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Gen-10-347.17.10
File 49-60

Restitution in Germany
CR JRSO 1/9/51

AJC
RG 347.17.10
Box 275
File 49-60

MEMORANDUM

To: William Frankel

January 11, 1951

From: Foreign Affairs Department

Subject: Reserved Powers on Restitution in Germany

In pursuance of our memorandum of January 10, we feel that the following information should be added:

Quite recently, Mr. Rubin of the AJC and Messrs. Rock and Jacobson of the JDC had informal contact with a number of "working level" people in the Department of State. They were assured that there is no decision on the question of turning over authority in this field to the Germans, and that developments on restitution have definitely not reached a stage which would make it final that the reserved powers would be abandoned. As a matter of fact, only general consideration has as yet been given by the Tripartite Committee in London to restitution, although, undoubtedly, specific discussions may start on the subject, at least in the State Department, in the not distant future.

Our spokesmen were also assured that the Department continued to be devoted to the principles of restitution, and would not be likely, in the forthcoming discussions, to turn its back on those principles. Nevertheless, we feel that complications and disagreements may arise at least at the tripartite level, and the result may be that the Allied Powers would feel that the carrying into effect of these "principles" may be safely entrusted to the Germans, with only minimal or nominal machinery of restraint or supervision on the part of the Allies. Obviously, therefore, it will be necessary for the Jewish organizations here to put in their cautioning word in time, and, for this reason, we believe that the discussion with Mr. Webb, mentioned in our last memorandum, should take place as planned.

As far as a Washington is concerned, there does not appear to be any intention to "ditch" restitution, and even in the worst case on the tripartite level, we seem to be able to count on American support to the working out of some appropriate substitute machinery. If nothing else, the visit to Mr. Webb should open the way for us to the presentation of our views when the forthcoming specific discussions start.

EH:sha

cc: Paris office

AJC GEN-10 Box 275
347-17.10 File 49-60

AJC
RG 347.17.10
Box 275
File 49-60

August 27, 1951

To: Justice Charles D. Breitler
From: Edwin J. Lukas
Subject: Court of Restitution Appeals (Germany)

The American Jewish Committee, as I told you Friday, is vitally interested in an important development which appears to be taking place in Germany under the program of property restitution. Following our discussion, when I called on you to enlist your assistance in averting what appears to us to be an impending disaster to that program, you suggested that I send you this memorandum which provides background material in the situation.

For a full description of the threat involved, I am attaching herewith a recently prepared summary of the problem; a similar document, I understand, is also being distributed among a carefully chosen few members of Congress. From this summary, you will note that the problem revolves primarily around the Court of Restitution Appeals, whose influence has been widely credited for whatever implementation of the restitution program has thus far taken place and which is now threatened with a basic revamping that appears certain to destroy or severely cripple the whole program.

Apart from other reasons, the approach of the State Department to this matter appears to be particularly incomprehensible in view of the seeming lack of assurance that the German leaders will insist on such drastic changes, should the Allies themselves not offer them. As a matter of fact, some recent conversations by representatives of the American Jewish Committee visiting in Germany would seem to indicate that the precise opposite is the case.

The program of property restitution, little as it is, represents one of the few avenues of redress which were made available to the Jewish victims of Nazism. To have even this limited measure now threatened with destruction is something to which the Jewish groups cannot stand idly by. The matter is indeed one of most vital concern to them.

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347.17.10

File 50-57

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File 50-57

C O P Y

HEADQUARTERS

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

14 July 1950

Dr. Philipp Auerbach, President
Bayerisches Landesentschadigungsamt
11 Arcisstrasse
Munich 2

Dear Dr. Auerbach:

I have received a copy of the minutes of your meeting on 5 July 1950 with several German lawyers to discuss the merits of the JRSO's claim as against other Jewish claimants who failed to file their claims on time. I am grateful for your consideration in keeping us informed about this meeting. I have also received your invitation for another meeting this month with the same group in order to discuss the same problem.

