreign governments of the countries in which the securities were located.

Under General License No. 95, therefore, the foreign governments were authorized to issue certifications of dollar securities located within their boundaries. After a certification was attached to a security, the security and attached

¹⁸ Originally, if a French citizen, for example, held property in the United States through the intermediary of a Swiss bank, sub-certification was required. Moreover, in order to expedite the unblocking in this type of case, the Treasury Department permitted the assets to be certified directly by the agency of the country in which the beneficial owner resided without obtaining sub-certification from the country in which the financial institution was located.

coupons not only were free of all United States restrictions on importation but could thereafter be dealt with as a free asset. Interest or dividends accruing could be freely paid and the proceeds of any sale were free.

In connection with this provision for certification, the eligible countries gave written assurances, separate from the basic letters of agreement relating to the certification procedure, that they would undertake prompt investigation of the ownership of all American securities located in those countries. They further agreed to attach certifications to all such securities which were eligible for certification and to segregate all other securities for disposition pursuant to further agreement. The Treasury Department was to be advised of any securities in which there was reasonable cause to believe there was an enemy interest.

In order to assist the foreign governments in their endeavor to ascertain the true ownership of American securities located within their boundaries, the Treasury Department continued its import controls of securities until July 25, 1947. By that time those governments which were able to do so prepared lists of securities which were believed to be looted. The Treasury Department thereupon compiled and published a comprehensive list of "scheduled securities" and simultaneously removed its import controls over all securities except those appearing on the published list of "scheduled securities."¹⁹ It is understood that the list in major part was compiled from information furnished by the Netherlands Government on

¹⁹ Amendment to General Buling No. 5 and List of Scheduled Securities, issued July 25, 1947 (12 F. R. 4933).

the basis of the records maintained during the German control of the Lippman Rosenthal Bank.

Under these amended controls, which are still in effect, persons who bring scheduled securities into the United States from abroad or who receive them from a foreign country, are required to deposit the securities with the Federal Reserve Bank of New York, where they are impounded pending judicial or other determination of ownership.

Except for the securities appearing on the list of "scheduled securities," there no longer are any freezing or import restrictions on dollar bearer securities which are not physically deposited in blocked accounts in the United States. Certification is not required for bearer securities. Registered securities may be freely imported into the United States, but if registered in the name of a blocked national, a Treasury license is required to transfer or otherwise deal with the security.²⁰

E

Treatment of War Time Transfers

The certification procedure deals with war time transfers in rather oblique and indirect fashion. It permits unblocking of assets in which there is no ineligible interest. As of July 1, 1948, the ineligible interests are limited to those of persons in Germany, Japan, Hungary, Bulgaria, Rumania, Latvia, Estonia, Lithuania, Yugoslavia and Portugal. If no ineligible interest is involved in any change of ownership, the assets, though

²⁰ See Public Circular No. 35, July 25, 1947 (12 F. R. 4901).

transferred, may be certified. If a certification is issued, the transfers are valid insofar as the freezing regulations are concerned.

Consequently in respect to the great majority of war time transfers, the certifying countries established and pursued their own laws and policies. If, for example, property was owned on May 10, 1940, by a Netherlands national and thereafter during the occupation was transferred to another Netherlands national and by him to a third person, ownership was to be determined according to Netherlands law. The Netherlands authorities could invalidate the two transfers and certify the assets as belonging to the original owner; or it could recognize the first transfer and invalidate the second, certifying the property as belonging to the first transferee; or it could recognize both transfers and establish title in the present holder. If the transfers are treated as valid and involve a national of another eligible country, a sub-certification would be required. Whatever the decision of the Netherlands authorities may have been, General Ruling No. 12, designed to prevent war time transfers from taking effect, no longer applied to any assets with respect to which a certification has been issued. In any event, the certification is "anonymous" insofar as the United States Government is concerned.

Moreover, under a Public Interpretation of the Treasury Department, the certifying agencies of the former occupied countries could certify property transferred to an enemy during the occupation.²¹ If, for example, a Netherlands corporation were Netherlands owned on May 10, 1940, and

²¹ Public Interpretation No. 19, February 8, 1946.

*How does this work?
Is certification anonymous?
Is a decision with the
usual validating provision
affected? Is it listed in
the book.*

What is the purpose?

during the occupation the ownership of the shares of the corporation had been acquired by German interests, the Netherlands Government could invalidate the transfer and then certify the dollar assets of the corporation or, if regarded as an effective transfer, the Netherlands Government could seize the stock as enemy property, and certify the dollar assets as free from enemy taint.²²

In other words, for the purpose of the certification procedure and in order to give the liberated governments free scope in dealing with war time transfers according to their own laws, a simple test was applied: What was the ownership of the property on the effective date of the Freezing Order? If the person who was then the owner was eligible for certification, subsequent transfers of the property, even though to enemy interests, did not make the property ineligible for certification. The adjustment between the eligible parties in such a situation was regarded by the United States as an internal matter for the former enemy occupied countries.

²² This procedure is also embodied in the Agreement Relating to the Resolution of Conflicting Claims to German Enemy Assets, signed *ad referendum* at Brussels on December 5, 1947. Article 27, Part V, declares:

"13. In determining whether any property is owned or controlled by a German enemy no transfer to a German enemy or dealings with a German enemy shall be taken into account which represent looting or forced transfers within the meaning of the Inter-Allied Declaration of January 5, 1943, against Acts of Dispossession."

Exceptions to Certification Procedure

With the establishment of the certification procedure, the Treasury Department initiated the general policy of not acting on direct applications for the unblocking of those assets which could be released by certification and referred the applicant to the procedure set forth in General License No. 95. However, the Treasury Department was continuously presented with applications for unblocking without certification.²²

With certain exceptions, the Treasury Department resisted this pressure and insisted upon certification. In originating the certification procedure, it was not an objective of the Treasury Department to assist foreign governments to locate and control the dollar assets of their nationals. On the contrary, it was the feeling as indicated by the issuance of General License No. 94, that as a general policy there should be no interlocking controls to implement foreign exchange controls. The fact that under the certification procedure, the certifying countries were enabled to locate and control the blocked dollar assets of their nationals was deplored as a necessary evil.

