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The Transfer Agreement

• THE UNTOLD STORY OF
THE SECRET AGREEMENT
BETWEEN THE THIRD REICH
AND JEWISH PALESTINE •

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Hartenstein said, he would allow Hanotaiah's expanded permission to stand. Hartenstein tried, however, to reassure Landauer with a promise to watch Hanotaiah's work and make sure Cohen's company lived up to all expectations.²¹

Landauer would not yield. He told Hartenstein that he could not trust any program implemented by Hanotaiah. As the head of the ZVfD, which controlled the Palastina Amt, he was therefore going to counsel all emigrants that anyone transferring via Hanotaiah was doing so at great financial risk. At the same time, he was going to instruct the Zionist authorities immediately to establish a competitive trust company supervised by the Anglo-Palestine Bank as outlined in the transfer memo of July 19.²² This was a tense moment. Landauer was speaking to a high German government official. He was declaring that he would create an economic organization to frustrate an important export program. Landauer's adamancy came at a time when high-ranking Nazi officials were being sent to concentration camps for proposing alternative economic plans. It was a time when Economics Minister Kurt Schmitt had received Hitler's authority to crush anyone who did not fully cooperate with economic directives.

But the exodus of Jews to Palestine, the employment that would result from the exports, the foreign currency that would be earned, and most significantly the anti-boycott effect of finalizing the transfer were all too vital to let lapse. So Hartenstein backed down and agreed to stay Hanotaiah's expanded permission briefly, pending a verification from the Foreign Ministry, through Consul Wolff, of Cohen's authority. If Hanotaiah was discredited, Hartenstein would vest the transfer authority with the ZVfD and allow Hanotaiah to participate as a mere importer. However, if Cohen was vindicated and the much-touted Anglo-Palestine Bank trust company did not quickly come into existence, then Hanotaiah would be granted full transfer authority—and Landauer could tell the emigrants anything he chose.²³ With that compromise, Landauer left the Economics Ministry and went right to work.

A coordinated plan of action was called for. It began that same day, July 20, with Hermann Ellern, who had access to Schmidt-Roelke at the Foreign Ministry. While traveling back to Karlsruhe, Ellern had made contact with Landauer, probably during a train stop at Frankfurt. After learning of the unexpected Sam Cohen development, Ellern telegraphed Schmidt-Roelke: "WILL SEND YOU COMMENTS RE TRANSFER PLAN TODAY STOP WOULD APPRECIATE YOUR CONSIDERATION OF SAME IN IMPLEMENTATION DIRECTIVES"²⁴

The next morning, Landauer sent an urgent correspondence to Anglo-Palestine Bank director Hoofien in London. He explained the sudden crisis, how apparently between the July 13 Wilhelmstrasse conference and Landauer's follow-up July 20 meeting with Hartenstein, Cohen had made addi-

tional unauthorized representations to the Economics Ministry that once again placed the entire transfer in his hands. In writing his letter, Landauer tried to control his anger. "It is clear that the Reich Economics Ministry and the Foreign Ministry should not have done this thing without asking us. Mr. Sam Cohen's behavior is for me entirely unclear. He has operated with the most impossible remarks. For instance, he said that he will get an office with us, and he is our authorized agent."²⁵

Cohen's coup could be reversed, but "only if all parties in Palestine establish an office within the week to take over the merchandise and if the APB immediately takes the initiative." Landauer urged Hoofien to "treat this matter urgently" and his letter ended with the simplest distillation of the crisis: What happened in the next few days would "decide in the long run the fate of German-Jewish emigrants' money."²⁶

Once Hermann Ellern arrived in Karlsruhe, he sent Schmidt-Roelke his personal transfer suggestions. These closely followed Landauer's ideas. This was to show Schmidt-Roelke the widespread acceptance of Landauer's viewpoint. Ellern added his comments: "This plan is intended to facilitate for Jewish emigrants the transfer of a majority of their assets to Palestine and reopen a large market for German products. This proposal [however] may have been overtaken by events, namely the agreement . . . with Hanotaiah."²⁷

Ellern's demarche continued, "I am in close contact with the ZVfD in this matter and feel a personal obligation to inform you of some misgivings, since I want to take a position as early as possible with respect to matters which might be harmful to all parties concerned. . . . Last night I was told at the offices of the ZVfD that, contrary to statements made by Mr. Sam Cohen, there is no question of opening a Hanotaiah office. . . . Also, I have spoken with a representative of Yakhin who stated that Mr. Cohen is not speaking for that company."²⁸

To retain his own credibility, Ellern disparaged Cohen carefully: "I don't know Mr. Cohen personally and have no reason to doubt his veracity, but I have gained the impression that a transaction of this magnitude, if it were to be conducted solely by Hanotaiah, would not be greeted with universal trust and confidence. This also conforms to various opinions which I have heard about Hanotaiah in Palestine."²⁹

Realizing his assertions went against everything Schmidt-Roelke had been told, Ellern explained, "Mr. Cohen is a very clever businessman and his sweeping powers of attorney and letters of recommendation may be based on the fact that the situation in Germany is not well known there [in Palestine] and that every idea is welcomed which could conceivably lead to a transfer of capital . . . by emigrants, thus facilitating the establishment of a new existence for these emigrants in Palestine, as well as to again make the Palestine market accessible to Germany."³⁰ This last comment was a clear reminder

the Hanotaiah agreement. But at about that time, the officer on the Palestine desk saw that Consul Wolff's telegram was actually intended for Hartenstein's meeting. He immediately telephoned the message over to Hartenstein's office.¹⁵

Hoofien, Landauer, Cohen, and the others had not yet left the conference room when the news was brought in. A moment of silence passed as the telegram's contents were noted. It is unknown whether Hartenstein then read the words aloud, or whether he simply handed the handwritten note to Cohen. Whichever it was, Mr. Sam Cohen got the message.¹⁶ He had finally run out of endorsements. Wolff's new recommendation was clear. Cohen was gracious in defeat. He agreed to relinquish his transfer to a trust company to be established by the Anglo-Palestine Bank. Hanotaiah would step back and function as just one of several participating plantation companies.¹⁷ It was over.

Three days later, on August 10, Hartenstein issued a revised decree authorizing Hoofien to create two transfer clearinghouses, one under the supervision of the ZVfD in Berlin, one under the supervision of Anglo-Palestine's trust company in Palestine. The Berlin corporation was named Palastina-Treuhandstelle zur Beratung deutscher Juden GmbH—the Palestine Trust Society for Advice to German Jews, Inc. As was the Reich vogue, an appropriate acronym was immediately invented: Paltreu. Corresponding to Paltreu was Haavara Trust and Transfer Office Ltd. in Tel Aviv. Often called Haavara Ltd. for short, this corporation was organized under the Palestinian commercial code and operated by business managers. Its stock was wholly owned by the Anglo-Palestine Bank.¹⁸ *Haavara*, the Hebrew word for transfer, quickly became a synonym for *transfer*.

Paltreu and Haavara would each manage two separate accounts or *Kontos*. Konto I was for existing emigrants. They would deposit their marks into Paltreu's German-based blocked account. German exports would then be sold in Palestine, the proceeds being deposited in Haavara's balancing account. Hartenstein's decree specified that the equivalent of the blocked marks "will be paid out [by Haavara] in cash in Palestine pounds upon request." The transfer would indeed give the emigrants the cash they needed to restart their lives.¹⁹

Konto II was reserved for so-called potential emigrants or those wanting to invest in Palestine as a Jewish national home. German Jews could voluntarily deposit their marks into this second konto, but they could not be transferred until all the actual emigrant depositors of the first konto had been reimbursed. As such, these potential millions upon millions of frozen reichmarks represented a long-term money pool the Zionists could utilize for capital investments and development projects. Those who stayed behind would continually finance the expanding Jewish home for those who agreed to leave.²⁰

"The boycott of German goods in various countries is having a very material influence on German trade and the effects are undeniably being felt," the report asserted. [And it is] the only weapon which might . . . [influence] the present order to restrain the violence of the rank and file." The report recommended that the "boycott be increased and extended. Concentrated action against a few more industries will intensify the already serious economic situation in Germany and will force the present order to change its tactics."¹⁴

The report presented through Motzkin may have seemed like a reasonable compromise. Transfer the true believers to Palestine. At the same time, continue boycotting to force Germany to curtail persecution of those remaining. Unfortunately, the Third Reich was willing to release any number of Jews for Palestine as a means of expulsion, but it was unwilling to let them remove any of their assets unless the Zionists intervened against the boycott. Unless assets preceded emigrants, there would be no real nation to emigrate to. Motzkin's boycott report was rejected. Senator's report for stabilizing the German economy was accepted. It was simply a matter of priorities.

What began as a purely noble task in the minds of a few German Zionists quickly diluted into a grand bazaar of business opportunities. The notion of transfer was itself steeped in business transactions with Germany. When complete, Palestine would possess the commercial-industrial framework needed to supply a population's needs, provide jobs, and qualify the Jewish State as a member among nations in world commerce. This was sensible. A true nation was more than a haven, more than a commune. It was a land whose citizens could live, work, and prosper in peace. Therefore, the transfer of industrial machinery to build factories was intrinsic to state building as surely as the transfer of hospital beds and irrigation works.

Israel's commerce was to be as diverse as any nation's. In fact, this was a special feature of Zionist self-determination. Whereas Jewish economic opportunities had historically been confined, the opportunities in Israel would be unlimited—including the opportunity to earn one's bread by sweat and labor in fields and factories.

But in the summer of 1933, as the transfer apparatus developed, the lines between welfare and windfall blurred. What was state building, and what was pure commercialistic opportunism? Indeed, this conflict represented the critical flaw in the actions of Mr. Sam Cohen. For his flaws, Cohen was replaced with a fleet of brokers and enterprises that did enjoy the Zionist Organization's seal of approval, but were nonetheless just as commercialistic. So it soon became impossible to distinguish between the unhappy burden of doing business with the Third Reich to facilitate emigration, and the gleeful rush of entrepreneurs frantic to cash in on the captive capital of Germany's Jews.

For example, in the summer of 1933 a new publishing company was formed in London, headed by leading Palestinian publisher Shoshana Peritz. Its board included such notables as financier Robert Waley-Cohen, Hebrew University chancellor Judah Magnes, Palestinian industrialist Pinchas Rutenberg, and JNF director Menahem Ussischkin. The venture would be called the Palestine Publishing Company. Its feasibility hinged on the purchase of £80,000 (\$400,000) worth of printing presses and other lithographic equipment from Germany, only half of which was to be paid in actual pounds. The remainder would be paid out of blocked marks. To complete the transfer, Palestine Publishing would deposit minority shares instead of money in the balancing account. Thus, a new industry was created for Palestine that would have been financially impossible except for the transfer.¹⁵

In early August, several of the original transfer conceptualizers in Jerusalem, including Felix Rosenbluth and Arthur Landsberg, formed Exim, a company to import German steel via the transfer apparatus. The first transaction called for RM 500,000 in German steel, only 40 percent of which would be paid in foreign currency. The remainder would be paid in blocked transfer marks. There was no particular public character to their enterprise, no charitable by-product of Exim sales. Although steel was vital for housing and factories, Exim was in fact just a company selling German steel products via transfer.¹⁶

In August another group of investors decided to establish a brewery in Palestine. The German government agreed to transfer brewery equipment valued at RM 750,000 (about \$250,000), 90 percent of it paid by sperrmarks. The balance would be foreign currency supplied in part by the American Economic Committee for Palestine in New York.¹⁷

The Palestine Publishing Company, Exim, and the new brewery represented just a fraction of the Palestinian-German business ventures that came into play during July and August as the bonanza that lay within the transfer became known in business circles. Were these business deals little more than taking advantage of the crisis facing German Jewry? Or were they legitimate efforts to build the Jewish home by developing the Palestinian economy? All enterprise in Palestine of course expanded the Jewish national economy by providing jobs, services, products, and capital. But then again, in 1933, all nations and their citizens were struggling to recover from the Depression. Those who placed the boycott against Germany before lucrative business deals were sacrificing in the fight against Hitler. Palestinian entrepreneurs simply concluded that they could not afford to be part of that fight. A nation was being built. For now, there could be no wars. Only alliances.

An alliance with Germany based on trade quickly shifted the Zionist emphasis from the people caught in crisis to the money caught in crisis. By the July transfer activists spoke increasingly of "saving the wealth" and

"rescuing the capital" from Nazi Germany. The impact on the German Jews themselves seemed to be a subordinated issue. It was this very accusation that led to the rejection of Mr. Sam Cohen. And it was to avoid private-sector exploitation that the Zionist Executive had convinced Cohen to bring his mid-May deal under "national supervision." This meant sharing the transfer with the rival company Yakhin, operated by the Histadrut, the official labor conglomerate essentially controlled by Mapai. Yakhin and Hanotaiah had eventually signed a binder of cooperation, but Yakhin ultimately joined the Conference of Institutions.

However, at a July 31 Histadrut Executive session called to review the transfer, Histadrut leaders acknowledged that from the outset their main interest was forming a special investment combine to usurp the project from Hanotaiah. Then the Histadrut leaders unveiled a plan for a sort of mandatory loan that German emigrants would extend to a Yakhin subsidiary called Nir, which would purchase German goods for sale in Palestine using blocked funds. But instead of depositing all the proceeds in the Palestine balancing account, thus completing the transfer, Nir would essentially convert two-thirds of the transaction into a mandatory fifteen-year loan, using the money for large land purchases and housing construction.¹⁸

One of the leaders attending the July 31 meeting objected, "Frankly, this imposed loan has a bad smell. The Jew in Germany might claim he is being forced to loan money, while the Jew in the States is not." Such hesitation was brushed aside, however, as Histadrut leaders agreed that "constructive" tasks were of the highest priority. And unless a public body such as the Histadrut seized control, "it will turn to a gang of speculators."¹⁹

The attitude of Histadrut officials was typical of Mapai leadership and their allies, who saw the wealth of German Jews as the most precious hostage held by the Third Reich. As part of this thinking, Georg Landauer and the ZVfD fought for German regulations that would prevent German Jews from saving their wealth by any means other than investing it in Palestine. On August 17, ten days after the Transfer Agreement was sealed at Wilhelmstrasse, Landauer sent a letter to Hans Hartenstein. Landauer's words: "We looked for methods to make sure that sums which flow to Palestine in the framework of the presently granted three million mark concession are indeed invested there. We are also looking for solutions to prevent people using this concession in a roundabout way to establish a sure means of livelihood in other countries."²⁰

Landauer recommended that ZVfD certification of emigrants be contingent upon purchasing land in Palestine, extending a loan to Nir, or participating in any approved Palestinian investment. Landauer's words: "Therefore I would like to suggest that the Emigrant Advisory Office receive instructions whereby emigrant applications based on contracts with Palestinian colonization companies receive priority status." Landauer reminded Hartenstein that the legal basis for such an arrangement was essen-

tially already on the books by virtue of currency regulations that obligated the Emigrant Advisory Office to verify exactly how much cash an individual needed in order to relocate.²¹

Landauer's August 17 letter closed with a preemptive defense against the obvious criticism: "Of course we don't want to prevent the emigration of Jews into other countries. We only want to secure the application of the three million mark concession in the sense that it was granted."²² But Landauer and his associates knew that without money, a refugee was escaping to a life of soup kitchens and near starvation, a life that almost always precluded an entire family fleeing together for simple lack of cash. Moreover, refugees were barred access to the United States and other countries unless they possessed enough money to prove they would not be public charges.

Yet without the special certification Landauer requested, the transfer might have proven a false boon. Many German Jews were desperate to leave Germany for a short time, hoping the Hitler terror might subside. German Jews were quite willing to transfer their money briefly to Palestine and then retransfer it to a desirable destination such as Holland or France. However, the awesome impact of the ZVFD certification process was that, with few exceptions, a German Jew could not save himself with any of his assets unless he did so through Palestine.

Penniless refugees were already straining the charitable resources of Europe. It had been a Zionist strategy from April 1933 to divert relief donations for constructive work in Palestine. Chaim Weizmann had delivered a number of speeches to Jewish groups in this vein, urging them to look only to Palestine and relinquish any serious effort to maintain refugees in Europe. One such speech on May 29 in Paris was printed verbatim in Jewish and Palestinian newspapers for weeks thereafter. At a time when Nazi racial scientists were accusing Jews of being or transmitting an infectious racial disease, Weizmann's choice of words was ironic: "And here I must speak frankly of a very painful and delicate subject: these refugees are themselves the germ-carriers of a new outbreak of anti-Semitism."²³

The effect of Weizmann's Herzlian rhetoric was to make Jews in neighboring haven countries wonder if they were not importing German anti-Semitism by caring for the refugees. Weizmann's true point was made elsewhere in the speech: "It is true that thanks to generous hospitality . . . some tens of thousands will find refuge in France, in Czechoslovakia, in Switzerland, or in Holland; but . . . we must entertain no illusions. . . . The world is already full—and the countries abutting on Germany will soon become saturated. . . . What is going to happen to those 200,000 [German Jews] who may find themselves on the pavement tomorrow or the day after tomorrow? They are condemned to a fate which is neither life nor death." The answer was not a haven in Europe, said Weizmann. The answer was a home in Palestine.²⁴

Weizmann urged Jews to fight for national rights, not civil rights. Ener-

German vessels. But the ill-conceived assistance actually robbed German lines of an important profit center—bookings and transshipping on foreign vessels.¹⁵

An equally self-destructive rescue was imposed upon the textile industry, where unemployment in some places reached 50 percent. Recovery had been blocked at every turn by the boycott. So the Nazis slightly changed the design and color of regulation uniforms. Idled looms switched on and mill payrolls increased as textile companies scurried to produce materials for the new uniforms. But an impoverished public could not produce enough demand, and much of the new goods was dumped at great loss on foreign markets. Thus, sales revenues slumped in the face of increased production.¹⁶

Another trick was the outright bribery of foreign officials and cash incentives to special-interest groups purchasing German goods. For example, in August, I. G. Farben, one of Germany's largest employers, negotiated with the Rumanian government to lift their quasi-official ban on German merchandise, which was protectionist in origin but regularly flamed by anti-Nazi boycott groups. Via the German legation in Bucharest, with the full endorsement of the Foreign Ministry, Farben offered Rumania a complex but irresistible bargain.

First, Farben would purchase RM 17 million worth of Rumanian grain, about half of which would actually be imported into Germany to compete with German produce. The remaining RM 9 million would be sold by Farben to other countries. Second, Farben would broker 100,000 tons of Rumanian wheat to the world market, and even pay a 10 percent price support, in effect subsidizing Rumanian wheat farmers.¹⁷

Third, of the foreign currency received by Germany in selling Rumanian products, the equivalent of RM 2.5 million would be handed to the Rumanian National Bank. What's more, roughly 25 percent of the sales within Germany would be converted into foreign currency and also handed to the Rumanian National Bank. Fourth, much of the worldwide grain shipments would be shipped aboard Rumanian vessels, in direct competition with German lines. All this was in exchange for Bucharest's granting permits for RM 13.6 million worth of I. G. Farben products to be sold in Rumania.¹⁸

Despite the lopsided arrangement, Farben was forced to grease the deal further with a bribe of RM 250,000 to high Rumanian government officials for "party purposes." An additional RM 125,000 went to the National Socialists of Rumania, presumably to guarantee their consumer support for Farben's products. To quiet public opposition to trading with Germany, Farben earmarked a RM 125,000 slush fund "for exerting influence on the press and on [key] persons."¹⁹

But after all the bribes had been paid and the commercial favors and foreign-currency concessions granted, I. G. Farben could continue employing its assembly-line workers just a little longer. And Germany would remain

and some to the right—they would never stand and wait for destruction. They would fight first.

In the period between late 1933 and 1941, over \$30 million had been transferred directly via Haavara. Perhaps another \$70 million had flowed into Palestine via corollary German commercial agreements and special international banking transactions, this during a period when the average Palestinian Jew earned a dollar a day. Some of Israel's major industrial enterprises were founded with those monies, including Mekoroth, the national waterworks; Lodzia, a leading textile firm; and Rassco, a major land developer. And vast quantities of material were stockpiled, including coal, irrigation pipes, iron and metal products for companies and enterprises not yet in existence.

From 1933 to 1941, approximately one-hundred immigrant settlements were established along strategic corridors in western Galilee, the coastal plain, and in the northern Negev. About sixty of these settlements were established between 1936 and 1940. Most were possible only because Haavara or Haavara-related funds flowed to Zionist agencies for land purchase and development. And the settlements were made possible in large part because the Haavara economy had expanded the worker immigrant quota, allowing the influx of halutzim and German settlers. In 1948, the outline of these strategic settlements approximated the borders of the new Jewish State, for each settlement was not only a demarcation of Jewish life, each was an outpost of Jewish defense where battles were fought and a boundary line was ultimately drawn.

Between 1933 and 1941, 20,000 German Jews directly transferred to Palestine via Haavara. Many of them never collected their money, and often when they did, it was only partially in cash and mostly in mandatory stocks and mortgages. Another 40,000 German Jews emigrated to Palestine during this period via the indirect and corollary aspects of transfer. Many of these people, especially in the late 1930s, were allowed to transfer actual replicas of their homes and factories—indeed rough replicas of their very existences.

And something intangible also transferred with the German Jews during those years. It had nothing to do with concrete or cash accounts and had everything to do with culture. A German fondness for music, for art, for spotless homes, for cafés with chocolate tortes, for philosophy, for antiquities, for theater, for the finer things that struggling Palestine had never stopped to develop. These intangibles were transferred like everything else.

After World War II, when hundreds of thousands of Jews from a dozen different nations wandered through Europe stateless and displaced, each Jew remnant of a family, a town or a ghetto, all ravaged survivors without homes and without lives to return to, after the Holocaust, when the moment of the gathering of the exiles was at hand, Israel was ready. A nation was waiting. Fifteen years earlier, it hadn't existed. Fifteen years earlier few could have

RICHARD BREITMAN

THE ARCHITECT OF
GENOCIDE

HIMMLER AND
THE FINAL SOLUTION

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administration in the conquered areas of the Soviet Union. According to Hitler's instructions, the forthcoming war was more than a "mere armed conflict"; it was a collision between two ideologies. Accordingly, the Bolshevik-Jewish intelligentsia had to be eliminated. The military was to control as little territory as possible, its supreme authority restricted to the immediate areas of military operations. Civilian commissioners would rule over the rest, accompanied by police authorities. Whether the nonmilitary police (here Hitler referred specifically to organs of the Reich Führer SS) would also be needed in the operational areas was a matter that the military would have to clear with Himmler, but he added: "the necessity to neutralize Bolshevik leaders and commissars immediately is an argument in favor [of it]." With that, Hitler made the outcome of the military's talks with Himmler a foregone conclusion. He specifically excluded the use of military courts-martial for such operations; courts-martial would deal only with legal matters within the military. Two days later Quartermaster General Eduard Wagner told Army General Staff Chief Franz Halder that the army was not supposed to be "burdened" with administration in Russia. And on March 13 the redrafted OKW guidelines, now conforming to Hitler's wishes, provided for Himmler to carry out special tasks in the operational areas that were assigned by the Führer. He was to act independently and on his own responsibility in carrying out his mission, and he was to avoid disturbing military operations. He was supposed to arrange the details with the army directly.¹⁸

At least twice more that month Hitler emphasized the need to liquidate the bearers of Bolshevism, and on the second occasion, a speech to some 250 senior officers from the three armed services, he made it plain that the military too would have to play a role in this campaign. The German troops would have to hand over captured communist functionaries and political commissars to the *Einsatzkommandos*, or, if that was impossible, shoot the captives themselves; these people were not to be regarded as prisoners of war. Hitler's March 30 speech provided part of the impetus for one of the most infamous military orders of the war, which came to be known as the Commissar Order—the execution of alleged Soviet commissars without trial.¹⁹ In all likelihood, there was more behind this order than a simple desire to liquidate the Communist political officials assigned to the Russian army. Nazi propaganda dating back to 1935 closely identified commissars and party functionaries with Jews, and many German officers had come to accept this equation. The Commissar Order was a means to make use of the German military's anti-Bolshevist sentiment, which years of indoctrination had enhanced. The order would involve the army in the planned liquidations of commissars and move

it toward acceptance of the general killings of Jews. The Armed Forces High Command guidelines for the troops in Russia, in fact, called for merciless intervention against Jews, Bolshevist agitators, guerrillas, and saboteurs; Jews qualified simply because of their race.²⁰

To be sure, not all officers would go along easily with measures to liquidate civilians without trial. According to the wartime testimony of a Major Bechler at Hitler's headquarters, Brauchitsch knew that the army commanders would object to the Commissar Order, so he sent Lieutenant General Eugen Müller around to explain the necessity of the order. There still were objections, particularly from Field Marshals von Bock and von Kluge, but Hitler insisted on compliance.²¹

During March Gestapo chief Heinrich Müller and General Wagner were working on a draft agreement to regulate the relationship of the army and the police units.²² Himmler gave Heydrich specific instructions regarding this draft,²³ but the first version, completed on March 26, did not give the *Einsatzgruppen* a free hand. It conceded to the commando units the right to carry out Security Police tasks, but allowed the army commander-in-chief to exclude them from areas where they might disturb operations. Moreover, the draft mentioned only *Einsatzgruppen* activities in the areas of the rear army groups, away from the front lines. Heydrich noticed the omission and wanted a provision for arrangements on the front lines.²⁴

When it became clear that personal animosity between Müller and Wagner was complicating the problems, Heydrich turned negotiations over to his foreign-intelligence expert, Walter Schellenberg, who was able to secure an agreement that mitigated the restrictions. In the new version, the *Einsatzgruppen* received their instructions from the chief of the Security Police and SD, but were subordinate to the commander of the rear army group with regard to marching orders, quarters, and rations. The army commander-in-chief had to approve measures that could affect operations. Since Brauchitsch had cooperated already on a range of other matters,²⁵ the agreement left the *Einsatzgruppen* reasonably free. And there was a new provision for smaller *Sonderkommandos* to operate directly with the regular troops in the fighting areas.²⁶

The general idea of the extermination of millions in the East, born no later than January 1941, produced specific written arrangements between the RSHA and the army in late April. The orders, of course, could not be implemented until the attack on the Soviet Union, originally scheduled for mid-May and delayed until June. There was thus a hiatus of at least six months between the initial planning and the execution.

Heydrich's SD provided the biggest percentage of the leadership of the mobile police units, but Himmler reserved the final right of decision

over the selection (subdivided into *Einsatzgruppen*) six hundred and a thousand was very

Even before the direction to a select uals later recalled the meeting to discuss campaign. Heydrich's decision to invade last eight weeks or *gruppen*. According turned Nazi named responsible for the vations on the mea proposal to exterminate boasted about his previous.²⁸ Hartl's testimony (contrary to the similar extermination come down from ab

In January 1941 F affecting Jews. His undesirables (Jews, g well as the Jews of ' Heydrich was also seen Madagascars Plan. H Martin Luther, by n tended to carry out destination could be

Heydrich's subordinate Adolf Eichmann's col that the Führer wanted question after the war many. Hitler, through commission to develop *sungsprojektes*). On the ters and thanks to long worked out the essential Führer and Göring.³¹

OFFICIAL SECRETS



WHAT THE NAZIS PLANNED,
WHAT THE BRITISH
AND AMERICANS KNEW



RICHARD
BREITMAN



HILL AND WANG
A DIVISION OF FARRAR, STRAUS AND GIROUX
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This public statement reflected the prevailing Nazi identification of Communism with Jews, for the term "pogroms" indicated mass violence, particularly against Jews. Himmler simultaneously predicted and, in effect, gave his blessing to an attempt to murder a good portion of German Jewry if a suitable provocation occurred. Nowhere else had one heard such a thing from a government official.

Although Himmler's exact motives remain obscure, this statement expressed an impulse that he and other Nazi "true believers" shared, an intensification of the direction Hitler had taken, and Himmler had previously endorsed, in *Mein Kampf*. They expected a Jewish assault on Nazi Germany, and they wanted to neutralize what they believed was the internal Jewish threat. Whether the German public would act spontaneously or at the appropriate signal remained to be seen.

With Hitler, Himmler determined what the state let happen in the way of violence against Nazi enemies. As head of the SS, he controlled the growing number of concentration camps, where brutality and death were a part of the regimen. During 1933-36 Himmler obtained appointments as chief of police in the various state governments, and in June 1936 he received the title of chief of the German police.

Hitler had written in chapter 11 of volume 2 of *Mein Kampf*: "If propaganda has imbued a whole people with an idea, the organization can draw the consequences with a handful of men."³⁰ This passage was suited to a time when the Nazi Party was still relatively small and on the fringes of German politics. Once in power, Hitler and Himmler wanted many more than a handful of men to carry out their bidding absolutely, and they were in a position to get them.

There was no assassination attempt against Hitler in March 1933, but scattered, uncoordinated violent acts were carried out by some SS and SA men against Jews. To demonstrate to Nazi activists the will to punish the prime enemy, the Nazi Party announced a boycott of Jewish businesses throughout the country. American diplomats expressed concern to German authorities about this planned boycott and protested various physical assaults on American Jews in Germany. After sharp foreign criticism and internal pressures suggested that the boycott would damage Germany's interests, Hitler agreed to shorten it.³¹

On April 1, the American consul general in Berlin, George S. Messersmith, sent two vice-consuls on a tour of the commercial areas of the city to survey the public reaction to the boycott that day. They reported that many Germans treated the boycott as a joke and continued to shop at their favorite stores. In general, Messersmith believed

that the boycott damaged the economy, he reported, many of the boycotts were not successful and many people were hurt.

Messersmith reported that the German public, having been told that the boycott was necessary, was generally sympathetic to the German government's position; either they understood their concerns.

After the boycott, the state government of Prussia, the Air Ministry and many other departments of the U.S. government, including the State Department, were concerned about Nazi persecution.

In a May 19, 1933, report, the State Department concluded that the boycott had caused Jews to such an extent that it was a national and private matter. Those who believed in the boycott as well as a substantial number of anti-Semites. Because of the pressure, many were afraid to raise their voices.

Britain received a report from Rumbold, who had been in Germany during the firsthand where many in 1928 a Nazi revolution whom Rumbold was the ambassador in Berlin.

Rumbold perceived the Weimar Republic as having been given fair

that the boycott was not popular with the German public, because it damaged the economy and Germany's image abroad. At the same time, he reported, many Germans came to accept Nazi propaganda that the boycott was necessary to convince foreign countries to stop their own boycotts and propaganda against Germany.³²

Messersmith had served in Berlin since 1930 and was fluent in German, having been raised in a middle-class Pennsylvania Dutch family where German was a second language.³³ From a number of private conversations with German businessmen, he concluded that members of the German elites would not oppose the regime on the Jewish question; either they would express enthusiasm or they would bottle up their concerns.³⁴ Perhaps they had little choice.

After the boycott Hermann Göring, then in charge of the Prussian state government as well as the air force, invited Messersmith to the Air Ministry and denounced American press coverage of events in Germany and of the boycott in particular. Messersmith responded that the U.S. government had no control over the press but that many Americans, including some who worked for the newspapers, were concerned about Nazi persecution of Jews.³⁵

In a May 1933 analysis of anti-Semitism in Germany, Messersmith concluded that the Nazi movement had aroused mass prejudices against Jews to such an extent that, even if official persecution ceased, professional and private life for Jews would be difficult for years to come.³⁶ Those who benefited from the elimination of Jewish competitors, as well as a substantial segment of German youth, had joined the original anti-Semites. Moreover, those opposed to anti-Semitic measures because of the practical consequences for the economy were, on balance, afraid to raise their voices.³⁷

Britain received a similar assessment from Ambassador Sir Horace Rumbold, who drew on other evidence. From a family of diplomats and with decades of diplomatic experience, Rumbold had served in Germany during the summer of 1914, when war broke out. He knew firsthand where German nationalism could lead. He returned to Germany in 1928 as ambassador and observed Weimar's collapse and the Nazi revolution. Once it became clear that President Hindenburg, whom Rumbold admired, would not or could not impose restraints, the ambassador began to express alarm in his despatches to London.³⁸ Rumbold perceived a major increase in anti-Semitism during the Weimar Republic. Since the revolution of 1918, he wrote, Jews had even fair play in every walk of life, with the result that Jewish

authority that overlapped the functions of the police and interfered with them.¹⁰

In any case, on September 2, Himmler discussed deportations of Jews from Germany with Friedrich-Wilhelm Krüger, Higher SS and Police Leader for the General Government.¹¹ If Krüger and his very aggressive and ambitious subordinate in Lublin, SS and Police Leader Odilo Globocnik, could clear away the obstacles, perhaps some German Jews could be deported to the Lublin region or the Warsaw ghetto. Himmler freed a number of euthanasia gassing specialists of their previous responsibilities and transferred them to Globocnik at this time.¹² But the General Government would work as the main site for mass extermination facilities only if and when Himmler could be confident that the SS and police could control the entire process.

Another option for receiving German Jews was the existing ghetto at Lodz, in the Wartheland, which was not in the General Government. But Lodz was already crowded. Initially, Himmler wanted to send sixty thousand Jews there temporarily, promising that they would later be pushed farther east. Various difficulties emerged, so that between October 16 and November 4 only about twenty thousand German, Austrian, and Luxembourgian Jews and five thousand Gypsies were transported and squeezed into Lodz, over the protest of the district governor. Himmler had the man sent on vacation. Lodz, however, could only be a small part of the solution.¹³

Auschwitz was in the midst of a major expansion. The first experimental gassings there were conducted in early September 1941, but the gas chambers constructed at nearby Birkenau did not begin functioning until the spring of 1942. Auschwitz was eventually to become the central killing site for Jews deported from all across the continent, but in September 1941 Birkenau could not easily liquidate masses of German Jews. To hold German Jews at or near Auschwitz did not make sense either, for that too was now German soil (in the annexed portion of Upper Silesia).

There are indications that Heydrich had previously thought of the Soviet Union as the preferred site to conduct liquidations of Jews from elsewhere.¹⁴ He and his subordinates—Heinrich Müller of the Gestapo and Adolf Eichmann of its Jewish section—had primary responsibility for getting Jews out of Germany and to somewhere else. The immediate alternatives made the Soviet territories the best bet. They had plenty of room, and greater secrecy was possible there. SS

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ORDINARY MEN

RESERVE POLICE BATTALION 101
AND THE FINAL SOLUTION IN POLAND

Christopher R. Browning



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The Order Police and the Final Solution: Russia 1941

THE INITIAL PARTICIPATION OF THE ORDER POLICE IN THE Final Solution—the Nazi mass murder of European Jewry—occurred not in Poland but in Russia in the summer and fall of 1941. In preparation for the invasion of Russia and the “war of destruction” Hitler intended to wage there, four special mobile units of the SS known as Einsatzgruppen were formed and trained in the late spring of 1941. The core of these units came from Heydrich’s Security Police (Gestapo and Kripo) as well as his intelligence apparatus (Security Service, or SD). They were supplemented by small units of Waffen-SS (the military branch of Himmler’s SS). In addition, however, the three companies of Order Police Battalion 9 were distributed to three of the four Einsatzgruppen.¹ Order Police members thus constituted about

500 of the total of 3,000 men assigned to the four Einsatzgruppen.

The Einsatzgruppen were only the thin cutting edge of German units that became involved in political and racial mass murder in Russia. In early July a fifth ad hoc Einsatzgruppe made up of personnel from the Security Police in the General Government was sent into Russia. Most of these men became the permanent Security Police force in the areas of the 1939-41 Soviet occupation zone in former eastern Poland, while the original four Einsatzgruppen pressed deep into Russia behind the advancing German armies.

For the occupation of Russia, Himmler had appointed three Higher SS and Police Leaders for the northern, central, and southern regions respectively. These men were in charge of coordinating all SS operations in occupied Russia. In the euphoric days of mid-July 1941, when ultimate victory seemed in sight after Germany's stupendous initial military successes, Hitler ordered the intensification of the pacification program behind the advancing German lines. On July 16 he announced that Germany would never withdraw from its newly won territories in the east; instead he would create there "a Garden of Eden," taking all necessary measures to accomplish this. It was fortunate that Stalin had given the order for partisan warfare, Hitler said, because "it gives us the opportunity to exterminate anyone who is hostile to us. Naturally the vast area must be pacified as quickly as possible; this will happen best through shooting anyone who even looks askance at us."²

Himmler was not slow to respond to such exhortations from his master. Within a week, he had reinforced HSSPF Central Erich von dem Bach-Zelewski and HSSPF South Friedrich Jeckeln with an additional SS brigade each, thus adding more than 11,000 men to the SS murder campaign.³ Moreover, at least eleven police battalions—nine of them 300-level and thus composed of recent young volunteers—were distributed among the three HSSPFs in Russia, adding another 5,500 Order Police

the 500 already assigned to the Einsatzgruppen.⁴ Between late July and mid-August, Himmler toured the eastern front, personally urging his men to carry out the mass murder of Russian Jewry.

But the Order Police actually inaugurated their murderous career in Russia before this massive buildup in the later part of July. The site was the nearly half-Jewish city of Białystok. On the eve of the German invasion of Russia—dubbed Operation Barbarossa—Major Weis of Police Battalion 309 met with his company commanders. As in every other unit of the German army and police moving into Russia, he disclosed several orders that were to be passed on to the men verbally. The first was the notorious *Kommissarbefehl*, or “commissar order,” according to which so-called political commissars—all Communist functionaries in the army as well as those in the civil administration suspected of being in any way anti-German—were to be denied prisoner of war status and executed.⁵ The second order was the “Barbarossa decree,” which removed the actions of German soldiers toward Russian civilians from the jurisdiction of military courts and explicitly approved collective reprisal against entire villages.⁶ It was, in fact, a “shooting license” against Russian civilians. Major Weis then went further. The war, he said, was a war against Jews and Bolsheviks, and he wanted it understood that the battalion should proceed ruthlessly against Jews. In his view, the meaning of the Führer’s orders was that the Jews, regardless of age or sex, were to be destroyed.⁷

After entering the city of Białystok, Major Weis on June 27 ordered his battalion to comb the Jewish quarter and seize male Jews, but he did not specify what was to be done with them. That was apparently left to the initiative of the company captains, who had been oriented to his way of thinking in the preinvasion meeting. The action began as a pogrom: beating, humiliation, beard burning, and shooting at will as the policemen drove Jews to the marketplace or synagogue. When several Jewish leaders appeared at the headquarters of the 221st Security Division of

General Pflugbeil and knelt at his feet, begging for army protection, one member of Police Battalion 309 unzipped his fly and urinated on them while the general turned his back.

What started as a pogrom quickly escalated into more systematic mass murder. Jews collected at the marketplace were taken to a park, lined up against a wall, and shot. The killing lasted until dark. At the synagogue, where at least 700 Jews had been collected, gasoline was poured at the entryways. A grenade was tossed into the building, igniting a fire. Police shot anyone trying to escape. The fire spread to nearby houses in which Jews were hiding, and they too were burned alive. The next day, thirty wagonloads of corpses were taken to a mass grave. An estimated 2,000 to 2,200 Jews had been killed. When General Pflugbeil sent a messenger to Major Weis to inquire about the fire, the major was found drunk. He claimed to know nothing about what was happening. Weis and his officers subsequently submitted a false report of the events to Pflugbeil.⁸

If the first Order Police massacre of Jews in Białystok, on June 27, was the work of an individual commander who correctly intuited and anticipated the wishes of his Führer, the second, in mid-July, involved clear and systematic instigation from the very highest echelons of the SS—namely Erich von dem Bach-Zelewski, Kurt Daluge, and Heinrich Himmler. Police Battalion 309 moved eastward, and Police Battalions 316 and 322 entered Białystok in its wake. The official daily record, or war diary (*Kriegstagebuch*), and various reports and orders of Police Battalion 322 are among the rare surviving Order Police documents that have reached the West from Soviet archives. They allow us to trace subsequent events in Białystok.

The preinvasion orientation of Police Battalion 322 was apparently not as vicious as that of Police Battalion 309, but it was certainly not free of ideological exhortation. Major General Retzlaff delivered a farewell address to the battalion in Warsaw on June 10. Every member had to be careful, he advised, "to appear before the Slavic peoples as a master and show them that he was a German."⁹ Before leaving for Russia on July 2, the men

were informed that any "political commissar was to be shot" and that they had to be "tough, determined, and ruthless."¹⁰

The battalion arrived in Białystok on July 5, and two days later was ordered to carry out a "thorough search of the city . . . for Bolshevik commissars and Communists." The war diary entry of the following day makes clear what this meant: "a search of the Jewish quarter," allegedly for plunder seized by Jews before the German arrival. The German police in fact carried off twenty wagonloads of booty during the search. By July 8 the battalion had shot twenty-two people. "It was a matter . . . almost exclusively of Jews."¹¹

On this same afternoon of the July 8 search, the battalion received a surprise visit from the Reichsführer SS and chief of German police, Heinrich Himmler, and the commander of the Order Police, Kurt Daluege. The battalion commander, Major Nagel, was invited to the dinner given that evening by HSSPF Central, Bach-Zelewski, in Himmler's honor. The following morning Daluege held a review of the police battalions in Białystok in Himmler's presence. In his speech Daluege emphasized that the Order Police "could be proud to be participating in the defeat of the world enemy, Bolshevism. No other campaign had the significance of the present one. Now Bolshevism will finally be destroyed for the benefit of Germany, Europe, yes, the entire world."¹²

Two days later, on July 11, Colonel Montua of the Police Regiment Center (which included Police Battalions 316 and 322) issued the following order:

Confidential!

1. By order of the Higher SS and Police Leader . . . all male Jews between the ages of 17 and 45 convicted as plunderers are to be shot according to martial law. The shootings are to take place away from cities, villages, and thoroughfares. The graves are to be leveled in such a way that no pilgrimage site can arise. I forbid photographing and the permitting of

spectators at the executions. Executions and grave sites are not to be made known.

2. The battalion and company commanders are especially to provide for the spiritual care of the men who participate in this action. The impressions of the day are to be blotted out through the holding of social events in the evenings.

Furthermore the men are to be instructed continuously about the political necessity of the measures.¹³

The war diary falls strangely silent about what happened in Białystok following Montua's ordering of executions, but subsequent judicial proceedings in Germany unveiled the course of events.¹⁴ There was, of course, no investigation, trial, and conviction of so-called plunderers to be shot according to martial law. Male Jews who appeared to be between the ages of seventeen and forty-five were simply rounded up and brought to the stadium in Białystok on July 12. When the stadium was nearly filled, Bach-Zelewski visited the site, and valuables were collected from the Jews. It was a very hot day, during which the Jews neither received water nor were allowed to go to the toilet.