Aside from yourself and Dr. Sachs only the names of two of the remaining 6 lawyers are familiar to me. One of them is Dr. Schilf of Nuernberg who was defense counsel in the war crimes prosecution against the Krupp munitions firm and who is now one of the leading figures in the Protective Society for Restitutors in Nuernberg. The other is Dr. Aschenauer of Munich, who is undoubtedly the same Rudolf Aschenauer who served as defense counsel for SS-General Ohlendorf, the confessed murderer of 90,000 Jews. You may recall that I was the Chief Prosecutor in the Ohlendorf case and that Ohlendorf is still under death sentence in Landsberg along with 13 other colleagues for the murder of more than a million Jews. It came as quite a surprise to me to learn that Dr. Schilf and Dr. Aschenauer were interested in protecting the rights of Jewish claimants who failed to file their claims on time.

As you know, our Executive Committee has carefully considered this problem and has worked out an elaborate procedure in order to assure that a just result is reached in every case. I think that our Executive Committee is in a much better position to decide what is fair for Jewish claimants and what is in the best Jewish interest than the gentlemen attending your meeting. For that reason I can see no purpose or advantage to be gained by my joining such discussions. The JRSO will therefore not be represented at any such meeting.

Sincerely yours,

BENJAMIN B. FERENCZ
Director General

AJC Gen-10 347.17.10
Box 275

October 3, 1947

TO: Dr. Slawson

FROM: Dr. Hevesi

RE: Restitution in Germany

(Strictly Confidential)

AJC RG 347.17.10
Box 275
no file given

On September 29, two contradictory reports reached the five organizations from Germany on the present status of the restitution issue in Germany.

A cablegram received from Judge Lewinthal reported from Nuremberg that since the effort of reaching inter-Allied agreement by October 1 "seemed hopeless," General Clay reluctantly, and against his better judgment, promised unilateral enactment in the U. S. Zone. He expressed the opinion that public opinion in the United States will not "support the Jewish position on points of difference." With regard to these apprehensions, the cable alluded to the need that "enthusiastic favorable reaction follow the announcement" of the one-sided enactment. Our justified assumption was that unilateral enactment meant the enactment of the American draft approved by us.

A few hours later, Mr. Irving Mason reported over the phone from Berlin, on the basis of an interview with General Clay, held on September 27. The initial part of Mason's report tallies, as far as the General's "reluctant willingness" to enact goes, with Judge Levinthal's message, but subsequently the report makes it clear that by the 29th no final actual decision to enact unilaterally had been taken. On the contrary, the General declared to Mason that for Monday, September 29, a meeting was scheduled with the British authorities on the possibility of a bi-zonal solution, and that the General would take a final decision in accordance with the outcome of that U.S.-British meeting.

The turning point is revealed by Mason's news on this joint meeting. At the meeting, according to Mason, agreement was reached with the British finance director on all issues involved, with the sole exception of the heirless property successor organization which the British want to create in Germany, presumably within German jurisdiction, in a manner that each zone commander would be entitled to select the membership of the organization for his own zone. (The effect of this condition would be that the Jewish Restitution Commission will not be recognized by the British for their zone.)

With regard to the question of avoidance, the following compromise had been reached at the meeting: There would be absolute power of avoidance with respect to transactions entered into after the enactment of the Nuremberg Laws in 1935. Prior transactions would be subject only to the presumption of duress, ~~rebuttable~~ by proof to the effect that a fair purchase price had been paid. The agreement provided also that everything received by the seller must be paid back in full prior to restitution.