²² See Richards, *op. cit.*, *supra*, p. 184:

"This results for the most part from their desire to avoid conforming with the laws of their own countries which are applicable to their assets in the United States. These foreign nationals would much prefer and will argue strenuously that the Treasury Department should investigate the ownership of the property to determine whether there is an enemy interest and should not make available to their own governments the information concerning their United States property."

However, the Treasury Department and other interested departments concluded that there was no practical alternative in view of the emphasis on the continued search for enemy property,²⁴ the representations made by the foreign governments, and the pressure to reduce the size of the Foreign Funds Control staff.

There were, nevertheless, certain categories where exceptions were made and applications were examined by the Treasury Department and approved without certification. The major categories were the following:

(1) American Citizens

American citizens residing in blocked countries were not required to obtain a certification, but were permitted to present their applications di-

²⁴ *Ibid.*:

"... It is virtually impossible for the Treasury Department to attempt to ascertain the real ownership of property held by residents of foreign countries. This arises from the fact that this Government is unable to conduct investigations in sovereign foreign countries to verify the accuracy of statements and affidavits submitted to it. The foreign government of which the person is a resident is the only government in a position to investigate the background of the evidence presented and to hold its residents accountable for false affidavits and statements."

Where the possibility of the existence of enemy interests was exceedingly remote and where there were no serious problems of war time transfers under duress, full unblocking did take place, even though the unblocking was at complete variance with any program of assisting foreign governments to locate and control foreign exchange assets. Thus many blocked areas, including Albania, China, Formosa, Hong Kong, Korea, Philippines, Siam, Tangier, Spain and the French and Dutch colonies, were included in the generally licensed trade area and unblocked. See General License No. 53A (11 F. R. 5801).

rectly. Accordingly, the Treasury Department entertained and approved applications for licenses for the unblocking of American interests. American interests in blocked companies were similarly treated.

(2) *Victims of Nazi Persecution*

Victims of Nazi persecution were enabled to secure the clarification of their status as non-enemies and the unblocking of their assets by applying directly to the Treasury Department.²⁵ However, if they were residing in an eligible country, they nevertheless were required to obtain certification of their assets.

(3) *Religious Organizations*

In the main, the Treasury Department did not require certification of the assets of religious organizations, but acted on applications directly. In view of the policy of the Alien Property Custodian not to vest the assets of any religious organization, regardless of location, the Treasury Department also unblocked the property of religious organizations in Germany and Japan.

(4) *Bona Fide Emigrants from Blocked Countries*

The Treasury Department also did not insist upon certification in the case of persons who had

²⁵ In view of the provisions of Sec. 32(a) of the Trading with the Enemy Act, permitting the return of vested property to victims of Nazi persecution, notwithstanding their enemy citizenship or their presence in enemy territory, the Treasury Department followed the parallel policy of licensing the unblocking of the non-vested assets of such persons.

permanently emigrated from a blocked country and had established themselves in an unblocked country. In these cases, the Treasury Department examined the application on the merits if it was satisfied that the beneficial owner was a bona fide emigrant.

(5) *Trusts and Estates*

In certain types of cases, interests in trusts and estates of deceased persons were unblocked upon application to the Treasury Department.

G

Program for Termination of Freezing Regulations

When the certification procedure was established, the Treasury Department had planned that its controls could be terminated by June 30, 1947. However, many residents of the certifying countries did not apply for certification.²⁶

Consequently, the Treasury Department considered various alternatives to accelerate the un-

²⁶ Richards, *op. cit.*, *supra*, p. 183.

"The foreign nationals are reluctant to approach their own governments for three reasons: (1) Those who are acting as nominees for enemies have nothing to gain and much to lose by revealing the enemy interest in the property held in their names; (2) those persons who have not paid taxes to their own governments on their dollar assets may be compelled to pay these taxes if they request certification of their assets; and (3) residents of the war-devastated countries face the probability that they will be required to turn their dollar assets over to their own governments in exchange for local currencies if they request certification."

blocking of the assets not yet certified and the termination of its controls. It was first proposed in the spring of 1947 that a plan should be instituted to force the disclosure of the real ownership of blocked property. This plan contemplated that the certification procedures would end on April 30, 1948; that property still blocked on that date should be vested by the Alien Property Custodian on the premise that presumptively it was enemy owned. Under this program no information would have been transmitted by the United States to any foreign government.⁵⁷ However, formal applications could be made to the Alien Property Custodian to obtain restoration of non-enemy property. These proceedings would have been published and made a matter of public record.

In presenting this plan to the Congress in May 1947, before the Marshall Plan was proposed, it was officially recognized, as an end desirable in itself, that such a program would probably force most friendly aliens to disclose their holdings to their governments and that these foreign governments would thereby be able to mobilize dollar assets. The Treasury Department openly ac-

⁵⁷ In outlining this program to the House Committee on Appropriations, it was stated:

"Our vesting program which I have outlined to you is a procedure which avoids the necessity of our taking the reports and turning the information over to the foreign governments. What that does is to put it up to the foreign national himself to decide what he is going to do. He has to choose either to forfeit the property or else to go in and declare it to his own government."

See Richards, *op. cit.*, *supra*, p. 104.

claimed this result as a meritorious objective *per se*.⁵⁸

With the advent of the European Recovery Program a further adjustment in plans had to be made and public announcement was accordingly delayed. Up to this time, the Treasury Department had been adhering to the view that the

⁵⁸ "... the certification procedure as an incidental result enables the devastated countries to control the dollar assets of their nationals and to direct the use of these assets toward the rehabilitation of their countries. In this way, the certification procedure enables these countries to help themselves by mobilizing the assets of their nationals, thereby reducing to that extent the burden on the United States." Richards, *op. cit.*, *supra*, p. 180.