Beginning either the same day or the following morning, trucks from the motor pools of both police battalions began shuttling the Jews from the stadium to antitank ditches in a forested area outside the city. Most of Battalion 316 and one company of Battalion 322 guarded the shooting site and were formed into firing squads. Bach-Zelewski again appeared on the scene and gave a justifying speech. The shooting lasted until nightfall, and then the policemen attempted to carry on the executions under the headlights of their trucks. When this proved unsatisfactory, the action was broken off and completed the following day. The German courts concluded that at least 3,000 Jews had been shot (though it must be kept in mind that for judicial convenience such figures always represent an uncontested minimal estimate of victims, and not the most probable number, so as to remove that issue from judicial dispute).

The murder campaign against Russian Jewry accelerated in the late summer and fall of 1941, and the war diary of Police Battalion 322 reveals its continuing involvement. On July 23 the battalion's formal subordination to the rear area army commander was severed. "For the imminent tasks of the battalion, it is placed directly under the HSSPF Gruppenführer von dem Bach."¹⁵ As the three companies of Police Battalion 322 moved from Białystok to Minsk during the month of August, Lieutenant Riebel's Third Company particularly distinguished itself by ongoing executions of Jews in its path. Following sweeps by the Third Company through the forest regions around Białowieża on August 2, the war diary noted, "Before departure 3d Company must carry out the liquidation of Jews."¹⁶ Riebel subsequently reported, "In the early morning hours of August 10, the liquidation of the Jews lodged in the Białowieża prisoner collection camp was carried out by 3d Company. Seventy-seven male Jews between 16 and 45 were shot. The action was performed without incident. There was not a single case of resistance."¹⁷ This was not an isolated action, for five days later Riebel reported, "The Jewish action in Narevka-Mala was carried out by 3d Company on August 15, 1941. In it 259 women and 162 children were moved to Kobrin. All male persons between 16 and 65 years of age were shot. On August 15, 1941, a total of one Pole for plundering and 232 Jews were shot. The Jewish execution was performed smoothly and without incident."¹⁸

By late August the battalion was in Minsk, where Bach-Zelewski and Daluge met on August 29.¹⁹ As in Białystok earlier, their meeting was the prelude to Order Police participation in another major mass shooting of Jews. On August 30 the battalion commander, Major Nagel, was summoned to discuss "a basic Jewish action" scheduled to take place on August 31 and September 1. The battalion was to provide two companies.²⁰

On August 31 the First and Third Companies of Police Battalion 322 (now designated the Seventh and Ninth Companies

of Police Regiment Center) moved into the Minsk ghetto, where they seized some 700 Jews, including 74 women. The following day Riebel's Ninth Company took part in the execution of more than 900 Jews, including all of those seized the day before. For this first shooting of large numbers of Jewish women, the author of the war diary felt the need to provide a justification. They were shot, he explained, "because they had been encountered without the Jewish star during the roundup. . . . Also in Minsk it has been discovered that especially Jewesses removed the marking from their clothing."²¹ Ever anxious to get credit for his company's body count, Riebel dutifully reported, "In the Jewish action of September 1, the Jews seized on August 31 were shot. Shot by 9th Company were 290 men and 40 women. The executions proceeded smoothly. No one resisted."²²

In a subsequent action in Mogilev in early October, the need to explain the shooting of Jewish women was no longer felt. For October 2, the war diary recorded, "9th Company. From 3:30 p.m. the entire company. Jewish action in the ghetto of Mogilev together with the staff of the Higher SS and Police Leader Russia Central and Ukrainian auxiliary police: 2,208 Jews of both sexes seized, 65 shot on the spot attempting to escape." On the following day: "7th and 9th Companies together with the staff of the Higher SS and Police Leader Russia Central—execution of a total of 2,208 Jews and Jewesses outside Mogilev not far from the forest camp (7th Company 378, 9th Company 545 shootings)."²³

The involvement of the police battalions in the central region of Russia was not unique. The scant surviving documentation indicates similar involvement in both the south and the north: HSSPF Russia South, Friedrich Jeckeln, who commanded a total of five police battalions (304 and 320 in addition to Police Regiment South, consisting of 45, 303, and 314—thus, all but one of them composed of recent young volunteers), was careful in his cryptic daily reports to give credit where credit was due. The following emerges from an incomplete collection of these reports.²⁴

The Order Police and the Final Solution: Russia 1941 / 17

- AUGUST 19: Battalion 314 shot 25 Jews. Battalion 45 at Slavuta shot 522 Jews.
- AUGUST 22: Battalion 45 shot 66 and 471 Jews in two actions.
- AUGUST 23: Battalion 314 shot 367 Jews in a "cleansing action."
- AUGUST 24: Battalion 314 shot 294 Jews, Battalion 45 shot 61 Jews, and the "police squadron" (horse-mounted police) 113 Jews.
- AUGUST 25: Police Regiment South shot 1,324 Jews.
- AUGUST 27: According to the first of two reports, Police Regiment South shot 549 Jews and Battalion 314 shot 69 Jews. The second credited Police Regiment South with shooting 914 Jews.
- AUGUST 28: Police Regiment South shot 369 Jews.
- AUGUST 29: Battalion 320 provided the "cordon" while the staff company of the HSSPF shot 15,000 Jews at Kamenets Podolsky on August 26-27 and another 7,000 on August 28.
- AUGUST 31: Battalion 320 shot 2,200 Jews in Minkovtsy.
- SEPTEMBER 1: Police Regiment South shot 88 Jews; Battalion 320 shot 380.
- SEPTEMBER 2: Police Regiment South shot 45 Jews.
- SEPTEMBER 4: Police Regiment South shot 4,144 Jews.
- SEPTEMBER 6: Police Regiment South shot 144 Jews.
- SEPTEMBER 11: Police Regiment South shot 1,548 Jews.
- SEPTEMBER 12: Police Regiment South shot 1,255 Jews.
- OCTOBER 5: Police Battalion 304 shot 305 Jews.

Postwar judicial interrogations in the Federal Republic of Germany, stemming from this scant documentation, uncovered further information about the murderous swath Police Battalions 45 and 314 cut across the Soviet Union in the fall of 1941. Police Battalion 45 had reached the Ukrainian town of Shepetovka on July 24, when its commander, Major Besser, was summoned by the head of Police Regiment South, Colonel Franz. Franz told Besser that by order of Himmler the Jews in Russia were to be destroyed and his Police Battalion 45 was to take part in this task. Within days the battalion had massacred the several hundred remaining Jews of Shepetovka, including women and children. Three-figure massacres in various Ukrainian towns followed in August. In September the battalion provided cordon, escort, and shooters for the execution of thousands of Jews in Berdichev and Vinnitsa. The battalion's brutal activities climaxed in Kiev on September 29 and 30, when the policemen again provided cordon, escort, and shooters for the murder of over 33,000 Jews in the ravine of Babi Yar. The battalion continued to carry out smaller executions (Khorol, Krementshug, Poltava) until the end of the year.²⁵ Police Battalion 314 also began with relatively small three-figure massacres, starting on July 22. It then joined Police Battalion 45 in the execution of several thousand Jews in Vinnitsa in September 1941, and shot 7,000 to 8,000 Jews in Dnepropetrovsk on October 10-14. The last shooting uncovered in the investigation dated to late January 1942 in Kharkov.²⁶

The documentation from southern Russia provides a sketchy overview of the broad and continuous participation of Order Police units in the mass shootings of Jews, but it lacks detail; the documentation for northern Russia is just the opposite. Here we have no overview, but we do have one extraordinarily vivid description of an operation by Police Battalion 11, which had been stationed in the Kovno region since early July 1941, its Third Company charged with guarding the Kovno ghetto.²⁷ In mid-October the battalion commander was sent to Minsk with two companies of Battalion 11 and two companies of Lithuanian auxiliary police. The operations officer of the 707th Security

Division gave the policemen their first task (which they later claimed to be the first of only two such actions): the execution of all Jews in the village of Smolevichi, east of Minsk, as an alleged deterrent and warning to the civilian population not to help the partisans. The battalion commander claimed that he protested but was merely told by the operations officer and division commander that the German police could provide the cordon and leave the shooting to the Lithuanians. The massacre of the Smolevichi Jews was carried out as ordered.

In late October the two companies of Order Police and their Lithuanian auxiliaries were ordered by the army to liquidate all the Jews in Slutsk, south of Minsk, a town of some 12,000 inhabitants, one-third Jewish. Again the measure was justified as a deterrent for the protection of German troops. What happened in Slutsk on October 27 was the subject of a report from the head of the German civil administration there to his boss, Wilhelm Kube, in Minsk.

Slutsk, 30 October 1941

Regional Commissioner Slutsk
To: General Commissioner in Minsk
Concerning: Jewish action

In reference to my telephone report of October 27, 1941, I submit the following to you in writing:

On the morning of October 27 about 8 o'clock, a first lieutenant of Police Battalion 11 from Kovno (Lithuania) appeared. He introduced himself as the adjutant of the battalion commander of the Security [*sic*] Police. The first lieutenant declared that the police battalion had been assigned the task of carrying out the liquidation of all Jews in the city of Slutsk within two days. The battalion commander was approaching with a force of four companies, two of them Lithuanian auxiliaries, and the action had to begin immediately. I thereupon answered the first lieutenant that in any case I first of all had to discuss the action with the commander. About one-half hour later the police battalion arrived in

Slutsk. As requested, the discussion with the battalion commander then took place immediately after his arrival. I explained first of all to the commander that it would scarcely be possible to carry out the action without prior preparation, because all [the Jews] had been sent to work and there would be frightful confusion. At the very least, he was obligated to give one day's notice. I then asked him to postpone the action for one day. He nonetheless rejected this, noting that he had to carry out actions in the cities all around and only two days were available for Slutsk. At the end of these two days Slutsk had to be absolutely free of Jews. I immediately lodged the sharpest protest against this, in which I emphasized that a liquidation of the Jews could not take place arbitrarily. The larger portion of Jews still present in the city consisted of craftsmen and their families. One simply could not do without the Jewish craftsmen, because they were indispensable for the maintenance of the economy. Furthermore I referred to the fact that White Russian craftsmen were, so to say, utterly unavailable, that therefore all vital enterprises would be paralyzed with a single blow if all Jews were liquidated. At the conclusion of our discussion I mentioned that the craftsmen and specialists, insofar as they were indispensable, had identification on hand, and that these Jews were not to be taken out of the workshops. It was further agreed that all Jews still in the city, especially the craftsmen's families, whom I also did not want to have liquidated, should first of all be brought to the ghetto for the purpose of sorting. Two of my officials were to be authorized to carry out the sorting. The commander in no way opposed my position, so in good faith I believed that the action would therefore be carried out accordingly.

Several hours after the action began, the greatest difficulties were already becoming apparent. I discovered that the commander was not at all abiding by our arrangement. Contrary to the agreement, all Jews without exception were being taken from the factories and workshops and sent off. A portion of the Jews were in any case taken through the ghetto, where many were grabbed and selected out by me, but most were loaded

directly on trucks and without further ado liquidated outside the city. Shortly after noon, complaints were already coming from all sides that the workshops could no longer operate because all Jewish craftsmen had been removed. Because the commander had driven on to Baranovichi, I contacted the deputy commander, a captain, after a long search and demanded that the action be immediately stopped, because it was not taking place according to my instructions and the economic damage already inflicted could not be made good. The captain was very astonished by my viewpoint and explained that he had received instructions from the commander to make the city free of Jews without exception, as they had also done in other cities. The cleansing had to take place on political grounds, and nowhere had economic factors so far played a role. Upon my energetic interventions he then nonetheless stopped the action toward evening.

What else concerns this action, I must to my greatest regret emphasize, is last of all that it bordered on sadism. During the action the city itself offered a horrible picture. With indescribable brutality, by the German policemen as well but especially by the Lithuanians, the Jews and also White Russians were taken out of their lodgings and driven together. There was shooting everywhere in the city, and in the individual streets bodies of Jews who had been shot piled up. The White Russians had the greatest difficulty in extricating themselves from the roundup. Aside from the fact that the Jews, among them also craftsmen, were brutally mistreated in a frightfully barbarous way before the eyes of the White Russians, the latter were likewise beaten with truncheons and clubs. One can no longer speak of a Jewish action, it appeared much more like a revolution. I and all my officials were in the midst of this all day without a break, in order to save what could still be saved. Repeatedly I literally had to drive German police officials as well as Lithuanians out of the workshops with drawn revolver. My own gendarmes were given the same task but because of the wild shooting often had to get off the streets in order not to be shot themselves. The entire scene was

altogether more than ghastly. In the afternoon a large number of horse-drawn carts without drivers stood around in the streets, so that I had to assign the city administration immediately to take care of them. Afterward it turned out that they were Jewish wagons that had been assigned by the army to transport ammunition. The Jews had simply been taken down from the wagons and marched off, without anyone caring for the wagons.

I was not present at the shootings outside the city. Thus I can say nothing about the brutality. But it suffices when I emphasize that long after being thrown in the grave, some of those shot worked their way out again. Concerning the economic damage I note that the tannery was most frightfully affected. Twenty-six experts worked there. In one blow fifteen of the best specialists among them were shot. Another four jumped from the wagons while underway and escaped, while seven avoided being seized through flight. Five men worked in the wheelwright shop, four of whom were shot, and the shop must now be kept going with only one wheelwright. Still other craftsmen are missing, such as cabinetmakers, smiths, etc. So far it has not been possible for me to get a precise overview. As I already mentioned at the beginning, the families of the craftsmen were also supposed to have been spared. Today it appears, however, that in almost every family some people are missing. Reports come in from everywhere, from which it can be concluded that in some such families the craftsman himself, in others the wife, and in yet others the children are missing. Thus almost all families have been torn apart. In these circumstances it must be very doubtful if the remaining craftsmen are enthusiastic about their work and produce accordingly, the more so in that at the moment they are still walking around with faces beaten bloody on account of the brutality. The White Russians, whose full trust had been won, stood there aghast. Although they are intimidated and do not dare to express their opinions freely, one nonetheless hears it said that this day represented no page of glory for Germany and that it will never be

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forgotten. I am of the opinion that through this action much has been destroyed that we had achieved over the last months, and that it will be a long time before we can again win the trust of the population.

In conclusion I find myself compelled to point out that during the action the police battalion plundered in an outrageous way, and indeed not only in Jewish houses, but just as much in the houses of the White Russians. They took with them anything useful, such as boots, leather, textiles, gold, and other valuables. According to the accounts of members of the army, watches were torn from the arms of Jews publicly in the streets, rings were pulled off fingers in the most brutal way. One senior paymaster reported that a Jewish girl was ordered by the police immediately to fetch 5,000 rubles, then her father would be released. This girl is said to have run around everywhere trying to get the money. Also within the ghetto the individual barracks that were nailed shut by the civil administration and provided with a Jewish inventory were broken into and robbed by the police. Even in the barracks in which the unit was lodged, window frames and doors were torn out for the camp fire. Even though I had a talk with the commander's adjutant on Tuesday morning concerning the plundering and he promised me in the course of the conversation that no police would henceforth enter the city, several hours later I was forced once again to arrest two fully armed Lithuanians, because they were caught looting. On the night of Tuesday to Wednesday, the battalion left the city in the direction of Baranovichi. The population was manifestly happy as the news spread through the city.

So much for the report. I will come to Minsk in the near future in order once again to discuss the matter orally. At the moment I am not able to continue the Jewish action. First peace must return. I hope to be able to restore peace as quickly as possible and despite the difficulties to revive the economy. I now ask only that one request be granted me: "In the future spare me without fail from this police battalion."
Carl²⁸

Though the documentation of police battalion participation in the mass murder of Russian Jewry is not extensive, it does suffice to disprove beyond any reasonable doubt the chief postwar alibi of the Order Police leadership—namely, that Daluge had reached an agreement with Himmler whereby the Order Police would assist the Security Police, providing guard duty and any services short of shooting, but were forbidden to be the executioners themselves. This alibi, akin to the postwar claim of the Waffen-SS that they were soldiers like any others and did not participate in the ideologically grounded programs of the rest of the SS, was successfully pleaded before at least one German court in the trial of Police Battalion 11. The defendants persuaded the court that after only two executions—upon army orders in the Minsk region—they were able to invoke Daluge's arrangement to secure their recall to Kovno.²⁹

As the documentation shows, the direct participation of the Order Police in the mass executions of Russian Jews in the summer and fall of 1941 was pervasive, occurring within the jurisdictions of the northern, central, and southern HSSPFs as well as in Białystok. Moreover, the mid-July massacre in Białystok took place directly after Daluge and Himmler met there with Bach-Zelewski, and the September 1 massacre in Minsk occurred immediately after Daluge's visit with Bach-Zelewski in that city. Clearly, Daluge was not forbidding but rather inciting Order Police participation in the mass murder.

Order Police involvement in mass shootings in Russia after the fall of 1941 is not well documented and in all probability was much less frequent. The major exception was extensive Order Police participation in the shooting of Jews in the Pinsk region in the fall of 1942.³⁰ In the military crisis of the 1941–42 winter, many police battalions were pressed into frontline duty. Others had to contend with growing partisan resistance. Moreover, the number of men recruited from native populations into auxiliary units under the Order Police increased nearly tenfold in 1942, from 33,000 to 300,000.³¹ There was a constant tendency to assign the actual shooting duties to these units, in order to shift

the psychological burden from the German police to their collaborators. This psychological burden was serious and extended even to Bach-Zelewski himself. Himmler's SS doctor, reporting to the Reichsführer on Bach-Zelewski's incapacitating illness in the spring of 1942, noted that the SS leader was suffering "especially from visions in connection with the shootings of Jews that he himself had led, and from other difficult experiences in the east."³²

cemetery. The Jews were brought in groups of twenty, men first and then women and children. They were forced to lie face down near the cemetery wall and then shot from behind in the neck. Each policeman fired seven or eight times.¹⁸ At the cemetery gate one Jew sprang at Drucker with a syringe but was quickly subdued. The other Jews sat quietly awaiting their fate, even after the shooting began. "They were quite emaciated and looked half starved to death," one guard remembered.¹⁹

The number of victims of this Międzyrzec deportation of October 6 and a subsequent one three days later can not be ascertained. Witness accounts vary greatly.²⁰ In any case, the ghetto was restocked once again in mid-October, when 2,000 to 3,000 Jews were brought from Radzyń. These Jews were assembled early on the morning of October 14 and loaded onto a caravan of more than a hundred horse-drawn wagons. Guarded by Polish police, ethnic Germans of the Sonderdienst, and a few policemen from First Company, the caravan slowly made its way to Międzyrzec twenty-nine kilometers to the north, arriving after dark. The empty wagons were then returned to Radzyń.²¹

In subsequent actions on October 27 and November 7, the Międzyrzec ghetto was cleared of all but some 1,000 work Jews. These actions must have been smaller than those of early October, for neither Hiwi units nor Security Police from Radzyń were employed to assist the policemen. Gnade was now totally in charge. He apparently introduced one further step in the deportation procedure—the "strip search." After being assembled in the marketplace, the deportees were driven into two barracks where they were forced to undress and searched for valuables. They were allowed to put only their underclothing back on, despite the cold autumn weather. Scantily clad, they were marched to the train station and packed into cattle cars destined for Treblinka.²² With the conclusion of the November 7 action, units of Reserve Police Battalion 101 had deported at least 25,000 Jews from the city of "human horror" to Treblinka since late August.

While Gnade was deporting Jews from Międzyrzec, First

movement in the snow left tracks, and on at least one occasion frozen feces gave away a Jewish hiding place carved out within a haystack.² Thus, when it appeared that the deportations had come to an end, many Jews calculated that they stood a much better chance of survival within one of the permitted ghettos than as hunted prey in the forests.

In fact the deportations from the county of Radzyń had ended for the moment, but life in the ghettos of Łuków and Międzyrzec was not without continuing danger. In Łuków the SS ghetto administrator, Josef Bürger, had 500 to 600 Jews shot in December to reduce the ghetto population.³ In Międzyrzec 500 Jewish workers in the brush factory who had been spared the fall deportation were deported to the work camp at Trawniki on December 30, 1942.⁴ The following night, around 11:00 p.m. on New Year's Eve, Security Police from neighboring Biała Podlaska showed up at the Międzyrzec ghetto in inebriated condition and began shooting the remaining Jews "for sport" until the Radzyń Security Police arrived and chased them away.⁵

After four months of relative calm, the end came. On the night of May 1, the men of Second Company surrounded the ghetto in Międzyrzec, where they had carried out so many deportations the previous fall. Joined once again by a unit from Trawniki, they closed in on the ghetto in the morning and assembled the Jews in the marketplace. The policemen estimated the number of deportees in this action at 700 to 1,000, though one admitted it was said to have been as high as 3,000.⁶ One Jewish witness estimated 4,000 to 5,000.⁷ Once again the Jews were thoroughly searched and dispossessed in Gnade's undressing barracks and then stuffed into train cars so tightly that the doors would barely close. Some were sent to the Majdanek labor camp in Lublin, but most were deported to the gas chambers of Treblinka to conclude the so-called fifth action in Międzyrzec.⁸ The "sixth action" occurred on May 26, when another 1,000 Jews were sent to the Majdanek camp.⁹ At that point only 200 Jews remained. Some escaped, but the last 170 were shot by the Security Police on July 17, 1943, in the "seventh" and final

**DECISION
IN
GERMANY**

**BY
GEN. LUCIUS**

Now for the first time
revealing story of the
Berlin and the Allies
its back is disclosed
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that will shape the
and Europe for years

DECISION IN GERMANY

files and goes behind
international conference
London, Paris, and
coherent revelation
in perspective and
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and at times frightening
hottest sector in the

It is generally re-
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DECISION

IN GERMANY

by Lucius D. Clay

DOUBLEDAY & COMPANY, INC., 1950

GARDEN CITY, NEW YORK

representatives in Germany believe that we were not conducting our administration on a basis of expediency but frequent requests for the removal of the security classification were refused and the policy directive was not made public until October 1945.

While this document was intended as a guide only for the initial postwar period rather than as an ultimate statement of policy, it was not replaced in full until 1947. For many months we were to urge the adoption of its principles by the Allied Control Council. JCS/1067 authorized the assumption of sovereign power by our commander in chief, based upon unconditional surrender and his participation in the Allied Control Council. It required the decentralization of the German political and administrative structure and the complete severance of all ties between Germany and Austria. This became the expressed objective of all four powers and yet determining what it meant became a principal controversial issue between the Western Powers and Russia, and then among the Western Powers. Consistently we supported a structure which gave adequate but limited powers to a federal government.

By the provisions of JCS/1067 Germany was to be occupied as a defeated nation under a just, firm, and aloof administration which would discourage any fraternization. The German economy was to be controlled only to the extent necessary to meet the needs of the occupation forces or to produce the goods which would prevent disease and unrest, which might endanger the occupying forces. The Nazi party and its affiliates were to be dissolved, Nazi laws and regulations annulled. Members and associates of the party who had been more than nominal participants in party activities were to be excluded from places of prominence in public and private life, and party property and records were to be taken into our custody. The German armed forces were to be disbanded and arms, ammunition, and implements of war were to be seized and destroyed. War criminals and persons suspected as dangerous to the accomplishment of our objectives were to be arrested. To broaden the effect of this provision, the document listed a large number of organizations such as the Nazi party, Nazi youth and women's groups, the Gestapo, the SS, the SA, the police, the General Staff, the ministries, and less important groups whose key officials, officers, and non-commissioned officers were to be seized and held in internment because of the positions which they had held.

18. *Decision in Germany*

While political activities to include parades of any kind were prohibited, freedom of speech, press, and religious worship were to be permitted so long as the exercise of these freedoms did not prejudice military interests. Educational institutions were to be permitted to reopen when Nazi personnel was eliminated.

JCS/1067 gave only limited authority to Military Government. It specifically prohibited us from taking any steps to rehabilitate or maintain the German economy except to maximize agricultural production. Land reform was to be effected. Trade unions were to be encouraged and social insurance and poor relief to be continued. Patents and trade processes were declared subject to seizure. Production in war plants was to be stopped and plants equipped for such production were to be removed without awaiting action by the Allied Control Council. Until agreement was reached in the Council, there was to be no production of iron, steel, chemicals, machine tools, radio and electrical equipment, automobiles, or heavy machinery. Only the production of light consumer goods and the mining of coal were to be encouraged. Large concentrations of economic power were to be broken up, and all cartels and cartellike organizations disbanded. We were permitted to undertake such fiscal measures as seemed essential to prevent or restrain inflation.

When I was sent to Germany I had been fortunate in securing with Justice Byrnes's help the services of Lewis Douglas as my financial adviser. My work in production had brought me into frequent touch with his work in the Maritime Commission, and I had formed a great admiration for his ability. I was relieved of much anxiety when he joined me shortly after my arrival in Paris. He and I had been shown a draft of the proposed directive in late April. We were shocked—not at its punitive provisions but at its failure to grasp the realities of the financial and economic conditions which confronted us. Like the four basic documents which directed Allied policy, it had been drafted before Germany surrendered and without knowledge of the conditions we should find.

It seemed obvious to us even then that Germany would starve unless it could produce for export and that immediate steps would have to be taken to revise industrial production. Since there was no German Government to initiate these steps, Military Government perforce would be responsible. Nevertheless, we were not only prohibited from taking such steps but were also required to stop produc-

CHAPTER 5

The Way to Democracy: Rebuilding Government in the American Zone

SUNDAY, January 20, and Sunday, January 27, 1946, were important days in our zone. On these two days, first in Wuerttemberg-Baden and then in Hesse and Bavaria, the Germans in the smaller towns and villages went to the polls to select their local councils, their first free exercise of the right of ballot since Hitler's rise to power.

I have listened to election returns in the United States many times and with eager interest, but never have I waited so anxiously to know how many voted as I did that first Sunday. Dr. James K. Pollock, chairman of the Political Science Department of the University of Michigan, and others of my staff were in the zone driving around the country to witness the voting. About noon Dr. Pollock called me to say that I could stop worrying. In every town and village long lines were waiting at the polling places in schools, town halls, and sometimes in the remains of bomb-damaged buildings, when they opened. Old and young, men and women, the well and the sick had turned out in cold winter weather to record their votes. Free elections had returned to Germany, and the German people had responded.

These elections were only a part of the program of political reconstruction which had started with the establishment of local German administrations and the designation of local officials even before our

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troops had withdrawn from forward areas to our own occupation zone. The next steps to be taken were the extension of these administrations beyond the local level to the county and then to the state.

In July 1945¹ the Military Government teams in the field had restored German county (*Landkreis*) and city (*Stadtkreis*) administrations throughout our zone and had appointed the key German officials. They had also established regional (*Regierungsbezirk*) administrations to supervise several counties. Our Military Government officials still retained final control but much of the detailed work was now in German hands. Local government was recovering from the paralysis which followed surrender.

Before we could move ahead with state governments we had to create the states. This was made more difficult by the boundaries between the zones. No real consideration was given to the traditional pattern or to convenience in administration in fixing the line between east and west Germany. It was drawn before we landed in Normandy, when there was a lack of confidence in some quarters as to its success. It has been alleged that Mr. Churchill and his associates, underestimating the power of the Allied forces, considered this line to represent a major diplomatic victory for the Western countries which would save western Europe from Soviet domination. It was the line which stopped the advance of Communism to the west but it was far behind the forward position of our armies.

Likewise little consideration was given to the maintenance of old state lines in delineating the boundaries of the three western zones. We had accepted southern Germany as our area of occupation with reluctance and then only with the Bremen area² included under our control to provide us with a port of entry. It was separated from our zone by the British Zone and depended upon the latter for economic support. In carving out an area for the French to occupy, we had cut the old states of Wuerttemberg and Baden each into two parts. Only in Bavaria did we have a traditional state, although it too had suffered from loss of territory to the French Zone. However, it was fairly easy to set up a state administration there, since it had maintained some of its traditional autonomy in administration under the Nazi regime. Even Hitler had paid some attention to the Bavarian pride which has resulted in many separatist movements.

Therefore we established the first German state administration³ in Munich under a cabinet which included ministries for interior,

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finance, economics, education and religion, and labor. Then we decided that neither North Wuerttemberg nor North Baden was large enough to make into a state so we combined them into a single state, Wuerttemberg-Baden, with its capital in Stuttgart. We faced another problem in Hesse, where much of the area had been administered for years as a province of Prussia. Here our original plans to form the states of Hessen-Nassau, with its capital at Darmstadt, and Hesse, with its capital in Marburg, were changed in response to many requests from Germans to form the single state of Gross Hesse, later called Hesse, with its capital at Wiesbaden. The formation of this state was announced on September 19, 1945. We now had three states in our zone under German administrations headed by minister-presidents whom we had appointed.

These three states and the Bremen Enclave moved rapidly to form their government structures. In the absence of central government they were made responsible within their borders for many activities formerly conducted by the Reich, such as postal, telephone, and telegraph services, rail and highway transport. Of course these services should have been nationwide in scope or, since this was impossible, at least zone-wide. Thus we felt the need for some form of zonal co-ordinating machinery. It was desirable for the German states to start working together and preferably in an organization which would lead their officials to a better understanding of the federal type of government.

To accomplish this, on October 5, 1945, we established a Council of States or Laenderrat, composed of the minister-presidents of the three states in our zone (later Bremen was included). We did not want to have a capital for the United States Zone as it might lead to charges that we were setting up a separate government. Nevertheless, to facilitate the working of the Laenderrat, we authorized it to have a permanent secretariat in Stuttgart and to form working committees of lesser state officials to consider specific problems of common interest, such as the resettlement of refugees, the collection and distribution of food, and the allocation of transport and communications facilities. Although the Laenderrat was not given executive authority, its agreements, when approved by Military Government, could be issued as decrees in each state by its minister-president.

Its organization was worked out between Military Government

and the German minister-presidents by a small staff under Dr. Pollock. To provide direct liaison, an American representative who reported directly to me was designated as Co-ordinator of Regional Government and given an office in Stuttgart. Dr. Pollock was the logical choice for this important position. He spoke German well, was acquainted intimately with its past political history, and was an expert in modern political developments. His proved to be the right hand to guide the Laenderrat into a better understanding of the principles of democratic responsibility.

Our state problems were not ended, though, as the Bremen Enclave was in difficulty. A part of the enclave lay outside the city limits and really belonged to the British Zone. The three port cities—Bremen, Bremerhaven, and Wesermuende—depended on a hinterland which was entirely under British control. We worked with British Military Government to try to find a solution and finally transferred the area outside of the port cities proper back to British control. For a while we ran local government in Bremen under the policy control of British Military Government in the effort to fit the enclave into a higher pattern of political and economic life.

With the creation of the Laenderrat, by November 1945 we were able to report that German administrative machinery was functioning at village, city, county, and state level and was being co-ordinated on a zonal basis by the Laenderrat. Still the German officials were appointees of the occupying authority and were neither selected by nor responsible to the German people. We had set the stage for democratic government but had given it no life. Administration in itself was only a means to an end, the creation of responsible German government.

The overthrow of the Nazi regime which had ruled Germany for twelve years left a political vacuum. This had to be filled promptly with democratic leadership while we were still there to prevent the growth of new totalitarian systems under different names. I was convinced that we could neither hesitate nor delay.

In August we had authorized the formation within the *Kreis* or county of political parties⁴ which subscribed to democratic principles, and had encouraged them to political activity. Organization meetings, which were held immediately, were well attended and orderly. This led us in November to extend authority for the political

parties to organize on a state-wide basis. It also was timely to take the first step in making German administrations responsible to the people.

I was convinced that the soundest way to restore political government was from the ground up rather than from the top down, and that elections should be held progressively from the village to the state level. While my advisers in the Civil Administration Division had advocated elections for some time, they became lukewarm when I was ready to fix a date. Now it was too cold for the voters to turn out and too early in the occupation for them to have developed a real political interest which would draw them to the polls. Even Dr. Pollock, the foremost advocate of early elections, accepted their misgivings. I remember remarking to him that to learn to swim you have to get in the water. I think I also enjoyed teasing him a little about a liberal professor of political science trying to restrain a hard-boiled soldier running a military occupation from promptly restoring the ballot to a people who had been deprived of their right to vote.

The first elections were set in January 1946 to allow sufficient time for the states to issue electoral laws precluding former Nazis from becoming candidates and preventing active Nazis from voting. They were held in villages (*Gemeinden*) with fewer than 20,000 inhabitants. We took care to see that armed troops were not on duty in the election districts and asked occupation personnel to keep off the streets as much as possible. Final returns showed that 86 per cent of those eligible had voted, an extraordinarily high percentage for any local election and almost twice what we would expect at home. Thus we were able to give local government, which under the Nazis had little if any autonomy and since surrender necessarily had been dominated by military government, a base of popular support and understanding.

The next step was elections for county (*Landkreis*) councils, and councils in the larger towns (*Gemeinden*) having more than 20,000 inhabitants, held on April 28, 1946. They too were successful, and while not so large a percentage of the eligible voters participated, more than 71 per cent did, which was a satisfactory turnout. It was interesting to find that these elections returned to office a majority of the officials we had appointed, indicating that our appointees had not been branded as collaborators. In May the elections held

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for city (*Stadtkreis*) councils drew more than 80 per cent participation of the eligible voters. They completed the election cycle to return local governmental responsibility to elected public officials.

We were now ready for the next phase of our effort, the return of state governments to the German people. While the minister-presidents had in January 1946 established State Advisory Parliamentary Assemblies whose members were selected by political parties and other groups, these assemblies were not responsible to the electorate nor did they have any real power. Therefore, early in 1946 we requested the minister-presidents to have preliminary constitutions drawn up and to arrange for the election of constitutional assemblies to consider these drafts. Tentatively the work of the constitutional assemblies was to be completed by September 15 for submission to popular referendum not later than November 3. The drafting commissions were appointed promptly and had the draft constitutions ready for consideration by the constitutional assemblies which were elected on June 30. This voting also proceeded smoothly and attracted a heavy vote. The assemblies convened on July 15, completed their work in October, and submitted their work for our approval. While there were many differences of detail in the three constitutions,⁵ all represented a high concept of democracy. Many of their clauses were taken word for word from the constitution of the Weimar Republic, and others from those adopted by the German states between 1919 and 1923. They did contain some provisions such as proportional representation which we did not favor but which could not be considered in violation of democratic principles and were therefore accepted as representing the wishes of the electorate. The three constitutions established parliamentary forms of government and guaranteed independent judiciaries with judicial review of the constitutionality of legislation. They contained excellent provisions which defined and safeguarded the basic rights of the individual.

In approving these documents it was made clear that Military Government maintained the right to intervene and exercise supreme authority to accomplish our objectives. Those powers necessary "to effectuate the basic policy of the occupation" were reserved. Likewise it was made clear that under the state constitutions measures could not be taken which would interfere with or make more difficult the exercise of national government either by Military Govern-

ment or as subsequently established in a national constitution. The form of letters of approval with their express reservation of authority, and with their acceptance of certain provisions under specifically defined interpretations of their meaning, was used later by the three military governors in approving the Basic Law, or provisional constitution, for western Germany.

The constitutions were ratified⁶ by large majorities. In Wuerttemberg-Baden more than 72 per cent of the eligible voters took part in the voting, on March 24, which at the same time elected members of the State Parliament or Landtag. On December 1 the voters in Bavaria and Hesse gave overwhelming approval to the constitutions and elected their parliaments. We were now ready to place state governments in the hands of elected officials.

The new parliaments met at once to form these governments. Dr. Geiler, our appointee in Hesse, now rector of Heidelberg University, was succeeded by Christian Stock of the SPD (Social Democratic party), a former trade union official. In Wuerttemberg-Baden Dr. Reinhold Maier of the FDP (Free Democratic party) continued to head a coalition government, and in Bavaria Dr. Wilhelm Hoegner of the SPD was replaced by Dr. Hans Ehard of the CSU (Christian Social Union). This represented only a change within the coalition cabinet in Bavaria, for Dr. Hoegner became deputy minister-president when Ehard moved over from the Ministry of Justice to take his place.

Thus the three states in our zone entered 1947 with almost full self-responsibility for government. To insure their freedom of action within our basic policy, a directive⁷ was issued to define clearly the powers which Military Government would retain and the relationships which we expected between our state offices of Military Government and the state governments. So that it would be clear to the Germans in ratifying their constitutions that they were being granted real powers, it was published on September 30. It was the forerunner of the Occupation Statute which was to be given western Germany by the three Western occupying powers almost three years later. Elected governments now existed at all levels in our zone and these governments had backgrounds of legal authority subject to challenge in independent courts if deemed in violation of constitutional authority. It was up to them to win the respect and confidence of the German people.

When we moved ahead with these steps in the political reconstruction of our zone we hoped that parallel action would be taken in other zones so that the Allied Control Council would have no difficulty in setting up for all Germany the central administrations required by the Potsdam Agreement and so that these administrations would find the structures of state government available to facilitate their work. Our example in holding early elections was not followed in the other zones until September 1946, when municipal and county elections were held, and even then there was little choice left to the voters in the Soviet zone, as in many places the SED list of candidates was the only one placed before them.

However, when we started political reconstruction in 1945 we did not foresee its importance in the later development of West Germany. Soviet plans for expansion were then well concealed and their representatives and vassals had not yet succeeded in dominating the states of eastern Europe which were soon to become Soviet satellites. When the issue was drawn, the elected German administrations in our zone were steadfast in their opposition to Communism and in this way alone proved their value.

Perhaps the most significant development in western Germany, and particularly in our zone and the British Zone, was the healthy growth of political parties.⁸ In November 1945 they were authorized to form and work on a state-wide basis. The state parties in our zone were shortly co-operating through informal working committees which we made legal by approving their formal organization on a zone-wide basis.

The resulting rebirth of old and the formation of new parties is perhaps the most concrete outward evidence of political reconstruction. The authorization granted for the resumption of party activities was used almost immediately by political leaders first on a state and then on a zonal basis. A study of their development is essential to an understanding of present-day Germany.

Under Hitler there was only one party. In the Weimar Republic the left had been composed of Social Democrats, Democrats, and Communists; the center, of the Catholic Center party and the Bavarian People's Party; and the right, of the People's Party, the Nationalists, and the National Socialists. In the new Germany after Hitler, the rightist groups practically disappeared, the Communists were a small and extreme leftist group, and the two great parties

were both moderates: the SPD (Social Democratic party), slightly left of center, and the CDU (Christian Democratic Union), slightly right. Smaller parties, also for the most part slightly to the right of center, held the balance of power.

The oldest party, the SPD, derives its basic strength from industrial workers. It advocates the socialization of means of production and distribution by peaceful and legal methods. It desires that the so-called monopolistic industries be taken from private owners and turned over to a system of ownership and management on a co-operative basis by the states, trade unions, and co-operatives. It opposes nationalization—that is, ownership by central government. It supports a strongly centralized government and proportional representation, and opposes Church influence in public schools. Its leader, Dr. Kurt Schumacher, lives in Hanover in the British Zone. However, it had able men in our zone, including the heads of state governments in Bremen and Hesse, Dr. Wilhelm Kaisen and Christian Stock. Other leaders in our zone were Erwin Schoettle in Wuerttemberg-Baden, and Waldemar von Knoeringen in Bavaria.

The other great party to emerge was the Christian Democratic Union. It is a combination of Catholics and Protestants founded in the belief that all Christians should band together against the rise of Communism. Its strength is derived principally from the rural districts. It supports a true federal structure of government. It opposes socialism but believes that the capitalistic system should be modified by having government participate together with private capital in the ownership of major industries. Otherwise, it favors a free economy. It supports the right of parents to determine the sort of school their children shall attend, and confessional schools. It opposes proportional representation. Of particular interest is the support which the CDU gives to a united western Europe and to a reconciliation with France. Its leader, Dr. Konrad Adenauer, became president of the Parliamentary Council and was appointed the first Chancellor of the West German Republic in September 1949. Leaders in our zone include Dr. Werner Hilpert, Dr. Erich Koehler, and Dr. Ludwig Erhard. Dr. Hilpert was Finance Minister in the coalition cabinet in Hesse; Dr. Koehler, the able president of the Economic Council; and Dr. Erhard, the director of economics for the bizonal area. Dr. Erhard is deserving of special mention as his advocacy of a free economy became a major issue in the first general

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elections held in 1949. He removed many controls following currency reform, which required moral courage. Despite the abilities of its leaders, the CDU is not as effectively organized as the SPD, nor does it have comparable party discipline.

The CDU combined with the CSU appears to have been stronger than the SPD. The CSU differs little from the CDU. It is more predominantly Catholic and exists only in Bavaria. It favors a weak federal structure of government. Its leaders are Dr. Hans Ehard, Dr. Josef Mueller, who founded this party, and Dr. Alois Hundhammer. Were it not for typical Bavarian insistence on going it alone, the CSU would amalgamate with the CDU.

In the same Bavarian spirit, two smaller parties have developed in that state. One of these, the Bavaria party, led by Joseph Baumgartner, is rightist and would be nationalist if it did not base its principal appeal on the cry "Bavaria for Bavarians." The other, the Economic Reconstruction party (WAV), headed by Alfred Loritz, opposes Bavarian separatism and supports a federal structure of government. It advocates a referendum for all important measures and government by experts. Its colorful leader, who alternates between palaces and jails, keeps it in the limelight. All in all, Bavarian politics, though varied, are never dull.

The third major party started in Hesse in 1946 as the organization of liberals. Other organizations with the same objectives started shortly thereafter under other names. Finally they joined together to form the FDP, or Free Democratic party. It is politically progressive and economically conservative, a true party of free enterprise. I suppose it might also be called a party of the "rugged individualists." Its leaders include Dr. Theodor Heuss and Dr. Reinhold Maier, minister-president of Wuerttemberg-Baden. This party joined the CDU to form the first government of West Germany.

The Communist party (KPD) has its main strength in our zone in the Mannheim area. However, its voting strength in the zone is just a little over 5 per cent. Its tight party discipline has not helped it to expand in the face of rising hatred of Russia. Its principal leader, Max Reimann, is in the British Zone. Its leaders in our zone, which include Walter Fisch, Oskar Mueller, and Albert Buchmann, are largely party hacks.

Two parties located largely in the British Zone have some adherents in our zone. One of these, the Center party (Zentrum), is

left of the CDU. So far its strength is limited to North Rhine-Westphalia. The other, the German party (DP), is a rightist party in which nationalistic elements predominate. It has as yet developed little strength in western Germany as a whole, and practically none in our zone.