Apart from these gravely unfavorable features of this bi-zonal agreement, there is the overall fact that the negotiations with the British have not been conducted on the basis of the American draft approved by us but on the basis

Date September 3, 1947

To Dr. Slawson
From Eugene Hevesi
Subject Meeting with General Hilldring on Restitution in Germany

Early this year, an agreement came about between the United States authorities and the Jewish organizations to the effect that a delay of 60 days would be given General Clay to achieve quadripartite agreement on restitution in Germany, with the express commitment undertaken by the Area Commanders to proceed with the one-sided enactment of the draft law in the United States, if by the end of the 60 days, no prospect for quadripartite agreement existed.

Since then, not 60 but 150 days went by, and there is no prospect whatsoever, for quadripartite agreement. Even the British, who, on principle, had already accepted the American draft law, changed their position by denying any financial assistance to Jews, which may help Palestine. The French insist that the successor organization for heirless and communal property should not be a Jewish but a non-sectarian, international organization. And the Russians intend to hand over heirless property to the German Gaender in their zone.

With regard to this deadlock, both General Hilldring and the Jewish organizations felt the need of a direct exchange of views on the situation. The meeting took place at the Department of State on August 8. Both General Hilldring and his successor, General Salzman, and six members of their staff attended. The AJC was represented by Professor Herman A. Gray and Eugene Hevesi.

The objective pursued by General Hilldring was to convince the Jewish organizations that it would be dangerous from the point of view of Jewish interests to proceed with the enactment of a law in the U.S. zone alone without reaching an agreement with the three other governments represented on the Control Council. Unilateral action by the U.S. would offend these partners to such an extent that some 80% of Jewish property -- which is outside the U.S. zone -- would be in jeopardy. He asked us whether we were willing to risk this property by insisting on a U.S. zonal law now.

The composite sense of our counter-arguments was the following:

1. Enactment in the U.S. zone would, at last, break the ice and serve as a model for the other zones. It is fair to assume that the British and the French would, in the end, recognize the right of the Jews to their property.
2. Delays have, and will continue to offer opportunities for whittling down more and more the accepted provisions of the U.S. draft law. The principles involved must finally obtain recognition, and the only medium for this is the zonal law.

BACKGROUND MEMORANDUM

RECENT DEVELOPMENTS IN CONNECTION WITH RESTITUTION

PROGRAM IN GERMANY

Military Government Law 59, Germany, was enacted by General Clay in the latter part of 1947 to bring about the restitution of property taken away under the Nazis. Among other things, the law lays down certain necessary presumptions in favor of the claimants, sets certain rules, and provides for a system of special restitution courts to consider the claims including a highest court known as the Court of Restitution Appeals (CORA) made up exclusively of American judges.

Law 59 has, during the last three years, proven to be a major piece of legislation in Germany and approximately 50% of the claims filed under it have been finally processed or settled. It is now proposed by the three allied governments that, in addition to their reserved powers over other fields, they relinquish to the Germans the reserved power over restitution, on the basis of which power the restitution program has thus far rested. According to the State Department, this power will not be relinquished without a firm contractual agreement from the Germans that they themselves will nevertheless carry out the restitution program to completion. The Intergovernmental Study Group (ISG) which recently met in London has formulated special contractual proposals on this and other matters, but the details of these proposals have not yet been disclosed.

It has been the continuous position of the Jewish groups that return to the Germans of control over restitution will, apart from its moral wrong, open the door to complete sabotage of the program -- no matter what "guarantees" may be given by the Germans in the new contractual arrangement. The Jewish groups have therefore urged great care in the formulation of the actual ISG terms regarding restitution. Approximately two weeks ago, it was learned that the Allies were about to present to the Germans the slate of proposals regarding restitution which the ISG had worked out; the only specific proposal concerning which details could be obtained by the Jewish groups was one which provided that the present CORA's (similar courts exist in the other zones also) be replaced by a new court which would contain French, British, American and German judges.