Again it was stated:

"... Not only are these agreements vital to the discovery and segregation of enemy property, but as an incidental result they enable the governments of many countries which are applying to the United States for relief and rehabilitation loans to control the dollar assets of their private nationals.

"In that connection again I might add something about it which concerns countries like France and the Netherlands, which are very badly in need of dollars, as I am sure you gentlemen are well aware. Nationals of those countries have in blocked accounts in the United States substantial amounts of money, running into the millions of dollars. Keeping the property blocked and permitting it to be unblocked only by the certification of the foreign country is going to mean that the governments of such countries can discover the extent of the property held by their nationals. This means that such governments will be able to control the United States dollars of their private citizens, and in that way should substantially reduce the burden of the United States Government in connection with rehabilitation loans. (Italics supplied.)

"If our controls were lifted on June 30, 1947, those badly needed dollars would for the most part escape the control of the foreign governments concerned. This will not only bring forth vigorous protests from the foreign governments but will also undoubtedly mean an increased burden on the United States taxpayers." *Id.*, p. 185.

United States Government should not give to foreign governments any information in its files concerning the identity and location of blocked assets. The foreign national should be given the choice of declaring his property to his government or of running the risk of having it vested and either forfeited or disclosed in any proceeding for its return.

These views were re-examined in the light of the European Recovery Program and the decision was made by the National Advisory Council, of which the Secretary of the Treasury is Chairman, that the United States should affirmatively assist the recipient countries under the European Recovery Program to locate and control blocked assets. In communicating this decision on February 2, 1948, to Senator Vandenberg, Chairman of the Senate Foreign Relations Committee, it was further stated that no action should be taken with respect to free assets "because the amounts which are unknown to the governments of recipient countries are probably insignificant, and in any event serious practical difficulties would be involved."¹⁰

¹⁰ This policy decision, which was made by the National Advisory Council on International Monetary and Financial Problems, set up by the Bretton Woods Act of 1946 to coordinate United States foreign financial and monetary policy, was embodied in the letter from Secretary of the Treasury Snyder to Senator Vandenberg, dated February 2, 1948, and was made public on the same day.

The objections had been carefully considered. It was stated:

"The policy we should adopt with respect to assisting the recipient countries in obtaining control of the private dollar assets which are hidden in this country by their citizens has been a subject of much discussion in recent months. Representatives of financial institutions have urged that it is

(Continued)

The program as outlined in the "Snyder-Vandenberg Letter" provided for the future issuance of a public notice that three months thereafter, the certificate procedure would terminate and assets still blocked would be transferred to the jurisdiction of the Office of Alien Property of the Department of Justice. Prior to such deadline date, accounts of non-enemies which were not over \$5,000 would be unblocked without certification. After the transfer of jurisdiction, a census of blocked assets would be taken and the recipient countries would thereafter be furnished with any

fundamental to our free private enterprise system and, in particular to our capital market, to respect private property whether or not it is held by foreign nationals. Some felt that the United States Government should not adopt the policy of cooperating with foreign countries in the enforcement of their exchange control laws. Finally, it was argued that to adopt measures having the effect of forcing the disclosure to foreign governments of private property held by their citizens in the United States would put this Government in the position of supporting partial confiscation of private property. This last point relates to those cases where foreign countries require the surrender of dollar assets, against reimbursement in local currency at unrealistic rates of exchange.

"The National Advisory Council gave serious consideration to these views. The Council doubted that under ordinary conditions this Government should assist foreign governments in enforcing their foreign exchange laws. However, these are not ordinary times. Some European countries are in dire need of dollars to permit their survival as free nations. American taxpayers are being called upon to make substantial contributions to European recovery. Moreover, most of the foreign governments have repeatedly asked our assistance in obtaining control of the holdings of their citizens, who have concealed them contrary to the laws and national interest of their countries. It is these circumstances, I am sure, which have inspired marked public interest in the problem and have produced various legislative proposals for action, such as the Kunkel Bill (H. R. 4578) and the Norbold Resolution (H. J. Res. 268)."

- ① Public notice to be given
 ② No money account up to \$5000
 would be unblocked w/o certification
 ③ H.P.D. would take a census of
 unblocked assets, and E.P. Property
 would set up a list of assets
 ④ Certification would investigate
 and existing would be
 postponed for a reasonable
 period pending investigation

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information obtained by this census concerning assets of their "resident citizens." Each country receiving such information would be required to investigate the beneficial ownership of property held in the name of its citizens for the purpose of discovering any enemy interests; pending a "reasonable period" for such investigations, such property would not be vested. Release of the property would be dependent upon the outcome of such investigations. There was no commitment to disclose any information to a non-recipient country, the most important of which is Switzerland.

As to other blocked assets, including indirectly-held assets, and specifically those held in omnibus Swiss and Liechtenstein accounts, the National Advisory Council proposed:

"To deal with indirectly-held assets by a vesting program with respect to accounts which remain uncertified after the deadline date. Processing of uncertified assets in Swiss and Liechtenstein accounts for vesting under applicable law as enemy property will be started immediately after the receipt of the census information by the Office of Alien Property. The vesting program will also be applied to uncertified assets held indirectly through recipient countries where the program described in (a) above does not result in disclosure to the beneficial owner's government (e.g., French assets held through the Netherlands). In the absence of definite evidence of non-enemy ownership, full weight will be given to the presumption of enemy ownership arising from the failure to obtain certification. Evidence of non-enemy ownership

or interest offered either before or after vesting will be checked in accordance with the usual investigative procedures of the Office of Alien Property. These procedures involve disclosure to the governments of the countries of which persons claiming legal or beneficial interests are residents. Of course, any vested assets which are proved to be non-enemy may be returned under existing law applicable to the return of vested property."