The growth of these political parties indicates to me that there is considerable vigor left in German political life. It is regrettable that there are so many. However, they have played their part in restoring state governments and in the work of the bizonal administration, the Economic Council and the Parliamentary Council at Bonn. Their presence and the heavy vote which they have drawn collectively in all elections indicate to me that the oft-heard charge of political apathy in Germany is difficult to prove. Certainly if the existence of well-organized political parties is valid evidence, political reconstruction in Germany has made considerable progress.

However, the story of political reconstruction within our zone is incomplete without a description of the contribution made by the Laenderrat.⁹ While this was a temporary council of the states given only limited authority to co-ordinate the activities of the states in our zone, it developed a faith in democratic procedures and an experience in limited central authority which paved the way for West German Government in a form we could accept. Its members were to play active roles in creating the new government.

For more than a year the Laenderrat was aided in its work only by committees composed of state officials. As elections progressed, it became increasingly conscious of its lack of a popular base and in September 1946 asked permission to add an Advisory Parliamentary Council. This request was not approved until after state elections were held, and even then direct election of its members were prohibited. We still did not want to overemphasize the governmental nature of the Laenderrat. The Advisory Council was therefore composed of twenty-four representatives from the elected state parliaments. Indirectly it provided some measurement of popular support for the work of the Laenderrat.

In March 1947 the president of the Bremen Senate was permitted at his request to participate in the deliberations. Bremen¹⁰ had been excluded from representation because it operated under British policy just as Berlin was excluded because it was under quadripartite control. Bremen was never satisfied with this arrangement.

It had always maintained strong trade ties with the United States and wanted to be under our policy control. The attempt which we had made to administer the enclave under British policy had failed. Therefore, by mutual consent, we abrogated the earlier agreement on October 30, 1946, and made the enclave a state in our zone. Its Senate was authorized to prepare its constitution, which was ratified by its electorate on October 12, 1947.

During the two years in which the Laenderrat served as the coordinating agency for our zone I met with it in Stuttgart once each month with rare exception. The first meeting turned out to be the pattern of future meetings. I arrived in Stuttgart in the early morning and went directly to Dr. Pollock's office. There, in the Villa Reitzenstein, he and his staff briefed me on current issues while the Laenderrat and its principal staff assistants assembled in one of the large drawing rooms. This attractive villa, set in landscaped gardens high on a hill overlooking the city, had been the headquarters of the Nazi Gauleiter. As soon as the Laenderrat was assembled, Mr. Murphy, Dr. Pollock, our state directors, and I walked in to take seats on a platform at one end. After a welcome by the chairman, I spoke informally on the issues raised by Dr. Pollock. Then the meeting was adjourned and the minister-presidents joined me in Dr. Pollock's office for coffee. This gathering around the coffee table provided the opportunity for frank and informal exchange of views.

Later, when the Advisory Parliamentary Council¹¹ was established, its members also attended the meeting at which I spoke to the Laenderrat. I agreed to consider questions from the floor. This monthly appearance of a military governor of an occupied area to answer members of a parliament representing the occupied people must have been unique in the annals of occupations. Regardless of lack of precedent, it was a democratic procedure which developed better understanding of our purposes. It may also have reminded German administrators of their responsibility to the elected representatives of the people.

Still, our main benefit came from the informal meetings with the minister-presidents over coffee. Dr. Pollock and I were usually present, and later the minister-presidents were joined by the president of the Advisory Parliamentary Council and by the secretary general.

The minister-presidents were interesting, able, and intelligent.

Dr. Hoegner was a Social Democrat who had opposed the Hitler regime until he was forced to escape to Switzerland. Slightly built, he had great energy and a real appreciation of sound democratic principles. His successor, Dr. Ehard, was a lawyer and jurist of repute, with a clear head and a firm belief in constitutional procedure. Beset by the difficulties of Bavarian politics, he remained a staunch defender of the democratic processes. Dr. Maier had been a deputy in the Reichstag of the Weimar Republic. Although heavily built, his health had suffered in the past years and the exacting duties of office were a severe physical strain. His intelligent and attractive wife was Jewish, and she had fled with their children to England so that our entry into Germany had united the family after eight years of separation. He was a kindly, gentle man who loved the Swabian inheritance and, through his understanding, contributed much to the harmony of the meetings. Dr. Geiler was dignified and impressive. His reputation as an able lawyer was outstanding. Perhaps more ambitious than his colleagues, he was less inclined to impulsive responses and remarks and always weighed his comments carefully. He was succeeded by Christian Stock, largely a self-made man, who probably did not have the educational background of his colleagues but was a man of the people, close to their thinking. Herr Kaisen from Bremen, a former journalist and civil servant, was businesslike at all times. Impatient with dialectics, he was practical and realistic, essentially a man of action.

We were fortunate to have a succession of able men as Co-ordinators of Regional Government. When Dr. Pollock returned to his university duties he was succeeded by Colonel William Dawson, a Cleveland lawyer and member of the staff of Western Reserve University. At my request he removed his uniform, as I felt it most desirable to have a civilian in this important political task. Colonel Dawson was intelligent, democratic to the core, kind, and endowed with a homespun philosophy and humor which won the respect and affection of all who were associated with him. His influence on German thinking and his contribution to a real understanding of basic democratic principles were of inestimable value. After his death on February 11, 1947, American associates raised a fund in his honor for a German scholarship at Western Reserve University and German admirers established an American scholarship at Heidelberg University. He was followed by his deputy, Dr. Charles

Winning of the faculty of New York University, who had been with Military Government from the start and was well qualified to carry on the work.

The informal meeting with the minister-presidents was always followed by an informal session with the press on the events of the day. It was at Stuttgart that these meetings were first opened to German press representatives. They must also have been the introduction to German reporters of the "question and answer" relationship which marks the American press conference. It gave them a concept of what we meant when speaking of the responsibility of public officials to the press. At the initial meeting they could not believe they were permitted to question the deputy military governor. They watched the give-and-take with the Allied press for several meetings before they gained enough confidence to ask questions freely, and on the whole intelligently. Later, German reporters attended conferences in Berlin and Frankfurt at which they also learned much from Allied press representatives. They were no longer overawed by their own officials. They learned to demand that their questions receive appropriate consideration and reply. Today, editorial condemnation is certain to result for the public official who refuses.

In the early afternoon I met with our state directors to discuss current problems and to keep them abreast of policy developments.

These monthly meetings were used sometimes to express major policy and at other times to ask for the assistance of the minister-presidents in the accomplishment of our democratic objectives. They provided the opportunity to charge the minister-presidents with specific responsibilities and to remind them of failures to carry out these responsibilities or of deviation from our expressed policies. Thus the record of these meetings in many ways reflects the development and execution of American policy.

In the first meeting the Laenderrat was told: "United States policy in Germany is a firm policy. It may seem hard but it has been made so to destroy the war potential of Germany. It does not have as its purpose the destruction of Germany as an economic unit, nor the destruction of the German people. It includes as a primary objective complete denazification. Our policy likewise includes complete demilitarization. This means not only a breaking up of military forces, but also a deindustrialization directed principally at heavy

industries. Concentration of industrial power will be dispersed and will not be permitted to re-form."

On the other hand, it was told: "We propose to return to you as quickly as possible the responsibility for self-government. We propose to return to you a free press and a free radio at the earliest possible date. You now have complete freedom of religious worship. We also propose to remove any obstacles which we may find placed in the way of liberal educational opportunities. We do not wish to establish a zonal German capital. Therefore, we propose as an interim measure to establish here in Stuttgart a Council of Minister-Presidents. Since you will in fact develop the measures necessary for full co-ordination between your units, it must be assumed that each of you individually will carry out what you have agreed to collectively. I wish to emphasize that, within United States policy, yours is the responsibility. We will not dictate to you except as you violate expressed policy."

General McNarney, who had just assumed command, attended the December meeting. It was then that the election codes were approved and that the minister-presidents were charged with the responsibility for further denazification, including determining the extent to which active Nazis would be denied the franchise:

"We have recently received your proposed election codes. We have decided to approve those codes which exclude from the franchise certain categories of former Nazis as set forth in our directive. We do this in full recognition that such exclusion of a large number of voters is not a complete fulfillment of the democratic process. However, we feel strongly that those Germans who were not affiliated with the Nazi party must form an elected government. We are also most anxious that the minister-presidents prepare a program or a plan for continuing and completing denazification."

In the January 1947 meeting it was informed:

"It seems to me you have been given now the full measure of self-responsibility which is possible until some form of provisional government is established for Germany as a whole. . . . Although these constitutions provide for the requisite ceding of state power to a national or federal government, the exact powers which will be so ceded have not and cannot be formulated until a constitutional convention or congress has developed the final form of national government."

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In the absence of a national constitution it would prove difficult to distinguish clearly between the legislative responsibility of the Laenderrat and the state parliaments. However, Military Government policy was "to maintain a high degree of local responsibility and to hold national (zonal) legislation to the essential minimum." State legislation must be confined to state matters and thus "must be examined prior to formal approval by Military Government to make sure that it does not conflict with quadripartite matters either enacted or under consideration, or with uniform measures adopted in the American Zone."

The Laenderrat accepted the responsibility for denazification. In March 1946 it completed measures for this purpose and asked to present them for approval in Munich. This was the city in which Hitler made his first effort to grasp power and the minister-presidents believed it fitting that it also be the scene of the closing chapter. We met in the council chamber of the old Rathaus, a mellow, paneled room dating back to the Middle Ages, which retained its beauty and dignity although much of the building was bomb-damaged. The minister-presidents of Bavaria and Wuerttemberg-Baden and the Minister of Denazification of Hesse made short speeches to indicate their sincerity of purpose. Dr. Hoegner stated: "We are fully conscious of the difficulty of our task. Without a thorough purging, no democratic reconstruction and no re-education of the German people will be possible."

The law was signed by the minister-presidents in formal ceremony and then presented to me for signature. In signing in General McNarney's name, I said:

"It has been a basic policy and is a basic policy of Military Government to eliminate National Socialism and militarism—to that we are pledged. It has never been our desire to accomplish that by arbitrary methods. The responsibility for self-government of a people carries with it the responsibility for determining those who would destroy self-government and for taking measures which would prevent its ever happening again."

I then congratulated the minister-presidents on their sincerity and courage, and reminded them: "The rights of a people can be protected only when there is a leadership that has the vision and courage to protect these rights. To live as free men in a society of free men requires courage and determination."

Perhaps some instances of the use of these meetings to express our firm intent to accomplish our objectives will add to an understanding of their value. The November session provided the opportunity to express disappointment over the progress of denazification and regret that the political will and determination to punish those who deserved punishment had not yet developed.

When Bavaria protested rulings of the Laenderrat, it was necessary to speak sharply: "We are apprehensive that excessive state pride is beginning to arise. The Council must demonstrate to Germany and to the world its readiness and its capability for self-government."

On another occasion I was shocked with a German recommendation to lower the ration of displaced persons to the German level. It was necessary to remind the Laenderrat that other nations were sending in the additional food for the displaced persons and that Germany was fortunate not to be forced to assume the entire burden of support for these unfortunate people who were there through no fault or desire of their own but as a result of ruthless Nazi action. I refused to forward to our government a request to reduce the number of expellees, pointing out that if there had been no German aggression and if the expellees had been loyal to their country of residence the problem would not exist. We became distressed over the treatment being accorded to the expellees which came in part from wishful thinking that their stay in Germany was temporary. Therefore, in February 1947, the minister-presidents were advised of our concern in the words:

"These people are with you. They must be absorbed and your good citizenship in the future depends on the manner in which you absorb them. If it continues as at present, you will be establishing a minority group fostering hatred and hostility for years. You should know the difficulties that minority groups have caused in the past."

On several occasions it was necessary to insist on improved food collections as a requisite to continued American aid.

Fortunately it was seldom that meetings had to be devoted to admonitions. In December 1945 the Laenderrat was told: "We shall approve with the beginning of January 1 ration period a 1550-calorie ration. Hunger and starvation have never been United States objectives. My government has authorized me to say to you that it will

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support a 1550-calorie ration, the cost of which will be paid by Germany when it is able to pay."

Later our intent to return further responsibilities to German hands was announced: "It is our purpose to return the supervision of transportation (from the Army) to the Laender and its co-ordination to you."

In August 1946 the Laenderrat was informed of a special interest we had in the state constitutions: "Something which is always dear to the hearts of Americans is the provision which is made in the Constitution for the protection of the rights of the individual."

Also it was asked to support our effort to liberalize the education system, and reminded: "The future working people of the world will never be satisfied with an educational system that does not offer to the poorest child the same opportunity it offers to the most fortunate child. . . . Many civilizations which have lived in the past and contributed much to the world, because they lived in the past, have disappeared."

The Laenderrat was authorized soon after it was formed to meet at any time with the minister-presidents of other zones. It began to work with their associates in the British Zone to plan the economic merger of the two zones. However, this work was made difficult as their British Zone associates had no similar organization but were members only of a large Zonal Advisory Council which General Sir Brian Robertson had established. It made one unsuccessful effort to hold a conference of the minister-presidents of all four zones in Munich in June 1947. The French Zone officials were denied permission to attend and the Soviet Zone officials, puppets as they were, came only to use the occasion to create confusion and disruption. They attempted to repeat in thin disguise the Soviet charges against the Western Powers, but the Western officials refused to allow the meeting to be used for such purposes.

The task given to the Laenderrat was not an easy one. It had to undertake measures difficult for a strong government and depend upon mutual co-operation for their accomplishment. Some idea of the range of its activities may be obtained from a listing of only a few of the measures it enacted. They included laws for the redress of Nazi wrongs, the revision of civil procedures, the prevention of misuse of foreign relief, land resettlement and reform, the extension

of social insurance benefits to expellees, the revision of the criminal code and court procedures, the placement of labor, and employment insurance.

Its most effective work was accomplished in 1946 and early 1947. By then, financial and economic matters were handled by the bizonal administration and there was little left for the Laenderrat. Its members sat in the upper house of this organization. Therefore it was discontinued on June 1, 1948, and its members joined with their British associates in meeting informally each month with General Robertson and me. The new group was advisory and had no governmental responsibility.

I regretted seeing it disband. Any personal influence which I may have exerted through these monthly meetings and the close association which they developed was reduced substantially. Although General Robertson and I saw most things alike, we could not know exactly how each would reply to questions raised when we talked with the minister-presidents of both zones. Thus our answers were less frank and more guarded, so that the meetings never became the friendly exchanges of views which had characterized my talks with the Laenderrat. Moreover, the forum provided by the monthly meeting was gone.

In our final session I praised the democratic character and constructive nature of the role it had played in the reconstruction of our zone, saying:

"In the more than two years the Laenderrat has been in existence, I have found it always striving to represent the interests of the German people. I have found the Laenderrat always trying to accomplish its results through democratic processes which they believe in and which we believe in. I have found the minister-presidents zealous of the rights of the states which they represent, but I think always willing to compromise these rights in the interests of the common good. It is for that reason that I regret being here for the last time."

In the spring of 1948 a second political cycle was started with the election of new local councils. The participation of eligible voters continued high in quiet and orderly voting, in which, significantly, there was a loss of ground by the Communist party which at no time represented more than 7 to 8 per cent of the electorate in our zone.

It is timely now to return to the work of the Allied Control

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Council while German administration was being established in the four zones. It was in this period when it seemed as if the Allied Control Council might work successfully that different types of administration developed in each zone, which made for greater difficulty in bringing them together.

Food and Health for the German People

FOR three years the problem of food was to color every administrative action, and to keep the German people alive and able to work was our main concern. From the first I begged and argued for food because I did not believe that the American people wanted starvation and misery to accompany occupation, and I was certain that we could not arouse political interest for a democratic government in a hungry, apathetic population.

The need to provide food and thus prevent disease and unrest in the population behind the battle lines was recognized throughout the war, and SHAEF had brought to Germany for this purpose 600,000 tons of grain. This supply was not to be used lightly, because we did not know where and how more could be obtained for the forthcoming winter. We were convinced that the prevention of disease and unrest was as important to winning peace as it was to winning war. Human suffering follows quickly a falling ration, and inadequate supply brings about a deterioration in moral qualities difficult to overcome. Laws and regulations mean little to those who see their loved ones suffering from hunger.

Thus the provision of an adequate supply was more than a humane consideration. It was essential to the accomplishment of our objectives. We expected German reserves to be low and to be faced with a difficult period. To make the best of the situation we had brought seeds into Germany with us, even though we recognized that it was

sense of pride and proved its worth many times over. In addition I directed the transfer of Negro soldiers from service units to form three Negro infantry battalions, later incorporated into the Constabulary. They became excellent units and we saw the incident rate for Negro troops fall below the white rate. The incident rate, which records the total number of disciplinary violations that occur in a month divided by the number of thousands of troops, is a satisfactory index of the state of discipline. It includes many violations of a minor nature which would never be recorded on a police blotter. By 1949 our rate had become much lower than the police court rates in many American cities and the venereal rate had been cut in half. Our soldiers were sensing their purpose in Germany; they were becoming proud representatives of the United States.

There is much I could write of the Army's role in Germany. I have known and loved the Army and respected the American soldier for many years. Never did I know it to respond more to the demands of its commander than in my two years of command in Germany. Young though our soldiers may be, they are performing their duties admirably. Small though our forces may be, they are well trained, excellently equipped, and competent for any service they may be called on to perform, and even those soldiers with daily administrative and supply duties are trained in secondary tactical missions. What I have said about our soldiers applies to our airmen, who were equally responsive to our training objectives. I pay tribute to their work in the Berlin airlift elsewhere. Of course among 100,000 Americans there will always be a few who cause trouble. In Germany they became very few, and I am sure that visiting Americans who saw our soldiers in 1948 and 1949 returned home proud of what they had seen.

Another responsibility I assumed with command was the care and protection of displaced persons. The Allied armies advancing in Germany had uncovered almost 6,500,000 displaced persons,¹ the great majority of whom had been brought into Germany for forced labor. In an unbelievable operation, by rail, highway, and air, more than 4,000,000 had been repatriated² by July 31, 1945, and of the remaining 2,200,000 almost 2,000,000 were collected in assembly centers. There were large numbers who did not wish to be repatriated because of their political beliefs, including the Baltic people and the western Ukrainians, whose states had been absorbed by the

racy on a starvation diet. We could not even prevent sickness and discontent.

The effect in Germany was paralyzing. Workmen could not produce a full day's work. Economic recovery was stopped and the population was becoming more apathetic each day. Our appeal received support at home and shipments by the end of June permitted a small increase to approximately 1225 calories a day. At the time some believed that this official figure did not fairly represent the food consumed by the average German, since it ignored black market purchases. Our estimates of total production indicated otherwise. The unaccounted-for supply averaged perhaps 200 calories per person per day. Evenly distributed, this would have raised the normal consumer ration to 1425 calories, far below a sustaining diet. Of course it was not evenly distributed. Black market food benefits only the few who have the means to obtain it and not the great masses. No country has ever been able to fully prevent the selfish individual who has the means from living better than the average.

I doubt if we would have obtained increased shipments of food from the United States had it not been for the support given to our requests by former President Hoover. President Truman had asked him to visit Europe to survey the food needs of the several European countries. When I heard his visit would include Germany I asked permission to pay my respects to him on his arrival in Europe. I met him and his party at Brussels and found him sympathetic and understanding but insistent on supporting data. His party included among others Dennis A. FitzGerald, an expert from our Department of Agriculture then serving with the International Emergency Food Council of the United Nations Food and Agriculture Organization. He was an outstanding expert on world food supplies and needs. Shortly they visited us in Berlin, where our agricultural experts submitted the facts. We also brought the chief German official, Dr. Dietrich, and the state ministers of agriculture, to answer questions. Hoover's exceptionally analytical mind and his grasp of figures, combined with FitzGerald's rich store of information on the world food situation, enabled them to detect inconsistencies quickly. When our presentation was completed, they congratulated us and told us they had here been furnished more convincing evidence of need than anywhere else they had been. Their assistance on their return

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BOARD OF ECONOMIC WARFARE
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TRADING
WITH THE ENEMY
IN WORLD WAR II

By

MARTIN DOMKE

NEW YORK

CENTRAL BOOK COMPANY

1943

1595

in the Orders of the Alien Property Custodian rather than by direct application of provisions as contained in the Act itself. Inasmuch as the scope of this book is concerned with the operation of trading with the enemy laws during World War II, emphasis is placed on the interpretation of regulations issued in this war and decisions dealing with them, rather than on a discussion of decisions rendered during World War I.

The term "national of a foreign country" or "national of a designated enemy country" includes not only the subjects, citizens or residents of belligerent countries, but also all persons who have been domiciled in a blocked (designated) country at such time as that country is declared "foreign country," within the meaning of Exec. Order No. 8389, as amended. Due to the development of economic warfare, emphasis is shifting from the territorial test to the loyalty test, by which even the belligerent's own nationals are subject to control by that belligerent. Decisive restrictions no longer depend on the determination whether or not individuals are enemies within the meaning of the Act.

It is true that the Trading with the Enemy Act still uses the territorial test, which was eloquently expressed as early as 1814 by Story, J., in *Society for the Propagation of the Gospel v. Wheeler*:²⁰ "It is not the private character of conduct of an individual, which gives him the hostile or neutral character. It is the character of the nation, to which he belongs, and where he resides. He may be retired from all business, devoted to mere spiritual affairs, or engaged in works of charity, religion, or humanity, and yet his domicile will prevail over the innocence and purity of his life. Nay more, he may disapprove of the war, and endeavour by all lawful means to assuage or extinguish it,

²⁰ 2 Wall. 105 (U. S.).

tion and conservation of the assets of occupied countries to one of aggressive total economic and financial warfare."

Thus, in commenting on the freezing of Japanese assets, an English note⁷¹ rightly points out that "the ubiquity of modern trade and international conditions of exchange have led to the discovery in the 'freezing of assets' of a method of constraint more effect, it would seem, than pacific blockade, and a good deal less troublesome."

With regard to foreign funds control, the freezing regulations, Exec. Order No. 8389, as amended, made any transaction in which a "national" of a foreign (blocked) country had any interest, direct or indirect, subject to a license, general or special,⁷² a "national" being defined in sec. 5E(1) as "any person who has been domiciled in, or a subject, citizen or resident of a foreign country."⁷³ But this definition of a "national" of a foreign (blocked) country, which was issued pursuant to sec. 5(b) of the Trading with the Enemy Act, is now superseded by General Ruling No. 11 as amended, insofar as the freezing regulations are concerned.⁷⁴

The new concept of enemy national as "any individual within enemy territory," was also adopted for the regulation of communications as administered by the Office of

⁷¹ (1941) 91 Law Journal 289.

⁷² For a discussion of this definition of a "national" see *supra* n. 3; Binder, *Practical Aspect of Foreign Property Control*, (1941) 19 N.Y.U.L.Q. Rev. 1, 20; Davis, *Trading with the Enemy*, (1941) 106 N. Y. L. J. 2048; Thiesing, *Control of Foreign-Owned Property in the United States* (1941) p. 15; Bloch and Rosenberg, *Current Problems of Freezing Control*, (1942) 11 Fordham L. Rev. 71, 74.

⁷³ The term "national" under Exec. Order No. 8389, as amended, as used in the foreign funds control, both by the Treasury Department and the Alien Property Custodian, has no bearing upon the use in other regulations, as in sec. 101(a) of the Nationality Act, October 14, 1940, 54 Stat. 1137: "The term national means a person owing permanent allegiance to a State."

⁷⁴ As to financial regulations concerning "foreign nationals" in England, see Notice of the Bank of England, November 13, 1941, C.C.H.W.L.S.F.S. ||67723; Howard, *supra*, n. 37, at p. 15.

sec. 3 (c),⁹³ defined a "designated national" as "any person in any place under the control of a designated enemy country or in any place with which, by reason of the existence of a state of war, the United States does not maintain postal communication." Sec. 4 of General Order No. 14, December 1, 1942,⁹⁴ in defining a "designated foreign national" as "any individual who is resident of," and⁹⁵ "any business organization organized under the laws of or having its principal place of business within" (enumerated enemy countries), also adopts the strict territorial concept of enemy character, irrespective of nationality.

But the concept of enemy character of an individual in the "territorial sense," i. e., residence or carrying on business in enemy territory, has been broadened in this war. Blacklisted persons and corporations are expressly declared "enemy nationals," in sec. 1801.2 (c) 4 of the U. S. Censorship Regulations, and in sec. 2 (a) (iv) of General Ruling No. 11, as they are "designated foreign nationals" in sec. c (4) (iii) of General Order No. 14, sec. f (2) (iii) of General Order No. 15 of the Alien Property Custodian.

Moreover, the powers which the President of the United States held under the Trading with the Enemy Act, as amended, were considerably enlarged at the entrance of the United States into this war. Sec. 301 of Title III of the First War Powers Act, amending sec. 5 (b) of the Trading with the Enemy Act, authorized the President to vest in himself or his agent all foreign-owned property within the jurisdiction of the United States, irrespective of the enemy character of the owners, including even property of non-enemy owners⁹⁶ and friendly governments.⁹⁷ Until now,

⁹³ August 3, 1942, 7 Fed. Reg. 6199 (1942).

⁹⁴ December 1, 1942, 7 Fed. Reg. 10546 (1942).

⁹⁵ Chapter II, n. 14; General Order No. 15, January 6, 1943, (1943) 25 J. Pat. Off. Soc. 137, enlarges the number of countries which are to be considered enemy territory.

⁹⁶ See Turlington, *Vesting Orders Under the First War Powers Act*, (1942)

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citizens who are supposed to be Axis supporters. It may also be recalled that being "inimical to the interests of the Western Hemisphere" is the leading test in the Recommendations of the Final Act of the Inter-American Conference on Economic and Financial Control.¹⁰⁴

Thus, the test of loyalty will become decisive for the determination of any individual as an enemy, wherever resident and of whatever nationality. Even American citizens have been treated as enemies for certain purposes of Trading with the Enemy legislation, inasmuch as they appear as potential enemy sympathizers in wartime. Thus, "the ideological and racial nature of the present war appears, in many respects, to have cut across national lines and destroyed the value of old distinctions based on nationality."¹⁰⁴

Under statutes other than the Trading with the Enemy Act, the test of loyalty led to a different treatment of American citizens of Japanese ancestry,¹⁰⁵ and to cancel the naturalization certificates of former members of the American-German Bund, in order to distinguish those classes of enemy sympathizers from other citizens and also from law-abiding resident aliens of enemy nationality.

Adoption of the test of loyalty to determine the "enemy" character of an individual (or a corporation) was rendered possible in the early stage of freezing regulations. Exec. Order No. 8389, April 10, 1940,¹⁰⁶ sec. 5E (iv), included in the term national "any other person who there is reasonable cause to believe is a national as herein defined," and gave the Secretary of the Treasury full power to deter-

¹⁰⁴ Note, *Alien Enemies and Japanese-Americans: A Problem of Wartime Controls*, (1942) 51 Yale L. J. 1318, 1337.

¹⁰⁵ The property of "evacuee nationals" has been declared "special blocked property" by Special Regulation No. 1 under Exec. Order No. 8389, as amended, and sec. 5(b) of the Trading with the Enemy Act, as amended. See Chapter VII, n. 46.

¹⁰⁶ 5 Fed. Reg. 1400 (1940).

Proclamation was held to be decisive to permit resident aliens of enemy nationality to institute and prosecute lawsuits in the courts of this country during the war. More recently the United States Supreme Court in *Ex parte Kumezo Kawato* sustained this position.

Aliens of enemy nationality who are resident in this country are not enemies within the meaning of the Trading with the Enemy Act. But, for this reason, it is necessary that they comply with the requirement of residence, namely, that they be legally admitted into this country.¹² Residence presumes a legal admittance, as pointed out in *United States v. Shapiro*,¹³ referring to *U. S. v. Goldstein*, 30 Fed. Supp. 771, where it was said: "The term residence, as used in this Act, is 'legal residence,' and anyone who enters this country illegally cannot thereby acquire a legal residence."¹⁴

Accordingly, in *Szanti v. Teryazos*,¹⁵ an alien of enemy nationality (Hungarian) who had been employed as a fireman on board the *S. S. Leontios Teryazos* (which was of Greek registry) and who had overstayed his shore leave of sixty days, was regarded as staying in this country illegally since that time; he was therefore deemed a non-resident of the United States and hence an enemy within the meaning of the Trading with the Enemy Act. In a scholarly opinion, discussing the meaning of the definition "resident," the Court said: "A seaman or any other person who remains in this country illegally and who is subject to deportation cannot be regarded as a resident for the pur-

¹² Cf. Note, *Aliens—Naturalization—Proof of Entry for Permanent Residence*, (1942) 10 Geo. Wash. L. Rev. 225.

¹³ 43 Fed. Supp. 927 (D. C. S. D. Cal., March 30, 1942). Cf. *Petition of Wright*, 42 Fed. Supp. 306 (D. C. E. D. Michigan, December 23, 1941).

¹⁴ For a recent discussion of the term "residence," see *Harshbarger v. Sherron Metallic Corp'n*, N. Y. L. J. February 20, 1943, p. 714.

¹⁵ 45 F. Supp. 618 (D. C. E. D. N. Y., June 26, 1942, as corrected July 21, 1942).

aliens in departing from and reentering into this country in wartime,¹⁸ and the necessity of the issuance of a visa approved by the Interdepartmental Visa Review Committee (since June, 1941)¹⁹ obliged such persons to stay in this country as visitors. These temporarily admitted aliens or visitors may claim to be residents. Recent New York Supreme Court decisions qualified visitors as resident persons, in *Greiner v. Bank of Adelaide*,²⁰ applying sec. 225 of the General Corporation Law (action against a foreign corporation by a resident), and in *Townsend v. Townsend*,²¹ sec. 1162, subd. 1 (2) of the Civil Practice Act (action for separation).

In the field of the freezing regulations, General License No. 42 as amended,²² expressly declared that any individual who was residing in the United States on February 23, 1942, and who does not thereafter enter any blocked country is a generally licensed national. Thus, the position of visitors who entered this country legally before that date is similar to that of residents, as to the provisions of foreign funds control.²³ These resident aliens of enemy nationality insofar as they arrived before June 14, 1940, in this country, are not "nationals of a foreign country" and thus not subject to the regulations which are imposed upon generally licensed nationals, to wit, the prohibition²⁴ from purchasing directly or indirectly securities of any corporation

¹⁸ Proclamation No. 2523 establishing control of Persons entering and leaving the United States, November 14, 1941, 6 Fed. Reg. 5821, 5869 (1941), Regulations December 9, 1941, 6 Fed. Reg. 6349 (1942), January 14, 1942, 7 Fed. Reg. 376, 381 (1942).

¹⁹ Rules and Regulations, January 26, 1942, 7 Fed. Reg. 574 (1942). Cf. Biddle, *Proposed Presidential Control on Tariff and Immigration Laws*, (1943) 22 Congr. Digest 6.

²⁰ 176 Misc. 315, 26 N. Y. S. (2d) 517 (1941).

²¹ 176 Misc. 19, 26 N. Y. S. (2d) 515 (1941).

²² 7 Fed. Reg. 1492 (1942).

²³ Press Release, Treasury Dep't, Fed. Res. Bank of New York, Circular 2383.

²⁴ Public Circular No. 14, February 3, 1942, 7 Fed. Reg. 698 (1942).

in such a manner that more than one per cent of the outstanding securities of any one class of the corporation would be held by blocked nationals.

On the other hand, Public Circular No. 4C, relating to reports to be filed on Form TFR-300, Series L, September 14, 1942,²⁵ excepts in sec. II A(1) (a) from the requirements of reporting "a national (of a foreign country) entering the United States on a purely transitory visit, whether for business or pleasure."²⁶ All aliens who entered the country after February 23, 1942, including legally admitted immigrants, are treated as nationals of a foreign (blocked) country and cannot avail themselves of the benefits of General License No. 42, as amended, which other individuals enjoy, even those who, though entering before that date, have not yet been granted legal residence.²⁷

Failure to be legally admitted to residence in this country may have additional effects. In *Sundell v. Lotmar Corp.*,²⁸ an action by Finnish residents visiting New York was dismissed when it was found that they were not qualified to maintain an action here, as they were enemies within the meaning of the Trading with the Enemy Act, being nationals of a country acting "in concert with Germany in their war against Russia, our ally."²⁹ It will be

²⁵ 7 Fed. Reg. 7274 (1942).

²⁶ As to treaty-traders, i. e., persons admitted as traders "in pursuance of the provisions of a treaty of commerce and navigation," 47 Stat. 607 (1932), 8 U. S. C. §203(6) (1934), see (1941) 41 Col. L. Rev. p. 1062, n. 165.

²⁷ For the question of residence in the freezing regulations, before the enactment of General License No. 42, as amended, February 23, 1942, 7 Fed. Reg. 1492, see references Chapter III, n. 3, 72.

²⁸ 44 F. Supp. 816 (D. C. S. D. N. Y., February 17, 1942).

²⁹ In *The Lawhill*, (1942) 85 South African L. J. 46 (Sup. Ct. of South Africa, Cape Provincial Division, September 15, 1941), an application was made by the Crown for the requisition of a Finnish vessel in the custody of the Prize Court after Finland had become an ally of Germany and was fighting on the side of Germany, although at that time Finland had not declared war on Great Britain or the Union of South Africa. Application was granted. See

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³⁰ *Birge-Forbes Co. v*

³¹ Trib. Civ. Seine, 1939 II 338.

³² Trib. Civ. Seine, 19

5. Alien Enemies Under Other Regulations and at Common Law.

IT HAS been pointed out in Chapter IV that all definitions of "enemy" contained in the different Trading with the Enemy Acts apply only to questions regulated by these Acts and by the orders issued thereunder, such as the Foreign Funds Control exercised by the Treasury Department and the General Orders and Vesting Orders made by the Alien Property Custodian.

In all Trading with the Enemy Acts, the definitions are expressly restricted "for the purpose of this Act,"¹ "in these Regulations,"² or "as used in this Act."³

In the same way, the definitions of "enemy" or "alien enemy" contained in other statutes and regulations are confined in their application to these particular enactments.

In the United States, "alien enemies" are generally defined as persons who owe allegiance to a country at war with the United States.⁴ "The appellation of 'alien enemy,' with its indiscriminate implication of disloyalty, is an unfortunate survival from early common law dogma. It is regrettable that most of the statutes in this field still retain this archaic terminology. The modern tendency is to describe this category of individuals as 'enemy aliens,' 'aliens of enemy nationality,' 'enemy nationals,' 'aliens

¹ British Act, sec. 2(1), Canadian Regulations, sec. 1(1).

² Australian Act, sec. 3(1), New Zealand Regulations, r. 2.

³ U. S. Trading with the Enemy Act, sec. 2, Dutch Decree, June 7, 1940, sec. 1.

⁴ See Perry, *Aliens in the United States*, (1942) 223 *Annals Am. Acad. Pol. Soc. Sc.*, p. 1; Correa, *The Enemy Alien Problem* (Address), N. Y. L. J. April 29, 1942, p. 1799.

from enemy countries,' or in some similar manner which will not suggest disloyal attachments."⁵

This is the definition used in the Nationality Act of 1940, as amended December 13, 1941,⁶ which provides in sec. 326 (a): "An alien who is a native, citizen, subject or denizen of any country, state, or sovereignty with which the United States is at war, shall be considered an alien enemy for the purpose of the naturalization laws. A native of such an enemy country who subsequent to birth has become a citizen or subject of a nation with which the United States is not at war shall nevertheless be considered an alien enemy." In view of the definition of alien enemy as a subject of any country with which the United States is at war, the question arose whether sec. 2171 of the Revised Statutes of the United States⁷ denied naturalization to an alien whose country was at war with the United States "at the time of his application." This section was repealed by the Act of May 9, 1918.⁸ In a decision rendered after the repeal, it was held *In re Pollack*⁹ and *In re Blechschmidt*¹⁰ that an alien enemy who had filed his petition for naturalization prior to the act, could avail himself of the benefits of the act.

An alien enemy may "in the discretion of the President of the United States, upon investigation and report by the Department of Justice fully establishing the loyalty of such alien enemy, be excepted from such classification of alien enemy, whereupon he shall have the privilege of having a

⁵ Gordon, *Status of Enemy Nationals in the United States*, (1942) 2 *Lawyers Guild Rev.* 10, n. 10.

⁶ 54 Stat. 1150. See Regulations Governing the Naturalization of Alien Enemies, December 13 and 20, 1941, 6 Fed. Reg. 6450, 6747 (1941).

⁷ For cases pro and con, see Hackworth, *Digest of International Law*, vol. 2 (1941), p. 52.

⁸ 40 Stat. 545.

⁹ 257 Fed. 350 (D. C. S. D. N. Y. 1918).

¹⁰ 291 Fed. 99 (D. C. E. D. Pa. 1923).

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¹³ 7 Fed. Reg. 2199.
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¹⁴ 54 Stat. 885, 55 S
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¹⁵ Public Laws No. 36C
¹⁶ Public Law No. 772,
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Act of that date,²⁷ under the authority of which Act the recent Proclamations were made.

These restrictions govern the conduct of aliens of enemy nationality in the United States who are not actually naturalized. The Regulations Controlling Travel and Other Conduct of Aliens of Enemy Nationality, of February 5, 1942,²⁸ provide for further limitations such as prohibited ownership or possession of radios, cameras, firearms and other articles, exclusion from restricted areas, and the necessity for travel permits.²⁹ A further proclamation, No. 2537, January 14, 1942,³⁰ required that aliens of enemy nationality shall apply³¹ for Certificates of Identification.³²

Special measures became necessary on account of the military precautions to be taken on the West Coast. Exec. Order No. 9066 of February 19, 1942,³³ authorized the Secretary of War and military commanders designated by the President to prescribe military areas from which "any

²⁷ 1 Stat. 577 (1798), Rev. Stat. Sec. 4067 (1878), as amended April 16, 1918, 40 Stat. 531.

²⁸ 7 Fed. Reg. 844 (1942).

²⁹ 7 Fed. Reg. 1084, 1474, 8247, 8555 (1942). See the pamphlet issued by U. S. Dep't of Justice: Questions and Answers concerning Aliens of Enemy Nationality, May 5, 1942; Public Proclamation No. 13, October 22, 1942, 7 Fed. Reg. 8565 (1942); Bulletin, Dep't of Justice: War Activities of the Department Since the Japanese Attack on Pearl Harbor, N. Y. L. J. December 14, 1942, p. 1887.

³⁰ 7 Fed. Reg. 329 (1942).

³¹ The Alien Registration Act of June 28, 1940, 54 Stat. 673, already provided for the registration and fingerprinting of all aliens. See Biddle, *Identification of Alien Enemies*, (1942) 8 *Vital Speeches* 279; Hill, *The Mechanics of Alien Enemy Control*, (1942) 10 *Geo. Wash. L. Rev.* 851, 853; Correa, *The Enemy Alien Problem*, (1942) 107 *N. Y. L. J.*, p. 1799.

³² In *Hines v. Davidowitz*, 312 U. S. 52, 61 S. Ct. 399, 85 L. Ed. 366 (January 20, 1941), a majority of the United States Supreme Court held that the Federal Alien Registration Act of 1940 rendered ineffective a Pennsylvania statute for the registration of aliens resident in Pennsylvania, since it involved an aspect of foreign relations in a field where the Federal Government is supreme. See Kuhn, *Conflict of Federal and State Law in Respect to the Registration of Aliens*, (1941) 35 *Am. J. Int. L.* 326, and Wilson, *Treatment of Civilian Alien Enemies*, (1943) 37 *ibid.* 30, 41.

³³ 7 Fed. Reg. 1407 (1942).

or all persons" might or all persons might Proclamations issued Defense Area³⁴ and the enemy aliens but also Japanese ancestry. Things before federal Chapter VII. The me concerning evacuation, we gress³⁵ when it passed restrictive order prom military commander³⁶ and imprisonment.³⁷

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³⁴ Public Proclamations Nos. 1-4 2405, 2543, 2601 (1942), as a December 23, 24, 1942, 8 Fed not only enemy aliens but also cestry. See *Civilian Restrictive Act*, DSS Form 304 A January

³⁵ Public Law No. 503, 77th Co

³⁶ By Public Proclamation No. 13 Italians were exempted from cur were further lifted for German al

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³⁸ Regulations, sec. 30.2(a) of Fe

questions relating to the property rights of alien enemies."⁷² The court further said that "there is no escape from such conclusion is made manifest by the holding of our Court of Appeals in *Techt v. Hughes*."⁷³ In this case, Mrs. Techt had lost her American citizenship by marriage to an Austro-Hungarian; she continued to reside with her husband in New York. Her father, an American citizen, died intestate in December, 1917, and left real property in New York. The question was whether an Austrian could inherit real property in New York from an American decedent after the outbreak of war between the United States and Austria-Hungary. The Court of Appeals reversed the decision of the lower court,⁷⁴ which had considered Mrs. Techt an "alien friend,"⁷⁵ and held that she could not inherit under state law. Judge Cardozo, speaking for the Court, referred to subjects of enemy nationality in these terms: "Sometimes, though loosely we speak of them as friends for the purpose of characterizing their status when they are brought within the range of exemption, tacit or proclaimed. The truth is that they are enemies, who within the limits placed by the sovereign upon a revocable license enjoys the privileges of friends. Their identification with friends is never complete." He further said: "If the plaintiff's capacity to inherit depended solely on the statute, I should feel constrained to hold against her. I cannot follow the Appellate Division in its view that she is in law an 'alien friend.' The wisdom of the statute, I make no attempt to vindicate. Our duty is done when we enforce the law as it is written. In the primary meaning of the

⁷² *George v. People*, N. Y. L. J. December 23, 1942, p. 2021.

⁷³ 229 N. Y. 222 (1922).

⁷⁴ 106 Misc. 524, 176 N. Y. S. 356; 188 App. Div. 743, 177 N. Y. S. 420.

⁷⁵ Cf. 2 Am. Jurisprudence (1936), Aliens ¶3, p. 464. "Aliens may also be classified as alien friends and alien enemies, the former being citizens or subjects of a nation with which the United States is at peace, and the latter subjects or citizens of some hostile state or power."

words, an alien friend is the subject of a foreign state at peace with the United States; an alien enemy is the subject of a foreign state at war with the United States."