Immediate representations were made on the matter to Mr. McCloy, as a result of which he personally intervened to bring about a postponement, at the eleventh hour, of any discussions with the Germans regarding CORA. He then referred the matter back to Washington for further instructions and it now rests there. In the opinion of almost everyone who has worked on restitution in Germany, a proposal to bring German judges into CORA will in fact kill the restitution program. The considerations which impel such a conclusion are as follows:

- 1) In all of their attacks on restitution, German propagandists, politicians, etc., have always concentrated much of their fire on CORA, clearly recognizing it as the bulwark which stands behind the whole program; such attacks have been accompanied by a demand for German participation on the bench. An allied proposal now to include German judges will certainly build up German hopes, will create great new uncertainty as to whether

Restitution - Berlin
(New Folder)

20 July 1949 EBF/sta

Mr. Eli Reek
American Joint Distribution Committee
270 Madison Avenue
New York 16, N.Y.

Hq. JRSO - New York Letter #184

Dear Eli,

We have just received word from Berlin that final approval has been received for a Restitution Law covering the 3 western sectors of the city. Official announcement will probably be made in a few days as soon as all translations are completed.

We have a draft of the law which has been changed in a few insignificant spots. As soon as we have the final copy, we will transmit it to New York.

The present law does not relate to any property having at the date of transfer a total value of less than RM 1,000.--.

Article 7 provides:

"Successorship of Dissolved Associations.

1. If a juridical person or unincorporated association was dissolved or forced to dissolve for any of the reasons set forth in Article 1, the claim for restitution which would have appertained to such juridical person and unincorporated association had it not been dissolved may be enforced by a trust corporation to be appointed by Military Government. Either trust corporations or successor organizations, formed in Berlin under German law, or authorized to operate in the respective Zones, shall be eligible to apply for such status in the respective Sectors of Berlin. Such organizations or corporations are hereinafter referred to as the "trust corporation".

Article 9 provides:

"Trust Corporation in Respect of Heirless and Unclaimed Property.

1. One or more trust corporations as referred to in Article 7 shall be appointed for the purpose of claiming unclaimed and heirless property.
2. Trust corporations shall claim any affected property.

- 2 -

- (a) where no claim for restitution has been lodged; or
- (b) where the victim of Nazi persecution has died or dies intestate without leaving a spouse or heir entitled to his inheritance.

3. Regulations to be made by the Military Governments of the respective sectors will provide for the appointment of trust corporations and will define their rights and obligations and specify the classes of persons to whose property they may respectively lay claim."

Article 10 provides:

"Special Rights of Trust Corporations.

1. If within six months of the effective date of this Order no petition for restitution has been filed with respect to an affected property, a trust corporation established pursuant to Articles 7 and 9 may file a petition and apply for all measures necessary to safeguard the property.
2. If the victim or his successor does not himself file a petition on or before 30 June 1950, a trust corporation shall by virtue of filing the petition succeed to the legal position and rights of the victim."

Article 20 provides:

"6. Any petition filed by a person who is not entitled to restitution of the property shall be deemed to have been effectively filed in favor of the true claimant, or where appropriate, of a trust corporation.

7. The time limit for the submission of the report or declaration referred to in paragraphs 4 and 5 of Berlin Kommandantura Order (49) 26 and Article 48 of this Order is hereby extended to 15 February 1950."

Article 53 provides:

"Powers of Review.

A Board (or boards) shall have the power to review any decision on any petition for restitution under this Order and to take whatever action is deemed necessary with respect thereto. Regulations of Military Government will provide for the appointment and composition of such Board (or boards), its jurisdiction, procedure, and such other matters as are deemed appropriate."

- 3 -

In other respects the law is very similar to the British MG Law # 59. The claim to be filed for restitution is a very simple one requiring only 6 items of information.

There is no provision for the filing of claims through a Public Prosecutor and the time limit is the same for everyone.

As soon as we receive the official copy of the law we shall apply for recognition as the successor organization for the U.S. sector. It might be wise if at the same time a similar petition was submitted to the British and French commandants signed by the leading Jewish organizations in England and France. Your view on this would be appreciated.