The program outlined in the "Snyder-Vandenberg Letter" is now in the course of execution. On February 27, 1948, General License No. 97 was issued, unblocking accounts which on February 1, 1948, were \$5,000 or less.²⁰ On March 1, 1948, public notice was given in the form of a United States Treasury Department Press Release that jurisdiction over assets remaining blocked on June 1, 1948, would be transferred to the Office of Alien Property of the Department of Justice. Announcement was also made that immediately upon the transfer of jurisdiction, the Department of Justice would take a census of the remaining blocked property and that the information concerning the names and assets of "resident nationals" as disclosed by the census would be given to the governments of the appropriate countries.²¹

²⁰ 12 F. R. 891. This general license does not apply to property of persons resident in or organized in Germany, Japan, Hungary, Rumania, or Bulgaria. If a person had separate cash accounts or a cash and a securities account, each account under this license was considered as separate even though all the accounts were maintained with the same American institution.

²¹ U. S. Treasury Press Release, March 1, 1948, Press Service No. S-648.

On April 27, 1948, it was announced that the date of June 1, 1948, had also been fixed as the final date for filing applications for certification in the eligible countries and that the respective certifying agencies had been given until September 1, 1948, to complete action on these applications. On September 1, 1948, the certification procedure under General License No. 95 is to be revoked. It was also announced that the Treasury Department would retain jurisdiction over blocked funds until September 1, 1948, and would during this period take the first steps in executing the program outlined in the letter to Senator Vandenberg.²³

Changes in licensing policy were instituted by the Treasury Department to conform with the program of rendering active assistance to the recipient countries under the European Recovery Program. Commitments were obtained from the various foreign governments which were issuing certifications under General License No. 95, that they would not consider as eligible for certification any person who had left a recipient country after June 1, 1947, unless a sub-certification were obtained from the country of prior residence. In considering applications for unblocking, the Treasury Department followed a similar policy with respect to persons who had recently emigrated²⁴

²³ U. S. Treasury Press Release, April 27, 1948, Press Service No. S-704.

The Swiss Government has recently asked for a further extension of the termination date for issuing certifications until December 1, 1948, so that it might complete the handling of well over 20,000 pending applications and provisory declarations. Because of the short time remaining, provisory declarations were accepted to meet the June deadline, with the further privilege of completing the applications at a later date.

into the United States and the generally licensed trade area from a recipient country. As a condition precedent to unblocking, the beneficial owner was obliged to agree that the Treasury Department might report to the government of the country of which he was a citizen the location of his assets and that he was claiming to have permanently changed his residence. The Treasury Department after it approved the application, generally advised the indicated government of the facts, including the identity and location of the assets unblocked.²⁵

Regulations covering the new census were issued by the Treasury Department on May 29, 1948.²⁶ Under these regulations, the census reports must be filed by July 15, 1948. Whenever the census reports disclose assets belonging to "resident citizens" of recipient countries, the information concerning the names and assets of

²⁵ "This action is directed toward preventing residents of recipient countries from taking advantage of brief residence in other countries to obtain the unblocking of their assets in the United States without the knowledge of the countries which this government is assisting under the European Recovery Program." See U. S. Treasury Press Release, April 27, 1948, Press Service No. S-704.

After June 1, 1948, the Treasury Department commenced to follow the policy of prior consultation with the interested recipient country before unblocking and apparently without the prior consent of the applicant.

With respect to applications for unblocking filed after June 1, 1948, the Treasury Department apparently is following the practice of referring those cases which involve either non-eligible countries under General License No. 95, or non-recipient countries, to the Office of Alien Property for its consideration, while continuing to process cases involving citizens of recipient countries, as above outlined.

²⁶ Public Circular No. 37, May 20, 1948 (18 F. R. 2915).

such persons will be given to the appropriate countries. It is entirely possible that the disclosure of information to a particular recipient country will not be confined to its "resident citizens" but may be extended to its citizens residing in other recipient countries as well as to those citizens who have recently emigrated. Information may also be given to a recipient country concerning the assets of its residents regardless of citizenship. Other census reports which do not disclose the interest of a recipient country will be processed after September 1, 1948, by the Office of Alien Property for the purpose of vesting. The regulations also provide for the filing of amended census reports to correct reports previously filed which disclose assets blocked as of June 1, 1948, but released by certification or otherwise prior to September 1, 1948. It is probable that census reports with respect to assets in this category will not be further disclosed to the recipient countries.

It seems clear that resident citizens of recipient countries under the European Recovery Program will be unable to obtain release of their blocked assets without the knowledge of their governments. Other persons may, under certain circumstances, be successful in obtaining the release of their assets prior to vesting but there is the distinct possibility that the Treasury Department or the Office of Alien Property may decide to consult with the government of the country of residence or citizenship, or possibly both, to determine whether there is any enemy interest in the property. This question is not finally settled and the factual presentation of each case may determine whether any consultation will or will not take place.

Assets still blocked when jurisdiction is transferred to the Office of Alien Property will be eventually processed for vesting. The execution of such a vesting program will take some time and, in the interim, it is probable that the Office of Alien Property will consider applications for unblocking. It may be anticipated that the Office of Alien Property in examining these applications basically may follow the unblocking policies of the Treasury Department, inasmuch as many of these policies have been developed by the two agencies in consultation. Procedures, of necessity, will be different in many respects.

If any assets are vested under this program, a beneficial owner who can establish that he is not an enemy of the United States and that his property is free of enemy taint, is entitled as a matter of right to the return of his property.²⁵ He may resort either to judicial action pursuant to Section 9 of the Trading with the Enemy Act, with the attendant publicity, or to formal administrative application to the Office of Alien Property for a return, in which event the proceedings are a matter of public record and may involve consultation with the government of which he is a citizen or resident, or both.