Although Mrs. Techt was not entitled under the New York statute to inherit real property in this state, the court found her disability removed by the Treaty between the United States and Austria of May 2, 1848.⁷⁶ This treaty was held to be still in force, and compliance with the treaty, so to sustain the title of the plaintiff to the real property, was held in no way incompatible with the safety of the nation.⁷⁷

Under this opinion, resident aliens of enemy nationality are not entitled to acquire, hold and dispose of real property in the State of New York, except by virtue of treaty provisions which, while continuing in force, supersede the state law of real property.

The opinion of *Techt v. Hughes* was followed recently in *George v. People*.⁷⁸ There an Italian immigrant living in this country more than fifty years without becoming an American citizen, died in Brooklyn, N. Y., on February 3, 1942, after the outbreak of the war with Italy, and left real estate. Plaintiffs, his devisees, sought a determination that the property was held free of any claim to an escheat by the People of the State of New York. Upon the authority of *Techt v. Hughes* the court refused to regard the decedent as an alien friend. "There is no basis upon which to draw a line of demarcation between an enemy who is considered such only technically in law and one who is

⁷⁶ 9 Stat. 944.

⁷⁷ Treaties between the United States and Germany, such as the Treaty of Friendship, Commerce and Consular Rights of 1923 (Treaty Series No. 725), providing for "that degree of protection (of nationals) that is required by international law," are considered to be still in effect; see Turlington, *Vesting Orders Under the First War Powers Act*, 1941, (1942) 36 Am. J. Int. L. 460, 461; Steckler and Rosenberg, *supra* n. 71, at p. 1674.

⁷⁸ N. Y. L. J. December 23, 1942, p. 2021, *ibid.* March 17, 1943, p. 1058.

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considered such in actual fact. The sympathy that an alien or a particular class of aliens might have towards our institutions and traditions cannot sway the result." The court was fully aware of the recent exemption of Italians in this country from certain restrictions imposed upon alien enemies, but insisted nevertheless that title to real property held by such persons in the State of New York must "still remain subject to the disabilities applicable at common law" In this connection, the court said: "Where such persons as a class have demonstrated their loyalty to our country and its institutions to such convincing extent as to evoke federal recognition of such fact, the Legislature, in plain justice, should enact a remedial statute, applicable to the situation, whereby their right of acquisition, tenure and disposition of real property will be clearly validated both prospectively and retroactively. Surely, legislation of such character under the circumstances would meet with public approbation." In the instant case the plaintiffs had acquired title to the property, nevertheless, in spite of the common law disability of alienage which confronted their devisor upon death. As American citizens they were persons vested with capacity to acquire real property, according to sec. 10 (1) of the Real Property Law. Consequently, they were entitled to invoke the benefit of sec. 15 of that statute; it reads as follows: "The right, title or interest in or to real property in this State, now held or hereafter acquired by any person, entitled to hold the same, cannot be questioned or impeached by reason of the alienage of any person through whom such title may have been derived. Nothing in this section affects or impairs the right of any heir, devisee, mortgagee, or creditor by judgment or otherwise."

The opinions in *Techt v. Hughes* and in *George v. People* make it clear that the fact that resident aliens of

enemy nationality are not considered enemies, within the meaning of the Trading with the Enemy Act, by no means influences the effect of a state law, dealing with disabilities of aliens as to real property. Moreover, General Ruling No. 12, April 21, 1942,⁷⁹ excludes property from its application so that the question of the validity of any transfer, even when made under license, is not thereby settled, but remains within the exclusive regulation of the law of the state where the property is situated. In the same way, rights of the Alien Property Custodian have no bearing whatever upon the question of the disability of aliens of enemy nationality to acquire, hold, or devise real property.⁸⁰

On the court's own motion, *George v. People* was re-argued.⁸¹ Referring to the historical background of the statutory provisions of the New York Real Property Law, the court affirmed its original determination and said: "Read in the light of the common law, the composite effect of these statutes is to enable any alien, friend or enemy, to make a will but to allow only an alien friend to devise realty to any person, citizen or alien friend or enemy. This interpretation must logically follow because by statute only an alien friend may transmit realty by descent (R. P. L. sec. 10) and because under the common law an alien, friend or enemy, *may hold* realty, always subject of course to the sovereign's right to escheat. In this respect the common law still prevails."

New Jersey law takes the same view. In *Caparell v.*

⁷⁹ 7 Fed. Reg. 2991 (1942).

⁸⁰ As to stateless persons formerly of enemy nationality, see Chapter VI, n. 50.

As to pilot certificates to friendly aliens, see sec. 20.142(c) of the Civil Air Regulations, added February 22, 1943, 8 Fed. Reg. 2470 (1943): "A person who is in sympathy with the objectives of the United States and who is a trustworthy citizen of a friendly foreign government not under the domination of, or associated with any government with which the United States is at war."

⁸¹ N. Y. L. J. March 17, 1943, p. 1058.

Goodbody,⁸² by the majority brought a new vitality to the marketability of real property. This is a scholarly opinion in common law that the sovereign's power over a citizen before the New Jersey legislature is the law on this common law point. State Constitution

⁸² 29 A. 2d 563 (C

tions imposed upon alien enemies. Furthermore, while property of stateless refugees remains excluded from insurance against so-called bombardment risk, even if they are in the armed forces, the Soldiers' and Sailors' Civil Relief Act, as amended October 6, 1942,²⁹ includes in the term "insured," "any person on active duty with the military and naval forces of the United States (including Coast Guard) and any member of the Women's Army Auxiliary Corps, whose life is insured under and who is the owner and holder of and has an interest in a policy."

Unlike the regulations prevailing in this country up to the present with regard to refugees of Axis-controlled countries, the Australian National Security (Aliens Service) Regulations of February 3, 1942, r. 2,³⁰ contain an express definition of "refugee alien." The term as there defined means "an alien who has no nationality, or whose nationality is uncertain, or who is an alien enemy, in respect of whom the Minister of State for the Army, or a person authorized by that Minister to act on his behalf, is satisfied (a) that the alien was forced to emigrate from enemy territory on account of actual or threatened religious, racial or political persecution, and (b) that he is opposed to the regime which forced him to emigrate." Statelessness is the test which exempts a group of refugees of former enemy nationality from the restrictions imposed upon aliens of such nationality. Under the Regulations, the same classification is granted individually to persons on the basis of investigation by Australian authorities.

As to the foreign funds control in the United States, refugees, stateless or not, who have come to this country from any of the blocked countries, are subject to the pro-

²⁹ §10.3320, 7 Fed. Reg. 10232 (1942), issued under Public Law No. 732, 77th Cong., 2d Sess.

³⁰ Statutory Rules 1942 No. 39, Commonwealth Gazette February 3, 1942.

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³⁵ "Persons who ac onderdanen," "Staat

visions of Executive Order No. 8389, as amended, and are generally licensed nationals under General License No. 42, as amended,³¹ if they were residing in this country on February 23, 1942, and had not thereafter entered any blocked country.³² But their position under the foreign funds control of the United States is by no means different from that of other resident aliens, whether of enemy or of non-enemy nationality, stateless or not.³³

The decree of the Dutch government-in-exile of May 24, 1940,³⁴ vesting in the State of the Netherlands title to assets abroad of nationals residing in occupied territory, was made applicable, sec. 2 (1), to those nationals³⁵ only who before May 15, 1940, were not domiciled outside of the territory of the Kingdom in Europe now occupied by the enemy.

Stateless refugees of other than German origin are not treated differently from those who are expatriated by a measure of general application such as the German decree regarding German Jews living abroad. Thus, Frenchmen living in this country, even those who were expatriated, are treated as "nationals of a foreign country" within the meaning of Executive Order No. 8389. Only if they were residing in the United States since February 23, 1942, are they exempted from the restrictions imposed upon those coming from the originally unoccupied zone of France

³¹ 7 Fed. Reg. 1492 (1942).

³² See Press Release, Treasury Department, February 23, 1942, Fed. Res. Bank of New York, Circular 2383.

³³ Persons who formerly were domiciled in an enemy-occupied territory and are living as refugees in the United Kingdom with a Home Office permit to reside there (not being a transit permit) as the Belgian, Dutch, and French refugees, are regarded as residents, within the meaning of the financial regulations. Howard, *The Defence (Finance) Regulations, 1939* (1942) p. 6.

³⁴ Staatsblad No. A 6, *infra* Chapter XXI.

³⁵ "Persons who according to the Law of the Netherlands are 'Nederlandsche onderdanen,'" Staatscourant No. 152, June 10, 1940.

tude and no longer binds those stateless refugees to the government of their country of origin. They do not fall into the class of aliens who are excluded from the benefits of statutory state law such as sec. 10 of New York Real Property Law. An informal opinion of the Attorney General of the State of New York of July 1, 1942,⁵⁰ dealing with the capacity of refugees to take, hold and transmit real property, points out: "Germany (and possibly also this would apply to other Axis enemy nations) has expatriated Jewish refugees by law (November 25, 1941). There would appear to be no sound reason why New York courts would not recognize that these refugees have lost their citizenship in enemy countries." The opinion further points out that, "the Federal Statute furnishes no definition of 'enemy aliens.' It deals with a matter of war-time regulation. Title to real property is governed by the law of the State."⁵¹

Possibly state courts, though not bound by the opinions of the Attorney General, informal or otherwise, will recognize the denationalization as enacted by the law of the country of origin of the stateless person. It is true also that the federal statute to which the opinion refers, namely, the Alien Enemy Act,⁵² does not contain any definition of "alien enemies" that may be applied to real property questions in the State of New York.

tions, one being a compensation for the other," *Luria v. United States*, 231 U. S. 9, 22 (1913).

⁵⁰ Letter to the Jewish Agricultural Society, Inc., New York, N. Y. Times, July 6, 7, 1942. "The conclusion of the Attorney General is subject to one contingency—the title, while in the refugee may be subject to divestment by the State of New York itself as sovereign." See Pratt, *Present Alienage Disabilities Under New York State Law in Real Property*, (1942) 12 Brooklyn L. Rev. 1.

⁵¹ See Steckler and Rosenberg, *Real Property of Enemy Aliens*, 107 N. Y. L. J. 1710; Rosenberg, *Alien—Friends and Enemies*, (1942) 5 Contemporary Jewish Record 282.

⁵² 40 Stat. 531 (1918).

This statutory natives, denizens "alien enemies," enemy nationalities, natives of law has no bearing no doubt that the real estate only. It was held in *The People*⁵³ that resident and resident Italianized nor denationalized nor denationalized "friendly aliens," which they are is persons formerly are collectively denationalized persons of that country of protection, as mentioned, exempted from the benefits of enemy nationalities which I "friendly aliens."

On the other generally licensed amended,⁵⁴ on the try, continue to be. A general license amount to an exemption. Thus, though state-er citizens of a subjects of that country.

⁵³ N. Y. L. J. December

⁵⁴ 7 Fed. Reg. 1492 (1

eral provisions regarding property located in the enacting country.²⁰ Industrial property rights of enemies are subject to the restrictions which govern all enemy property in this country. On the other hand, in nearly all countries special regulations were issued which on the basis of reciprocity provided for the protection of enemy industrial property and its preservation by extensions of different periods fixed by the law.²¹

In this country, patents, trade marks and copyrights were subject to the freezing regulations insofar as a national of a foreign country, within the meaning of Exec. Order No. 8389, as amended, had any interest in them. They were not treated differently from other assets of such nationals, with one exception. Assets such as patents, trade marks and copyrights had to be reported, under Form TFR-300, even when they might be evaluated at less than \$1,000.²² Moreover, in the case of such assets, the obligation to report continues²³ for nationals of foreign countries entering the United States at any time after October 31, 1941, except nationals "entering the United States on a purely transitory visit, whether for business or pleasure" and those acquiring residence in the United States after February 23, 1943, who apply to be generally licensed under General License No. 42, as amended.²⁴ Furthermore, persons in the United States have to report patents if their property is blocked by specific direction of the Treasury Department or if these persons have custody or control of property of specifically blocked or blacklisted persons. The number of such persons for whom the obli-

²⁰ See sec. 10 of the Trading with the Enemy Act, as amended.

²¹ See Ladas, *supra* n. 1, at p. 41; (British) Patent and Designs Act, 1942, 5 & 6 Geo. 6, c. 6.

²² Sec. III F of Public Circular No. 4, and Sec. 3 of Public Circular No. 5, September 3, 1941, 6 Fed. Reg. 4196, 4587 (1941).

²³ Public Circular No. 4 C, September 21, 1942, 7 Fed. Reg. 2506 (1942).

²⁴ 7 Fed. Reg. 1492 (1942).

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²⁵ 6 Fed. Reg. 4586

²⁶ 7 Fed. Reg. 3471

²⁷ 7 Fed. Reg. 5205

This obviously refers to the rather intricate questions arising under the vesting decrees of the Dutch and Norwegian governments-in-exile. These decrees vested title to assets abroad of residents of occupied territories in the state represented by the respective government-in-exile. These questions will be discussed in Chapter XXI.

The administration of industrial property rights differs with regard to the varying character of patents, trade marks, and copyrights.

As to copyrights, the vesting of such rights serves the general purpose of the vesting policy, namely, to prevent the enemy owner from having royalties, even if that owner could not dispose of such royalties for the time being since they were blocked under the freezing regulations. Moreover, the Alien Property Custodian "received requests to take action to permit the translation of works of which the copyrights are held by enemy aliens in order that these works may be available in English for use in war work."⁵³

As to trade marks, they are necessary to licensees under compulsory licenses of patents, so that they may be able to sell the goods manufactured under such patents. This became evident in the English case *Rex v. Comptroller General of Patents, Ex Parte Bayer Products, Ltd.*⁵⁴

But, on the other hand, the control-program, for enemy-owned or enemy-controlled business enterprises as developed in this country through the freezing regulations, sometimes demanded the prevention of the use of undesirable trade marks. Said the Treasury Department:⁵⁵ "A trademark belonging to an Axis business enterprise represents an investment in good will, and is part of that

⁵³ *Supra* n. 46, at p. 66; Office of War Information, Release 1290, February 17, 1943, 56 U. S. Patent Qu., No. 8, p. III.

⁵⁴ *Supra* n. 11.

⁵⁵ Administration of the Wartime Financial and Property Controls of the United States Government (December, 1942) p. 31.

enterprise's enduring roots in the country. Disposition of an enterprise should include the disposition of the trademark as well. Destruction of a trademark might be the best method of disposition."

More legal and economic consequences are involved by the administration of vested patents. The greater number and value of these industrial rights is not the only reason why their administration is more important. Because of the experiences of the last war, especially with regard to the selling of patents to the Chemical Foundation,⁵⁶ the practice then followed has not been repeated. As explained by the Alien Property Custodian himself before the Senate Committee on Patents:⁵⁷ "During the last war the Alien Property Custodian seized about 17,000 enemy-owned patents and copyrights. Many of these were sold under arrangements which were designed to insure the permanent exclusion of detrimental and hostile alien control, but through the years alien interests have gradually regained a substantial degree of influence."

The Office of the Alien Property Custodian was specifically instructed by the President to "refuse to sell or to release title to the enemy patents. The inventions covered by these patents will be made a permanent possession of the American people and, through freely granted licenses, they will be incorporated in our national industrial machinery."⁵⁸ This policy, underlying the administration of vested patents and patent applications, has found public expression in a report of the Alien Property Custodian to the President of the United States, dated December 7, 1942.⁵⁹ Under the new responsibilities incurred by wise

⁵⁶ Cf. *U. S. v. Chemical Foundation*, 272 U. S. 1, 47 S. Ct. 1, 71 L. Ed. 131 (1926), and Gathings, *International Law and American Treatment of Alien Enemy Property* (1940) p. 78, n. 37.

⁵⁷ *Supra* n. 46, at p. 66.

⁵⁸ *Supra* n. 49, at p. 11.

⁵⁹ Reprinted (1943) 25 J. Pat. Off. Soc. 69.

utilization of vest worked out, desc Alien Property C made for further Department⁶¹ reve of administering e ents. "Since they | good will but an should be used for problem of this t facilities must eith try or relationship enterprise and an Hemisphere havin ties." These resear especially with re "which represent t Patents vested in t portant recent de porations, for exam Robert Bosch; the ler-Benz, Fiat, Ma catini, Kuhlmann Schneider et Cie a equipment of Soci ken and the elec Denkyu Kabushiki

⁶⁰ *Supra* n. 49, at p. 13, of Patents Vested in the ministration, Washington, Letter of Application for

⁶¹ Administration, *supra* n

⁶² *Supra* n. 49, at p. 12.

⁶³ See, for instance, the floats, which was applied Alien Property Custodian,

Sec. 5 (a) That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation suspend the provisions of this Act so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof, and to perform any act made unlawful without such license in section three hereof, and to file and prosecute applications under subsection (b) of section ten hereof; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act; and the President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b)¹(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising of any right, power or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

¹ As amended by section 301 of Title III of the First War Powers Act, 1941, December 18, 1941, c. 593, 55 Stat. 838.

APPENDIX C

EXECUTIVE ORDER NO. 8389

REGULATING TRANSACTIONS IN FOREIGN EXCHANGE AND FOREIGN-OWNED PROPERTY, PROVIDING FOR THE REPORTING OF ALL FOREIGN-OWNED PROPERTY, AND RELATED MATTERS

Exec. Order No. 8389, April 10, 1940, 5 Federal Register 1400 (1940), as amended,¹ was amended by Exec. Order No. 8785, June 14, 1941, 6 Fed. Reg. 2897 (1940).

The new text printed below was further amended by Exec. Orders No. 8832, July 26, 1941, 6 Fed. Reg. 3715 (1941), No. 8963, December 9, 1941, *ibid.*, p. 6348 and No. 8998, December 26, 1941, *ibid.* p. 6785; these amendments are indicated in the notes below.

By virtue of and pursuant to the authority vested in me by Section 5 (b) of the Act of October 6, 1917 (40 Stat. 415), as amended, by virtue of all other authority vested in me, and by virtue of the existence of a period of unlimited national emergency, and finding that this Order is in the public interest and is necessary in the interest of national defense and security, I, Franklin D. Roosevelt, President of the United States of America, do prescribe the following:

Executive Order No. 8389 of April 10, 1940, as amended, is amended to read as follows:

Section 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between

¹ Sec. 2 of Public Resolution No. 69, May 7, 1940, 54 Stat. 179, provided: "Executive Order Numbered 8389 of April 10, 1940, and the regulations and general rulings issued thereunder by the Secretary of the Treasury are hereby approved and confirmed."

any banking institution or banking institution or principal, agent, home office, or branch office in the United States, of the United States;

B. All payments by any person within the United States;

C. All transactions by any person within the United States;

D. The export or import of any property, or the earmarking of goods or services to be used by any person within the United States;

E. All transfers, or the receipt of any property, in, or out of, the United States, in any evidences of title, or any property by any person within the United States;

F. Any transaction which involves the evasion or avoidance of the provisions of Section 2. A. All of the above, except as specifically authorized by means of regulations issued by the Secretary of the Treasury:

Section 2. A. All of the above, except as specifically authorized by means of regulations issued by the Secretary of the Treasury:

(1) The acquisition of any property dealing in, or with, the United States, or thereof on which there is affixed or stamped a foreign notarial or similar stamp, if it was stamped, in a foreign country, and the date, place, and name have been stamped thereon;

(2) The acquisition of any property in the United States, or thereof if the acquisition is made that the security of the United States is not endangered within the United States;

B. The Secretary of the Treasury may prohibit under such conditions as he may prescribe, the export, import, or mailing, or the direct or indirect transfer, into the United States, of any securities or other

any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

B. All payments by or to any banking institution within the United States;

C. All transactions in foreign exchange by any person within the United States;

D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

E. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

Section 2. A. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise:

(1) The acquisition, disposition or transfer of, or other dealing in, or with respect to, any security or evidence thereof on which there is stamped or imprinted, or to which there is affixed or otherwise attached, a tax stamp or other stamp of a foreign country designated in this Order or a notarial or similar seal which by its contents indicates that it was stamped, imprinted, affixed or attached within such foreign country, or where the attendant circumstances disclose or indicate that such stamp or seal may, at any time, have been stamped, imprinted, affixed or attached thereto; and

(2) The acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated within the United States.

B. The Secretary of the Treasury may investigate, regulate, or prohibit under such regulations, rulings, or instructions as he may prescribe, by means of licenses or otherwise, the sending, mailing, importing or otherwise bringing, directly or indirectly, into the United States, from any foreign country, of any securities or evidences thereof or the receiving or holding

in the United States of any securities or evidences thereof so brought into the United States.

Section 3. The term "foreign country designated in this Order" means a foreign country included in the following schedule, and the terms "effective date of this Order" means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

- (a) April 8, 1940—
Norway and Denmark;
- (b) May 10, 1940—
The Netherlands, Belgium and Luxembourg;
- (c) June 17, 1940—
France (including Monaco);
- (d) July 10, 1940—
Latvia, Estonia and Lithuania;
- (e) October 9, 1940—
Rumania;
- (f) March 4, 1941—
Bulgaria;
- (g) March 13, 1941—
Hungary;
- (h) March 24, 1941—
Yugoslavia;
- (i) April 28, 1941—
Greece;
- (j) June 14, 1941—
Albania, Andorra, Austria, Czechoslovakia, Danzig, Finland, Germany, Italy, Liechtenstein, Poland, Portugal, San Marino, Spain, Sweden, Switzerland, and Union of Soviet Socialist Republics;
- (k)² June 14, 1941—
China, and Japan;
- (l)³ June 14, 1941—
Thailand;
- (m)⁴ June 14, 1941—
Hong Kong.

The "effective date of this Order" with respect to any foreign country not designated in this Order shall be deemed to be June 14, 1941.

Section 4. A. The Secretary of the Treasury and/or the Attorney

² Added by Exec. Order No. 8832, July 26, 1941, 6 Fed. Reg. 3715 (1941).

³ Added by Exec. Order No. 8963, December 9, 1941, 6 Fed. Reg. 6348 (1941).

⁴ Added by Exec. Order No. 8998, December 26, 1941, 6 Fed. Reg. 6785 (1941).

General may require, or otherwise, furnish under oath from time to time and relative to, any transaction under the Act of October 6, 1940, to any property in which thereof has any interest, direct or indirect, including contracts, letters, or documents in the custody or control of such person, if such transaction is in violation of and/or the Attorney General may require any such transactions of this Order.

B. Every person to whom sections 1 and 2 of this Order apply in each such transaction, and such record shall be maintained for one year after the date of such transaction.

Section 5. A. A person to whom this Order "transacts business with" a foreign country designated in this Order, has * * * any interest, direct or indirect, in the purchase, sale, lease, or transfer to or from (ii) any export or import of a foreign country, or of an obligation, or of a right, in a foreign country.

B.⁵ The term "United States" shall include any place subject to the jurisdiction of the United States, the District of Columbia, and the territories provided, however, that the term "United States" shall not include any territory included within paragraph D of this Order.

C. The term "association, corporation, partnership, or other organization" shall mean any association, corporation, partnership, or other organization organized under the laws of the United States, or of any territory included within paragraph D of this Order.

⁵ This paragraph B was added by Exec. Order No. 8998, December 26, 1941, 6 Fed. Reg. 6785 (1941).

General may require, by means of regulations, rulings, instructions, or otherwise, any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, from time to time and at any time or times, complete information relative to, any transaction referred to in section 5 (b) of the Act of October 6, 1917 (40 Stat. 415), as amended, or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect, including the production of any books of account, contracts, letters, or other papers, in connection therewith, in the custody or control of such person, either before or after such transaction is completed; and the Secretary of the Treasury and/or the Attorney General may, through any agency, investigate any such transaction or act, or any violation of the provisions of this Order.

B. Every person engaging in any of the transactions referred to in sections 1 and 2 of this Order shall keep a full record of each such transaction engaged in by him, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least one year after the date of such transaction.

Section 5. A. As used in the first paragraph of section 1 of this Order "transactions [which] involve property in which any foreign country designated in this Order, or any national thereof, has * * * any interest of any nature whatsoever, direct or indirect" shall include, but not by way of limitation (i) any payment or transfer to any such foreign country or national thereof, (ii) any export or withdrawal from the United States to such foreign country, and (iii) any transfer of credit, or payment of an obligation, expressed in terms of the currency of such foreign country.

B.⁵ The term "United States" means the United States and any place subject to the jurisdiction thereof, and the term "continental United States" means the states of the United States, the District of Columbia, and the Territory of Alaska; provided, however, that for the purposes of this Order the term "United States" shall not be deemed to include any territory included within the term "foreign country" as defined in paragraph D of this section.

C. The term "person" means an individual, partnership, association, corporation, or other organization.

⁵ This paragraph B was amended, see note 4, in order not to include into the term "United States" the Philippine Islands.

(iv) Any other person who there is reasonable cause to believe is a "national" as herein defined. ✓

In any case in which by virtue of the foregoing definition a person is a national of more than one foreign country, such person shall be deemed to be a national of each such foreign country. In any case in which the combined interests of two or more foreign countries designated in this Order and/or nationals thereof are sufficient in the aggregate to constitute, within the meaning of the foregoing, control or 25 per centum or more of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of a partnership, association, corporation or other organization, but such control or a substantial part of such stock, shares, bonds, debentures, notes, drafts, or other securities or obligations is not held by any one such foreign country and/or national thereof, such partnership, association, corporation or other organization shall be deemed to be a national of each of such foreign countries. The Secretary of the Treasury shall have full power to determine that any person is or shall be deemed to be a "national" within the meaning of this definition, and the foreign country of which such person is or shall be deemed to be a national. Without limitation of the foregoing, the term "national" shall also include any other person who is determined by the Secretary of the Treasury to be, or to have been, since such effective date, acting or purporting to act directly or indirectly for the benefit or under the direction of a foreign country designated in this Order or national thereof, as herein defined. ✓

F. The term "banking institution" as used in this Order shall include any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or broker; and, each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate "banking institution."

G. The term "this Order," as used herein, shall mean Executive Order No. 8389 of April 10, 1940, as amended.

Section 6. Executive Order No. 8389 of April 10, 1940, as amended, shall no longer be deemed to be an amendment to or a part of Executive Order No. 6560 of January 15, 1934. Executive Order No. 6560 of January 15, 1934, and the Regulations of November 12, 1934, are hereby modified in so far as they are incon-

sistent with the provisions of this Order, and except as so modified, continue in full force and effect. Nothing herein shall be deemed to revoke any license, ruling, or instruction now in effect and issued pursuant to Executive Order No. 6560 of January 15, 1934, as amended, or pursuant to this Order; provided, however, that all such licenses, rulings, or instructions shall be subject to the provisions hereof. Any amendment, modification or revocation by or pursuant to the provisions of this Order of any orders, regulations, rulings, instructions or licenses shall not affect any act done, or any suit or proceeding had or commenced in any civil or criminal case prior to such amendment, modification or revocation, and all penalties, forfeitures and liabilities under any such orders, regulations, rulings, instructions or licenses shall continue and may be enforced as if such amendment, modification or revocation had not been made.

Section 7. Without limitation as to any other powers or authority of the Secretary of the Treasury or the Attorney General under any other provision of this Order, the Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations, rulings, and instructions to carry out the purposes of this Order and to provide therein or otherwise the conditions under which licenses may be granted by or through such officers or agencies as the Secretary of the Treasury may designate, and the decision of the Secretary with respect to the granting, denial or other disposition of an application or license shall be final.

Section 8. Section 5(b) of the Act of October 6, 1917, as amended, provides in part:

"* * * Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both."

Section 9. This Order and any regulations, rulings, licenses or instructions issued hereunder may be amended, modified or revoked at any time.

The White House,
June 14, 1941.

Franklin D. Roosevelt

REGULATIONS

**RELATING TO THE
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Section 130.1. *Au*
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Order No. 8389 of A
No. 8785 of June 14

Section 130.2. *De*

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² June 14, 1941; the f

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APPENDIX M

SPECIMEN OF A VESTING ORDER OF THE ALIEN PROPERTY CUSTODIAN

VESTING ORDER

[X] INC.

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation:

1. Finding that [Y] Inc., New York, New York, is controlled by or acting for or on behalf of or as a cloak for a designated enemy country (Germany) or a person within such country, and therefore is a national of a designated enemy country (Germany);
 2. Finding that said [Y] Inc. is the beneficial owner of all of the outstanding capital stock of [X] Inc., a New York corporation, New York, New York, which is a business enterprise within the United States, consisting of 10 shares of no par value common stock registered in the names of — — — as Trustees for said [Y] Inc.
 3. Finding also that [X] Inc. is controlled by or acting for or on behalf of or as a cloak for a designated enemy country (Germany) or a person within such country;
 4. Determining, therefore, that said [X] Inc. is a national of a designated enemy country (Germany);
 5. Determining that to the extent that such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of the aforesaid designated enemy country (Germany);
 6. Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise; and
 7. Deeming it necessary in the national interest;
- hereby (i) vests in the Alien Property Custodian the shares of stock described in subparagraph 2 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States, and (ii) undertakes the

direction, management, supervision and control of such business enterprise to the extent deemed necessary or advisable from time to time by the undersigned.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof or to indicate that compensation will not be paid in lieu thereof, or to vary the extent of such direction, management, supervision or control or to terminate the same, if and when it should be determined that any of such action should be taken.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The term "national," "designated enemy country" and "business enterprise within the United States" as used herein shall have the meanings prescribed in section 10 of said Executive Order.

Executed at Washington, D. C., on, 1943

[SEAL]

Leo T. Crowley,
Alien Property Custodian.

TRADING

2 & 3

An Act to impose
make provision
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ters aforesaid.

Be it enacted
with the advice and
and Commons, in
authority of the Senate

Trading with the Enemy Act

1.—(1) Any person who
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- (a) on conviction shall
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- (b) on summary conviction
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¹ As amended by Def-
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THE AMERICAN MILITARY OCCUPATION
OF GERMANY
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General Reference Branch

By Oliver J. Frederiksen

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Historical Division
Headquarters, United States Army, Europe
1953

crossed into Germany in force. The prohibition of friendly contacts with Germans appeared to be a logical measure, intended on the one hand to prevent leakage of information and on the other to protect the lives of individual soldiers, it being known that in countries occupied by Germany, soldiers had been lured to their deaths by exploitation of their desire to fraternize. Other less urgent considerations advanced were the belief that aloofness would cause respect for Allied troops and that fraternization would have unfavorable reactions upon public opinion at home.

Much of the failure of the nonfraternization policy adopted for use in the Rhineland during the American occupation following the first World War was ascribed to the fact that means to enforce it had been purely negative. For this reason, vigorous efforts were made to promote nonfraternization by positive means. On the one hand a continuous and intensive campaign was carried on to explain to the troops the need for avoiding friendly contact with the Germans. The method to which this campaign went is illustrated by the following announcement broadcast by the Allied Forces Network in the spring of 1945: "If, in a German town, you bow to a pretty girl, or pat a blond child, you bow to Hitler and his reign of blood... you caress the ideology that means death and persecution. Don't fraternize." On the other hand, efforts were made to divert the troops from fraternization by recreational and educational programs. A large number of violations were reported immediately after the troops entered Germany. Wide publicity resulted, as well as renewed orders by the Supreme Commander that violators should be strictly disciplined. However, prior to V-E Day violations were on a comparatively small scale and of a petty nature.

Other problems involving security had to do with controlling the movement of refugees, preventing the looting of deserted homes and properties, and apprehending violators of military government laws and ordinances. In most cases the regular civil police had been evacuated or were under the control of military government detachments. Military government detachments had their own forces of their own to be used for the maintenance of order, and the tactical commander was obliged to create a police force of some type, if for no other reason than to control his own troops and installations.

In the early stages of the advance into Germany, each division commander usually relied upon his own military police to maintain the necessary controls. As more territory was overrun, there were too few military police to function as security police except in an area directly behind the line of combat. Troops were then assigned as military government security guards to watch roads, bridges, and railroads forming parts of lines of communication, and such installations as military government offices, courts, and prisons. In the Third Army, for example, a field artillery battalion was attached to the Provost Marshal Section to enforce military government and to guard military government installations in the army service area. All army corps furnished tactical troops to serve as security guards.

Security guards furnished by tactical units kept main supply routes clear of displaced persons and refugees, picked up arms from civilians, posted proclamations and ordinances, and interrogated suspicious individuals. These guards were not placed under the command of military government detachments, but maintained close liaison with them. As the occupation progressed, the field armies continued to furnish security guards in the rear areas. The Seventh Army assigned the entire 36th Division to maintain order and guard installations west of the Rhine. The First Army used the 76th Division, the 49th Antiaircraft Brigade, and the 23d Tank Destroyer Battalion as security guards in its rear area. East of the Rhine it became less necessary for the tactical troops to perform security services. More local police and other officials were found at their posts, and public and Nazi Party records were more generally found intact. The Nazi Party records were particularly useful for checking identity and establishing clearance for police and other local government officials. This work was done by the Counter Intelligence Corps or by the Special Branch of the military government detachment, or by both.

Military government detachments accompanied troop units in order to take charge of relations with the civil population as soon as possible in newly conquered areas, but until they arrived the tactical troops usually took steps to establish military government. The small G-5 staff of each tactical division was often the first military government agency to arrive in a captured town.

the Military Railway Service. The main activity in the field of transportation prior to V-E Day was the building up of the military lines of communication. The provost marshal allotted roads for use as supply lines and for other purposes, and army transportation offices, upon request by military government, assisted in the movement of refugees and displaced persons. U.S. Army transportation was used in emergencies to move seed and other supplies for the revival of agriculture. East of the Rhine, where the main highways and many secondary roads were in usable condition except for bridges, the tactical troops restored communications by building a number of temporary bridges. Toward the end of the campaign many highway and railroad bridges west of the Rhine were rebuilt by German civilian labor under military direction.

The control of German communications during the combat period was shared by the army technical services and military government. There was no precise division of authority. The Signal Corps and G-2 (Army Intelligence) agencies were particularly involved. The Signal Corps promptly seized for military use all interurban communication lines and retained them until after the cessation of hostilities. Military government took charge of communication matters of purely local importance. Tactical commanders impounded and guarded mail and protected post offices, exchanges, and other vital communications installations, with military government providing advice and preparing to increase their control after conditions became stabilized. Beginning in January 1945, G-2 mobile teams surveyed captured communications facilities in enemy cities and towns as soon as the tactical situation permitted, made sure that all mail and telegrams had been impounded and postal and telecommunications services halted, and took necessary action to forward captured materials in the proper channels. Communications services could not be resumed in any locality without the concurrence of the G-2 and signal officer of the army occupying the area.

The tactical troops were jointly responsible with military government for the location and preservation of monuments, fine arts, and archives. Field commanders were instructed to prevent the removal of works of art and objects of scientific and historical value, and to protect German monuments

and the contents of museums. Staff work in regard to the location and disposition of captured documents was done by military government agencies in close coordination with the G-2 staffs of armies.

Denazification was primarily a responsibility of military government, but the tactical forces, particularly the Counter Intelligence Corps, played an important role.

The administrative and supply operations of the troops in Germany before the end of combat were almost exclusively in support of combat operations and require no extended discussion. It should however be remembered that the experience gained in handling the vast logistic activities during the period of hostilities, particularly in the use of local labor, was of inestimable value to the occupation forces in their conduct of similar activities after the end of combat. Much experience was also gained in the extensive activity known as graves registration.

The American area of responsibility in Germany in which the U.S. forces were to utilize the planning and experience of the combat period included the U.S. Zone proper, a separate district containing the ports of Bremen and Bremerhaven, and the U.S. Sector of Berlin. The zone proper covered the area of the states, or *Laender*, which during the greater part of the occupation period were known as Hesse, Wuerttemberg-Baden, and Bavaria. The term U.S. Zone was often loosely used to refer to the entire American area of responsibility.

The territory thus assigned to the U.S. forces for occupation comprised 47,000 square miles, primarily devoted to agriculture and forestry. It contained few mineral resources and few important industries. One fourth was arable land, one fourth mountains and forests, and one half swamps and pastures. The only large cities in the U.S. Zone proper were Frankfurt and Munich. The population of the occupied area was approximately 19,000,000, including the many displaced persons and prisoners of war.

Conditions in the U.S. occupied area were appalling. Practically all the municipal areas of Germany had been heavily bombed. Larger cities were from 50 to 75 per cent destroyed, some secondary cities as much as 90 per cent. Berlin, the largest city in Germany, was 75 per cent destroyed. Frankfurt in the American zone was 60 per cent destroyed. Throughout the U.S. area no govern-

General, ETOUSA, and Commanding General of U.S. Group, Control Council.³

The decision to dissolve the combined British-American command and to create a purely American command in charge of the American troops in the theater was put into effect through the use of ETOUSA as a transitional agency. As the campaign drew to a close, General Eisenhower made preparations for separating the American elements from Supreme Headquarters by appointing five American general staff officers from Supreme Headquarters to be acting assistant chiefs of staff in the headquarters of ETOUSA. The scope of SHAEF activities became reduced, and the area of ETOUSA functions became greatly broadened. ETOUSA was charged with implementing within the American range of responsibility the policies of Supreme Headquarters regarding prisoners of war, displaced persons, and civilian internees, and for transmitting instructions regarding them to its major subordinate commands. It was responsible for civil affairs in liberated countries and for military government in occupied areas. Other ETOUSA responsibilities were redeployment of forces, reduction of installations, and support of the occupation forces. ETOUSA also established leave centers and developed educational programs in an effort to improve morale.

Having served its purpose as a wartime supply and administrative agency and a postwar transitional organization, ETOUSA was redesignated U.S. Forces, European Theater (USFET), on 1 July 1945. USFET continued to have its main headquarters at Frankfurt, with a rear echelon at Paris. For purposes of coordination, all USFET staff divisions had elements in both echelons. All members of the USFET rear echelon were included as members of the Communications Group. By 4 July 1945 the American troops had been withdrawn into the United States zone of occupation. The main condition for the final break-up of the combined command having been met, Supreme Headquarters, Allied Expeditionary Forces, was dissolved on 14 July. On 15 July, General Eisenhower,

³ Justice James F. Byrnes, then director of War Mobilization and Reconversion, probably participated in the decision to appoint General Clay as Deputy Military Governor. General Clay stated that Justice Byrnes informed him that he was in fact to be deputy to General Eisenhower, reporting to General Eisenhower and not to the War Department General Staff. See Lt. D. Clay, *Decision in Germany* (Doubleday and Company, Garden City, N.Y., 1950), p. 4.

as Commanding General of USFET, assumed command of all American forces in Europe.

General Eisenhower remained in command only until 11 November 1945, when he left the theater for Washington and an appointment as Chief of Staff of the U.S. Army. After a brief period, during which Gen. George S. Patton⁴ was theater commander in addition to his duties as commanding general of the Fifteenth Army, Gen. Joseph T. McNarney arrived in Frankfurt on 26 November 1945 and assumed command of USFET. General Clay continued to serve as deputy commander and deputy military governor.

In the months following the close of hostilities, the structure of the major commands of the theater underwent a number of changes, aimed chiefly at adjusting the large wartime combat organization to the lessened needs of postcombat duties in connection with the occupation. The structure of USFET on 1 March 1946, after it had become somewhat stabilized, is shown on Chart 3. When Supreme Headquarters moved to Germany, the headquarters of U.S. Naval Forces in France also moved to Frankfurt, where, under the designation of Headquarters, U.S. Naval Forces in Germany, it became responsible for the interpretation, dissemination, and supervision of policy directives from theater headquarters and from the Department of the Navy to all naval elements in Europe. It participated in the operation of ports, directed the disarmament and disbandment of the German naval forces, provided the naval elements for joint agencies, and provided partial logistic and administrative support for its own activities. U.S. Naval Forces in Germany was initially subordinate to U.S. Naval Forces in Europe, whose headquarters was then in London, but it later became a major command of USFET. Eventually both of these naval headquarters were moved to Bremen.

The former U.S. Strategic Air Force in Europe, commanded by Lt. Gen. Carl A. Spaatz, was reorganized on 24 July 1945 into an occupational air force under the name of U.S. Army Air Forces in Europe, and as such became a major command of USFET. The 9th Air Force was the basic occupation air force unit. The Air Transport Command

⁴ General Patton died on 21 December 1945 following an automobile accident. He was buried in Hamm Cemetery, Luxembourg, the only World War II U.S. general to be buried in Europe.

gram. In the fall of 1945, when there was urgent need for the construction of depots and of housing for displaced persons, these urgent engineering needs of the occupation areas were necessarily postponed in favor of the construction of huge staging areas in France and Belgium, eighteen camps with a total capacity of 249,000 troops being in process of construction shortly after V-E Day in the vicinity of Rheims, France, alone. The essential duties of guarding and consolidating theater stocks were also poorly performed because of the thousands of troops engaged in the redeployment program.

In the theater, it was estimated that following the redeployment, the Army could have carried on only limited defensive operations and was entirely incapable of performing any serious offensive operations. It was capable of carrying on such occupation duties as controlling the German population and suppressing local uprisings if necessary. Other occupation duties such as the care and disposal of equipment could be carried out only in the most haphazard manner. As late as January 1946 all units reported that because of continual personnel losses their missions were being performed poorly or incompletely.

By the late spring of 1946 the worst effects of the mass redeployment had been overcome. Training programs had been restored, at least on an individual and small unit basis. Most units in the theater had settled down in their permanent stations. Extensive programs for the improvement of morale, including the shipping in of dependents, the provision of educational and recreational programs, and an intensified indoctrination system, had been initiated. But to some extent the theater suffered for a long time from the redeployment program.

Redeployment was closely connected with the problem of theater manpower, since only a small number of the troops shipped from the theater were replaced. The military strength of the command dropped from 3,069,310 on V-E Day to 342,264 on 1 July 1946, and 135,000 on 1 July 1947. Then followed a period of comparative stabilization until the troop augmentation began in 1950.

The European theater had very little control over troop strengths. The reason for this lay chiefly outside the theater and need not be discussed at length here. Brief-

ly, the drastic drop in numbers in the first years resulted from the transfer of troops from the European theater to the Far East between V-E Day and the surrender of Japan, then to homefront pressure to return soldiers to the United States, and finally to a slashing of replacement sources by the Selective Service Act of 1946. The lack of resistance in Germany and the postwar demand in America for strict economy contributed to cutting down the number of troops allocated to the theater.