We will have to establish an office in Berlin and there will probably be a serious problem with the Gemeinde there. It is estimated that about 5000 Jews will remain permanently in Berlin. The number of properties involved will probably not be very great, but they will have far greater value than a similar number of properties in the U.S. zone.

I am sure that Harry Greenstein has given you the latest information on the General Claims Law and we are still keeping our fingers crossed on that particular issue. He has certainly done a wonderful job of fighting certain elements in Military Government and if we are not successful, it will not be due to lack of effort.

With best regards,

BENJAMIN B. PEREZ

cc: Mr. Jacobson
Mr. Greenstein
Mr. Isanbergh

Resubmission
YIVO (Am. Jew. Com.)
RG 347.1 (Am 41-46)
Box 65, File 4

Box 65 File 4

TO: John Slawson

DATE: December 22, 1947

FROM: Milton Winn

RE: Restitution Law - French Zone

Today I had a conference with Dr. Weis of the JDC, Mr. Monneray and also talked with Eugene Weill. The situation at present is the Alliance through Monneray has submitted a memorandum to Prefect Holveg who is now attached to the Cabinet of Mr. Schumann and who formerly was on the legal staff of the French Zone and originally worked on the proposed Ordinance. This memorandum points out the various inequities in the present Ordinance and it is hoped that as a result thereof a conference will be called with the French authorities in Paris to see if some of these inequities can be relieved.

Two days ago I spoke to Dr. Rubinstein, who is the chief legal adviser in France to IRO. Owing to his activity, he participated in our discussions and at the proper time will make representations to the French Government.

The outlook is not over-optimistic for a change in the Ordinance itself, but we hope that our efforts toward getting more favorable interpretation by way of implementation will bear fruit.

There was a recent meeting of GRIF on this subject which occurred while I was in Geneva, but according to reports received from Mr. Monneray, this meeting did not come to any conclusions. During my absence in Prague, Greece and Turkey, Dr. Weill of the JDC will work closely with Mr. Monneray in preparing the groundwork for any representations I may be able to make when I return.

The paragraph in Mr. Hevesi's memorandum to you dated December 2nd referring to Dr. Rothberg of Coblenz is noted and the information will be made use of, if possible, at the appropriate time.

YIVO RG 347.1
AJC (FAD 41-146)
Box 65

File 4

Immediately upon becoming cognizant of the issuance of this Ordinance, Mr. Wolfsohn and the writer met with M. Weill of the Alliance, M. Monneray, a French lawyer who is consultant on legal affairs to the Alliance, and Dr. Weiss of the legal staff of Joint. At this meeting, the Ordinance was considered in detail and procedures were discussed for further handling of the matter. The Alliance representatives were of the opinion that so far as internal French pressures are concerned, this could be best handled through their organization. In the ensuing days we worked with M. Weill and M. Monneray on drafting of a statement which they were to submit to the French governmental authorities, it being intended that arrangements could be made for M. Cassin to take the matter up at the highest level. After a good deal of deliberation and conferences, it was found that owing to the cabinet crisis M. Cassin would be unable to see the appropriate cabinet minister as soon as expected and therefore the plan was changed to one of having M. Cassin write the enclosed letter and that M. Weill and M. Monneray would pursue the matter at intermediate levels.

Likewise, the representatives of Alliance had the feeling that any statements made concerning this Ordinance and the circumstances of its issuance by our organization or by Joint should not ostensibly emanate from Paris. They felt that this might cause an adverse reaction by the French authorities who might feel that their prerogatives were being infringed upon. Also, the implied criticism of the French Military Authorities in issuing the Ordinance might in some remote way affect the interests of Jewish refugees in France.

Mr. Wolfsohn and the writer do not share this latter view but feel that the possibility of hurt pride of French authorities is a valid reason for the position taken with respect to confining our public activities to points of origin outside this area.