III

RETURN OF VESTED PROPERTY

As has been previously discussed, only a small amount of property owned by residents of the former enemy occupied countries had been vested

²⁵ *Clark v. Debevoise Finance Corporation* (1947), 332 U. S. 450, 92 L. Ed. 148.

during the war. With the liberation from enemy occupation, these countries ceased to be "enemy territory" and their residents no longer were technical enemies. Therefore there is no reason for the United States Government to retain title to any such vested property. However, the process of restoration and return of vested property was delayed until 1946, because the question of the legal authority to return the property was considered to be "shrouded in legal uncertainties."²⁵

Accordingly the interested executive agencies joined in recommending legislation to the Congress to grant the Alien Property Custodian discretionary authority to return the vested properties of "technical enemies" and of victims of Axis persecution. This legislation was enacted in 1946 and 1947.²⁶ Under this legislation, broadly speaking, the Custodian was given discretionary authority to make returns of vested property to all persons except voluntary residents of an enemy country during the war and citizens and subjects of an enemy country who at any time during the war were within enemy territory. Return could not be made to corporations organized under the laws of an enemy country or to other foreign corporations which at any time on or after December 7, 1941, were controlled by, or 50% or more of the stock of which was owned by enemy interests.

²⁵ See Annual Report, Office of Alien Property Custodian, Fiscal Year ending June 1946, p. 8. When property is vested by the Alien Property Custodian, it becomes property of the United States and the former owner is divested of all right, title and interest in the property. Thereafter it cannot be returned or otherwise disposed of without Congressional authorization.

²⁶ Public Law 322, 79th Congress, 2nd Session; Public Law 571, 70th Congress, 2nd Session; Public Law 370, 86th Congress, 1st Session.

*Methodology of when
made a gift of
50% former owner
has a right of
disposition. Any
transfer of his
rights must be
93).*

In addition, authority to return vested assets to the victims of Axis persecution was also conferred.²⁷

²⁷ Under the remedial legislation, the enemy countries are Germany, Japan, Bulgaria, Hungary and Rumania. The Custodian's office has construed the Statutes enumerated (supra, n. 38) as providing discretionary authority for the administrative return of vested property to the following class of claimants:

1. The governments of non-enemy countries.
2. American citizens who are not also citizens of an enemy country, regardless of residence.
3. Citizens of non-enemy countries who were not voluntarily resident in any enemy country at any time since December 7, 1941.
4. Citizens of enemy countries who have resided outside enemy and enemy-occupied territory at all times since December 7, 1941, and who were not engaged in any business in such territory.
5. Corporations and other associations organized under the laws of the United States or a political subdivision thereof.
6. Corporations and other associations organized under the laws of non-enemy countries, unless there was enemy control or other enemy interest of 50% or more at any time since December 7, 1941. A return may still be made if the enemy interest arose as an incident of the occupation by the enemy of the country under the laws of which the organization was formed, provided that the enemy interest was terminated prior to March 8, 1946.
7. Although corporations and organizations organized under the laws of enemy countries are not eligible for return, if the corporation's stock or the association's assets were wholly owned by American citizens or American corporations since December 7, 1941, the vested property of the organization may be returned to the American owners.
8. Individuals, regardless of citizenship or of residence, who qualify as victims of Axis persecution under Section 32(a) (2) (c and d) of the Trading with the Enemy Act, as amended. This Act applies to:

(Continued)

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Under these statutes, the return of vested property is discretionary with the Alien Property Custodian and as a condition precedent the Custodian must determine that the return is in the interest of the United States. No judicial remedy is provided for persons who, at the time of vesting, fell within the definition of "enemy,"³⁸ and the ad-

- (a) Individuals who were deprived of life or substantially deprived of liberty pursuant to any law, decree or regulation of any enemy nation discriminating against political, racial, or religious groups;
- (b) Individuals, who as a consequence of any law, decree or regulation of the nation of which he was then a citizen or subject, discriminating against political, racial, or religious groups, have at no time between December 7, 1941, and the time when such law, decrees, or regulation was abrogated, enjoyed full rights of citizenship under the laws of such nation.

Annual Report, Office of Alien Property, 1940, p. 146.

³⁸ It had been the position of the Department of Justice that no foreign national had a right to maintain a suit for the recovery of vested property and that the only judicial remedy afforded him was a suit for just compensation. However, in the recent case of *Clark v. Ueberese Finanz-Korporation*, supra, the United States Supreme Court held that a foreign national who at all times on and since the date of vesting was not an enemy and was free of "enemy taint" does have a judicial remedy for the return of vested property. What constitutes "enemy taint" was not determined. The Court stated:

"But what these interests are, the extent of holdings necessary to constitute an enemy taint, what part of a friendly alien corporation's property may be retained where only a fractional enemy ownership appears, are left undecided."

This decision will not avail the great majority of those residents of former occupied countries whose property was vested during the period of enemy occupation, since by reason of the enemy occupation they fell within the definition of "enemy" at the time of vesting. The decision, however, would appear to accord a judicial remedy to residents of non-enemy countries whose property may hereafter be vested under the program announced by Secretary of the Treasury Snyder.

ministrative remedy before the Office of Alien Property is exclusive.