Difficulties arising from lack of numbers were intensified by lack of quality. By the spring of 1946 the majority of the military personnel in the theater were re-enlistees or freshly inducted troops. Most of the latter were under twenty years of age and some were lacking in even basic training. Troops were sent to the theater without regard to military occupational specialties. A survey in the summer of 1946 showed that approximately 14 per cent of white and 49 per cent of Negro enlisted men in the army of occupation held Army General Classification Test scores of less than seventy, indicating probable lack of mental qualifications for becoming acceptable soldiers. This was particularly deplorable in view of the emphasis placed upon the role of occupation troops as "ambassadors of democracy." Progress in eliminating below-standard personnel was very slow until a Theater Placement Board was appointed to assist major commanders in disposing of enlisted personnel of doubtful value in their current assignments. By direction of the War Department great emphasis was placed for several months upon the elimination of persons unfit for military service. Nearly two thousand were shipped out on 18 November 1946, and a few smaller bulk shipments were made later on. After early 1947 no further bulk shipments were made. Other efforts to improve the quality of troops in the theater took the form of educational and training programs described elsewhere.

Following the surrender of Japan the War Department initiated a worldwide re-enlistment program. The theater made the program a priority project, beginning in September 1945. By the close of the first drive in July 1946, 51,140 men had been re-enlisted, though not all of these continued to serve in the command. The first program was followed by a succession of others. In the fall of 1946 General Eisenhower, then

at Supreme Headquarters was vested in a Displaced Persons, Refugees, and Welfare Branch of the G-5 Division, renamed in March 1945 the Displaced Persons Branch.

When the combined command was dissolved on 14 July 1945, USFET retained in principle the existing arrangement. As the main emphasis at the quadripartite level shifted from care to repatriation, the Combined Displaced Persons Executive was replaced on 1 October 1945 by a Combined Repatriation Executive, whose function it was to coordinate interzonal and international repatriation movements. Each zone commander was now responsible for the care and disposal of the DP's in his zone. In the U.S. Zone, the Displaced Persons Branch, G-5, continued to exercise staff responsibility, while direct responsibility for the care of DP's was in the hands of military government units of the ground forces.

The main efforts of the command after the end of fighting were devoted to repatriating displaced persons as rapidly and completely as possible. Experience gained in the handling of DP's and refugees during the combat period proved invaluable in organizing the mass movements produced by large-scale repatriation. Particularly valuable was the lesson that in executing extensive movements of DP's close attention must be paid to the timing of transports, the study of traffic flow and available routes, and careful planning of reception arrangements. The necessity of creating control machinery and providing adequate medical and nursing care on all movements had become evident.

Repatriation was carried out under the authority of Supreme Headquarters and administered and supervised by the Combined Displaced Persons Executive during the period of combined command. Military commanders could initiate repatriation movements of DP's if the movement did not interfere with military operations. Such movements were coordinated with the Displaced Persons Executive and the Allied Expeditionary Force mission accredited to the country of reception. Later on, actual movement orders had to be issued by an Inter-Allied Movement Control Authority created to make sure that only authorized persons were moved out of Germany. The Displaced Persons Executive coordinated movements made directly from assembly centers, and in consultation with the Transportation Division arranged further movements. In accordance

with agreements made at Yalta, military commanders were required to employ all practicable means to transport United Nations displaced persons to agreed locations where they could be transferred to their national authorities. Until January 1946, responsibility for movement of DP's was a direct military function performed by the theater G-4. Thereafter, the movements themselves were made by G-4, but priorities were taken over by the Transportation Division of the Office of Military Government for Germany (U.S. Zone).

The number of displaced persons in American care was at first reduced very rapidly by the process of repatriation. Mass repatriation of the more than 2,320,000 displaced persons in the 12th and 6th Army Group areas as of V-E Day was completed by 31 October 1945, when the number in the U.S. area of control had been reduced to 474,000, of whom 224,000 were regarded as nonrepatriable. Practically all DP's who were citizens of France, Belgium, the Netherlands, and Luxembourg had been repatriated by the middle of June 1945. Early in June, repatriation of Italians was begun on an informal basis, and by the end of September 1945 more than 97 per cent of all known displaced Italians in the U.S. Zone had been repatriated. Yugoslav, Greek, and Balkan ex-enemy nationals were repatriated fairly rapidly, except for some Yugoslavs who renounced their rights to return. Repatriation of Poles began about the middle of July 1945 but progressed very slowly, since the so-called London Poles, whose sympathies lay with the Polish Government-in-Exile in London, were unwilling to live under the Soviet-dominated government in control in Poland, and the Polish Ukrainians, under a Polish-Soviet agreement, would have had to live in the Soviet Union. Citizens of Estonia, Latvia, and Lithuania were not recognized as Soviet citizens by the American Government; no attempt was made to repatriate them against their wishes.

The repatriation of Soviet citizens posed the most difficult problems, but by the end of August 1945 almost 99 per cent of the more than two million Soviet citizens found in the U.S. Zone had been returned. Repatriation of Soviet citizens was governed by an agreement made between the United States and the Soviet Union at the Yalta Conference, paralleled by a similar agreement between the British and Soviet Governments.

7280 responded. It was now clear that the remaining displaced persons of eastern European origin were mainly political refugees who could not be repatriated. The resistance of the Polish Ukrainians and the London Poles has already been mentioned. Most of the Estonians, Latvians, and Lithuanians had fled from the Baltic states before the Russian advance in 1944 and were firmly resolved not to return. The Jewish group could not be repatriated, and most of the Yugoslavs remaining had been made stateless by having failed to meet a deadline of 16 April 1945 set by the Yugoslav Government as the latest date on which former Yugoslav citizens could declare their intention to return to Yugoslavia. Repatriation, for all practical purposes, came to an end with the second repatriation drive in the spring of 1947.

Although the main efforts of the theater in connection with displaced persons during the first two years after V-E Day were devoted to repatriation, there was no way of escaping responsibility for the care of those who remained. Theater headquarters recommended to the War Department in January 1946 that, with the exception of permissives, the care and maintenance of all DP's be discontinued as of 1 June 1946, and those not wishing to be repatriated be absorbed into the German civil population. The proposal was substantially rejected, and only the few DP's from the western European countries who were not repatriated by June 1946 lost their status as DP's. The many displaced persons from eastern Europe were unaffected.

Much effort was devoted to the improvement of housing, clothing, and other care. The housing for displaced persons had been very primitive, and for various reasons, including in some cases lack of cooperation by the DP's themselves, many accommodations which had been used during the summer following V-E Day were unfit for winter use. When it became evident in the fall of 1945 that large numbers of DP's could not be repatriated before winter, an intensive winterization program was begun. Installations which could not be winterized were abandoned, and others were repaired and improved. Surveys were made upon a minimum allotment of thirty square feet per person were made by army engineers and necessary requisitions and repair materials made upon the German economy. In spite of scarcity, limited supplies were relocated. The DP's themselves provided

much of the labor. In cases of emergency, DP's were transferred to other areas, and in a few instances German civilians were moved from existing accommodations to provide housing for displaced persons. In spite of these efforts, housing was far from satisfactory. The minimum space allotment was not always reached, many buildings suffered from leaking roofs and broken windows, and families could not in every case be placed in separate rooms. But at least all DP's were housed in more or less weatherproof buildings during their first winter following the end of combat.

Housing for displaced persons became critical again in the summer of 1946, after a flood of infiltrates from eastern Europe had come into the zone. Troop redeployment was expected to ease the situation, but for many reasons accommodations released by the troops were unavailable for DP's. Many of the troop facilities were of an emergency type unsuitable for family housing. Moreover, it was theater policy to return to the Germans as many as possible of the schools, hospitals, and sanatoriums occupied by American troops, and to requisition no additional private houses. A solution was found by providing accommodations for 23,000 persons in 1,800 prefabricated huts, located in stock in the zone and in France, or manufactured in Germany.

Even to the very end of the occupation, the housing of displaced persons continued to present difficulties as a result of the constant pressure to return accommodations to the German economy and the need to vacate DP housing to accommodate increased military needs during the last years of the occupation. Houses thus recovered from DP's were either subsequently assigned to occupation personnel or exchanged with the Germans for other houses more suitable for American needs.

During the first winter, coal was lacking. Woodcutting campaigns were conducted and heating was provided by using wood-burning stoves for which the displaced persons collected fuel. By the second winter, coal had become available in fairly satisfactory quantities.

Within a year after V-E Day, displaced persons were beginning to be adequately clothed. During the last six months of 1946 each DP in assembly centers received from the Army approximately nine pieces of clothing, chiefly shoes and underwear. Much ad-

Thousands of Jewish displaced persons were eager to emigrate to Palestine but, before the creation of the state of Israel, immigration was limited by the British authorities. When the new Jewish state proclaimed its existence, on 14 May 1948, the International Refugee Organization declared itself unable to assist emigration there because Israel was not recognized by all members of the United Nations. There were at that time 124,613 Jewish DP's in the U.S. Zone of Germany, of whom 91,391 were living in DP centers. After a short delay resulting from a United Nations truce forbidding the movement of men of fighting age to Israel, the European Command was authorized by the Joint Chiefs of Staff to recognize the chief of the Jewish Agency for Palestine as representative of Israel, and subsequently assisted in a mass movement of displaced Jews to Israel.

Other immigration programs on a lesser scale were undertaken by other countries, notably Canada and Argentina. Selection missions sent by the various countries were required to obtain the approval of the European Command prior to entry into the U.S. Zone of Germany.

As a consequence of the large-scale re-

settlement movements beginning in the middle of 1948, the displaced persons population in the U.S. Zone of Germany dropped from 501,267 to 274,474 during the year and a half from 30 June 1948 to 31 December 1949. A decline of 168,383 in the number of DP's in centers was particularly important from the point of view of the command, because these people required much more attention in the provision of housing and other care, and were much more troublesome in connection with the maintenance of law and order, than those living in the German community.

Reduction of the scope of the problem made possible another major shift in responsibility for the displaced persons program. Supervision of DP's was transferred from the European Command to the U.S. High Commissioner for Germany on 1 May 1950. At the time of transfer the DP's residing in centers numbered only 101,631, and those living in the German community only 71,677, in addition to 9,739 in labor units. The command retained its general responsibility for the maintenance of law and order within DP camps and for the furnishing of logistical support for IRO and the accredited voluntary and resettlement agencies.

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CHAPTER X

Military Communities

The provision of adequate housing and other care for occupation personnel was a vital factor in the success of the occupation. On V-E Day, the theater was housing and at least partially feeding well over eight million persons, including American troops, displaced persons in camps, prisoners of war, recovered Allied military personnel, and civilian employees. Of these, more than five million were in the occupied areas of Germany and Austria. This was in addition to general relief for civilians carried on under theater supervision and largely provided from theater stocks.

The performance of theater tasks also required the presence in the theater of a number of civilian agencies and personnel. Some were working directly with or for the Army. They included civilian employees of the Army; personnel of the American Red Cross, the United Nations Relief and Rehabilitation Administration, and the Army Exchange Service; accredited newspaper and magazine correspondents; Special Services entertainers; and technical observers employed by the Army. Others were nongovernmental organizations serving the military forces, such as banks, insurance companies, lawyers, and employees of Coca-Cola bottling and distributing agencies; all accredited civilian representatives of the U.S. Government as well as of Allied governments; the representatives of certain private relief and charitable societies; and acknowledged consular representatives of Allied governments. Finally, there were American and foreign businessmen representing American commercial agencies. On account of the difficult living conditions in Europe, all these classes of persons were housed and given certain other essential support by the theater during the year following V-E Day, and in some cases throughout the period of the occupation. Although varying degrees of priority were assigned, nongovernmental agencies and businessmen being given support only after the needs of direct and indirect employees of the theater and their dependents were met, in practice,

all the above groups received the same billeting, mess, commissary, and other services as those accorded to military personnel of comparable rank, including the special arrangements for dependents. A considerable portion of the support of persons not members of the U.S. military forces was provided on a reimbursable basis. In April 1946, as conditions in countries outside Germany and Austria became more nearly normal, support of nongovernmental agencies and businessmen in such countries was withdrawn. For a time gasoline and post exchange items were supplied to American embassies on a bulk basis.

Immediate Problems

It was a major logistical task to acquire and maintain the vast amount of real estate needed for the occupation forces and other agencies which they supported. In the early years of the occupation, property was acquired in either one of two ways, confiscation or requisition. Any property or facilities in the occupied area which had belonged to the German Government or to the Nazi Party, or to any agency of either, was subject to confiscation by the United States forces. All other property was subject to military requisition, but could not be confiscated. Records of confiscated property had to be maintained, but no payment of any kind was required.

Requisitioning could be used to meet the needs of accredited official and quasi-official agencies supported by the Allied forces as well as for the needs of the forces themselves. Requisitioning was effected on authority of the local American commander and had to be in reasonable relation to the resources of the country. Actual requisitioning was done through military government agencies, which in turn worked through German municipal authorities or other public agencies. Compensation to the individual was the responsibility of the civil government, acting under instructions and supervision by military government authorities. Commanding officers were required to take

from the armed forces to the Department of State could now be put into effect. On 21 September 1949, the day on which the new German Government came into being, the authority of the United States Military Governor and of the Office of Military Government for Germany (U.S.) for the governmental functions of the United States in Germany was transferred from the occupation forces to the Office of the High Commissioner for Germany (U.S.) (HICOG), an agency of the Department of State. The Office of Military Government (U.S.) was discontinued. The change did not mark the end of the occupation as far as the American military forces were concerned. It merely marked the end of military government and the end of the EUCOM commander's responsibility for governmental powers in Germany. The military forces continued to be officially in occupation of the U.S. area of responsibility in Germany, making possible continued use of requisitioning and other occupation powers.

The reorganization referred to above was accompanied by shifts in top positions. General Clay returned to the United States on 15 May 1949, leaving Lt. Gen. Clarence R. Huebner temporarily in charge. Gen. Thomas T. Handy became Commander in Chief, EUCOM, and Commanding General, U.S. Forces of Occupation, Germany, on 2 September 1949. Mr. John J. McCloy became Military Governor (U.S.) and High Commissioner for Germany (U.S.), on the same date, marking the first occasion on which the position of military governor was held by a person other than the commanding general of the occupying forces. He held both posts until the discontinuance of the Office of Military Government (U.S.) on 21 September 1949. Qualified military personnel formerly employed by OMGUS were given an opportunity to civilianize and continue employment with HICOG.

In a general shifting of headquarters, General Handy moved the commander in chief's office from Berlin to Heidelberg, where for the first time since the departure of General McNarney the commander in chief was located with the bulk of the headquarters staff of the command. On 1 February 1950 U.S. Naval Forces, Europe, moved its headquarters from Berlin to Heidelberg. The headquarters of U.S. Air Forces in Europe remained in Wiesbaden. The Office of the High Commissioner was moved from

Berlin to Frankfurt, and in the fall of 1951 to Bad Godesberg, near Bonn.

The actual transfer of authority from the Office of Military Government to the Office of the High Commissioner involved little difficulty for the European Command, for the separation of military occupation functions and organization from those of military government had been almost complete.

Coordination between the two offices continued to be required, particularly for intelligence, supply, and legal matters. At the top, liaison was effected through Maj. Gen. George P. Hays, the Deputy U.S. High Commissioner for Germany, who served on a loan basis from EUCOM. Political coordination was maintained by the Office of the Political Adviser, located in the headquarters of the European Command and staffed by Department of State personnel. Several staff divisions maintained their own liaison offices. Otherwise the Civil Affairs Division was the European Command agency for coordination with the Office of the High Commissioner, especially for matters concerning displaced persons. The Civil Affairs Division also maintained liaison with the Allied High Commission at the tripartite level, in order to keep the European Command continuously informed in regard to tripartite matters affecting the armed forces. An especially valuable means of liaison was a system of monthly conferences attended not only by the heads of EUCOM and HICOG but by heads of their main subordinate elements as well. Further liaison was maintained on an informal basis on all levels.

Special liaison arrangements were made in Berlin, where the U.S. Commander, Berlin, acted as the personal representative of both the Commander in Chief, EUCOM, and the High Commissioner for Germany (U.S.), thus performing all U.S. military and governmental functions in the U.S. Sector.

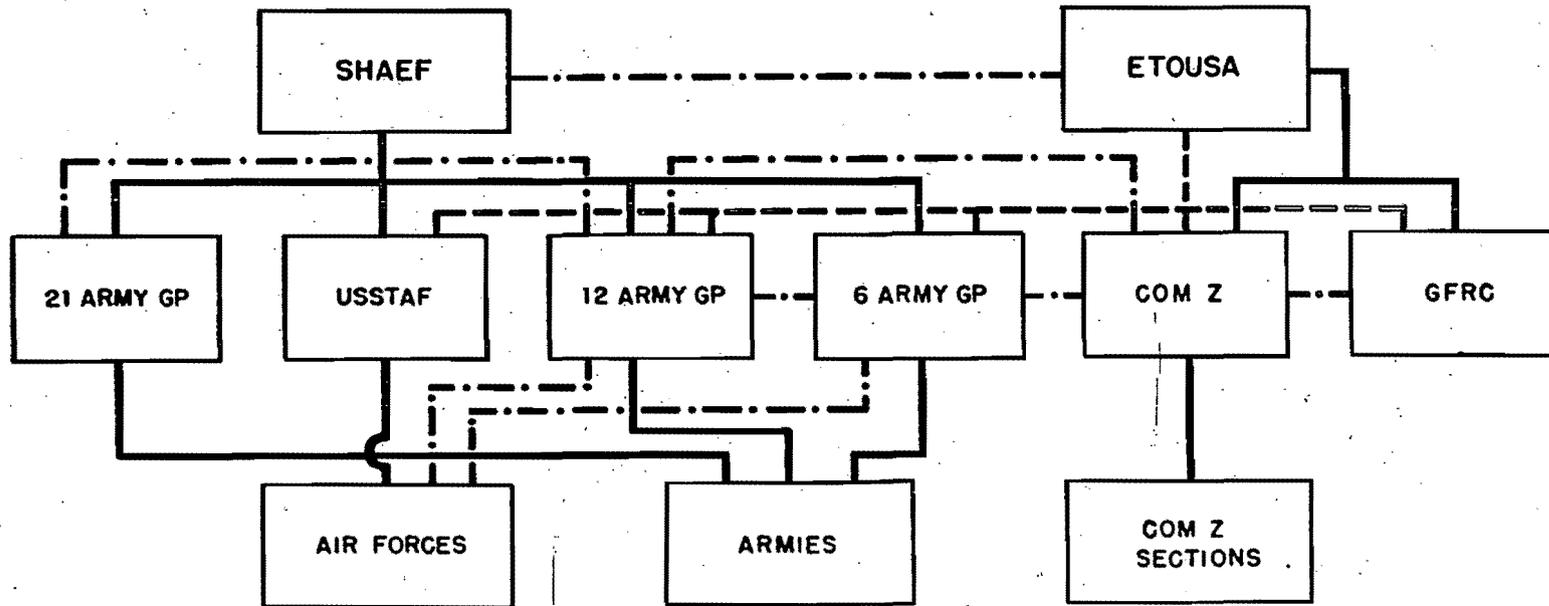
In Austria, the commanding general of the U.S. forces had also been U.S. High Commissioner, since 28 June 1946. In the latter capacity he had been responsible directly to the Joint Chiefs of Staff. On 23 May 1949 U.S. Forces, Austria, was relieved from assignment to the commander of the European Command and made an independent command directly responsible to the Joint Chiefs of Staff. The actual effect of this change was not great, as the European Command continued to furnish the same

Date	Event
1946	
28 June	— Military government ends in Austria and a U.S. High Commissioner becomes representative of the United States for governmental purposes.
1 July	— The U.S. Constabulary is activated and assumes responsibility for area security in the U.S. Zone exclusive of Berlin District and Bremen Enclave, and for control of border security.
13 July	Bremerhaven replaces Le Havre as U.S. redeployment port. Control of civilian internees is turned over to German authorities.
17 July	A Community Planning Board is established to restudy the military community program and to determine availability of suitable accommodations for troops and dependents.
6 September	Secretary of State Byrnes' speech at Stuttgart outlines the new American policy toward Germany.
16 September	The use of Military Payment Certificates (scrip) by U.S. personnel is introduced in the theater.
1947	
1 January	The agreement for economic unification of the U.S. and British Zones becomes effective with the creation of Bizonia.
15 January	The Dependents School Division replaces the Dependents School Service.
1 March	The American Express Company is authorized to operate a bank in Frankfurt with branches in other chief cities of the U.S. Zone.
15 March	— U.S. Forces, European Theater, is redesignated the European Command, and sweeping changes are made in theater organization. General Clay replaces General McNarney as commander in chief and military governor, with General Huebner as deputy commander in chief and chief of staff.
7 April	A U.S. Military Liaison Mission to the commander in chief of the Soviet Occupied Zone of Germany is established in Potsdam.
29 April	Most restrictions against inviting German guests to messes and snack bars are withdrawn.
1 May	Free travel for nonduty travelers in the U.S. occupied zones of Germany and Austria is ended.
5 May	The Grafenwoehr Training Center is opened.
29 May	A Bizonal Council (BICO) is formed for economic administration of the bizonal area.
5 June	The Marshall Plan for aid to distressed areas, later known as the European Recovery Program, is outlined by Secretary of State Marshall in a speech at Harvard University.
24 June	Headquarters, EUCOM (Berlin) is redesignated Office of the Commander in Chief, Berlin.
25 June	A screening program begun in April 1946, to determine the eligibility for care and maintenance of displaced persons in assembly centers, is completed.
26 June	The Army Exchange Service is centralized and redesignated the EUCOM Exchange System (EES).
1 July	The International Refugee Organization supersedes UNRRA and the Inter-Governmental Committee on Refugees, and assumes broad responsibilities for the care of displaced persons and refugees under an agreement with EUCOM.
	The Office of Jewish Advisor to the Commander in Chief, European Command, is created.
26 August	The office of Negro Advisor to the Commander in Chief, European Command, is created.
30 September	The last EUCOM prisoner-of-war center, that at Dachau, is closed.
1 October	All rations for displaced persons are ordered drawn from the German economy through German supply distribution channels, and responsibility for such supply is transferred from EUCOM to OMGUS.
15 October	The U.S. Army in Europe is freed of responsibility for the supply of military attaches and embassies in eastern Europe.

Date	Event	D.
1949		
6 October	The Mutual Defense Assistance Act is signed by President Truman, authorizing American aid to members of the North Atlantic Treaty Organization subject to approval by the President of an integrated defense plan, and the signing of bilateral agreements.	21 J 6 F
25 October	EUCOM is directed to provide logistic support to HICOG without reimbursement through Fiscal Year 1950 within the limits previously authorized for OMGUS.	10 F 20 M
15 December	A network of USAREUR Character Guidance Councils is established.	
20-21 December	59 war criminals serving terms due to expire in October 1950 are released in accordance with a newly established, good-conduct-time credit program.	28 M 31 M
22 December	HICOG ordinances and regulations and the current policy of EUCOM regarding hunting and fishing by U.S. personnel are issued.	15 J
31 December	The Office of the Advisor on Jewish Affairs is closed.	
1950		
20 January	A EUCOM Board on German-American relations is created.	3 A
27 January	The Mutual Defense Assistance Act goes into effect and American aid funds became available, the prerequisites having been met.	5-19 A 25 A
1 February	U.S. Naval Forces, Europe, moves its headquarters from Berlin to Heidelberg. Army components of six Mutual Assistance Advisory Groups are established under the EUCOM Joint Advisory Military Assistance Group.	12 S 3-10 O
16-22 March	EUCOM Exercise SHAMROCK is held, under the command of Lt. Gen. J. K. Cannon, Commanding General, USAFE.	10 O
1 May	Supervision of the care of displaced persons is transferred from EUCOM to HICOG.	21 O
27-30 May	<i>Deutschlandtreffen</i> , a Whitsuntide Rally, is held in Berlin by the Free German Youth organization under the auspices of the Soviet-dominated German Democratic Republic.	25 O
31 July	The EUCOM Special Services Division is redesignated the EUCOM Special Activities Division and its scope of activities broadened.	2 N
1 August	A Labor Services Division is established to control the activities of German and displaced persons guard and labor companies.	15 N
8 August	A EUCOM program for improving relations between the German people and the members of the U.S. occupation forces is inaugurated.	23 N
31 August	The office of the EUCOM Advisor on Negro Affairs is closed.	26 N
11-18 September	EUCOM Exercise RAINBOW is held.	28 N
13 September	The USAREUR TI&E Division is directed to impress upon troops the necessity for a continuous state of combat readiness.	31 D
18 September	The NATO Council of Deputies agrees upon the establishment at the earliest possible date of integrated forces under a centralized command.	
19 September	The Council of Foreign Ministers declares the Allied Governments will treat any attack upon the German Federal Republic or upon West Berlin as an attack upon themselves. It also announces that the Allied forces in Germany will be augmented.	10 Ja
26 September	EUCOM is authorized by the Department of the Army to re-acquire desirable surplus property from STEG.	11 Ja
24 November	Headquarters, Seventh Army is activated with Lt. Gen. Manton S. Eddy as commander; the 1st Infantry Division and units of the U.S. Constabulary are assigned to the Seventh Army.	21 Ja
1 December	The Seventh Army is activated as a field army.	2 Fe
18 December	General Eisenhower is appointed Supreme Allied Commander, Europe.	
1951		
6-27 January	General Eisenhower, Supreme Allied Commander, makes a personal survey tour of the NATO nations to confer with chiefs of staff and defense ministers. He spends 20-23 January in the European Command for conferences with EUCOM leaders and to make his first inspections of EUCOM troops.	26 M 30 M

COMMAND CHANNELS OF SHAEF AND ETOUSA

12 FEBRUARY 1945



————— *COMMAND FOR OPERATIONS*
 - - - - - *COMMAND FOR ADMINISTRATION*
 ······ *LIAISON*

LIAISON WITH {
 BELGIUM
 DENMARK MISSION
 FRENCH MISSION
 NETHERLANDS MISSION

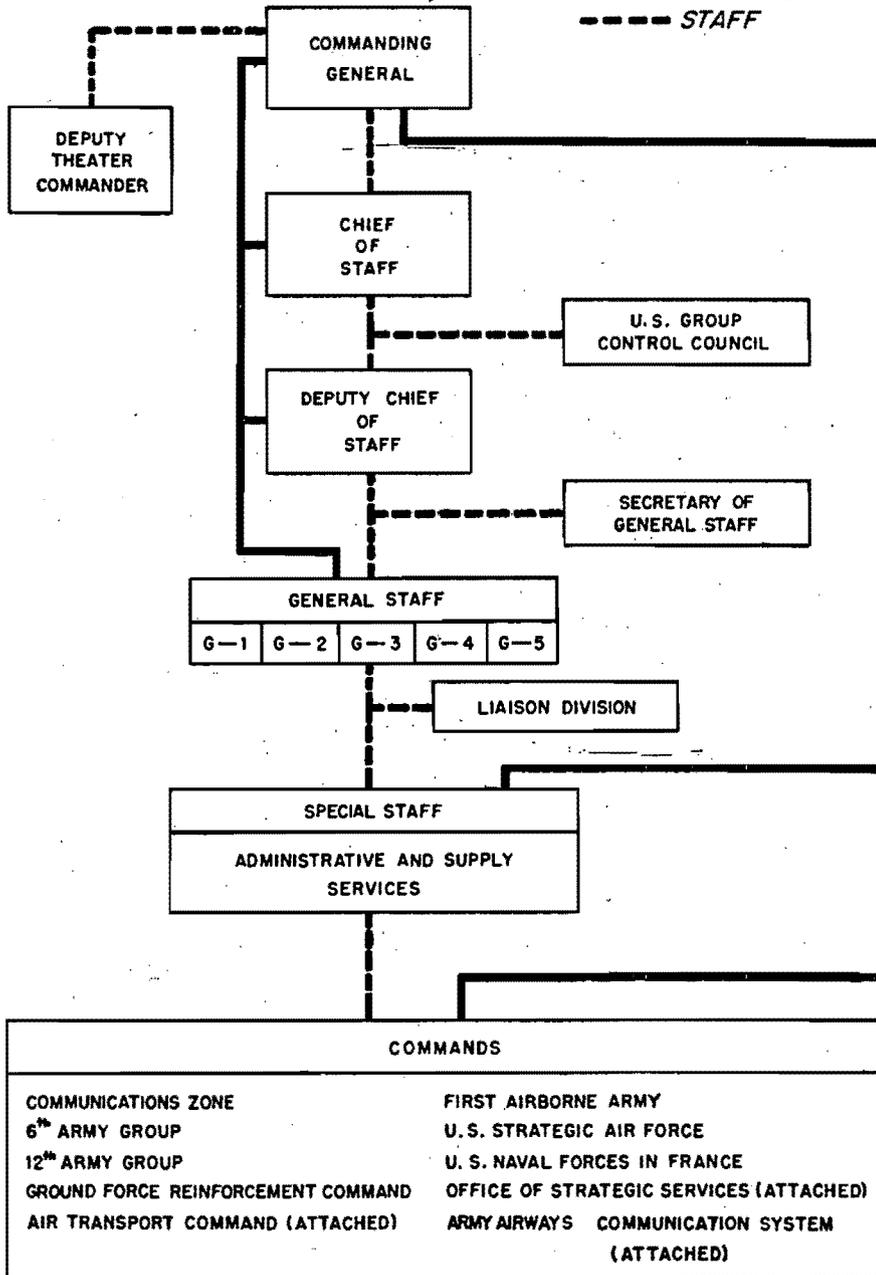
CHART 1

* TAKEN FROM FREDERICKS, "THE AMERICAN MILITARY OCCUPATION OF GERMANY, 1945-1953" 17

ORGANIZATION OF ETOUSA

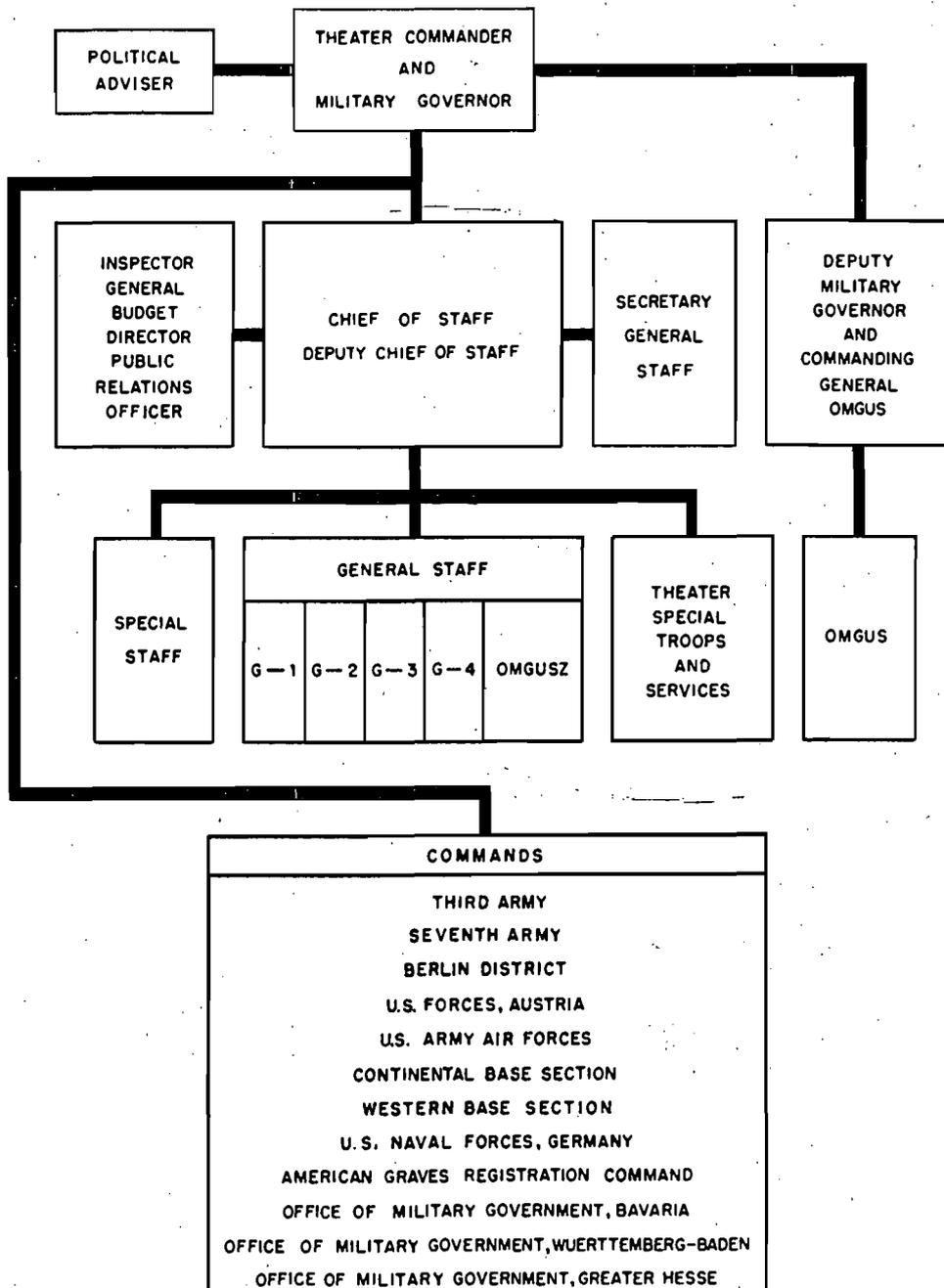
1 MARCH 1945

LEGEND:
 ——— COMMAND
 - - - STAFF



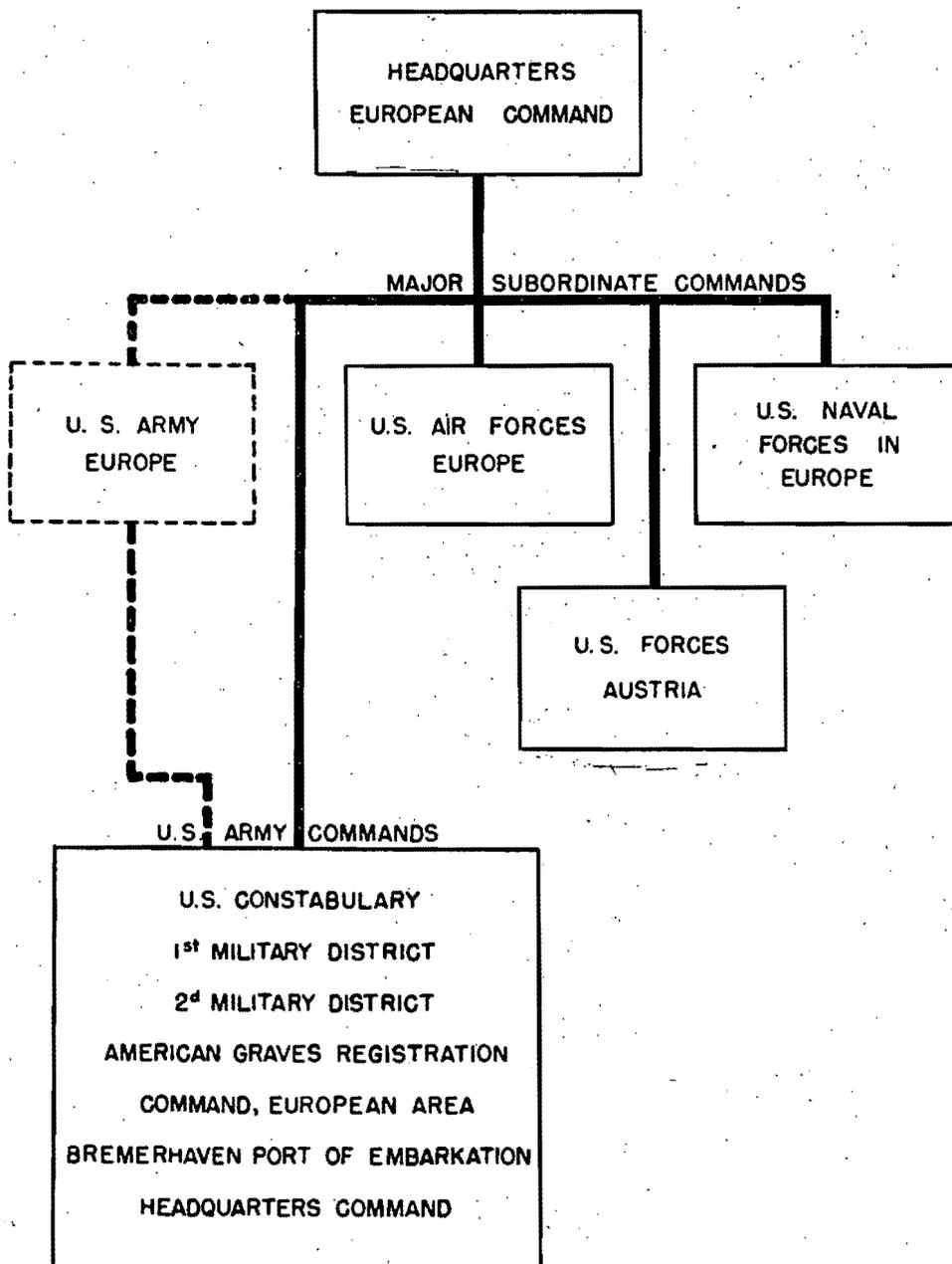
ORGANIZATION OF USFET

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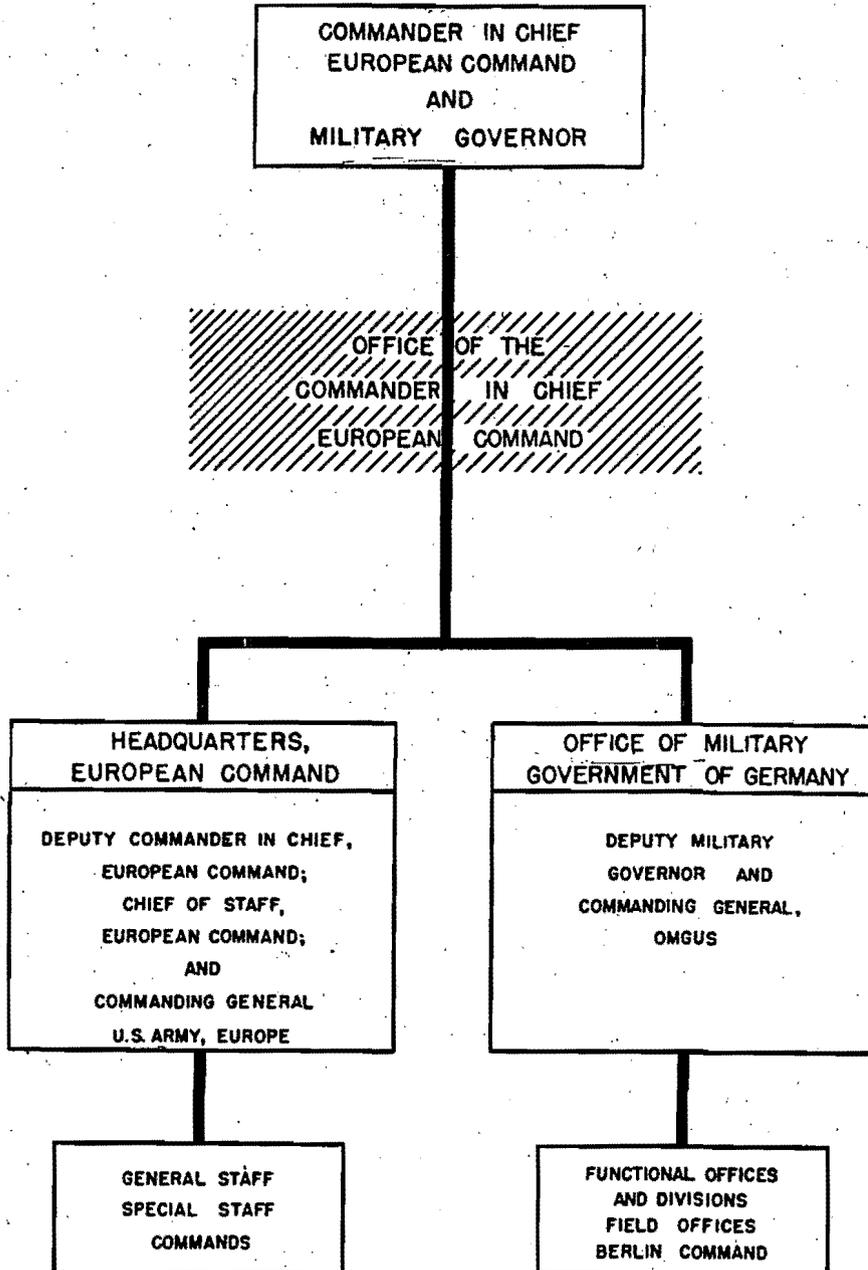
COMMANDS SUBORDINATE TO HEADQUARTERS, EUROPEAN COMMAND

15 NOVEMBER 1947



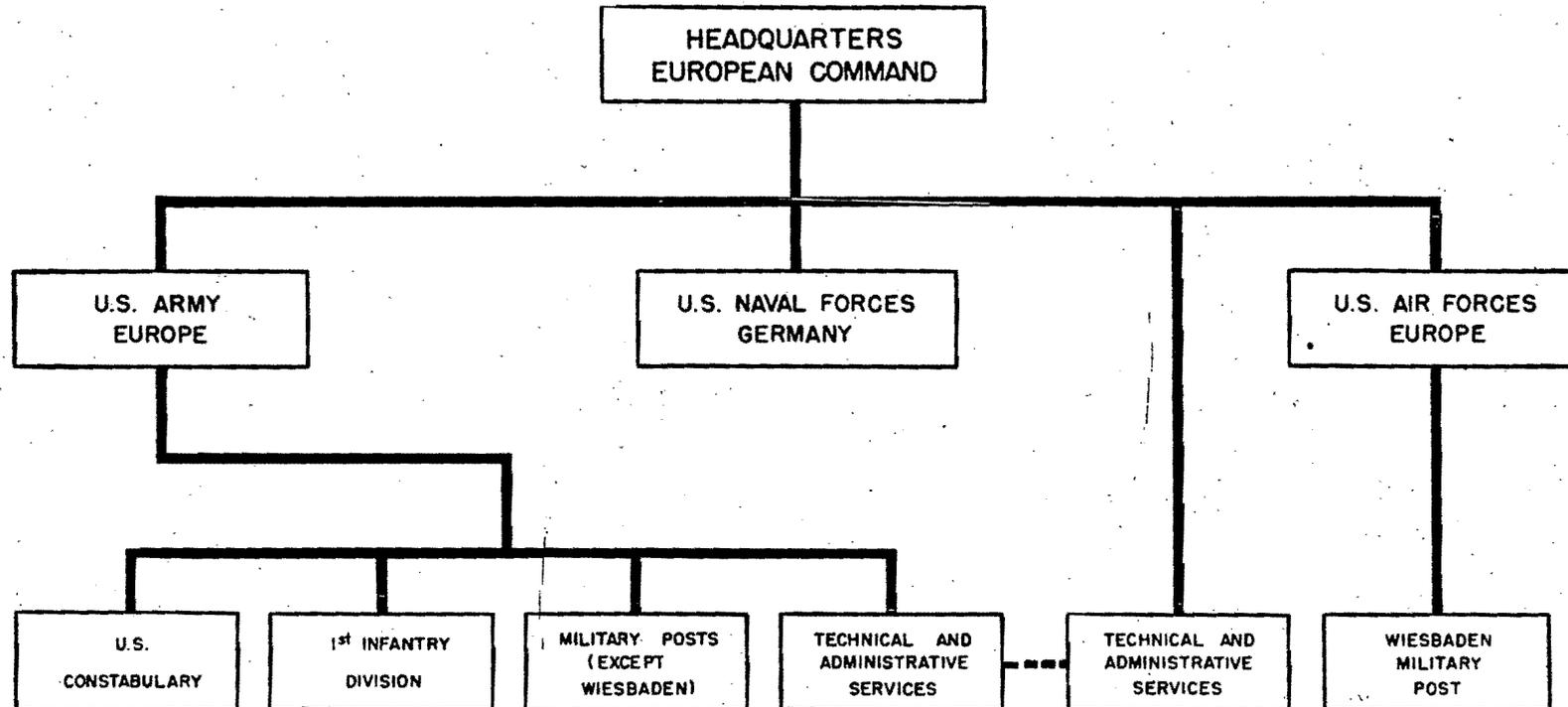
ORGANIZATION OF THE EUROPEAN COMMAND

15 NOVEMBER 1947



ORGANIZATION OF THE EUROPEAN COMMAND

1 JANUARY 1950

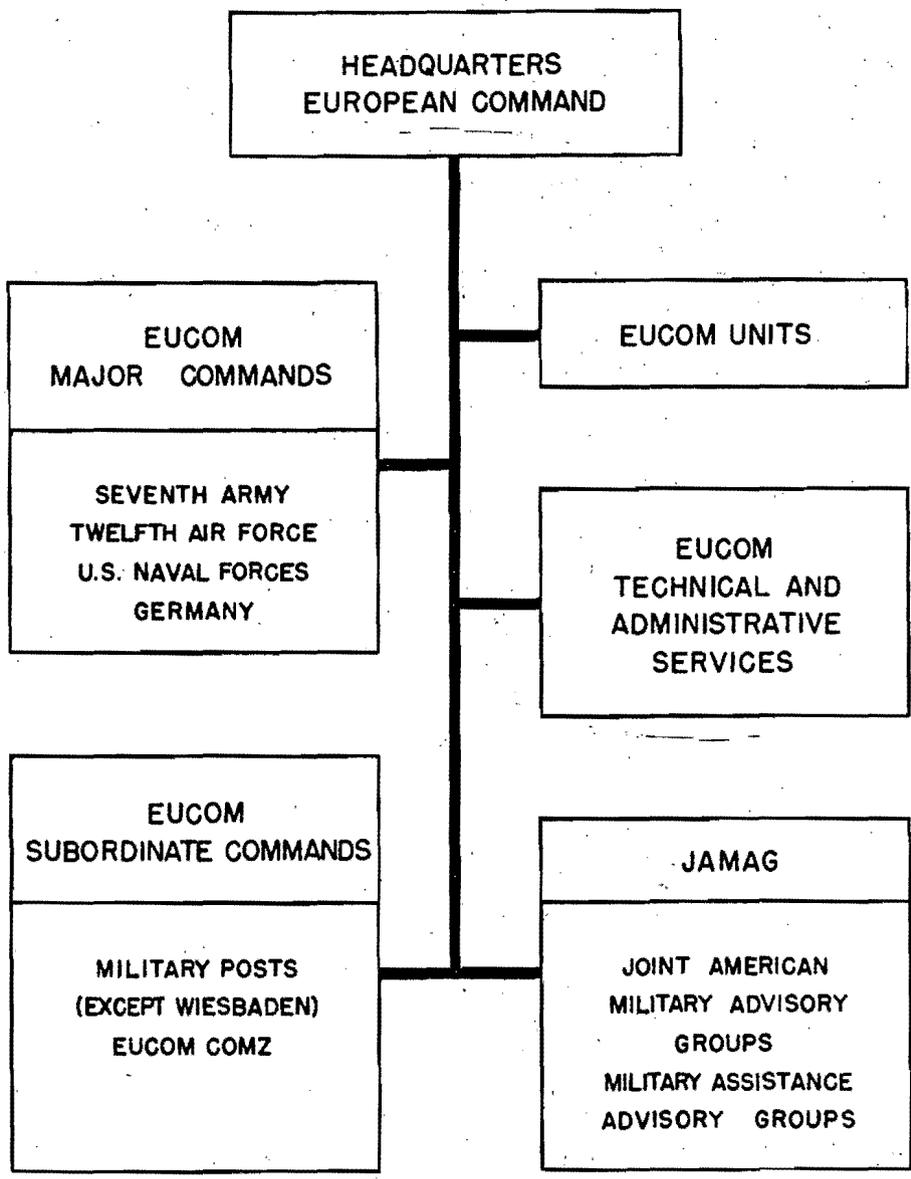


NOTE: TECHNICAL AND ADMINISTRATIVE SERVICES OF EUCOM AND USAREUR WERE PRACTICALLY IDENTICAL.