However, we and the representatives of Joint, strongly feel that this Ordinance should not go unchallenged. It may be argued that the voicing of criticism at this time may be ineffective in persuading the French to amend a law issued only a few days ago. Nevertheless, since the Ordinance is ambiguous and vague in many respects, a proper atmosphere should be created so that in the issuance of regulations thereunder or in the implementation of the Ordinance some of its graver inequities might be modified.

In addition, and more importantly, we feel that if there is no sharp reaction to this Ordinance, the British may be encouraged by the very lack of such reaction, to issue laws or regulations in their zone still more unfavorable to the Jewish position.

It is for these reasons that we have collaborated with the JDC on the enclosed statement. While it is realized this statement is not in the final form of a press release, we trust that it will be carefully considered by the cooperating organizations in New York as a guide to the line of approach to be taken in handling the matter. We feel that if steps are taken through the press and other media to bring out some of the glaring weaknesses and obvious inequities inherent in the Ordinance, not only will the path of the French organizations here in obtaining favorable interpretations be made easier but also reverberations

may reach the British who may, as a result, be more circumspect in framing the legislation they have in mind. While we are endeavoring to keep informed on the intentions of the British authorities, again the present lack of liaison in the British Zone makes this difficult and there is no assurance that a similar incident may not occur with respect to their legislation. Mr. Wolfsohn is to discuss this with Mr. Frankel on his present visit to London, and the entire problem of liaison in all the occupied zones will be taken up by the writer on his forthcoming visit to Germany.

MW:RS

Germany
YIVO RG 347-1
Am Jwsh Cmtee
(Ergn Affrs Dept 41-46)
Box 65
File 4
Attch. Nov. 28, 1947

A surprising development has taken place in the French Zone of Occupation in Germany with respect to the Restitution of property formerly owned by victims of Nazi persecution.

On November 14, the French Military Authorities published in the Official Journal an Ordinance (dated November 10, 1947) setting forth the principles and procedures governing this subject.

Representatives of the various voluntary agencies which have been studying the problems of restitution were given no prior opportunity to examine the proposed text or to offer their views.

An examination of the text of the Ordinance as issued discloses many serious deficiencies so that it appears that the Ordinance falls far short of a fair and equitable plan for restitution.

This observation is reinforced by the fact that in many instances the Ordinance treats Germans who profited by despoiling the victims of Nazi persecution more leniently than the French domestic law treats Frenchmen who acquired property from persecutees during the occupation of France. Further, the Ordinance grants the German Laender rights with respect to heirless property (i.e. property whose former owners were killed by the Nazis and who left no traceable heirs because of the wiping out of whole families) which are more favorable than those given to some of the German satellites in the Peace Treaties.

For instance, the domestic French Restitution Law provides that a Nazi victim whose property was taken from him without his consent and who claims restitution need, under no circumstances, repay to the present possessor more than the claimant actually received, even if the present

possessor acquired his holding in good faith. In contradistinction under the Ordinance, the victim will have to pay to one who is held to have acquired the confiscated property in good faith the full consideration paid by him. This is so even if such possessor acquired the property in a speculative manner and paid more than the fair value and even if he did not actually receive any consideration.

Again, French domestic law presumes bad faith on the part of any one who acquired such confiscated property however remote from the original confiscation. The Ordinance, on the other hand, only presumes bad faith if the claimant proves that the possessor had actual knowledge that the first transfer was wrongful.

In Article 25 of the Peace Treaty with Rumania and in Article 27 of the Peace Treaty with Hungary these countries undertook to transfer all unclaimed individual and communal property to organizations representing victims of Fascist measures. These properties are to be used by such organizations for the relief and rehabilitation of surviving groups, organizations and communities which were subjected to persecution.