In view of the fact that the remedial legislation prescribes the test of national interest, and in order to facilitate the processing of claims filed by foreign residents, the Custodian has concluded agreements with most foreign governments which were allied with this country under which procedures have been established for the certification of such claims. Under these procedures a person residing in any of these countries may submit his claim for return to a designated agency of such country. This agency will make an investigation to determine whether the claim correctly sets forth the citizenship and residence of the claimant and whether any enemy interest exists in the property claimed. It will also investigate whether the claimant at any time after December 7, 1941, aided or assisted the enemy by collaboration or otherwise. If the investigation is favorable the designated agency will issue a certification to that effect and will forward the Notice of Claim, accompanied by the Certificate, to the Office of Alien Property.⁴⁰

⁴⁰ Under the certification form, the certifying agency certifies that an investigation of the records of the government has disclosed no information contrary to that set out in the Notice of Claim in respect to the citizenship and residence of the claimant and enemy interest in the property claimed; that the records of the government do not indicate that the claimant at any time after December 7, 1941, aided or assisted the enemy by collaboration or otherwise; that the records of the government do not disclose any information contrary to that set out in the Notice of Claim with respect to enemy control or enemy ownership of the claimant and enemy interest in the property claimed; and that the documents attached to the Notice of Claim showing a devolution of title are in accordance with the laws of the certifying country.

(Continued)

Should the investigation be unfavorable, the Notice of Claim is forwarded by the certifying agency to the Office of Alien Property with a statement of the reasons why certification was not granted.

A claimant may file his Notice of Claim directly with the Office of Alien Property. In such case, if the claim is an appropriate one for certification, a copy of the Notice of Claim will be transmitted for purposes of certification by the Office of Alien Property to the designated agency of the government concerned. It is understood that the general practice of the Office of Alien Property is to transmit for certification whenever it appears that the claimant at any time between December 7, 1941, and the date of the cessation of hostilities resided in a certifying country. Thus, for example, if a claimant resided from December 7, 1941, to January 1943, in Holland, and from January 1943, to 1945 in France, the Notice of Claim would be transmitted to both De Nederlandsche Bank, Amsterdam and L'Office des Biens et Interets Prives, Paris, notwithstanding that the claimant thereafter may have immigrated to the United States or some other country.

Generally speaking, it may be said that the Office of Alien Property will accept the findings of the certifying agency as to the personal status of the claimant and his activities during the war. However, the determination of the allowance or disallowance of the claim for return is made by

Completed or tentative agreements for certification have been reached with France, Belgium, Denmark, The Netherlands, Norway, Poland, the United Kingdom, Austria, Czechoslovakia, Luxembourg and Italy. See Annual Report, Office of Alien Property, Department of Justice, Fiscal Year ending June 1947, p. 84.

the Office of Alien Property and it may determine not to return the property notwithstanding a favorable certification or may return the property notwithstanding the denial of certification.

It is obvious that the effect of the procedures followed by the Alien Property Custodian may be to place under the control of the certifying country, the assets returned, even though the return actually is made to the claimant.

IV

CONCLUSION

From the foregoing, it is apparent that a foreign national whose property was blocked or vested by the United States Government will, in the absence of evidence of enemy interest or enemy control, encounter little difficulty in obtaining the release of his property interests in the United States, if he is willing that his government either actively intervene or at least be consulted. It remains for future determination those categories of cases in which release will be possible administratively without such publicity.

Undoubtedly in seeking the release of their dollar assets, applicants will run the risk that their governments may compel them to pay taxes or penalties for failure on their part to disclose these assets. Moreover, they face the probability that they will be required to turn over their dollar assets in exchange for local currency.

The very nature of the recent conflict which introduced controls over non-enemy property, and the resultant devastations and spoliation which brought about the European Recovery Program has introduced new factors, the final effects of

which cannot be fully foreseen. They may well result in the reorientation of many of the policies heretofore followed by the Treasury Department and the Office of Alien Property. It should be borne in mind that under Public Law 472, 80th Congress, 2nd Session, enacting the Foreign Assistance Act of 1948, beneficiary countries are required to agree that, to the extent practicable, they will take measures to locate and identify and put into appropriate use, in furtherance of the European Recovery Program, the dollar assets of their citizens. This legislation envisages control measures over foreign owned assets of which blocked and vested accounts form only a small part. Although it has been officially stated that no action will be taken by the United States Government to assist the beneficiary countries in locating the free dollar assets of their citizens, this policy may have to be readjusted as world conditions change. At the present time, there seems to be no disposition in responsible governmental circles to take any action in respect to free assets.

In respect to blocked assets, undoubtedly applications for unblocking will hereafter be considered in the light of the impact on the European Recovery Program. Where the interests of citizens of non-beneficiary countries are involved, there is some reason to believe that the phase of international cooperation exemplified by the certification agreements will have come to an end. Each case will be examined on its merits and it may well be that consultation will depend upon the facts of each case and may be limited to those cases where the facts of ownership are obscure or where there is some evidence of enemy interest.

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YIV 126347-7
Am. Jew. Com. (FAD 41-46)
Box 30, FILE 5
Germany Rest.

(FAD = Foreign Affairs
Dept)
Box 30 File 5

December 28, 1948

TO: Foreign Affairs Department
FROM: Max Isenbergh
SUBJECT: Law 59 - American Zone Germany
I. Jewish Restitution Successor Organization - Community Property
II. Review Board

I.

While in Germany last week, I went to Nuremberg to attend a meeting of the Advisory Board of JRSO. The main issue under discussion was the problem of community property which is being claimed both by the Successor Organization and by the surviving Jewish communities.

AJDC and the Jewish Agency, who are represented on the Advisory Board, take the position that the Jewish communities are no longer in existence, and that therefore the property should go in its entirety to the Successor Organization. A contrary argument is made that legally the Jewish communities continue to exist, and therefore, although greatly reduced, they are entitled to all of the community property. We in the Paris office had, before the meeting began, come to the conclusion that regardless of the resolution of the narrow legalistic issue of the continuity of the communities as legal entities, it would be wrong in principle to permit all the community property to go to the surviving groups. In the first place, the communities are typically one or two per cent of their former size. In the second place, they are in large part composed of Jews of mixed marriages or Jews who before the war were members of different communities. In the third place — and more important — the return of large amounts of community property to small groups might afford an encouragement to Jews to remain in Germany, a result which we are convinced is wrong.