CHART 6

ORGANIZATION OF THE EUROPEAN COMMAND

1 MAY 1952

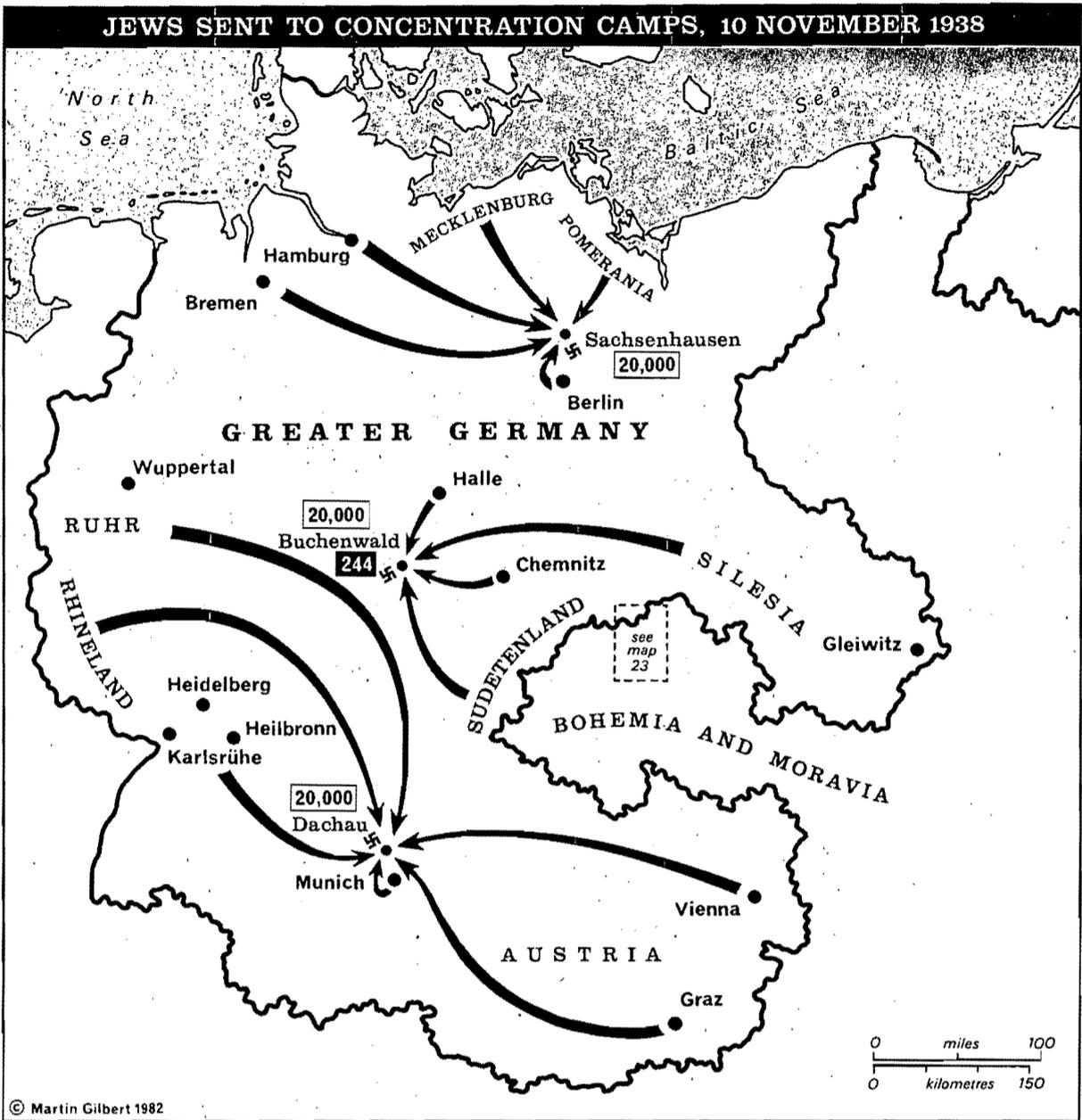


Atlas of the Holocaust

Martin Gilbert

Fellow of Merton College, Oxford
Official Biographer of Sir Winston Churchill

WILLIAM MORROW AND COMPANY, INC.
New York



Immediately following the 'night of broken glass', more than 35,000 Jews were seized throughout Germany, and sent to concentration camps, bringing to more than 60,000 the total number of Jews in the camps (above). Hundreds died of ill-treatment, including 244 at Buchenwald alone in the first month of their imprisonment. Hundreds more committed suicide as a result of the harsh conditions and the brutality of the guards.

In March 1939 Hitler ordered his armies to enter the Bohemian and Moravian provinces of Czechoslovakia (opposite, below). Tens of

thousands of Jews were trapped, many of them refugees from Germany and Austria who had fled to Bohemia and Moravia a year before. Other Jews fled from Slovakia to Poland, as the Slovak province, where anti-semitic activities had been growing, declared its independence.

Jews had first been mentioned in Prague in AD 970, the first settled community in 1091. They survived repeated expulsions in the seventeenth century, to enjoy religious liberty and their own civil jurisdiction by 1700. Forbidden to follow many of the trades of the time, they had come to excel as

Klaus-Dietmar Henke

Die
amerikanische Besetzung
Deutschlands

2. Auflage

R. Oldenbourg Verlag München 1996

Während des Vorstoßes nach Mitteldeutschland mußten kurzfristig ungefähr 130 provisorische Detachments aufgestellt werden, die nach dem Rückzug der amerikanischen Truppen auf die vereinbarten Zonengrenzen wieder aufgelöst wurden.¹¹⁰ In der nördlichen Rheinprovinz und in Südwestfalen etwa halben die für Ostbayern vorgesehenen Teams aus.¹¹¹ Die Ninth U.S. Army wies seinen CA/MG Detachments im Februar 1945 neue Zielorte zu und machte damit mehrere Monate des „pinpointing“ hinfällig, weil, wie es in deren Historical Report wie selbstverständlich hieß, die Ziel-ausbildung ohnehin nur vorläufig gewesen sei „und dazu gedient habe, Praxis in deutschem Verwaltungshandeln zu vermitteln“¹¹².

Trotz des ständig im Fluß befindlichen, vom akuten Bedarf diktierten Einsatzes mehrerer hundert Militärverwaltungseinheiten blieb die Struktur der einzelnen Detachments ab Herbst 1944 stabil. Nachdem zunächst an die Aufstellung von nicht weniger als 24 verschiedenen Team-Arten gedacht gewesen war, kristallisierten sich, wie erwähnt, schließlich fünf Standardtypen (bezeichnet mit den Buchstaben E, F, G, H, I¹¹³) heraus. E-Detachments sollten die Kontrolle der Länder oder Provinzen übernehmen, F-Detachments waren für die Ebene der Regierungsbezirke vorgesehen. Nach den Personalplänen waren einem E-Detachment 26 Offiziere und 35 Mann zugewiesen, darunter beispielsweise Fachoffiziere mit Zuständigkeiten wie „Property Control“, „Administration & Local Government“, „Transportation“ oder „Legal“. Die Mannschaftsdienstgrade waren als Dolmetscher, Stenographen, „Court Reporter“ oder (wie fast ein Drittel von ihnen) als Fahrer beschäftigt; ein Detachment vom Typ F war nominell mit 16 Offizieren und 25 Mann besetzt. Die große Zahl der kleineren Einheiten des Typs G, H und I sollten ihren Dienst auf der Ebene der Stadt- und Landkreise versehen. Vier Offiziere und sechs Mann war die Standardbesetzung der kleinsten, der I-Teams. Zu Beginn der Besatzungszeit, vor allem in der zweiten Hälfte des Jahres 1945, mußte zu den meisten Detachments aber beträchtlich mehr Personal abgestellt werden.¹¹⁴

Nicht nur die im Herbst 1944 berechneten Personalstärken stellten sich im Frühjahr des folgenden Jahres als zu gering heraus. Es wurde ebenfalls deutlich, daß die vorgesehene unterste Kontrolleebene, die Ebene der Stadt- und Landkreise, zu hoch angesetzt war. Auch hier mußten die Planungen kurzfristig korrigiert werden, die unter der Herrschaft der „indirect rule“-Doktrin auf der optimistischen Schätzung aufgebaut hatten, ein zehnköpfiges I-Detachment werde zur Kontrolle von etwa 100 000 Einwohnern ausreichen. Um eine angemessene Überwachung zu gewährleisten, mußten in den ersten Monaten nach der deutschen Kapitulation aber Teams auch in kleineren Städten eingesetzt werden; in Großstädten arbeiteten oft mehrere zur gleichen Zeit. Bis zu dieser Verdichtung des Kontrollnetzes, die etwa im August 1945 zum Abschluß kam, war es nichts Ungewöhnliches, daß zwei oder drei Landkreise von einer

¹¹⁰ Vgl. VI/4.

¹¹¹ Twelfth Army Group, Report of Operations, VII; IfZ-Archiv, Material Henke.

¹¹² Ninth U.S. Army, G-5, Historical Report für Februar 1945; NA, RG 331, 17.14 Ninth U.S. Army Historical Reports.

¹¹³ Zur Entschlüsselung der Detachment-Nomenklatur ausführlich auch die entsprechenden Beiträge im OM-GUS-Handbuch.

¹¹⁴ Zur Struktur der Detachments vgl. Starr, Planning Stage, S. 114 ff. Twelfth Army Group, Report of Operations, VII, Anhang 3. Vgl. auch Konrad Latour, Thilo Vogelsang, Okkupation und Wiederaufbau. Die Tätigkeit der Militärregierung in der amerikanischen Besatzungszone Deutschlands 1944–1947, Stuttgart 1973, S. 38 ff.

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¹¹⁵ In Erwartung
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Dwight D. Eis

¹¹⁶ Das folgende
NA, RG 260,
8. 4. und 10.
Stunde Null,

¹¹⁷ Vgl. Ziemke,

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**THE
DESTRUCTION
OF THE
EUROPEAN
JEWS**

REVISED AND DEFINITIVE EDITION

RAUL HILBERG

HOLMES & MEIER

NEW YORK LONDON

1105

CONSEQUENCES

Jews were involved. Brand replied that the offer encompassed a million people. "But Mr. Brand," the British host exclaimed, "what shall I do with those million Jews? Where shall I put them?"⁸¹ There were no longer a million. The entire network of standby organizations had become a vast organization of bystanders.

By the beginning of 1945, five million Jews were dead. There were no more gassings. Auschwitz had been abandoned. But tens of thousands of Jews were still to die. On October 15, 1944, Judge Proskauer of the American Jewish Committee telegraphed McCloy, urging that internees in concentration camps be recognized by the U.S. Government as prisoners of war,⁸² but the Assistant Secretary of War expressed doubt that such a step was "legally justified" or that it would "really help" the people it was designed to assist.⁸³ During the shadow months of the Nazi regime, Roswell McClelland of the War Refugee Board negotiated in Berne with Standartenführer Becher of the SS and Police for the amelioration of conditions in the camps. In the final weeks the International Red Cross also made itself felt. The Germans began to release thousands of Jews. The Allied armies found the remainder alive, dying, or dead in the camps.⁸⁴ Many of the survivors had lost enough body weight to look like living corpses.⁸⁵

Up to May 8, 1945, the Jewish masses could not be rescued from catastrophe; now the survivors had to be saved from its consequences. On the conquered territory of the former German Reich, some tens of thousands of Jews clustered around the liberated concentration camps: Bergen-Belsen in the British zone, the Dachau complex in the Ameri-

81. Weissberg, *Brand*, pp. 214-15. Lord Moyne, the British Minister Resident in Cairo, was shortly thereafter assassinated by members of the extremist Stern group. Brand speculates that the conversation had been reported in Palestine and that the assassins struck at Moyne in anguish. *Ibid.*, p. 216. Long afterward Eichmann said: "The plain fact was that there was no place on earth that would have been ready to accept the Jews, not even this one million." *Life*, December 5, 1960, p. 148.

82. Proskauer to McCloy, October 15, 1944, Archives of American Jewish Committee, EXO-16, Proskauer files (Joint Emergency Committee).

83. McCloy to Proskauer, October 17, 1944, Archives of American Jewish Committee, EXO-16, Proskauer files (Joint Emergency Committee).

84. Kasztner, "Bericht," pp. 112-13. War Refugee Board, *Final Report*, pp. 34, 43-45, 59.

85. In one stratified sample of survivors studied by Leo Eitinger in Israel, the percentage of Jewish camp survivors that had been found in a cadaverous state was nearly a third. L. Eitinger, "Concentration Camp Survivors in Norway and Israel," *Israel Journal of Medical Sciences* 1 (1965): 883-95, particularly p. 889. See also his "The Concentration Camp Syndrome and Its Late Sequelae," in Joel Dimsdale, ed., *Survivors, Victims, and Perpetrators* (Washington, 1980), pp. 127-62. Eitinger, a physician, was a Jewish deportee from Norway in Auschwitz.

can zone, Mauthausen in Austria.⁸⁶ Thousands of the worst cases among the camp survivors were taken to hospitals in Germany, Switzerland, and Sweden. Thousands more began to trek back to Hungary and Poland in search of lost families. To the south and east, the broken Jewish remnant communities formed a belt of restlessness, extending from the Balkans through Poland to the depths of Russia. The Hungarian-Romanian area still contained half a million Jews. Many were dispersed, most were destitute, and all were insecure.⁸⁷

In Poland the scattered survivors found possessions and homes in other hands. Not a few of these Polish Jews, emerging from labor camps and out of hiding, were greeted with the query: "Still alive?"⁸⁸ These Jews, too, wanted to get out, but no door was opened to them. The United States still had its immigration quotas. (The total quotas allotted to *all* the people born in the eastern half of Europe could not exceed about 1,500 a month.) In Palestine the White Paper of 1939 had set a permissible immigration total of 75,000 Jews for a period of five years. When it was discovered in the autumn of 1943 that only 44,000 of these certificates had been used, the British government agreed to the utilization of the remaining 31,000 passes after 1944.⁸⁹ By the end of 1945, no certificates were left. From January 1, 1946, therefore, the British Labor government, under the severest pressure, allowed the Palestinian migration to continue at the rate of 1,500 a month.⁹⁰ In short, the United States and Palestine together offered the Jews accommodation at the trickling rate of a few thousand month after month. For the hundreds of thousands of uprooted survivors, the only prospect was a wait of years.

In Poland, Czechoslovakia, and Hungary many Jews chose not to wait; they decided to embark on their journey, even if in the meantime they could not travel more than halfway. From Poland the exodus began through Czechoslovakia to the American zone in Germany.⁹¹ From Hungary and Romania the Jews began to arrive in Austria.⁹² By November 1945 the flow was beginning to thicken, and thousands of

86. Most of these camp inmates were Hungarian Jews. Other significant groups were deportees from Poland, Holland, Slovakia, and Lithuania.

87. Duschinsky, "Hungary," in Meyer et al., *The Jews in the Soviet Satellites*, pp. 373-489; Nicolas Sylvain, "Rumania," *ibid.*, pp. 491-556.

88. Weinryb, "Poland," *ibid.*, p. 244.

89. Report of Anglo-American Committee, 1946, Cmd. 6808, pp. 65-66.

90. *Ibid.*

91. Weinryb, "Poland," in Meyer, et al., *The Jews in the Soviet Satellites*, pp. 254-57.

92. Report of the Anglo-American Committee, 1946, Cmd. 6808, pp. 48-49.

CONSEQUENCES

refugees were spilling over into Italy.⁹³ These infiltrations were only an introduction. Under a Soviet-Polish agreement, all Jews and Poles in Soviet Russia who had been Polish citizens before September 19, 1939, were permitted to return to Poland.⁹⁴ Over 150,000 Jews in Soviet Asia were affected by that agreement. From their Uzbek, Turkmen, Tadzhik, and Kazakh exiles, the Jews now started to move westward to the new Polish frontier. Passing the gutted ghettos, they were sent on to the newly administered Polish territory to the west, where they could come into possession of abandoned German lands and homes. But the migrants from the Asian USSR did not stop in the Pomeranian-Silesian region. Joining the survivors of Poland, they overflowed into the Western-occupied zones of Germany.⁹⁵

The British authorities in Germany looked upon the influx of the Jews as a vast conspiracy to explode the immigration barriers to Palestine. Lieutenant General Sir Frederick Morgan, who served as chief of displaced persons operations in Germany for the United Nations Relief and Rehabilitation Administration (UNRRA), declared in an interview before newsmen that a secret Jewish organization was behind the infiltration into Germany from the east, that these Jews were "well dressed, well fed, rosy cheeked," and that they had "plenty of money." "They certainly do not look like persecuted people," he observed. Then, warning that the European Jews were "growing into a world force," he confided that they were all planning to leave Europe.⁹⁶

The sentiments expressed by this general guided the British in their actions. The Jewish Brigade was withdrawn from Austria, and the frontier controls were tightened.⁹⁷ To the north, in Germany, the British denied admission to displaced persons camps in their zone to all persons who arrived there after June 30, 1946. The protests of Director General La Guardia of UNRRA to Prime Minister Attlee did not change the British decision in this matter.⁹⁸ Toward the end of 1946 the British government decided to adopt a compulsory labor law for resi-

93. Transit to Italy was facilitated by the Jewish Brigade from Palestine, then stationed in the British zone of Austria, astride the route from Vienna to the Italian frontier. *Ibid.*

94. Weinryb, "Poland," in Meyer et al., *The Jews in the Soviet Satellites*, pp. 361-62.

95. *Ibid.*, pp. 362, 266-68.

96. "UNRRA Aide Scents Jews' Exodus Plot," *The New York Times*, January 3, 1946, pp. 1, 3.

97. Report of Anglo-American Committee, 1946, Cmd., 6808, p. 48.

98. George Woodbridge (Chief Historian of UNRRA), *UNRRA—The History of the United Nations Relief and Rehabilitation Administration* (New York, 1950), vol. 2, p. 512.

RESCUE

dents of the displaced persons camps in the British zone of Germany. The UNRRA administration's protest that the law contained no safeguard for Jews and other ex-inmates of German concentration camps was entirely in vain.⁹⁹

Blocked by the British, the Jews poured into the American zones. From January to April 1946, the rate of entry was 3,000 per month into the American zone of Germany and nearly 2,000 into American-occupied Austria, including the Vienna area.¹⁰⁰ In April the Jewish displaced persons population in Western-occupied Germany was 3,000 in Berlin, 1,600 in the French zone, 15,600 in the British zone, and 54,000 in the American zone. The comparable figures for Austria were 1,000 in the British zone and 6,500 in the American zone.¹⁰¹ By the end of 1946 the number of displaced Jews in the Western zones of Germany and Austria had risen to about 204,000. The American area contained 183,600, or about 90 percent of them.¹⁰²

The concentration of so many displaced persons in the American zones prompted Senator Conolly to express the opinion that the United States was "the biggest sucker in the world" and that in Germany the Americans were "accepting people from all the other zones and feeding them."¹⁰³ Senator Conolly's remark indicated that, whereas the Palestine issue was dictating British actions, the cost of maintenance would become the chief problem in the American zones. Under Control Council Law No. 2, the care of displaced persons on German soil was a German responsibility. From 1946 on, however, the United States

99. *Ibid.*, p. 520.

100. German statistics from Jay B. Krane, chief, reports and analysis branch of UNRRA Central Headquarters for Germany, to Ira Hirschmann, special representative to the Director General of UNRRA, June 26, 1946. Typewritten carbon copy of the original letter in UNRRA Central Headquarters for Germany, Miscellaneous Documents, 1945-47, Columbia Law Library. For monthly statistics of arrivals and departures of Jews in the American-held territory of Austria, from November 1945 to August 1949, see U.S. High Commissioner, *Civil Affairs Austria—Statistical Annex*, August 1949, p. 11.

101. *Report of Anglo-American Committee*, 1946, Cmd., 6808, pp. 47-48. In Italy there were about 16,000. *Ibid.*, p. 58.

102. Testimony by Assistant Secretary of State John H. Hilldring, Hearings before Subcommittee on Immigration and Naturalization of the Committee on the Judiciary, House of Representatives, 80th Cong., 1st sess., June-July 1947, pp. 124-25. The division between the two U.S. zones was: Germany, 152,803; Austria, 30,797. The Austrian figure is 6,200 higher than the one in the *Statistical Annex* of the High Commissioner's report (August 1949, p. 11). Hilldring's figure for the number of Jewish displaced persons in Italy on December 31, 1946, was 21,288.

103. Confidential report by George Meader, Chief Counsel, Special State Committee Investigating the National Defense Program, November 22, 1946, mimeographed, p. 8. The report was subsequently released.

guaranteed to the Germans a minimum standard of living. To make good that guarantee, the United States army was spending in Germany over \$500,000,000 a year under the budget heading "Government and Relief in Occupied Areas" (GARIOA). Insofar as the German economy did not supply the needs of the displaced persons (and it supplied in the main only fringe services of an administrative character), the clothing and feeding of these people had to be financed from GARIOA. And while non-Jewish displaced persons were leaving the American zone to go back to their homes, more and more Jews arrived on the scene.¹⁰⁴

Searching for a solution to this problem, War Department officials thought of ridding themselves of 70 percent of their displaced person (DP) burden by closing the camps to all but persecutees. The plan failed when strong Catholic and Protestant groups protested to President Truman that the measure was an act of discrimination that would favor only the Jews.¹⁰⁵ The military authorities then considered the less novel solution of reducing the standards of upkeep, for both shelter and food.

The billeting problem was complicated by the arrivals of trainloads of German expellees from Czechoslovakia and Hungary. Although by an old military directive displaced persons were accorded priority over the German population in matters of housing,¹⁰⁶ the practice was often quite different. Thus a group of 300 Jews who were living in houses at the DP center in Fürth was ejected by military police in order to make room for a trainful of Germans who were waiting at a siding to move in.¹⁰⁷

In June 1946 the Third Army directed its three divisions that under no circumstances were substandard accommodations to be provided

104. At the end of the war Jews constituted a negligible percentage among millions of DPs. By the end of 1946, 30 percent of all DPs in camps of the American zone were Jews. The yearly budget for DP maintenance in that zone was calculated at \$109,000,000. For each DP the cost was as follows: food, \$12 monthly (\$13.20 for persecutees, including Jews); maintenance, \$5 monthly; initial outfit of clothing, \$49. Meader report, p. 47. The cost of maintaining the Jews was thus in the neighborhood of \$33,000,000 per year.

Unlike Germany, Austria was a recipient of UNRRA aid, and from April 1 to December 1, 1946, UNRRA took responsibility for supplying the DPs. From January 1 to August 18, 1947, the American army bore the cost. The army, however, spent only \$10 per month. Headquarters, United States Forces in Austria, *A Review of Military Government*, September 1, 1947, p. 166. At that rate, the cost to the U.S. Army of supplying the Jewish DPs in Austria was approximately \$2,500,000.

105. Krane to Hirschmann, June 26, 1946. UNRRA Miscellaneous Documents. Meader report, p. 43.

106. Louise W. Holborn, *The International Refugee Organization* (London, New York, and Toronto, 1956), p. 131, citing SHAEF memorandum of April 15, 1945.

107. Leo W. Schwarz, *The Redeemers* (New York, 1953), pp. 104-6.

for persecutees.¹⁰⁸ Nevertheless, the great bulk of the Jews were forced to remain in the camps. Frequently these camps were overcrowded. Some lacked basic facilities for heating, cooking, and washing. Family privacy could often be achieved only by partitioning the barracks with blankets swung across ropes.¹⁰⁹ In a somewhat similar vein, the clothing goal was met by a yearly issue of one complete set of clothes—sometimes a little "strange and worn."¹¹⁰ The food allowance was fixed in calories, two-thirds of which came from bread and potatoes.¹¹¹ The UNRRA's historian, Woodbridge, states that "since the indigenous populations resented the giving of food to displaced persons," and "since the military authorities frequently sympathized with the indigenous populations . . . it required unremitting efforts by the UNRRA officials to keep their charges from starvation."¹¹²

Unlike the British, the Americans did not require the Jewish DPs to pay for their upkeep by donating their labor to the German economy.¹¹³ "It is understandable," said Assistant Secretary of State Hilldring, that Jews "have no wish to work for or under the Germans."¹¹⁴ Not all Americans, however, were so understanding. George Meader, the Chief Counsel of a special Senate committee investigating the defense program, compared the Jews with the Balts. In contrast to the industrious Balts, he said, the Jews "do not desire to work, but expect to be cared for, and complain when things are not as well done as they think they should be. . . . It is very doubtful," he added, "that any country would desire these people as immigrants."¹¹⁵

By April 1947 the War Department followed the British example by

108. Krane to Hirschmann, June 26, 1946, in UNRRA Miscellaneous Documents.

109. Holborn, *The International Refugee Organization*, vol. 2, p. 583, pp. 218-19. Woodbridge, *UNRRA*, vol. 2, p. 503.

110. Woodbridge, *UNRRA*, vol. 2, p. 503.

111. *Ibid.*, pp. 503-4. From October 1945 to August 1946 the number of calories for Jewish DPs in Germany dropped from 2,500 to 2,200 in the U.S. zone, and from 2,170 to 1,550 in the British zone. In the American zone of Austria, the drop was from 2,400 (U.S. Army) to 1,200 (UNRRA). *Ibid.*, p. 503; *Report of Anglo-American Committee*, 1946, Cmd. 6808, p. 49. The U.S. Army made additional allowance for persecuted persons (mostly Jews). In Germany that allowance was 200 calories (included in figures above). The British classified Jews by "nationality."

112. Woodbridge, *UNRRA*, vol. 2, p. 504.

113. Wages accruing from German employment could be paid only in reichsmark, which had no foreign exchange value and which could not even be used for purchasing in the rationed German market. The Americans could not benefit either. DP income was subject to German taxation, and savings were headed for devaluation.

114. Testimony by Maj. Gen. Hilldring in hearings before Immigration Subcommittee, House Judiciary Committee, 80th Cong., 1st sess., June-July 1947, pp. 126-27.

115. Meader report, pp. 45, 52.

closing the gates to the camps. After April 21 no new arrivals were allowed refuge in them.¹¹⁶

It should be pointed out that the military authorities in all occupation zones undertook responsibility only for essential care and that on occasion there were lapses in the exercise even of this responsibility. To plug some of the gaps and to supply all the "supplementals" from additional food rations to schooling of children and training of adults, the resources of international organizations and private societies had to be brought into operation. Up to June 30, 1947, the international agency concerning itself with refugee matters was UNRRA. Since UNRRA had been created for the relief and rehabilitation of Allied nations only, a question arose immediately whether Jews who were stateless or who carried the nationality of an enemy or ex-enemy state should receive any aid at all.

The British government took the view that such Jews were not entitled to assistance. In a letter by Sir George Rendel to UNRRA's displaced persons division, the British delegate declared: "The fact that Jews can, as a race, be identified by certain characteristics, and that political developments, and in particular the National Socialist racial doctrine, have given them peculiar problems of importance in international politics, are not sufficient reasons for treating 'Jews' as a separate national category."¹¹⁷ The British objection was overcome by an American-sponsored resolution that extended UNRRA's aid to all persons "who have been obliged to leave their country or place of origin or former residence or who have been deported therefrom, by action of the enemy, because of race, religion or activities in favor of the United Nations."¹¹⁸

116. Headquarters, United States Forces in Austria, *A Review of Military Government*, September 1, 1947, p. 165; Woodbridge, *UNRRA*, vol. 2, p. 512.

117. Text of British memorandum in UNRRA Standing Technical Subcommittee on Displaced Persons for Europe, 9th meeting, August 11, 1944, TDP/E(44)38. Also, British draft resolution on UNRRA operations in enemy or ex-enemy areas, September 12, 1944, UNRRA Council, 2d sess., document 32.

118. Council Resolution No. 57, 2d sess., September 1944, in Woodbridge, *UNRRA*, vol. 1, p. 135. The wording of the resolution was such that aid could not easily be given to posthostility refugees. The UNRRA administration solved that problem by adopting the doctrine of "internal displacement"; that is, the "infiltrates" were covered because they were displaced from the moment they were forced to leave their homes by the Germans. *Ibid.*, vol. 2, pp. 509-10. The British restriction with respect to "nationality" would have deprived more than 20,000 Jews of UNRRA benefits. See chart of Jews receiving IRO assistance (by nationality), July 31, 1947, from Report of Special Subcommittee on Displaced Persons and the International Refugee Organization, House Foreign Affairs Committee, 80th Cong., 1st sess., 1947, p. 8, in Holborn, *The International Refugee Organization*, p. 199. The IRO took over UNRRA's function in refugee matters on July 1, 1947.

T A B L E 11-7
UNRRA AID TO DISPLACED PERSONS

Country	Supervision of Camps	Supply of Essential Food, Fuel, and Clothing
Germany	{ American zone British zone	All camps } Most camps }
Austria	Less than half the camps	\$2,427,000 for food
Italy	A few camps	Complete for April-December 1946
		Complete

NOTE: Woodbridge, *UNRRA*, vol. 2, pp. 491-92, 500 ff. Compilations of camps under UNRRA supervision in Holborn, *The International Refugee Organization*, p. 236. On December 31, 1946, the division of the Jews in Austria was as follows:

UNRRA camps	9,833
Military camps	20,213

Testimony by Hilldring, Immigration Subcommittee, House Judiciary Committee, 80th Cong., 1st sess., June-July 1947, p. 125. UNRRA had a \$4-billion operation financed to the extent of 70 percent by the United States. Expenditures for DPs were approximately \$60,000,000. The Jewish share was about \$15,000,000. See statistics in Woodbridge, *UNRRA*, vol. 3, pp. 423, 428, 500, 506. Germany was not entitled to UNRRA aid. Austria and Italy received \$135,513,200 and \$418,222,100, respectively. *Ibid.*, p. 428.

The type of assistance rendered by UNRRA was in the main a rounding out of essential care. Table 11-7 shows UNRRA's responsibility before its liquidation. When the International Refugee Organization assumed UNRRA's caretaking functions on July 1, 1947, it attempted to improve the accommodations, clothing, and food rations of the DPs.¹¹⁹ Nevertheless, the combined rate of military and international spending was only enough to guarantee to the survivors continued life, and it fell to Jewish organizations to invest substantial sums for the innumerable needs of a completely rootless community.¹²⁰

Between 1945 and 1948 a quarter of a million Jews had become DPs. Germany had created these displaced Jews, but it took the whole world to prolong their displacement for years. The Jews were being dammed up: they were coming in a massive flow but could leave only

119. Holborn, *The International Refugee Organization*, pp. 218-38. Unlike UNRRA, the IRO was devoted entirely to refugees. Operating to the end of 1951, it spent \$400,000,000. Expenditures, with overhead, for care of DPs were ca. \$175,000,000. Care of Jewish DPs may have cost about \$30,000,000. *Ibid.*, pp. 124, 199-200, 238.

120. The Jewish share of military-international spending probably exceeded \$150,000,000. During the life of the IRO the principal Jewish relief organization (the Joint Distribution Committee) contributed about \$26,000,000 to the upkeep of Jewish DPs. *Ibid.*, pp. 148-49. The total Jewish contribution is considerably greater.

CONSEQUENCES

in trickles. One of the small openings was an order by President Truman, dated December 22, 1945, that visas within the quota limits be distributed so far as possible to DPs of "all faiths, creeds and nationalities" in the American occupation zones.¹²¹ Most other openings were smaller still. The war-torn countries of Europe were largely closed, and the British Dominions were not anxious to receive masses of Jews. The Jews themselves were more and more resolved to move to their national home. In 1946 the authorized migration to Palestine was beginning to be supplemented by small, crowded ships attempting to crash the British blockade. Several thousand Jews were landed. Sixteen thousand were intercepted and interned on the island of Cyprus. One ship, the *Exodus*, was boarded, and its passengers were sent back to Germany. But in 1948 the British were ready to quit. When the Jewish state was established in Palestine on May 15, the logjam was finally broken.

One month after the mass movement of Jews to Israel got under way, the United States, too, opened its doors. Special legislation was required for the large-scale admission of the stranded DPs, and a skeptical Congress had debated such legislation for a year. The lawmakers' skepticism was reflected in the thinking of Texas Representative Gossett of the Immigration Subcommittee of the House. If the United States was going to follow humanitarian motives, he reasoned, why not admit Chinese, Indians, and all other suffering groups in unlimited numbers? Conversely, if economic considerations were going to be decisive, America could get better people than DPs. With regard to the Polish Jews, he was convinced of one thing: their rightful place was behind the Iron Curtain. "Somebody," he said, "has to fight communism in those countries, and are not some of these people equipped to do that?" Told about the pogroms, he asked Secretary of State Marshall, "But the thing that puzzles me is why there would be any perse-

121. See statement by Truman, December 22, 1945, and his letter of the same date to Secretaries of State and War, Attorney General, Surgeon General, and Director General of UNRRA, in *The New York Times*, December 23, 1945, p. 10. With respect to the provision of the immigration law requiring immigrants to pay their own fare, the President authorized admission of DPs whose fare was advanced by private welfare organizations. *Ibid.*

British Labor Minister George Isaacs attempted to facilitate the entry of DPs from the British zones to England. He was unsuccessful. The British government wanted only young unmarried people, who could be put up in barracks and who would not complicate the housing situation. Testimony by Rabbi Philip S. Bernstein (adviser on Jewish DPs to General Clay), Immigration Subcommittee, House Judiciary Committee, 80th Cong., 1st sess., June-July 1947, p. 241.

cution of Jews in Poland when half of the Polish Government are Jews?"¹²²

The final outcome of the doubts and opposition was the passage of a compromise bill at the end of a long legislative day at two o'clock in the morning. The act excluded (with certain exceptions) all DPs who had arrived in Germany, Austria, or Italy after December 22, 1945. Of 202,000 DPs who were to be admitted between July 1, 1948, and June 30, 1950, 80,800 visas were to be set aside for Balts and 60,600 for persons who were engaged in agricultural pursuits (Balts or others). On the other hand, the eligible DPs could be admitted without regard to quota limitation, in that 50 percent of the quota of succeeding years could be mortgaged to reach the 202,000 total. Among the preferences prescribed for the selection of the 121,000 nonagricultural DPs, one category comprised clothing and garment workers.¹²³ Apart from that provision, the Jews had only one advantage: their organizations were well prepared. They could employ major resources to speed the processing of the DPs and to provide assurances of support for the period of their integration. This preparation paid off: During the two-year period about 40,000 Jewish DPs were admitted to the United States.¹²⁴

In the winter of 1949-50, hearings were resumed with a view to extending the Displaced Persons Act. The Jews were interested in three amendments: They wanted the removal of the cutoff date of December 22, 1945, in order that the later infiltrees could come into the United States; they asked that eligibility be granted to the Shanghai Jews; and they desired that clothing workers and agricultural workers be given equal chances in the preference scheme.

Let us point out that the Jews were not the only petitioners. Polish, Greek, and Italian interests were working too. Above all, the German-American organizations were demanding major concessions. Though Senator Langer of North Dakota had secured one-half of the German-Austrian quotas from July, 1948, to June, 1950, for ethnic German refugees, the German-Americans were decidedly not satisfied. Testify-

122. Remarks by Gossett in Hearings of Immigration Subcommittee, House Judiciary Committee, 80th Cong., 1st sess., June-July 1947, pp. 237, 511.

123. Displaced Persons Act, approved by the President on June 25, 1948, 62 Stat. 1009.

124. Statement by Lewis Neikrug, Director General of the Hebrew Immigrant Aid Society (HIAS), cited in report of special subcommittee of House Judiciary Committee on Displaced Persons in Europe and their Resettlement in the United States, 81st Cong., 2d sess., January 20, 1950, pp. 76, 80-81. Also, Senate Report No. 1237, January 25, 1950, United States Code Congressional Service, 81st Cong., 2d sess., No. 5, pp. 1337-43.

CONSEQUENCES

ing before a subcommittee of the Senate Judiciary Committee, Otto Hauser of American Relief for Germany, Inc., declared: "Thirty-three millions of German extraction demand the same rights under the immigration laws of the United States as are enjoyed by Americans of any other extraction."¹²⁵ Otto Durholz of the Committee for Christian Action in Central Europe argued that an exclusion of ethnic Germans would be "racist."¹²⁶ J. H. Meyer of the Steuben Society assured the senators that the "co-racials" of the prospective immigrants in the United States were good, hard-working farmers.¹²⁷

Congressman Celler then came to testify before the Senate Committee. As chairman of the House Judiciary Committee, his influence was considerable. Now he found himself in a difficult position: he was a Jew. He had reason to suspect that ethnic Germans had participated out of proportion to their numbers in the destruction of the Jews; yet he did not wish to jeopardize the extension of the act. Resigning himself to a horse-trading session, he said, "There are some good Volksdeutsche, there are some bad Volksdeutsche."¹²⁸ The Jews got their revisions. An additional 22,000 Jewish DPs were brought into the country. The German-American organizations secured authorization for the admission of an additional 54,744 ethnic German refugees.¹²⁹

In the final tally the 250,000 Jewish DPs found their homes in the following places:¹³⁰

Israel	142,000
United States	72,000
Canada	16,000
Belgium	8,000
France	2,000
Others	10,000

It is noteworthy that before the war the United States received more than twice as many refugees as Palestine. After the war, in spite of the Displaced Persons Act, this ratio was reversed.