In contrast to the above, the Ordinance leaves heirless property to the Laender and states this property is to be used for "indemnification of victims of National Socialism." The Laender have the option in their discretion of entrusting the administration of these properties to an organization to be established or authorized by them. Not only does the Ordinance fail to give weight to the fact that heirless property is derived almost exclusively from Jewish victims, while the present survivors of Nazi persecution are mostly non-Jews, but since the property is to be

Attch. Nov. 28, 1947

used for "indemnification" and not for relief and rehabilitation, in effect the Laender are relieved of the duty of indemnification which really should be a charge upon their general budget. Thus, this budget being relieved of such a charge profits by the fact that whole Jewish families have been exterminated.

It is interesting to note that in August 1947 the German Ministry of Justice in Koblenz published a draft of a proposed Restitution Law. A comparison of the points mentioned above with the suggestions made in that draft reveals that the Germans themselves provide that bad faith on the part of the present possessor would be assumed not only where there is actual knowledge of an act of spoliation but also where such knowledge should have been acquired by ordinary diligence; the German draft further provides that the victim in order to obtain restitution need not repay more than he actually received at his free disposal regardless of whether or not his property was alienated with or without his consent; and finally, the German draft suggested the transfer of heirless property to organizations which represent the same group of Nazi victims to which the former owner belonged.

It is certainly surprising that Restitution in the French Zone will be governed by a law which is the least favorable of all European Restitution laws published to date in regard to the victims of Nazi persecution. Some of the Jewish Communities in the French Zone are the oldest Jewish Communities in Germany, dating back to the early Middle Ages. In view of the provisions of the Ordinance, it is an open question whether the property of these Communities can be claimed under it and whether, if it can be claimed, it will not be necessary to sell synagogues and cemeteries in order to relieve the Laender of their duty of indemnifying the victims of Nazism.

11/25/47

MW:RS

YIVO RG 347.1
AJC (FAD 41-46)
Box 65
File 4
Attch, Nov. 28, 1947

Since the Ordinance provides that "heirless" property is to be used for "indemnification," it is doubtful whether provision has been made for the claiming of the property of these communities. Further, assuming that such property can be claimed, and if the theory of "indemnification" is applied, then these properties, including synagogues and cemeteries, would have to be sold to provide funds for indemnification.

MM:RS
11/26/47

EW/lf

YIVO RG 347.1
 Am Jwsh Cmtee
 (Frng Affrs Dept 41-46)
 Box 65
 File 4

24 Novembre 1947

Objet: Ordonnance de
 restitution aux spo-
 liés en zone française
 d'occupation

Attch. Nov. 28, 1947, Commissariat Général aux Affaires
 allemandes

Monsieur Savary
 7, avenue Hoche
 Paris 8^e

Monsieur,

Le Secrétaire Général de notre Association, Monsieur Eugène Weill, m'a tenu informé au jour le jour des contacts qu'il avait déjà pris avec vos services, et plus particulièrement avec leur directeur des Affaires Politiques, Monsieur Sauvagnardes, au sujet de la parution au Journal Officiel du Commandement Français de la Zone d'occupation, d'une ordonnance en date du 10 Novembre 1947, relative à la restitution des biens spoliés dans la zone française d'occupation. (J.O. du 14 Novembre 1947 de Z.F.O.)

Notre Organisation était dans l'ignorance absolue de la préparation de ce texte, ainsi que des travaux qui ont pu le précéder.

Or, elle s'est toujours préoccupée des intérêts de nos coreligionnaires hors de France, et elle aurait donc été heureuse de pouvoir formuler ses vœux et ses desiderata afin d'éviter, si possible, que nos coreligionnaires résidant en zone française d'occupation soient moins bien traités que ceux pouvant résider dans d'autres zones, ce qui serait tout à fait contraire aux intérêts du prestige français et de la réputation de la France dans sa zone d'occupation.

Un premier examen rapide de ce texte semble faire apparaître une différence sensible entre lui et le texte français qui avait réglementé le même problème en France (ordonnance du 2^e avril 1945), et ceci au détriment des spoliés du nazisme, et en conséquence, à l'avantage des spoliateurs allemands.