I spent the evening before the meeting with Dr. Philip Auerbach, representative of all of the Jewish communities in Bavaria. He refused to accede that there was any merit in our arguments and said that the Jewish communities of Bavaria would not abandon their claims. He said that he would make no concessions at the meeting, and that if the Advisory Board was of a different opinion, he would proceed to litigate the question in the Restitution Chamber of the German courts. On the morning of the meeting, I drove to Nuremberg with Dr. Auerbach and attempted to convince him of the unseemliness of bringing this question into the open in the German courts. He repeated that he would not consider any compromise, and that if his position were not accepted, he would merely withdraw from the meeting.

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The meeting (December 20) was attended by Dr. Curt Epstein, representing the Jewish communities of Hesse; Dr. Warshar, representing the Jewish communities of Wurttemberg; Dr. Philip Auerbach, representing the Jewish communities of Bavaria; Dr. Max Kreutzberger, representing the Council of Jews from Germany in London, and the Jewish Agency; and George Weis, representing AJDC. Mr. Ferencz sat as non-voting chairman, and I participated as an officious inter-meddler.

Fortunately, the representatives of the other communities were less adamant, and finding himself alone in the meeting, Dr. Auerbach finally succumbed.

The upshot of the meeting was as follows:

1. JRSO is to take title to all the community property.
2. The Jewish communities are to submit to the JRSO budgets of their needs, and these are to be reviewed by the Advisory Board.
3. The budgets as approved are to be submitted to the Board of Directors of JRSO in New York, together with the recommendation that JRSO undertake to place at the disposal of the Jewish communities so much of the community property as is necessary to meet their needs.
4. If the Board of Directors of JRSO approves the proposals, the question will be closed.
5. If the Board of Directors is not prepared to approve the recommendations, it will permit representatives of the communities to participate in the deliberations leading to a different course of action.
6. Pending settlement of the question, JRSO and the communities will not prosecute any claims for community property without mutual consent.

Particularly in view of the initial recalcitrance of Dr. Auerbach, these conclusions appear to me to be quite satisfactory. Unfortunately, they may not be adhered to, since I have just learned from Mr. Ferencz by telephone that Dr. Auerbach is threatening to resume his original position.

You will doubtless receive more detailed minutes of the meeting, but I thought you would like to have this preliminary statement of my impressions.

II.

While I was in Germany, the appointments to the Review Board on restitution matters were announced by General Clay. The chairman will be Johnson P. Crawford, and the other members will be Frederick Hulse, Meyer L. Cassan and Peter J. Flanagan. Until their appointment, all of these gentlemen held posts in Military Government. Ferencz, who knows most of them, thinks that the Board can be depended upon to do a conscientious and not unsympathetic job.

December 27, 1948

TO: Foreign Affairs Department

Subject: GERMAN TRIZONAL
CONSTITUTION & OCCUPATION STATUTE

FROM: Max Isenbergh

One of the purposes for which I recently went to Germany was to look into the question of the creation of the proposed trizonal state, with a view toward trying to make this event the occasion for comprehensive improvement of the restitution and indemnification laws in Western Germany. Fortunately, I was able to catch in Frankfurt Dr. Hans Simons, Chief of the Governmental Structures Branch of COMUS and Deputy (to Dr. Litchfield) Liaison Officer with Germany for questions of the occupation statute, negotiations with the Parliamentary Council (constitutional convention) at Bonn, and changes in the boundaries of the Laender.

Dr. Simons, whom I had previously known only by reputation, appeared to me to deserve the high esteem he enjoys. As you may know, although an "Aryan," he chose to leave Germany in 1933 and became one of the mainstays of the New School for Social Research in New York. He told me that the Germans themselves participating in the deliberations at Bonn have no feeling that they should assume responsibility for the Nazi victimization of Jews and others. It is true that many of them were themselves in concentration camps and represent the small body of authentic resisters to Hitler. He pointed out also that they have become quite skilled in playing off the three occupying powers against each other and in taking advantage of the British and American Military Government attitude that the economic recovery of Germany comes first. Possibly, vigorous representations from Military Government that adequate restitution and indemnification are regarded by the occupiers as a requirement of the new state would influence them, but the fact is that there is no voice of this kind in COMUS, and there is like indifference among the British and French.

I asked him whether it would be possible to enlist the aid of some German group by trying to convince them that decent restitution and indemnification measures originating with the Germans would pay for themselves in terms of winning good will. He thought that this might be possible, but when I asked him what German group to work with, he threw up his hands. (Since my return from Germany, Mr. Shuster and I have been in touch with Mr. Irving Brown, who is in Europe for the AF of L and who has very close associations with the Social Democratic Party (SPD). He gave us the names of SPD leaders most

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likely to have sympathy for our aims, and Mr. Shuster and I plan to go to see them soon. Mr. Brown also assured us that he would vigorously press the question with them.)

I asked Dr. Simons whether the proposed occupation statute contained any provision on restitution and indemnification, and he told me that since the occupation statute is secret, he was not at liberty to discuss it with me. I learned later, however, that the occupation statute originally included a brief statement that restitution and indemnification would continue to be reserved for treatment by the occupying powers. I learned also that in view of the passage by the Leader of the American zone of an indemnification statute (discussed in an earlier memorandum), the words "and indemnification" were deleted from this statement.

In connection with the occupation statute, I asked Dr. Simons whether DPs would continue to be excluded from the jurisdiction of German courts. He told me that this was an open issue under the occupation statute in that the Americans are pressing for this exclusion but that "others," whom he refused to identify, thought that the time has come to permit the German courts to exercise jurisdiction over DPs.