Nor was this all. In the Eastern countries the Jewish communities could no longer maintain themselves. The catastrophe had brought to Jewry rampant physical privation. In the immediate postwar years the principal American Jewish relief organization the Joint Distribution Committee, gave aid to more than 300,000 Jews in Romania and Hungary alone.¹³¹ Tens of millions had to be spent to prevent disease, starvation, and death. The Romanian-Hungarian area in particular was affected by another plague—deportations.

On September 1, 1949, a roundup struck the Transnistrian Jews. These people originally hailed from the Bukovinian-Bessarabian region. They had been deported east when Romania expanded, and transported west when the Romanian line receded. Many reached Old Romania and began to settle there. But the Bukovinian-Bessarabian provinces had become Soviet territory, and the hounded remnants of Transnistria were claimed by the Soviet Union as its citizens. They disappeared by ship and rail behind the Soviet border.¹³²

In February 1952, Romanian police launched a drive to relieve the "overpopulation of Bucharest" by deporting from the city a sizable number of former shop owners and other "unproductive" people. The deportees, who included many Jews, were sent to the Danubian-Black Sea canal construction project and to further destinations within the USSR.¹³³ Shortly thereafter, Hungarian officials decided to solve their housing shortage in Budapest in an identical manner.¹³⁴ The Jews behind the Iron Curtain thus found themselves in an impossible position.

125. Testimony by Hauser, Hearings, Senate Judiciary Committee/Subcommittee on Amendments to the Displaced Persons Act, 81st Cong., 1st and 2nd sess., March 25, 1949 to March 16, 1950, p. 187.

126. Testimony by Durholz, *ibid.*, p. 77.

127. Testimony by Meyer, *ibid.*, p. 161.

128. Testimony by Celler, *ibid.*, pp. 192-93.

129. The cutoff date was extended from December 22, 1945, to January 1, 1949, benefiting Jewish DPs and German expellees alike. A total of 4,000 visas were authorized for DPs in China. Farm and clothing workers received preferences without specified numbers or percentages. The German-American organizations scored a number of successes. Only the first 7,000 ethnic German immigrants were chargeable to the German-Austrian quotas; the remainder was taken off the quotas of the respective countries of birth. Since the IRO was paying for transportation of DPs only, the U.S. government transported the ethnic German refugees. See Displaced Persons Act Amendment, approved June 16, 1950, 64 Stat. 219. A total of about 64,000 Jews arrived in the United States under the DP Act and its amendments from July 1948 to June 1952. During the same period, 53,448 ethnic Germans were admitted to the country. Final Report of Displaced Persons Commission, *The DP Story*, (Washington, D.C., 1952), pp. 248, 366.

130. For the period July 1, 1947, to December 31, 1951, statistics of Jewish DP movements totaling 231,548 may be found in Holborn, *The International Refugee Organization*, p. 440. Adjustments for the two years preceding IRO operations are approximations. The IRO contributed, with overhead, more than \$20,000,000 to the transportation of Jewish DPs. Jewish organizations covered the remaining costs.

131. Sylvain, "Rumania," in Meyer, et al., *The Jews in the Soviet Satellites*, pp. 520-23, 543; Duschinsky, "Hungary," *ibid.*, pp. 407-8, 434, 464-66.

132. *American Jewish Year Book* 52 (1951): 351-52, from a report in the *Jewish Daily Forward* (New York), October 4, 1949.

133. Wolfgang Bretholz, "Tragödie in Bukarest," *Aufbau* (New York), April 16, 1952, pp. 1, 12. Sylvain, "Rumania," in Meyer et al., *The Jews in the Soviet Satellites*, p. 550.

134. Duschinsky, "Hungary," in Meyer et al., *The Jews in the Soviet Satellites*, pp. 471-82.

The Communist party looked upon them as exponents of capitalistic cosmopolitanism. Within the population itself there was a tendency to identify them with Communist rule. The eastern Jews therefore had only one escape: they had to move out.

Mass emigration from Eastern Europe was easiest in non-Communist Greece and in the neighboring states of Yugoslavia and Bulgaria. It was beset with obstacles, interruptions, and restrictions in the countries to the north, particularly in Romania and Hungary. It could not even begin in Russia. The obstructions were introduced because of economic considerations. The "necessary" Jews had to stay behind; the others had to leave at least some of their possessions. The emigrating Jews were subjected to heavy passport fees in Czechoslovakia.¹³⁵ Passage had to be booked for an exorbitant price on government ships in Romania.¹³⁶ Dollar ransoms were paid to get 3,000 Jews out of Hungary.¹³⁷

In spite of all the impediments, the migration continued. The Hungarian revolt of 1956 occasioned the immediate departure of some 18,000 Jews, and a purge of Jews launched by the Polish government in 1967-68, following the Six-Day War in the Middle East, drove all but a handful of the 20,000 Jews, still living in Poland at that time, into exile. Before 1970, the Soviet Union opened its doors to limited emigration of its Jewish community, albeit under conditions involving long waiting periods and much frustration. Thirty-five years after the end of the Second World War, Eastern European Jewry was an aging population in a state of continuous decline (see Table 11-8).

In the center of Europe the Jews of Germany and Austria in the 1950s totaled 5 percent of the number who had lived there in 1933. Germany still had 25,000 Jews, Austria about 10,000. These Jews no longer constituted a viable community. They were composed of survivors in mixed marriages, old people from Theresienstadt, DPs who had not moved on, and returnees from prewar emigration. In 1950, 13 percent of the Jews in Germany were under eighteen.¹³⁸ The economy of the

135. Meyer, "Czechoslovakia," *ibid.*, pp. 145-52; A. Nissim, "Falls Dr. Fischl auftauchen sollte," *Aufbau* (New York), May 11, 1951, p. 7.

136. Sylvain, "Rumania," in Meyer et al., *The Jews in the Soviet Satellites*, pp. 548-50.

137. "Last Jews To Quit Red Hungary Sail," *The New York Times*, November 18, 1953, p. 5. The price was \$3,000,000.

138. *American Jewish Year Book* 52 (1951): 316. Thirty years later, the Jewish population of West Germany and Austria, with new immigrants from Eastern Europe, was still about 35,000. *American Jewish Yearbook* 84 (1984): 205-11, 225. *This Week in Germany*, June 22, 1984, p. 5. West Germany's total membership in Jewish congregations in 1984 was 27,791. Austria's about 7,500.

T A B L E 11-8
POSTWAR JEWISH POPULATION CHANGES IN
EASTERN EUROPE

Country	Survivors and Returnees 1945-46	DP Migration 1945-48	New Migration 1948-80	Remaining 1980
Czechoslovakia	44,000	5,000	30,000	9,000
Poland	225,000	150,000	65,000	6,000
Romania	430,000	40,000	340,000	35,000
Hungary	200,000	25,000	35,000	65,000
Bulgaria	47,000	—	40,000	4,000
Yugoslavia	12,000	—	5,000	5,000
Greece	12,000	—	6,000	5,000
USSR	2,300,000	—	250,000	1,700,000

NOTE: For statistics and postwar history, see the volumes of the *American Jewish Year Book* published from 1945. In the table the 200,000 survivors and returnees in Hungary include "Jews" under wartime definition, whereas the figure for 1980 excludes converts or born Christians of Jewish ancestry. In the Hungarian census of 1946, only 144,000 persons identified themselves as Jewish. Their median age was ca. 41, and in the age group 20-40, women outnumbered men 4:3. See Randolph Braham, *The Politics of Genocide* (New York, 1981), pp. 1143-47. Emigration from the Soviet Union dropped sharply after 1980.

Jews in Germany was partly marginal, partly terminal. Roughly a third of them derived an income from business, professional fees, or employment. The business sector consisted of about 1,800 shopkeepers and 100 owners of small manufacturing plants. Most of these businessmen were DPs. The self-employed professionals also numbered about 100; most of them were lawyers. There were in the neighborhood of 3,000 employees, including wage earners in Jewish establishments and the personnel of the Jewish community machinery. The remaining Jews were dependent on pensions and indemnification payments, rent from restituted property, Jewish assistance, and government relief.¹³⁹

More so than anywhere else, the Jews of Western Europe have reestablished their normal mode of existence. But one problem is peculiar to this region. Thousands of children who had been sheltered in convents and homes had become Jewish orphans in Christian custody, and the return of these children to the Jewish community was a slow and drawn-out process. Some were not returned at all. "It would thus

139. Kurt R. Grossman, "Die Wirtschaftslage der Juden in Deutschland," *Aufbau* (New York), August 31, 1956, pp. 25, 37. For an earlier study, see Jack Hain, *Status of Jewish Workers and Employers in Post-War Germany*, Office of U.S. Military Government/Manpower Division, Visiting Expert Series No. 10, August 1949.

CONSEQUENCES

seem," remarked a Jewish writer, "as if the Jewish people, after having lost 6 million souls through the savagery and sadism of Nazi paganism, will have to resign itself to the loss of another few thousand to the mercy of Christendom."¹⁴⁰ In 1983 one of these few thousand was named a cardinal.¹⁴¹

SALVAGE

If we were to survey the hurt inflicted by the Germans upon the Jews, we would have to consider the suffering and dying of the victims; we would have to measure the impact of these deaths on those who were closest to the victims; we would have to think about the long-range effects of the entire destruction process upon Jewry as a whole. All this adds up to a vast, almost nonassessable loss. What, then, is to happen after such damage has been done? When ordinary justice prevails, there is an expectation of compensation for every wrong, and the bigger the injury, the greater will be the claim for payment. However, the postwar situation confronting the Jews was far from ordinary. They were in the midst of a cold war, and neither side was dependent on their support. Much that the Jews wanted had to be gotten in Germany, and Germany itself was the battleground.

In 1945 the demarcation line running through Germany split Europe in two. East and West carried out their separate policies in their respective areas. The Soviet policy was directed toward maximum exploitation of the newly conquered zone, and during this stage the Jews were not recognized as a special group with special problems of their own. When East Germany was graduated to junior satellite status, the Jews, with Moscow's blessing, continued to be ignored. Now that the Soviets had had their meal, the Germans had to eat. For Jewry nothing was left except the principles of socialist equality.

140. Israel Cohen. *Contemporary Jewry* (London, 1950), pp. 263-64. See also Hildegard Level, "Return to Holland," *Congress Weekly*, January 2, 1950, pp. 9-11. Three cases of conversion and kidnapping aroused publicity in Western Europe and America. The cases involved the Finaly brothers in France, Rebecca Melhado and Anneke H. Beekman in Holland. Anneke disappeared. See *The New York Times Index* and other papers, 1953-54.

141. Jean-Marie Lustiger, born in Paris in 1926, taken in by a Catholic family in Orléans, and converted at the age of fifteen, was appointed Archbishop of Paris in 1981. *The New York Times*, February 3, 1981, p. A5. His elevation to cardinal followed two years later. *Ibid.*, January 6, 1983, pp. A1, A10.

SALVAGE

The Western aim in Germany was wholly different from that of the Soviets. Though initially concerned with depriving Germany of its war industries and external assets, the Western coalition soon began to look upon the West German industrial complex as a potential bulwark against the Soviet Union. This consideration dictated the preservation and ultimately even the expansion of Germany's productive capacity. During the ensuing buildup the United States and England rendered great assistance to the Germans. At the same time, nothing was to be shipped out of Germany that was needed for German recovery. Insofar as there were any significant exports of the least essential items, the accruing foreign credits were to be used only for the most essential imports. The claimants outside Germany's borders could thus be paid neither in goods nor in money. However, the Allied controls in their very nature were designed to guarantee an eventual German ability to make some payments abroad. Consequently the Allied authorities did not summarily dismiss the question of admitting claims advanced by the Jews.

From the very start the Jews asked for three things: they insisted on the restitution of all Aryanized and confiscated Jewish property; they wanted indemnification for survivors who had suffered damage and injury; and they claimed reparations for the rehabilitation of the displaced.¹ In all these demands the Jews confined themselves to the needs of the victims who were still alive. For all those who had gone down with everything they had there was no further claim. Though European Jewry had for centuries been the fountainhead of all that mattered in Jewish life, the Jews of the world did not step forward now as its heirs in law. One might say that the Jewish organizations were reversing the inherent proportionality between infliction and adjustment: their claim was like a salvage operation in which recovery is inversely proportional to the depth of the loss. In a sense, the pe-

1. Dr. Chaim Weizmann (Jewish Agency for Palestine) to governments of United Kingdom, United States, USSR, and France, September 20, 1945, in Government of Israel/Ministry for Foreign Affairs, *Documents Relating to the Agreement between the Government of Israel and the Government of the Federal Republic of Germany* (Jerusalem, 1953), pp. 9-12. Statement of the American Jewish Conference on the German Peace Treaty, together with proposals for inclusion in the treaty, approved by the interim committee, of the conference on January 22, 1947, and signed by Henry Monsky, chairman of the interim committee, and Louis Lipsky, chairman of the executive committee, in American Jewish Conference, *Nazi Germany's War against the Jews* (New York, 1947), pp. iii-xv. The conference proposals differed from those of the agency principally in their emphasis upon restitution and indemnification. While Weizmann demanded German contributions for resettlement in Palestine, the conference spoke only of "token" reparations.

trators were asked to pay for the incompleteness of their job. Yet even this bill was not paid in full.²

The Jews could expect their earliest success in the battle for restitution. However, this contest became at the very outset a struggle for two objectives: the return of property values to individual survivors and the recovery of assets that had no heirs. The first objective was much easier to achieve than the second. At that, the difficulties within the realm of individual restitution were already quite formidable. Some of these obstacles were the product of intrinsic factors; the others were the outcome of extraneous causes.

The inherent limitations in the individual procedure were threefold. In the first place, the restoration of a property right was feasible only to the extent that the object was identifiable; that is, it had to be something that could be spotted in the hands of a wrongful possessor. Little could be done, for example, to effect the return of movables that had long been in non-Jewish homes. Second, the restitution laws did not lend themselves to the re-creation of an asset that had disappeared, such as a liquidated business or a job that was no longer in existence. A third limitation was generally the repossession of something that had only been rented, such as an apartment. Clearly, these were natural limits. The very idea of a restitution process did not encompass the solution of such problems. However, the Jews were also confronted with complications that were not rooted in the administrative characteristics of the operation but were the result of outside forces. These factors, which effectively blocked or impeded the return of tangible property, could be found primarily in Eastern Europe and in occupied Germany.

Because of the communization of the East, the Jews could no longer count on the permanent recovery of agricultural land or industrial enterprises. In the former Axis states (Bulgaria, Romania, and Hungary), Jewish property that had been acquired by the Germans was treated by the Soviets as a German asset; that is, it was now subject to Soviet acquisition as part of German reparations.³ The Czechoslovak

2. In Jewish terminology the demands were "material claims." The Germans called their payments "amends" (*Wiedergutmachung*).

3. Sylvain, "Rumania," in Meyer et al., *The Jews in the Soviet Satellites*, p. 515. In Paris during the peace conference of June 1946, the Jewish organizations had succeeded in inserting into the treaties with Rumania and Hungary provisions for the restoration of property rights. The Bulgarian Jewish community did not desire the insertion of such a clause in the peace treaty with Bulgaria. Israel Cohen, "Jewish interests in the Peace Treaties," *Jewish Social Studies*, 11 (1949): 111-12. The USSR was undeterred by these treaty provisions, although it was a party to the treaties. The Soviet stand with regard to Aryanized property in German hands was duplicated in Austria. See report of an incident in Soviet Vienna by the U.S. High Commissioner, *Civil Affairs Austria*, August 1949, pp. 54-55.

government looked upon all Jews who had held German or Hungarian nationality in 1930 as enemy aliens who were not entitled to the receipt of their former belongings.⁴ On the whole, not much was returned to the Jews in the East. The meagerness of the results forced more and more Jews to the edge of departure, and the ensuing emigration nullified much of what had already been granted.

In Germany the principal problem arose from the fact that most of the claimants were already outside the country. These prewar refugees did not merely want their property returned to them; they wanted to sell it and enjoy the proceeds. The goal was not to be attained without an uphill fight.

The anchor of Jewish hopes lay in an ancient Western commitment: a Western system of law could not *ipso facto* recognize changes brought about by contracts that had not been freely negotiated. The United States in particular took that position from the beginning. In the earliest directive from the Joint Chiefs of Staff, the U.S. zone commander was instructed to "impound and block" all "property which has been the subject of transfer under duress."⁵ A long time elapsed, however, between the initial blocking of the "duress properties" and their ultimate restitution.

The drafting of a restitution law was tackled toward the end of 1946, and the law was proclaimed on November 10, 1947.⁶ Its basic

4. Meyer, "Czechoslovakia," in Meyer et al., *The Jews in the Soviet Satellites*, pp. 78-84.

5. Par. 48e of Joint Chiefs of Staff Directive 1067/6, April 26, 1946, in Special Report of Military Governor, *Property Control in the U.S.-Occupied Area of Germany, 1945-1949*, July 1949, pp. 46-47. See also American Military Government Law No. 52 (revised text, July 1945), *ibid.*, p. 39. Further, Par. 42b of Control Council Proclamation No. 2 on "Certain Additional Requirements Imposed on Germany," September 20, 1945, *ibid.*, p. 38.

6. American Military Government Law No. 59 on Restitution of Identifiable Property, November 10, 1947, together with implementary regulations. *Ibid.*, pp. 72-83. During the drafting period the United States attempted two alternate approaches: (1) to bring about a four-power agreement on a restitution law for the whole of occupied Germany, and (2) to persuade the newly constituted German provincial governments to enact an acceptable measure in the U.S. zone. Both attempts failed. *Ibid.*, pp. 40-41, 44.

The following laws were enacted in the other zones: French Decree No. 120, November 10, 1947, *Amtsblatt des französischen Oberkommandos in Deutschland*, 1947, p. 1219. British Law No. 59, May 12, 1949, *Amtsblatt der Militärregierung Deutschland—Britisches Kontrollgebiet*, 1949, p. 1196. West Berlin Ordinance BK/0(49)180 (by the three Western powers jointly), July 26, 1949, *Verordnungsblatt für Gross-Berlin*, vol. 1, p. 221. In the Soviet zone the enactment of restitution laws was entrusted to German provincial authorities, which (except in the case of Thuringia) did not even admit claims from absentee owners. In 1953 East Berlin declared all unclaimed Jewish property in control of the state to be "people's property." "Ost-Berlin macht jüdisches Eigentum zu Volkseigentum" *Aufbau* (New York), January 16, 1953, p. 1.

CONSEQUENCES

provisions, which in substance were duplicated in British and French legislation as well as by a joint enactment for the three Western sectors of Berlin, dealt with "identifiable property" (i.e., in the main, business firms and real estate.)⁷ The holder of such property had to report it to the occupation authorities, and the original owner had to file claim with them. Recovery could be effected by agreement between claimant and possessor or by an order from a German restitution agency from which appeal could be taken via German courts to an American board of review.

Insofar as any asset was subject to restitution, the original transfer was deemed to be incomplete, and the claimant was given the option of finalizing the transaction or voiding it. In the first case the seller could treat the acquirer as a debtor and demand the difference between the original purchase price and fair market value, with interest. In the second case the entitled owner could view the holder as a trustee and recover the lost property together with accumulated profits by refunding the original purchase price plus costs of reasonable maintenance.⁸

Since most of the claimants were no longer living in Germany, one might expect that a great many of them would rather have chosen ready money than the cumbersome route that—through refunding, repossession, and eventual sale—could theoretically lead to the same result. Even assuming, however, that the restitutor's money was ready, an added factor had been introduced into the picture: the currency reform of 1948. Under that law, old reichsmark were converted into new deutschmark at rates as drastic as ten to one. Insofar as any judgment allowed the holder to discharge his obligation at that rate (and such was the decision of the American board of review),⁹ the simple path to restitution was virtually extinguished.

Fortunately for the claimant, the 10:1 conversion was applied to refunds too.¹⁰ Yet this was no decisive change, for in that case the

7. Generally speaking, three types of property were not recoverable under the provisions of the law: (1) All tangible personal property the value of which did not exceed RM 1,000 at time of loss, (2) stock certificates, unless they represented ownership in a Jewish enterprise, and (3) discriminatory taxes, including "fines," emigration taxes, and the *Sozialausgleichsabgabe*. (In the case of real estate encumbered by such taxation, the encumbrance devolved on the persecutee.)

8. Management costs generally could not exceed 50 percent of net profits, and the restitutor was liable for profits that should have been made but for his willful failure or neglect. Depreciation was subtracted from the refund; the costs of improvements were added to it.

9. Decision No. 147 by the U.S. Court of Restitution Appeals, reported by the American Federation of Jews from Central Europe. "Umstellung des Anspruches auf Nachzahlung," *Aufbau* (New York), February 22, 1952, p. 8.

10. Decision No. 15 by U.S. Court of Restitution Appeals, April 26, 1950, reported

SALVAGE

recoverable profits were decreased to 10 percent as well. If the profits had been great, so was their reduction; if they had been few, so were the chances for a future sale. In this intricate mechanism the opportunities to achieve a fast recovery in full were few.¹¹

When a claimant finally had his cash, he was confronted with still another difficulty: he had to exchange the money for the currency of the country in which he lived. At first this was impossible, but after a while the Allied authorities permitted the sale of the blocked accounts to non-German investors.¹² Such disposals involved losses of about 40 percent.¹³ With the improvement of the German trade position, the permissible uses of the funds were increased, and the value of the sperrmark rapidly began to approximate that of the deutschmark itself. By the end of 1954 there was no longer a transfer problem.¹⁴ In the interval, those who could least afford to wait had been forced to take the greatest loss.

by Herman Muller of Federation of Central European Jews in "Wichtige Entscheidung des amerikanischen Rückerstattungsberufungsgerichts," *ibid.*, April 18, 1950, p. 22. Decision by Restitution Chamber of West Berlin Chancery Court (3 W. 1376/50), reported by Lyonel J. Meyer in "Eine Entscheidung des Kammergerichts," *ibid.*, August 3, 1951, p. 6. Decision by British Board of Review (51/66), May 30, 1951, reported by Federation of Central European Jews in "Rückgewähr des Kaufpreises," *ibid.*

11. German industrial interests in the meantime fought for changes of the following order: (a) no restitution of property acquired before November 9, 1938; (b) admissibility of the plea of "good faith"; (c) conversion ratios favorable to the restitutor; (d) no interest payments on differentials; (e) no restitution of profits; (f) no liability for value diminution except in cases of gross neglect; (g) exclusive jurisdiction of German courts. The industrialists were basing their hopes on the supposed wearying of the British and French and on a decline of the "influence of Jewish circles in America." Summary of meeting in the legal committee of the Industrial Associations/Commission for Restitution Questions, held on March 2, 1950, in Bonn, reprinted under the title "Neues Attentat auf die Wiedergutmachung," in *Aufbau* (New York), April 21, 1950, pp. 1-2. The German attempt did not succeed.

Jewish property "returned or compensated for" in the U.S. zone was estimated at DM 906,000,000 for the period to May 1954. The program was three-fourths completed by that time. See Margaret Rupli Woodward, "Germany Makes Amends," *Department of State Bulletin*, 31 (July 26, 1954): 128-29.

12. Initially, four types of investments were recognized: (a) the purchase of securities; (b) the acquisition of real estate, (c) construction and reconstruction; (d) credits and business participation. Advertisement for sperrmark by Hamburg-Bremen Steamship Agency, *Aufbau* (New York), May 18, 1951, p. 5. *Aufbau* carried dozens of ads for German sperrmark and Austrian sperrschillinge.

13. From mid-1951 to mid-1953, the sperrmark rose from a low of 10 cents to roughly 14 cents. The deutschmark on the free market rose from about 19 cents to 23 cents.

14. When sperrmark were abolished in September of that year, the deutschmark was traded for 23.5 cents. "Keine Sperrmark mehr," *Aufbau* (New York), September 17, 1954, p. 1.

CONSEQUENCES

For much of the Jewish property that had remained on European soil there were no living owners and no surviving heirs. Ordinarily, heirless property falls to the state, and, indeed, few of these assets were made available to the Jewish communities: In the East their restitution was almost negligible. Hungary turned over a few movables and several hundred buildings. Romania supplied the Federation of Jewish Communities with old furs and old valuables. Czechoslovakia handed over to the Jewish community of Bohemia-Moravia the leftovers of Theresienstadt, amounting to about 60,000,000 crowns, or \$1,200,000.¹⁵ Outside of the Communist sphere, heirless-property laws were enacted during the first postwar years in Greece, Italy, and the Western zone of Trieste. In West Germany the Allies found two kinds of assets: remnants of valuables that the Germans had hauled in from the Polish killing centers, and capital investments that had once belonged to Jews deported from the Reich. So far as the valuables were concerned, the Allies promptly decided to sell this haul for non-German currency and to turn over 90 percent of the receipts to Jewish relief organizations for rehabilitation.¹⁶ The sales were accomplished with due dispatch, but it was a small operation that netted only petty cash.¹⁷

The disposal of the immovable property that the dead Jews of Germany had owned promised somewhat greater results—but they were not to be achieved so easily. The Allies did recognize that the Jewish community in Germany was no longer large enough to make use of that property. Under the restitution laws, title to the assets was therefore granted to Jewish successor organizations for the benefit of surviving victims everywhere.¹⁸ However, there was no time for the prolonged process of effecting recovery ten-thousand-fold. Pressed by

15. Cohen, *Contemporary Jewry*, pp. 259–60.

16. Paris Reparations Agreement, Part I, Article 8-B (so-called nonmonetary gold clause), January 14, 1946, *U.S. Treaties and Other International Acts Series*, No. 1655. Implementation agreement between the United States, Great Britain, France, Czechoslovakia, and Yugoslavia, June 14, 1946, *ibid.*, No. 1657. Report by H. W. Emerson, director, Intergovernmental Committee on Refugees, to Preparatory Commission of the International Refugee Organization, PREP/6, Geneva, February 13, 1947. Most of the gold was converted into bullion for sale to governments. Artistic items, including porcelain, rugs, etc., were sold at auction in New York. IRO/Public Information Office/Monthly Digest No. 3, November 1947, pp. 7–8, 26–27.

17. Early in 1949 the proceeds amounted to \$2,171,874, and the final figure was expected to total ca. \$3,500,000. IRO/General Council, 2d sess., report by the Director General on the activities of the organization from July 1, 1948, GC/60, March 22, 1949, pp. 79–87.

18. The Jewish Restitution Successor Organization in the American zone, the Jewish Trust Corporation in the British and French zones, and both organizations in West Berlin.

survivors' needs, the organizations sold their claims to German provincial authorities for whatever the traffic could bear.¹⁹ Since the proceeds had to be used all over the world, the successor organizations were then faced by the transfer problem. Once that obstacle had been overcome, a bitter struggle broke out over the right of refugee Jews from Germany to receive a special allocation.²⁰

The restitution laws had been designed for the upper middle class; they covered the kind of property that was substantial enough to be

19. Claims amounting to about DM 150,000,000 in the American zone were thus reduced to less than half. Jack Raymond, "Jews' Claims Cut To Aid Restitution," *The New York Times*, February 13, 1951, p. 11. Raymond, "Restitution Pact Made in Bavaria," *ibid.*, March 16, 1952, p. 12. "Erbloses jüdisches Eigentum in Berlin," *Aufbau* (New York), January 6, 1956, p. 9.

20. Rabbi Dr. Leo Baeck (president of the Council for the Protection of the Rights and Interests of Jews from Germany) to Monroe Goldwater (president, Jewish Restitution Successor Organization), March 24, 1954, *Aufbau* (New York), April 2, 1954, p. 2; Goldwater to Baeck, *ibid.*, April 23, 1954, p. 7. The successor organizations were also engaged in two other operations: the recovery of community property and the collection of individual items on behalf of owners who had missed the deadline for filing their claims.

The Austrian restitution laws did not deal with heirless property. The four occupying powers consequently inserted a provision into Article 26 of the Austrian State Treaty under which such assets were to be made available for the relief and rehabilitation of persecutees, with the qualification that Austria was not required to "make payments in foreign exchange or other transfers to foreign countries." State Treaty for the Re-Establishment of an Independent and Democratic Austria, signed on May 15, 1955 and entered into force on July 27, 1955, *U.S. Treaties and Other International Acts Series*, No. 3298. After signing the treaty, the Austrian government agreed to relinquish its hold over the assets for the benefit of surviving victims resident in Austria. "Entschädigung in Österreich geregelt," *Aufbau* (New York), July 15, 1955, p. 1.

Under the Paris reparations agreement, each signatory power was given title to German assets within its frontiers. The United States subsequently released the portion of its share that had belonged to Jews who had left no heirs. The portion, which was worth \$3,000,000, was to be used for rehabilitation work within the United States. Amendment to the Trading with the Enemy Act, August 23, 1954, 68 Stat. 767. The recipient of the funds was the Jewish Restitution Successor Organization. "JRSO empfängt jüdisches erbloses Eigentum in U.S.A.," *Aufbau* (New York), January 21, 1955, p. 9.

The Paris reparations agreement also provided that heirless assets in neutral countries be made available to persecutees. However, in the implementation agreement between the United States, Great Britain, France, Czechoslovakia, and Yugoslavia, the two Eastern signatories declared that they had not given up their claim to the forthcoming inheritances, "which, according to the provisions of international law, belong to their respective states." See Eli Ginzberg, "Reparation for non-Repatriables," *Department of State Bulletin* 15 (July 14, 1946): 56, 76. Switzerland subsequently transferred to Poland all heirless property of Polish Jews. "Herrenloses Vermögen in der Schweiz," *Aufbau* (New York), March 3, 1950, p. 10. The provision for heirless assets in the neutral states appears to have remained a dead letter.

CONSEQUENCES

preserved in identifiable form. For those who had never possessed such assets, there was as yet no remedy. The masses of the poorer Jews who had lost their relatives, their health, their liberty, and their economic prospects could not make use of restitution laws. These Jews could be served only by a money grant, and such payment had to be obtained out of the public funds of the country that was responsible for their misery: Germany. This was a much tougher proposition.

The occupying power that promised to take the initiative in the matter was once more the United States. When the restitution law was drafted in the American zone, the U.S. military government adopted the view "that persons who [had] suffered personal damage or injury through National Socialist persecution should receive indemnification in German currency."²¹ In the course of the following two years, the lengthy process of pressure and drafting got under way. The pressure came from Jewish organizations; the drafting was done by the German *Länder* governments in the American-occupied territory. Toward the end of this development the military grew weary, the State Department seemed dubious, and the British Foreign Office expressed its opposition. At the last moment the High Commissioner designate, John J. McCloy, cast his lot for the Jews. As a result, a general claims law went into effect for the U.S. zone.²²

The design of the law was to allow every persecutee to file a claim if he resided in the U.S. zone on January 1, 1947, or if he had emigrated from there before that time. The eligible claimants thus comprised postwar displaced persons as well as prewar refugees. The losses for which a claimant was covered included the killing of relatives who had given support to the victim, damage to health, deprivation of freedom, confiscation or destruction of property and capital, discriminatory exaction of taxes, the impairment of professional or economic advancement, and the curtailment of insurance payments and pensions. Except for the property losses, the law recognized injuries and damage without regard to the place where they had been inflicted, so long as they were the product of discriminatory action by the German state.²³

The American-sponsored general claims law served as a model for

21. Military Government Regulation 23 2050/Directive on U.S. Objectives and Basic Policy in Germany, July 15, 1947. in Office of Military Government, *Property Control*, November 1948, p. 21.

22. Jack Raymond, "McCloy, Reversing U.S. Position, Orders Payment to Nazis' Victims," *The New York Times*, August 10, 1949, pp. 1, 14.

23. For a summary analysis, see Herman Muller, "Das Entschädigungsgesetz in der amerikanischen Zone," *Aufbau* (New York), August 19, 1949, pp. 5-6; August 26, 1949, p. 11; September 2, 1949, p. 16.

similar legislation in the French zone and in West Berlin.²⁴ The British, however, departed from the American principle. In their zone a victim was barred from filing a claim if he was no longer a resident at the time of the enactment of the legislation. In short, compensation was granted, with few exceptions, only to German persecutees.²⁵

After a while difficulties developed in the American zone with respect to the administration of the law. The administrators were German provincial authorities, and in Bavaria that authority was used in attempts to subvert and disrupt the indemnification process. The first attempt was a Bavarian implementation decree that simply eliminated the refugees.²⁶ With regard to the displaced persons, the Bavarians appeared to have another scheme. In the case of awards above \$600, the law directed that one-half of the amount be paid in cash and that the rest fall due in 1954. The displaced persons who were in great need frequently sold the unpaid half of the claim for about 45 percent of nominal value. The promissory notes were collected by banks such as the Bayrische Staatsbank, the Hypotheken- und Wechselbank, the Gemeindebank, the Vereinsbank, and Seiler and Company. Reportedly these Bavarian banks had made an agreement with the Bavarian Staatssekretär for Finance, Dr. Richard Ringelmann, to resell the notes to the government for 62-65 percent of value in 1952.²⁷

On March 9, 1951, the Bavarian administration pulled a minor coup. The Jewish president of the Indemnification Office, Philip Auerbach (an Auschwitz survivor), was dismissed from his office and placed under arrest to face a variety of charges, including the fraudulent use of the title "Doctor," the granting of credits without adequate guarantees, the deposit of private money as organization income in order to obtain a more favorable currency conversion rate, the receipt

24. In the French zone each province enacted its own law: Baden on January 10, 1950; Württemberg-Hohenzollern on February 14, 1950; and Rheinland-Pfalz on May 22, 1950. For an analysis of the laws, which were substantially alike, see American Federation of Jews from Central Europe/United Restitution Office/Indemnification Section, "Entschädigungsgesetz in der französischen Zone," *ibid.*, June 23, 1950, p. 5. A West Berlin city ordinance was adopted on October 26, 1950. Walter Braun, "Berlins Entschädigungsgesetz für Naziopfer," *ibid.*, November 24, 1950, p. 9; December 1, 1950, p. 8.

25. "Protest gegen ein böswilliges Gesetz," *ibid.*, August 24, 1951, p. 15. The law under criticism was the newly passed measure in Nordrheinland-Westfalen.

26. For correspondence between the editor of *Aufbau* (Manfred George), Bavarian Indemnification Commissioner Philip Auerbach (Jewish survivor), and the office of the High Commissioner, see *Aufbau* (New York), December 30, 1949, pp. 2, 26; February 10, 1950, pp. 1-2. The decree, dated November 26, 1949, removed the eligibility of victims who had left Bavaria before January 1, 1947.

27. "Rings um den Fall Auerbach," *ibid.*, April 6, 1951, pp. 1-2.

of kickbacks from a contractor charged with the renovation of a Jewish cemetery, and the processing of 111 claims of allegedly nonexistent persons. For weeks the Indemnification Office was closed while Munich police were looking for evidence.

At the trial Auerbach admitted his use of the title "Doctor" (he had been called by that title for so long that he finally adopted it). The court itself freed him from the principal charge of making payments to "dead souls." His conviction upon the remaining charges led to a sentence of two and a half years in prison and \$643 in fines. Stunned, Auerbach on a sickbed protested his innocence. Then he took his life.²⁸

The Jewish organizations were now prompted by a dual necessity to press for a West German indemnification law. They had to resolve the problem of inequality between the zones, and they had to have insurance against the Allied abdication of power. Only one measure could give the Jews both uniformity and continuation: an indemnification law enacted at the behest of the Allies by the new West German parliament.

The organizational spokesmen made their views known to the State Department on September 27, 1951.²⁹ During the following months the Western Allies conducted negotiations with the West German government for the replacement of the occupation regime with a contractual relationship. The Jewish request was inserted as one of the chapters in the proposed settlement. The Germans accepted the provision. They did not have their freedom yet, they needed good will, and they could not very well proceed with the indemnification of German persecutees, let alone with the pensioning of Nazi perpetrators, without also recognizing the Jewish claim.³⁰

28. "SPD drängt auf Klärung der Massnahmen gegen das Entschädigungsamt," *Süddeutsche Zeitung* (Munich), February 3-4, 1951, p. 2; "Bis jetzt 200 Fälschungen aufgedeckt," *ibid.*, February 5, 1951, p. 2; "Jewish Aides Guilty in Nazi Victim Fraud," *New York Times*, August 15, 1952, pp. 1, 3; Manfred George, "Exit Auerbach," *Aufbau* (New York), August 22, 1952, pp. 1-2; "Das grosse Echo auf Auerbachs Selbstmord," *ibid.*, August 29, 1952, pp. 7-8. See also running accounts in these papers, 1951-52.

29. The conference was attended by the following officials:

Department of State: Henry A. Byrode, Geoffrey Lewis, George Baker

Congress (representing a refugee district): Jacob K. Javits

American Federation of Jews from Central Europe: Rudolf Callmann, Hermann Muller, Alfred Prager

Axis Victims League: Bruno Weil, Fremont A. Higgins

American Association of Former European Jurists: Julius B. Weigert

"Mindestforderungen für die Durchführung der Wiedergutmachung—Eine Konferenz im Department of State," *Aufbau* (New York), October 5, 1951, p. 28.

30. See Chapter 4 of the Convention on the Settlement of Matters Arising out of the War and the Occupation, signed by the United States, Great Britain, France, and Ger-

The Federal Indemnification Law was enacted on September 19, 1953. Its basic framework was taken from the claims law in the American Zone. It superseded all the *Länder* laws. However, no victim could receive payment for the same thing twice, and the 730 million deutschmark that had already been paid out were no longer a charge against West Germany.³¹ Money was going to be appropriated by the federal government, but the law required the aggregate of the *Länder* to match these appropriations, each *Land* making its contribution in proportion to its population.³² That division of the burden was to make any revision in favor of the victims a difficult proposition politically.³³ The following outline is designed to show how the law in its amended form categorized the eligible claimants and the losses for which a claim could be made.³⁴

I. ELIGIBLE CLAIMANTS (general coverage)

Residents of West Germany or West Berlin on December 31, 1952 (mostly German political persecutees).

People who emigrated (or were deported) from an area that was German on December 31, 1937 (mostly Jewish refugees).

Nonrepatriable displaced persons who were housed in a camp in West Germany or West Berlin on January 1, 1947 (mostly Jewish survivors).

Admissible Claims for

Loss of Life caused by persecution, if claimant had been a wife or child of the deceased, or if claimant, as a dependent husband, parent, grandparent, or orphaned grandchild, had been deprived of support from the deceased.

many on May 26, 1952, *U.S. Treaties and Other International Agreements* VI, pt. 4, pp. 4474-76. The detailed outline of the proposed federal law was agreed upon in Protocol No. 1, signed by Chancellor Adenauer for Germany and Dr. Nahum Goldman for the Conference on Jewish Material Claims against Germany, September 10, 1952, in Government of Israel, *Documents Relating to the Agreement*, pp. 152-57.

31. The figure of 730 million deutschmark is taken from "Wiedergutmachungs-Statistik 1957," *Aufbau* (New York), April 18, 1958, p. 17.

32. In the case of West Berlin the cost was to be borne by the federal government (60 percent), the nine *Länder* (25 percent), and the city itself (15 percent).

33. See an analysis of counteragitation from the Rheinland-Pfalz by Konrad Wille, "Es geht schon wieder los: Dunkle Macheenschaften gegen Wiedergutmachung," *Aufbau* (New York), February 21, 1958, p. 17.

34. Indemnification Law, September 18, 1953, BGBI I, 1387. Second Law (amendment), August 10, 1955, BGBI I, 506. Third Law (amendment), June 29, 1956, BGBI I, 559. For text of the law as amended in 1956, see *Bundesentschädigungsgesetz*, with introduction by Dr. H. G. van Dam (Düsseldorf-Benrath, 1956). See also Final Law (*Schlussgesetz*) of September 14, 1965, BGBI I, 1315. A codified text with extended commentary was prepared by Walter Brunn and Richard Hebenstreit, *BEG—Bundesentschädigungsgesetz* (Berlin, 1965), with *Nachtrag* (1967).

CONSEQUENCES

Monthly payments to claimant equal to the pension that would have been granted if the deceased had held a German civil service rank commensurate with his economic or social status before his persecution, and if he had thereupon suffered accidental death on duty. Payments terminable upon achievement of reasonable self-support, or after remarriage in the case of a widower or widow, or at age seventeen in the case of a child. Lump-sum payment for the period from date of death to November 1, 1953, on the basis of the rate paid in November 1953.

Damage to Body and Health, including

Medical Costs: in accordance with rates established by the German government for its civil servants in the case of accidents.

Reduction of Income: provided that income was reduced by at least 25 percent. The income was presumed to be that which claimant—on the basis of his economic and social status before his persecution—would have received in the German civil service on May 1, 1949.

Compensation from 15 percent of the civil service salary (in the case of 25 percent disability) to 70 percent (in the case of total disability). Monthly payments, in accordance with prevailing salary rates, for the duration of the disability. Lump sum payment for impairment to November 1, 1953, with reichsmark salaries converted into deutschmark at the rate of 10:2.

Reeducation: to the extent that such training was conducive to an increase of income.

Loss of Freedom, including

Wearing of the star outside of a ghetto or camp (Reich, Protektorat, Generalgouvernement, Netherlands, Belgium, Luxembourg, France, Serbia, and Croatia).

Living in "illegality under degrading conditions" (hiding).

Incarceration in a ghetto (including Shanghai).

Incarceration in a camp.

Individual arrest.

Lump sum payment at the rate of 150 deutschmark for each month of deprivation of liberty.

Property Losses involving belongings which in the area of the Reich (borders of December 31, 1937) were

Destroyed

Damaged

Lost, or

Abandoned because of emigration, deportation, or hiding.

Lump sum payment of replacement value up to a maximum of 75,000 deutschmark for all property losses, provided that for loss of personal belongings, a persecutee could demand payment of 150 percent of his yearly income of 1932, converted

1:1, up to a maximum of 5,000 deutschmark. The Federal Restitution Law of 1957 as amended recognized claims without a maximum for identifiable property confiscated by the Reich or any of its subdivisions in an area bounded by West Germany, West Berlin, and East Berlin, or for identifiable property confiscated elsewhere if it was brought into this territory by the German confiscators during the war (as in the case of furniture from the West and jewelry from all occupied areas). Under the provisions of a law enacted in 1969, the loss of identifiable business property (such as firms, land, or licenses) was indemnifiable also if it was confiscated in an area bounded by East Germany, provided that the claimant was a German national at the time of the deprivation.

Capital Losses involving capital which in the area of the Reich (borders of December 31, 1937) was diminished by at least 500 reichsmark because of

Boycott.

Liquidation.

Transfer of reichsmark into foreign currency with a loss of more than 20 percent.

Emigration expenses.

Lump sum payment, by converting reichsmark loss into deutschmark at the rate of 10:2, up to a maximum of 75,000 deutschmark for all capital losses, provided that emigration expenses were to be compensated up to a maximum of 5000 deutschmark.

Discriminatory Taxes to the Reich or any of its subdivisions, insofar as recovery was not effected through restitution laws.

Lump sum payment at the rate of 10:2 without maximum, except that a persecutee who in the course of a restitution proceeding had paid an Aryanizer at the rate of 10:1 for removal of discriminatory tax encumbrances was now repaid at the same rate. Many claimants were unable to recover taxes under the Federal Indemnification Law because such suits were deemed to be actions for return of assets sufficiently "identifiable" to have been covered by the restitution laws. The difficulty was removed by the Federal Restitution Law, which provided, however, for a conversion rate of 10:1.

Impairment of Professional or Economic Advancement, in the case of Entrepreneurs: provided that income was reduced by at least 25 percent.

Payment in either:

Lump sum, for a period ending with the achievement of an "adequate standard of living" (in terms of a German civil service career) or at age seventy, such sum to consist of a differential between actual earnings and 75 percent of the salary earned by the equivalent civil servant at the end of

such period, plus 20 percent of that differential, with possible adjustments in favor of claimants in countries where the purchasing power of the local currency might be out of line with official exchange rates, up to a maximum of 40,000 deutschmark,

or:

at the election of a claimant who had no reasonable expectation of achieving an adequate living standard, monthly rates for life consisting of a differential between actual earnings (if any) and two-thirds of such pension as claimant would have received if he were a civil servant at the time of entry into force of the law, plus twelve monthly payments for the period preceding November 1, 1953, the maximum monthly payment not to exceed 600 deutschmark.

Private Employees

Payment in lump sum only, calculated as above, except that employees covered by social security or pension could not receive the 20 percent addition to their differential.

Public Servants (including university professors and employees of the Jewish community who were in office before 1933).

Lump sum payment consisting of a differential between pension received (if any) and three-fourths of the last full salary, for the period from date of dismissal or forced retirement to April 1, 1950, converted 10:2.

Students or Trainees

Lump sum payment up to a maximum of 10,000 deutschmark.

A persecutee who, in addition to a claim for impairment of advancement, won recognition of either a death claim or claim for damage to health, could receive the bigger award in full and the smaller award to the extent of 25 percent.

Loss of Life Insurance Payments and Private Pensions (insofar as no satisfaction was received under the restitution laws)

In the case of holders of life insurance

Payment in lump sum or annuities—depending on the provisions of the policy—converted according to a rate applicable to the policy under the currency laws. If there were unpaid premiums, claimant had the option of having such premiums deducted from the award at the rate of 10:1, or of claiming such sums as he would have received under the terms of the policy for the money he had paid in. (Lump-sum indemnification in such cases was made at the rate of 10:2.) Maximum payment to claimant: 25,000 deutschmark.

In the case of pensioners

Payment in lump sum or annuities, as provided for in the pension, converted 10:2. However, no annuities were granted for the period prior to November 1, 1952, and maximum pay-

ments to claimant and his survivors could not exceed 25,000 deutschmark.

II. SPECIAL CLAIMANTS (limited coverage)

- A. Corporate persons (or their successors) who maintained their headquarters in West Germany or West Berlin on December 31, 1952, or who had removed their headquarters from an area that was German on December 31, 1937, because of persecution.

Admissible Claims for

Property and Capital Losses: Payments as above, except that in the case of religious organizations or their successors, the maximum could be exceeded.

- B. Persons who, because of persecution, lost real estate in the area of West Germany or West Berlin.

Admissible Claims for

Property Losses: Payments as above.

- C. Persons who, because of their nationality, suffered permanent impairment of their health (mainly as a result of medical experiments).

Admissible Claims for

Damage to Health: Monthly payments, depending on disability, from 100 to 200 deutschmark.

- D. Heirs of persons who died as result of persecution before December 31, 1952, and whose last residence was in West Germany or West Berlin.

Admissible Claims for

Death of the Persecutee: Payments as above, provided that the requirements of the claim were fulfilled as above.

- E. Persons who had lived in an area from which Germans were expelled after the war (principally Czechoslovakia and western Poland) and who could be considered German by reason of language or culture.

Admissible Claims for

Death of another person in the same category: Conditions and payments as above, but no payment was granted for periods to January 1, 1949.

Damage to Health: Payments as above.

Loss of Freedom: Payments as above.

Discriminatory Taxes: Lump-sum payment at the rate of 100:6.5, up to a maximum of 9750 deutschmark.

Impairment of Advancement: Payments as above, except that the maximum of the lump-sum payment was fixed at only 10,000 deutschmark, and maximum monthly payments were limited to 200 deutschmark.

- F. Persons who had lost their nationality (other than Austrian) and who were resident in some country other than Israel as of October 1, 1953.

Admissible Claims (only in cases of non-support from any public agency) for

Death of another person in the same category: Conditions and payments as above, but no payment was granted for periods to January 1, 1949.

Damage to Health: Payments substantially as above, except that no payment was granted for periods of disability prior to January 1, 1949, or for retraining.

Loss of Freedom: Payments as above.

- G. Persons who had lost their nationality (other than Austrian) and who were resident in Israel as of October 1, 1953.

Admissible Claims (only in cases of non-support from any public agency) for

Death of another person in the same category: Conditions and monthly payments as above, except that no lump-sum payment was granted at all.

Loss of Freedom: Payments as above.

- H. Persons not eligible for indemnification under other provisions of the law, who were residents of a non-Communist country on December 31, 1965, and who did not possess the nationality of a Communist state on that date, provided that they were not covered in a European country under programs set up with West German funds.

Admissible Claims (only in cases of nonsupport from any public agency) for

Death of a Spouse because of persecution, subject to the proviso that the claimant had not remarried: Lump-sum payment of DM 2,000, or DM 2,500 if claimant was at least 65 years old.

Disability because of persecution, if at least 80%: Payment as for death of a spouse.

Loss of Freedom, if at least for six months: For incarceration in a camp or ghetto, lump-sum payment of at least DM 3,000, with larger sums provided for those who were deprived of freedom in this manner for a year or more. For those who wore the star or were in hiding but who could assert no other claim, a lump-sum payment of DM 1,000.

The Federal Indemnification Law contained a double compromise: (1) it did not cover all the surviving victims and (2) it did not provide full indemnification for those whom it covered.

Omitted were all the survivors of Eastern Europe who did not emigrate to a non-Communist country by the end of 1965. Limited and late was the coverage afforded in 1965 to those who were part of the East European migration during the preceding twelve years. Relatively small were the DM 977,000,000 made available by West Germany to

twelve European countries for compensation of victims, non-Jewish as well as Jewish.³⁵ One of these countries was Austria.³⁶

The West Germans felt that the Austrians had been sufficiently active partners in the Nazi destruction process to share in the payment for its effects. The Austrians on their part contended that as an "occupied" nation they were not responsible for anything that might have transpired with their cooperation. Caught between these irreconcilable positions, the Jews of Austria finally accepted a Viennese offer of a few crumbs.³⁷

Even those who were fully eligible to assert claims under the Federal Indemnification Law found limitation placed upon limitation. From a somewhat restricted coverage of losses and injuries, the law-

35. Agreements were concluded between 1959 and 1964 with Luxembourg, Norway, Denmark, Greece, the Netherlands, France, Belgium, Italy, Switzerland, Austria, Great Britain, and Sweden. France received DM 400,000,000, Holland DM 125,000,000, Greece DM 115,000,000, Austria DM 101,000,000. Rolf Vogel, *Deutschlands Weg nach Israel* (Stuttgart, 1967), p. 112. On Greek and French agreements, see *Aufbau* (New York), September 29, 1961, p. 25, and October 13, 1961, p. 19, respectively.

36. The agreement was ratified in 1962. Announcement by Austrian Embassy in Washington, *Aufbau* (New York), November 23, 1962, p. 29.

37. In 1955 the Vienna government agreed after long negotiations and much unfavorable publicity to grant lump-sum payments to victims living abroad who had been Austrian citizens, or who had resided in Austria during the entire decade from 1928 to 1938. A total of 550,000,000 schilling, or \$21,000,000, was made available for expenditure over a period of ten years. Indemnification was granted for: (a) loss of earning capacity due to impairment of health (S. 10,000 to a maximum of S. 30,000, or \$385 to \$1,155); (b) total disability caused by persecution (S. 30,000, plus S. 10,000 if the disability was incurred as a result of at least six months of harsh imprisonment); (c) persecution in general, to the extent that funds permitted, with priority for elderly victims in need (up to S. 20,000). "Das Wiener Entschädigungs-Abkommen," *Aufbau* (New York), July 22, 1955, pp. 1, 4. "Österreichischer Hilfsfonds," *ibid.*, November 2, 1956, p. 6.

Under Article 26 of the Austrian State Treaty, the Austrian Government was obligated to indemnify persecutees for property losses incurred in Austria. After an exchange of notes with Great Britain and the United States in 1959, the Austrian Parliament authorized \$6,000,000 for this purpose. The law, passed in March 1961, covered only bank deposits, notes, cash, confiscated mortgage payments, and discriminatory taxes. It adjusted for currency revaluation and provided for maximum payments. "Zwei Gesetze," *ibid.*, March 31, 1961, p. 25.

At the same time, the Austrians passed another law providing compensation for wearing the star, reduction of earning capacity, and interruption of education. However, the entry into force of the law was made conditional upon the financing agreement with West Germany. *Ibid.*

Survivors in East Germany could receive indemnification only at age sixty in the case of men or at age fifty-five in the case of women. Maximum payments were (East) DM 480 per month. Bruno Weil, "Vereinigung und Wiedergutmachung," *ibid.*, October 21, 1955, p. 11.

makers had proceeded to establish substantive conditions for giving effect to the coverage, and that effect was modified in turn by major restrictions on payments.

To begin with, the law did not recognize every kind of loss. There was no recognition of sheer torment and chagrin. No provision of the law authorized payments for suffering as such. For the pure hurt inflicted by the German state there was no remedy at all. Recovery for pain could be effected only in the regular courts—and from private defendants. Similarly, the law authorized no compensation for forced labor, nor could anyone who had once been compelled to work for a public agency now find satisfaction under any law. However, those who had been detailed to private firms could sue those corporations under the civil code in the regular courts. One ex-employee of I. G. Auschwitz thus won DM 10,000 in a suit. The liquidators of the I. G. Farben concern, fearing a cascade of such actions, thereupon moved quickly to effect a settlement with a Jewish claims conference for DM 27,000,000, and several other companies, finding themselves in a similar situation, contemplated negotiations.³⁸ In the end, five agreements were made with the following results:³⁹

Company	Number of Claimants Paid	Amounts in DM
I.G.	5,855	27,841,500
Krupp	3,090	10,050,900
AEG	2,223	4,312,500
Siemens	2,203	7,184,100
Rheinmetall	1,504	2,546,095

38. Agreement signed by Dr. Fritz Brinckmann and Dr. Walter Schmidt (liquidators for the I. G.) and Dr. Ernst Katzenstein (for the Conference on Jewish Material Claims against Germany, Inc.), February 6, 1957. See also letter by Brinckmann and Schmidt to the stockholders February 1957. Photostatic copies through the courtesy of Mr. Frank Petschek. The agreement covered Buna IV, Heydebreck, Fürstengrube, and Janina-grube. The number of Jewish claimants was estimated at 3,400. An additional DM 3,000,000 was made available for non-Jewish slave laborers who qualified as "persecutees."

Following the passage of a federal law that placed a time limit on wartime claims against private German firms, ex-inmates who had slaved for the AEG, Brabag, Heinkel, Holzmann, Krupp, Moll, Rheinmetall Borsig, Siemens-Schuckert, Telefunken, and other companies formed a committee of former Jewish slave laborers in Germany to expedite matters. "Ein Komitee früherer jüdischer Zwangsarbeiter," *Aufbau* (New York), December 13, 1957, p. 2. In 1959 the claims conference made a settlement with Krupp in the amount of DM 6 million to DM 10 million, assuming 1,200 to 2,000 claimants. "Friedrich Krupp will Sklavenarbeiter entschädigen," *ibid.*, January 1, 1960, p. 1.

39. Benjamin B. Ferencz. *Less Than Slaves* (Cambridge, Mass., 1979), pp. 210-11. Ferencz describes the negotiations in detail.

Although the indemnification law did recognize a wide variety of losses, it made the recognition of many of them conditional. We have seen the condition of a minimum: the property losses had to amount to at least 500 reichsmark; transfer losses had to reach at least 20 percent; reduction of income had to be at least 25 percent. There was also a condition with regard to the place of the damage. Property and capital losses, regardless of size, were not indemnifiable if they had occurred outside of the borders of 1937. A host of additional conditions were interpolated in the course of interpretation, with the effect of blocking awards until final rulings could be obtained. Examples of such complications were questions of the following order: Was a place a ghetto if it had no walls?⁴⁰ Was a claimant a persecutee if his captors were not Germans?⁴¹ Could an award be granted for damage to health if the illness was a neurosis?⁴²

Ultimately, time frames were established to fix German responsibility for actions by satellite states. Thus Slovakia and Croatia were considered to have lacked any power of their own from the beginning of their existence, and all their persecutory activities were treated as German. Vichy France was deemed to have lost its independence only after August 12, 1942; Romania, Bulgaria, and Italy, in September 1943; and Hungary, in March 1944. The law of 1965, however, specified that Germany was to be held accountable for measures taken by Romania, Bulgaria, and Hungary as early as April 6, 1941, if these actions had deprived the victims of all their freedom. The deprivation was total only if it had been caused by such relatively drastic measures as ghettoization, incarceration in a camp, or service in a Hungarian labor company. Star decrees did not suffice.⁴³

40. Kurt R. Grossmann, "Sabotage der Wiedergutmachung—Der Fall des 'nicht abgeriegelten Ghettos'" (Przemyslawy), *Aufbau* (New York), September 30, 1955, p. 5. Eventually, Generalgouvernement ghettos were deemed closed after October 15, 1941. Brunn and Hebenstreit, *BEG*, p. 191. Forced residence (as in France) was not ghettoization. *Ibid.*, p. 172. Forced labor was not deprivation of freedom, unless restrictions of movement were greater than those that would have been imposed solely for the extraction of work. *Ibid.*, p. 172.

41. Early difficulties were encountered by claimants from Romania. See R. M. W. Kempner, "Entschädigung für Juden aus Rumänien vorläufig gestoppt," *Aufbau* (New York), July 19, 1957, pp. 5-6. Herman Muller, "Entschädigung für Juden aus Rumänien," *ibid.*, August 9, 1957, p. 13. Bukowiner Freunde, "Entschädigungs-Ansprüche der Bukowinaer Juden," *ibid.*, March 7, 1958, p. 6.

42. Richard Dyck, "Die Neurosen in der Wiedergutmachung," *ibid.*, March 7, 1958, p. 15; March 21, 1958, pp. 19-20; April 4, 1958, p. 16; comments by Dr. Hans Strauss in the issue of April 18, 1958, p. 18.

43. Brunn and Hebenstreit, *BEG*, pp. 166-71. The Shanghai ghetto (up to May 8, 1945) qualified for indemnification. *Ibid.*, p. 171.

Finally, there were the limitations on payment. These limitations were manifested through (1) the insertion of ceilings on amounts, (2) arbitrary conversion, (3) failure to compensate for delay, and (4) the provisions for the contingency of the claimant's death. In the case of income reductions, maximum amounts were fixed by "assimilation" with the German civil service;⁴⁴ in the case of property losses by outright figures.⁴⁵ Arbitrary conversions were applied in many claims that were founded on damage measured in reichsmark (claims for disability, capital losses, discriminatory taxes, and lost pensions). For lump-sum payment the reichsmark amounts in such instances were converted into deutschmark at the rate of 10 to 2 or less (i.e., for a 100,000-reichsmark loss, 20,000 deutschmark).

For a long time, this situation was aggravated for claimants in the United States. For every 4.2 deutschmark they could receive one dollar; yet the dollar on the receiving end was not the equivalent in purchasing power of 4.2 deutschmark in Germany. Not until 1960 did the German courts adopt realistic exchange rates for American claimants.⁴⁶

There was also the problem of delay. The basic correction for delay in payment is interest, but the indemnification legislation provided for no interest payments aside from limited allowances in the case of articles confiscated by the Reich. More serious still was the provision for the event that the claimant died. During the mid-1950s claimants were dying at the rate of 5-6 percent per year.⁴⁷ With the death of a claimant, all monthly payments lapsed. For the contingency that a lump sum payment had not yet been granted, there was a threefold regulation:⁴⁸

44. The prewar economic and social status was to be considered in the assimilation procedure. However, in the case of death and health claims, social status was not to be used to the detriment of the claimant. See Par. 11 of the 1st Implementation Decree (death claims) and Par. 14 of the 2nd Implementation Decree (health claims) in H. G. van Dam, *Durchführungsverordnungen zum Bundesentschädigungsgesetz* (Düsseldorf, 1957), pp. 27, 39.

45. The Federal Restitution Law of 1957 did allow actions without maximum. The law provided, however, for a total expenditure of not more than DM 1.5 billion. Insofar as the allowable claims were to exceed that sum, the built-in safety provisions of the law stipulated in effect that awards to the extent of DM 10,000 be paid in full, that determinations between that figure and DM 100,000 be largely satisfied, and that larger amounts be reduced in rough proportion to the remaining funds. The windup of the program was projected for the early 1960s.

46. Robert Held, "Zweierlei Mass," *Aufbau* (New York), October 18, 1957, p. 18. Robert Kempner, "Neuer Wiedergutmachungs-Entscheid," *ibid.*, March 11, 1960, p. 1. Walter Peters, "Zum Streit um die Kaufkraft," *ibid.*, March 18, 1960, p. 33. Robert O. Held, "Lösung des Kaufkraft-Problems?" *ibid.*, March 31, 1961, p. 25.

47. Kurt Grossmann, "Pläne zur Finanzierung des Lastenausgleichs," *ibid.*, February 21, 1958, p. 17.

48. If there was no will, heirs-in-law were not excluded, but in no case was pay-

1. The law admitted as claimants all heirs of victims whose last residence had been West Germany or West Berlin and who had died at any time before December 31, 1952.
2. Insofar as an otherwise fully eligible claimant had died before adjudication, the payments for property, capital, and tax losses could be claimed by any heir; the award of payments for other losses was restricted to heirs in the immediate family.
3. In the event that a special claimant from an expellee area had died before a decision had been reached, payments for discriminatory taxes were granted only to heirs in the immediate family; and in the event that a special claimant in the nationality category had died before an award, the payments for death were disallowed altogether.

The provisions of the Indemnification Law reflected the complexity and exceeded the duration of the destruction process that had given rise to them. By the end of 1980, cumulative payments under the law reached DM 50,181,000,000, and the number of claimants still receiving monthly allotments was approximately 240,000. In addition, total expenditures under the Federal Restitution Law had risen to DM 3,898,000,000.⁴⁹ All these sums exceeded original estimates.

After the initial decade of operations, annual outlays in pursuance of the Indemnification Law were two billion deutschmark. Despite lump sum payments and deaths, this yearly amount did not decrease thereafter.⁵⁰ The plateau was maintained by a variety of factors: the juridical rulings and statutory amendments adding newly admissible claims, the migration of Jews from Eastern Europe enlarging the pool of eligible claimants, and the automatic upward adjustments of monthly payments for impairment of income or health. The higher monthly allotments, however, were partially offset by inflation.⁵¹ In considering the global sum, one should also keep in mind that residents of Germany constituted one fifth of the compensated claimants and that they received about a third of the money.⁵² The distribution of

ment made to a foreign state. A victim who was missing after the war was presumed to have died on May 8, 1945, unless there was evidence to support an earlier date.

49. Further, about DM 4,800,000,000 were paid out under laws compensating civil servants (including Jewish community employees) and a number of other groups. All statistics through the courtesy of the German Information Service in New York.

50. Statistics of German Federal Finance Ministry, published in *Aufbau* (New York) from time to time.

51. German scales, keyed to average labor income, rose in real terms, although not to the extent indicated by the nominal increases.

52. German Federal Government/Press and Information Office, *Bulletin*, June 14, 1960, pp. 4-5. Rolf Vogel, "Das Zahlenbild der Wiedergutmachung," *Aufbau* (New York), September 10, 1971, p. 26. "Restitution in Germany," German Information Center, *Focus on*, April 1981.

CONSEQUENCES

payments by cause is indicated in the following rank order, which dates from 1956 and does not include the satisfaction of claims under the Federal Restitution Law: the largest amount was for loss of freedom, followed by losses of economic advancement, property, capital, tax money, and health, down to payments for loss of life.⁵³ The Jews were getting the smallest amount for what had been their greatest loss:

If we could imagine for a moment a restitution-indemnification program that would have given to every victim the fullest possible coverage, we would see before us a financial foundation upon which the lives of the survivors could have been rebuilt. As things were, the program contained gaps, and the necessary foundation for a complete reconstruction did not exist.

An important part of the rehabilitation cost rested upon the Jewish community and the individual survivor himself. The portion borne by the community in Israel and elsewhere became the cause of a special claim: the "reparations." The Jews had to obtain their reparations through the use of two separate channels: (1) the allocation of a share from Allied takings after the war and (2) direct negotiations with the West Germans themselves. The first operation did not yield very much.

The Allied reparations plan envisaged a broad division between East and West and a further subdivision among the Western countries. Russia was to satisfy its own requirements and those of Poland from three sources: removals in its occupied territory, deliveries from the Western zones, and the acquisition of German external assets in the former Axis satellites of Hungary, Romania, and Bulgaria. Since the Soviets were primarily interested in hard economic gain, it is hardly necessary to add that the Jewish community received nothing in the Eastern area.⁵⁴

The Western reparations policy was based more on a containment of the German war potential than on an exploitation of available spoils. Accordingly, the Western powers concentrated their attention on shipping, heavy industry, and German external assets in Allied and neutral states. At the Paris Reparations Conference, the United States proposed that a small part of the enemy assets in neutral countries be allocated to nonrepatriable displaced persons. The sum agreed upon was \$25,000,000. Under a subsequent agreement the money was to be

53. Statistics up to December 1, 1956, in "Geht es mit der Entschädigung wirklich vorwärts?" *Aufbau* (New York), March 29, 1957, p. 11.

54. An exception was the abandoned German property made available by the Poles to Jewish repatriates from Siberia. The Jews soon left. It should be pointed out that the Jewish needs that were now unrecognized stemmed from Jewish losses that the Soviets had not forgotten to figure in for their justification of reparations claims. The Jewish dead from territories bounded by the postwar USSR and Poland numbered four million.

made available by the Allied governments as a priority on the proceeds of the liquidation of the German property in the neutral countries, and 90 percent of the funds were to be devoted to Jewish rehabilitation.⁵⁵

The administering authority of the \$25,000,000 was to be the International Refugee Organization (IRO). When the Preparatory Commission of the IRO discussed the use of the money in February 1947, the representative of the United Kingdom, Sir George Rendel, questioned the allocation of 90 percent of the proceeds to Jewish organizations. The Jews, he said, now constituted less than 10 percent of the refugees. No class of refugee, said Sir George, should be excluded from the utmost help that international action could give.⁵⁶

In the meantime, there were as yet no funds. The first payment was made by Sweden, not from German assets but out of its own treasury. That sum amounted to 50,000,000 kroner.⁵⁷ Switzerland followed with 20,000,000 Swiss francs. The dollar equivalent of these two amounts was approximately \$18,500,000, and that was all the reparations money received by the IRO for resettlement purposes during its lifetime.⁵⁸

Years afterwards the new state of Israel, staggering under the influx of survivors, turned its attention to the reparations question.⁵⁹ On March 12, 1951, the Israeli government dispatched identical notes to Washington, London, Paris, and Moscow, to ask for the help of the four occupying powers in securing from the two German republics

55. See Ginzberg, "Reparation for Non-Repatriables," *Department of State Bulletin* 15 (July 14, 1946): 56, 76. The author, professor of economics at Columbia University, was the U.S. representative at the five-power conference of June 14, 1946.

56. Summary records (mimeographed), PREP/SR/6, February 15, 1947.

57. Accord between the United States, France, the United Kingdom, and Sweden, signed on July 18, 1946, entered into force March 28, 1947, 61 Stat., Part 3, 3191; *Treaties and Other International Acts Series*, No. 1657. IRO/Public Information Office, *Monthly Digest No. 3*, November 1947, pp. 26-27. The agreement specified that the German assets be used exclusively to satisfy Swedish claims and for the purchase of commodities essential to the German economy, that German owners be indemnified in German money, and that Germany be required to confirm the transfers.

58. IRO/General Council, 2d sess., report by the Director General, GC/60, March 22, 1949, pp. 79-87. Disbursements as of December 30, 1948, totaled \$13,867,359, including \$4,636,344 to the Joint Distribution Committee, \$9,019,392 to the Jewish Agency, and \$211,623 to non-Jewish organizations. *Ibid.* In England £250,000 (or \$700,000) from confiscated German assets were allotted to victims there through a "Nazi Victims Relief Trust." "Britischer Hilfsfonds für Naziopfer," *Aufbau* (New York), November 15, 1957, p. 19.

59. In 1950 German investments in Israel were impounded as security for the collection of future reparations. The assets, which did not include certain properties of the Church, were worth about \$9,000,000. Most of the owners had been deported by the British to Australia during the war. *Congress Weekly* (New York), January 30, 1950, p. 2. Haim Cohn (Attorney General of Israel), "The New Law in the Country of the Law," *United Nations World*, September 1950, pp. 62-63.

CONSEQUENCES

reparations equal to the cost of the absorption and rehabilitation of 500,000 victims in Israel. That cost was \$1,500,000,000.⁶⁰ The three Western governments replied that they were precluded by the terms of the Paris reparations agreement from asserting, either on their own behalf or on behalf of other states, further reparations demands on Germany.⁶¹ The Soviet Union did not bother to reply.

The stage was now set for a gesture from the government in Bonn. The West Germans could no longer sidestep the problem. They had been endowed with freedom of action; yet it was precisely this freedom that compelled them to act. Much that was recessed and remote came to the foreground now. At this moment, particularly, the inner disturbance could not be removed without an outer settlement; and at this moment, too, there was much German concern with possible Jewish opposition to the reestablishment of Germany as a power in the world. It was also realized that the Jewish figure, somewhat reduced in total and greatly spread out in years, would not constitute Germany's heaviest burden. Accordingly, on September 27, 1951, Chancellor Adenauer declared before the German Parliament that in view of the terrible crimes that in another epoch had been committed in the name of the German people, the federal government was ready to settle with representatives of Jewry and of Israel the problem of material amends.⁶²

The representatives of Jewry were quick to accept the Chancellor's invitation. In October 1951, twenty Jewish organizations formed the Conference on Jewish Material Claims against Germany, Inc., in order to request the payment of \$500,000,000 for the rehabilitation of Jewish victims outside Israel.⁶³

In Israel the decision to dispatch emissaries of the Jewish state to a conference with German officials was not so easy to make. After Adenauer indicated a willingness to accept Israel's figures as a basis of discussion, Prime Minister Ben-Gurion submitted the question to Parliament,⁶⁴

60. Israel note to the four occupying powers, March 21, 1951, Government of Israel, *Documents Relating to the Agreement*, pp. 20-24. The figure of 500,000 included prewar refugees as well as anticipated arrivals.

61. Notes by the United States, the United Kingdom, and France to Israel, July 5, 1951, *ibid.*, pp. 34-41.

62. Declaration by Adenauer before Parliament, September 27, 1951, *ibid.*, pp. 42-43.

63. Resolution by the Conference on Jewish Material Claims, October 26, 1951, *ibid.*, pp. 46-47.

64. Adenauer to Dr. Nahum Goldmann (chairman of Claims Conference), December 6, 1951, *ibid.*, p. 57; statement by Ben-Gurion in Knesset (Israel's one-house legislature), January 7, 1952, *ibid.*, pp. 57-60.

SALVAGE

and the legislature consented by a narrow margin.⁶⁵ The figure of Israel's claim against West Germany was \$1,000,000,000.

The negotiations began at The Hague in the Netherlands on March 21, 1952. The delegations were headed by the following specially chosen men:

West Germany: Prof. Franz Josef Böhm, Rector of Frankfurt University; Dr. Otto Küster, lawyer

Claims Conference: Moses A. Leavitt

Israel: Dr. F. E. Shinnar, Foreign Office; Dr. Giora Josephthal, Jewish Agency

The official language of the meetings was English.⁶⁶

The \$500,000,000 figure of the Claims Conference was reduced by the Germans to 500,000,000 deutschmark. Ten per cent of that amount was to be made available by the federal government for aid to converts; the other 450,000,000 deutschmark (\$107,000,000) was to be received by the Claims Conference, over a period of ten years, for relief, rehabilitation, and resettlement of Jewish victims in all parts of the world.⁶⁷

When the Israelis submitted their total of \$1,000,000,000 (representing West Germany's expected contribution to Israel's

65. The vote was 61 to 50, with five abstentions and four absences. To the right of center, the Herut party and General Zionists were in basic opposition. The left (consisting of the pro-Soviet Mapam and the Communists) voted against negotiations, in reflection of the attitude of the USSR. The majority in the center included a few votes of Arab deputies. See Dana Adams Schmidt, "Foes of Bonn Talks Lose Israeli Vote," *The New York Times*, January 10, 1952, p. 14. See also advertisement by Zionist-Revisionists of America (Herut), *ibid.*, January 6, 1952, p. 15.

66. Michael Hoffman, "Bonn Assures Jews on Reparation Aim," *ibid.*, March 22, 1952, p. 5. On Böhm, see "Der Unterhändler," *Aufbau* (New York), February 8, 1952, p. 5. On Küster (a former indemnification commissioner in Württemberg-Baden), see Albion Ross, "Slave Laborers Find a Champion," *The New York Times*, March 6, 1955, p. 9.

67. "Bonn Makes Jews \$107,000,000 Offer," *The New York Times*, June 17, 1952, p. 3; Protocol No. 2 between West Germany and the Claims Conference, signed at Luxembourg on September 10, 1952, by Adenauer and Goldmann, in Government of Israel, *Documents Relating to the Agreement*, pp. 161-63. Under the agreement the deutschmark accruing to the Claims Conference were paid to Israel, which was to make available the funds in the required currencies. During the first year of its operations, the Claims Conference spent \$8,705,000 in fifteen countries. Of that amount, over \$7,000,000 was spent for direct relief, \$900,000 was allocated for "cultural reconstruction" (grants to scholars, with emphasis on catastrophe research), and \$800,000 was given to the United Restitution Office, a legal agency that processed indemnification claims of eligible Jewish victims—probably the largest legal aid society in the world. "100,000 Naziopfer profitieren von den deutschen Reparationen," *Aufbau* (New York), October 15, 1954, p. 17.

\$1,500,000,000 absorption cost), the German delegates asked some twenty-five questions about the basis of the claim. They wanted to know whether the emigration of fugitives from Eastern Europe was not the result of Communist rather than Nazi measures. They questioned the estimate of \$3,000 for resettlement cost per person.⁶⁸ Following the questioning, they presented a round figure of their own. The \$1,000,000,000, or DM 4,300,000,000, were scaled down to DM 3,000,000,000, or \$715,000,000. The Germans then declared that because of their country's current economic and financial position, they could not even guarantee the payment of that sum.⁶⁹

The complicating factor in the situation was a concurrent conference in London between thirty states (representing private holders of prewar German public bonds) and the West German government over the settlement of Germany's external debts. The leader of the German delegation in London, Hermann J. Abs (Deutsche Bank), had agreed with Professor Böhm of The Hague delegation that no commitments were to be made until it was possible to assess Bonn's total obligation.⁷⁰ When the Israelis were confronted with this impasse, Israel's Parliament voted to break off the negotiations.⁷¹

Following the action by the Israelis, Böhm reworked his agreement with Abs in order to be able to resume the talks, but he found an unrelenting opponent in Finance Minister Schäffer. The theory that there was only one pot from which to pay had become a basic precondition in Bonn, and at that moment Germany's foreign credit was considered a little more important than Germany's moral debt. At a cabinet meeting in mid-May, Adenauer apparently sided with Schäffer. Böhm and Küster thereupon pulled an unexpected punch: they resigned. In their statement of resignation these independent men charged their government with insincerity.⁷²

Faced with the necessity of retrieving its position, the federal government now tried something else. Hermann Abs informally approached Israeli aides in London and suggested a down payment of deliveries amounting to DM 1,000,000,000 (ca. \$250,000,000) over a period of three years, the balance to be settled later. He was refused.⁷³

68. "Bonn and Israelis Push Claims Talks," *The New York Times*, April 1, 1952, p. 13.

69. Statement by German delegation, April 5, 1952, in Government of Israel, *Documents Relating to the Agreement*, p. 82.

70. "Bonn-Jewish Talk at Crucial Stage," *The New York Times*, April 3, 1952, p. 5.

71. Decision of the Knesset, May 6, 1952, in Government of Israel, *Documents Relating to the Agreement*, p. 90.

72. "Top Germans Quit in Israel Fund Lag," *The New York Times*, May 20, 1952, pp. 1, 11.

73. "New Bonn Feeler to Israel Spurned," *ibid.*, June 1, 1952, p. 9.

The Germans then made their "binding offer" of \$715,000,000.⁷⁴ That offer was accepted.

Under the terms of the agreement, the obligation was to be discharged in the course of the ten years following exchange of ratifications. The federal government was to deposit the money in the agreed installments at the Bank Deutscher Länder. An Israeli mission with diplomatic status was empowered to draw upon the account for the purchase of steel, machines, chemicals, and a variety of other capital goods.⁷⁵

After the document had been signed, the Israelis awaited the approval of Bonn before doing anything. The German parliament was taking its time. A number of German industrialists were worried about the loss of the Arab market,⁷⁶ while German shipping interests were protesting the absence of a stipulation extending some business to their flag.⁷⁷ At last the approval came, over the opposition of a coalition of elements from the extreme left and extreme right wings.⁷⁸ The Israel

74. "Bonn, Jews Reach New Parley Basis," *ibid.*, June 11, 1952, p. 7.

75. Text of agreement (with exchange of letters) signed at Luxembourg on September 10, 1952, by Sharett (Shertok) and Adenauer, in Government of Israel, *Documents Relating to the Agreement*, pp. 125-51. Certain items (such as oil) could be purchased with German-held balances in foreign markets, and special consideration was to be given by Israel to industries of West Berlin. No discrimination was to be exercised by the federal government against Israel in the event of any restrictions upon exports, and no commodities obtained by Israel were to be reexported to any third state. Clauses calling for renegotiation were included to provide for the possibility of economic inability to pay, or of inflation. Israel agreed not to advance any further claim against West Germany, and, subsequent to the entry of the treaty into force, negotiations were begun in Rome between Israel, West Germany, and Australia for the return to the Palestine Germans of the money obtained by Israel from the sale of their assets. "Templer fordern Wiedergutmachung von Israel," *Aufbau* (New York), January 22, 1954, p. 17. Of interest, too, was Israel's immediate offer to release ca. \$15,000,000 in bank deposits belonging to Arab refugees. "Israel Will Free Arabs' Bank Funds," *The New York Times*, October 10, 1952, pp. 1, 3.

76. The Bonn government offered the Arabs \$95,000,000 in credits, but Cairo wanted ten times as much. M. S. Handler, "Bundesrat in Bonn Gets Israeli Pact," *The New York Times*, February 14, 1953, p. 3. The Free Democrats suggested that the reparations be administered by the United Nations and that a part of the funds be diverted for Arab refugees. "German-Arab Plan Drawn," *ibid.*, November 14, 1952, p. 8. For a while, some of the industrialists were also talking about a "vendors' strike," i.e., a refusal to make deliveries to Israel. "Israel Will Press Bonn on Payments," *ibid.*, January 6, 1953, p. 12.

77. "Vertrag Bonn-Tel Aviv vor dem deutschen Parlament," *Aufbau* (New York), February 27, 1953, p. 1. Israel's government thereupon lifted the ban on German shipping in its ports. "Die Israel-Regierung hebt den Boykott der deutschen Flagge auf," *ibid.*, March 6, 1953, p. 1.

78. For an analysis of the vote in the Bundestag (lower house), see Kurt R. Grossmann, "Ratifiziert!" *ibid.*, March 27, 1953, pp. 1-2.

CONSEQUENCES

Cabinet then ratified the instrument without submitting it to the legislature for another vote.⁷⁹

The agreement was carried out in its entirety between 1953 and 1966. The principal categories of deliveries, expressed in percentages of the total value of the reparations, were as follows:⁸⁰

Oil (purchased in the United Kingdom)	29.1
Ships	17.0
Iron and steel for construction	11.3
Machinery (cranes, pumps, etc.)	9.2
Electrical products (generators, etc.)	6.5
Chemicals	4.7
Railway equipment, pipes, etc.	3.8
Other items, including textiles, leather, timber, specialized vehicles, optical instruments, coin presses, and agricultural products	11.0
Services, including obligations assumed by West Germany for indemnification of German owners of property sequestered in Israel and transferred to Israel	7.4

For the West German economy, whose output was rising steadily, the burden of the payments was declining correspondingly. They amounted to 0.22 percent of the West German gross national product in 1954, and to 0.06 percent by 1963. The compensation program as a whole—reparations, indemnifications, and official restitution—represented a shrinking share of national output. The combined total of external payments under the three headings was 0.84 percent of gross national product in 1961, and 0.30 percent in 1966.⁸¹ For this price Germany was able not only to adjust a claim but also to conclude a peace.

This aspect of the settlement was to produce some unexpected psychological repercussions. After a while it became clear that the Germans were engaging in strange behavior: they were praising the Jews. In countless articles and editorials, in mass demonstrations at Bergen-Belsen, in vast and silent attendance at the performance of a play whose simple lines were taken from the diary of a dead Jewish girl, Germans were paying homage to the massacred Jews and to living

79. Dana Adams Schmidt, "Tel Aviv Ratifies Reparations Pact," *The New York Times*, March 23, 1953, p. 12. Ratifications were exchanged on March 27, 1953, in New York.

80. For the history of the agreement and its implementation, see Nicholas Balabkins, *West German Reparations to Israel* (New Brunswick, N.J., 1971). See detailed discussion of deliveries, *ibid.*, pp. 155–88.

81. *Ibid.*, pp. 192–93.

SALVAGE

Jewry everywhere. The contrast between this spectacle and all that had preceded it was so strong that observers were struck by something uncanny in the demonstration.⁸² It seemed almost that the Germans were going a little too far. This was not mere repentance; like their ancient Teutonic ancestors, the Germans were deifying the slain.

The West German decision to make peace with Israel placed the East Germans in an awkward position. At one point, in fact, an East German spokesman, caught at a press conference in West Germany, found himself speaking about the possibility of negotiations with Israel.⁸³ To be sure, this willingness was soon withdrawn. At the end of 1953, Albert Norden of the East German government declared before a press gathering in Soviet-controlled territory that Israel had no right to reparations, since it was a military base of the United States and not the legal successor of millions of Jewish victims of Nazi tyranny. In the event of a peace conference, East Germany was not going to recognize West Germany's commitment.⁸⁴

For the Jewish community the satisfaction of its claims meant the abandonment of a host of reservations that it had hitherto retained in its dealings with Germany. Outside Israel the channels of trade were cleared almost immediately;⁸⁵ in Israel itself restrictions were thrown aside one by one. Even while negotiations were still in progress, the Tel Aviv–Jaffa Chamber of Commerce was faced with the question of what to do with member firms who were assuming the representation of German companies in violation of the boycott.⁸⁶ In 1953 the Israeli government lifted its ban on the registration of German patents and trademarks.⁸⁷ A few years later, German travel bureaus were booking tourists for visits to Israel, and a five-man German industrial delegation left for Israel to examine the opportunities for investments there.⁸⁸ In

82. See Alfred Werner, "Germany's New Flagellants," *American Scholar*, Spring 1958, pp. 169–78. See also William S. Schlamm, *Die Grenzen des Wunders* (Zurich, 1959), pp. 62–73, particularly pp. 63–65.

83. "Israelis Welcome East German Bid," *The New York Times*, September 22, 1952, p. 5. The speaker was East German Agriculture Minister Goldenbaum.

84. "Ostdeutschland lehnt offiziell Wiedergutmachung ab," *Aufbau* (New York), January 1, 1955, p. 11.

85. See the comment on the spur of German diamond exports, "Diamond Industry in Germany Grows," *The New York Times*, February 21, 1952, p. 43. On the interesting development in which Jewish public relations experts were enlisted in the drive for recovery of German assets in the United States, see William Harlan Hale and Charles Clift, "Enemy Assets—The \$500,000,000 Question," *Reporter*, June 14, 1956, pp. 8–15.

86. "Um die Vertretung deutscher Firmen in Israel," *Aufbau* (New York), April 25, 1952, p. 8.

87. "Wieder deutsche Patente in Israel," *ibid.*, June 26, 1953, p. 31.

88. Kurt R. Grossmann, "Deutsch-israelische Annäherung wächst," *ibid.*, June 21, 1957, p. 1.

CONSEQUENCES

1957 West German Foreign Minister Heinrich von Brentano, in answer to a question whether any power had been approached to bring about an establishment of German-Israeli diplomatic relations declared:

No steps have been taken to establish diplomatic relations with Israel in the near future. When we arrive at such a decision, there will be no need for a third power as an intermediary. Our relations with Israel are so unequivocal and good that, in my opinion, only direct talks between Israel and the Federal Republic will be required in order to put them on a formal basis as soon as both of us shall consider the moment appropriate.⁸⁹

89. *News from the German Embassy* (Washington, D.C.), June 24, 1957, p. 3. Ambassadors were exchanged in 1965. Vogel, *Deutschlands Weg*, pp. 175-94.