In terms of what to do next, I emerge with the following conclusions:

1. On the German side, we are going to press as hard as we can to get the support of the SPD on the questions of restitution and indemnification. We recognize that there are no reasons to be optimistic on this issue, and that it would in any event be better to have the handling of these matters imposed from above by Military Government. Nevertheless, if we could get some indigenous voice to urge that the Germans themselves take responsibility for restitution and indemnification, that would probably impress Military Government a little and might reduce MI's resistance to imposing adequate measures on the Germans. More specifically, we shall seek to have a statement on the moral necessity for making restitution and indemnification included in the preambular phrases of the proposed constitution. A copy of the current version of the constitution is being sent to New York separately. As revisions are made, I shall try to send them to you.
2. It is essential that we arouse some force in the State Department in favor of extending the principles of the American restitution law to the other zones, and in favor of getting decent indemnification measures enacted in the American zone as well as in the others. In this connection, I learned in the course of conferring with the French Military Government people in Baden-Baden that the chiefs of the property divisions of the three zones are meeting in Frankfurt on December 28. While their meeting is for a different purpose, it affords a good occasion for the Americans to press the others on these issues. I have therefore telephoned to Mr. Rubin and have asked him to do his best to get a cable of instructions from the State Department to the American representatives at the meeting to press again for unification of restitution and indemnification measures. I propose myself to leave for Frankfurt tonight in the hope that by confronting the representatives of the three countries I may possibly exert an influence for the good.
3. As I recommended in another memorandum, a personal call on General Clay by our most impressive emissary or emissaries is much to be desired.

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December 27, 1948

YIVO 347.7
AJC (FAD 41-46)
Box 30 File 5

4. On the question of protecting DPs from the possibility of being subjected to the jurisdiction of German courts, it is essential that the most vigorous representations be made to the State Department immediately. The occupation statute is under consideration right now in Washington, and we should not run the risk that in the absence of vocal pressure the State Department may retreat from the protective attitude toward DPs which the American occupation representatives have thus far championed.

The foregoing was dictated hurriedly since I wanted you to know as soon as possible the lines along which I am working. When I return from Germany, I shall prepare a more detailed memorandum, setting forth more fully the substantive issues I briefly outlined by telephone to Mr. Rubin.

oOo

Copy: Mr. Seymour Rubin

340536

YIVO 347.7
AJC (FAD 41-46)
Box 30 File 5

Re: Germany

SEYMOUR J. RUBIN
ATTORNEY AT LAW

PHONE: REPUBLIC 0504
CABLE ADDRESS: RUBINLEX

1822 JEFFERSON PLACE, N.W.
WASHINGTON 6, D.C.

December 24, 1948

Mr. Max Isenbergh
The American Jewish Committee
30, Rue la Boetie
Paris 8, France

Dear Moose:

I talked at great length with Noel Hemmendinger this morning. As indicated in my cable of today's date, he indicated that it would be entirely futile, hopeless, impossible and undesirable to try to get out anything on the subject of indemnification. He told me that US policy with respect to indemnification was very far from clear and that with respect to the law passed by the Laender it was considered with considerable skepticism, doubt and hostility by Military Government. He therefore thought that, even with the best good will in the world, it would probably be impossible to get a cable out of the State Department, that it would certainly be impossible to get a cable out of the War Department and that if such a cable arrived in Germany absolutely nothing would happen. He indicated, moreover, that the Chiefs of the Property Divisions would not be the people principally interested in the indemnification law, but rather the Chiefs of the Finance Divisions would be, and that therefore the December 28th meeting would probably not even be an appropriate forum. He seemed to feel that anything substantial with respect to indemnification was a matter which would take a good long time.

On the basis of this, I suggested that he drop any reference to indemnification in the cable. I asked, however, that he get out a cable on the subject of restitution. He said that he would try to do so and he later called me back and said that he had cleared in the State Department a cable on this subject. He alluded to the possible difficulties in the Department of the Army because of completely extraneous circumstances, these apparently being certain indications on the part of General Clay recently that the Army has been breathing somewhat too heavily down his neck recently. If these extraneous difficulties can be surmounted, a cable may go out today or Monday. The cable will say in substance that it is understood that a meeting is taking place on December 28, that Washington wishes to raise the question of unification of restitution procedures and asking for comments from Germany. Apparently it is considered undesirable to tie the December 28th meeting too clearly to a directive to discuss the matter - again, apparently, on the let's-not-breathe-down-General-Clay's-neck-too-hard theory.

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Finally, Noel suggested to me that the better course in connection with this matter would be for me not to check up too closely on progress. It may be that some people in the Department feel that the participation of a private organization like the Committee in public work has already gone as far as is desirable. Since Noel is obviously a friend of ours in the Department, I am inclined to abide by his advice and to refrain from pushing very vigorously until I hear from him again.

I hope that you have a good Christmas.

With all best wishes, I am

As ever,



Seymour J. Rubin

cc: Dr. Eugene Hevesi

340538

Fall in Restitution Germany

903 North Wayne Street,
Arlington, Virginia,
October 7, 1948.

Dear Joel
Moose,

I am writing to both of you because I do not know which of you will be in a better position to look into this matter and on the theory you will consult.

Monroe Karasik and I have been concerned about the continued discrepancies of practice with respect to restitution in the 3 zones of western Germany and may get off a cable through Army to OMCUS asking if anything can now be done about it. We don't have enough information here to get very far in figuring out all the ramifications, with respect to the possibility of a single administration of the 3 zones, the effects of currency reform, British attitude on enacting a decent restitution law, etc. If either of you have an opportunity to look into this at all in Germany, we would very much appreciate your comments on how the problem would be advanced.

Best personal regards.

Sincerely yours,

Noel Hermer

Joel Fisher,
Joint Distribution Committee,
19 Rue de Tehran,
Paris, France.

Max Isenbergh,
American Jewish Committee,
30 Rue la Boetie,
Paris 8, France.

*P.S. Hope your
Greek trip -
profitable. Cable wires
to Athens.*

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