Il semble en être de même par rapport aux dispositions qui ont déjà pu être prises en zone américaine d'occupation, par une récente ordonnance, laquelle semble à première vue être plus favorable aux intérêts des spoliés.

Monsieur Eugène Weill, Secrétaire-Général de l'Alliance vous entretiendra des problèmes que soulève l'ordonnance du 10 Novembre 1947, et se mettra à votre disposition pour préparer un mémorandum sur d'éventuelles modifications à apporter à l'ordonnance du 10 Novembre afin de tendre à une unification souhaitable de la législation sur les biens spoliés.

Je vous prie de recevoir, Monsieur, l'assurance de mes sentiments distingués.

LE PRESIDENT:
 René CASSIN

COPY

ORDER No. 120

Concerning the Restitution of Possessions having been the Object of Acts of Spoliation

yivo rg 347.1
Am JWSH Cmtee
(Frng Affrs Dept 41-46)
Box 65 File 4

10 Nov. 1947

* * *

The French C-in-C in Germany:

Being aware of the decree of June 15, 1945 concerning the creation of a French Chief Command in Germany, modified by decree of October 18, 1945.

Being aware of Order No. 1 of July 28, 1945 maintaining in existence the orders and regulations promulgated by or under the authority of the Supreme Interallied Command.

Being aware of the law No. 1 of the Supreme Interallied Command repealing Nazi laws.

Being aware of law No. 52 of the Supreme Interallied Command concerning the freezing of and control of possessions, modified by order No. 81 of March 3, 1947.

Being aware of the ordinance No. 24 of December 8, 1945 concerning the declaration of acts of spoliation committed to the detriment of persons, even German persons, owing to their race or opinions.

Upon the proposition of the Assistant General Administrator for the Military Government of the French Occupation Zone.

Having heard the Juridical Committee.

ORDERS

Chapter I

Acts which are null or which can be declared so.

ARTICLE 1. Are null all acts disposing of possessions, rights or interests having taken place after January 30, 1933 without the consent of their owner (physical or moral persons) further to the measures which did establish a discrimination based on nationality, race, religion, opinions or political activities hostile to the Nazi regime.

The physical or moral persons, or their legal heirs, whose possessions, rights or interests have been the object of such acts, are entitled to have the nullity of same ascertained under the conditions provided for in the present order.

ARTICLE 2. The courts will pronounce the annulment of acts disposing of possessions without the owner's consent further to a legislation in existence prior to January 30, 1933, if it is established that these acts have in fact been performed because of the nationality, race, religion, opinions or political ... activities of the person concerned and with the intention of wronging said person.

ARTICLE 3. The courts will pronounce in the same way the annulment of acts disposing of possessions with the owner's consent when this consent has only been given under physical or moral constraint.

The contracts and ^{judicial} acts which occurred since January 30, 1933 affecting the possessions, rights or interests belonging to physical or moral persons whose situation has been settled before or after the date of these acts by means of the discriminating measures referred to in the previous articles are presumed to have taken place under constraint.

However, for all acts passed between January 30, 1933 and June 14, 1938, if the purchaser can bring proof that his purchase has been made at a price which is deemed fair, proof of the constraint will rest with the dispossessed owner.

ARTICLE 4. The dispositions of the present order are only applicable insofar as the possessions, rights and interests having been the object of acts disposing of same can be identified on the day of the application before the court.

CHAPTER II: EFFECTS OF THE NULLITY

ARTICLE 5. When the nullity has been ^{ascertained} or when the annulment has been ^{pronounced}, the parties are equitable reestablished in the situation resulting from the rights they had prior to the act declared null or quashed. The dispossessed owner takes again possession of his possessions, rights or interests free of all charges, mortgages and real rights with which the purchaser or successive purchasers may have burdened same. He takes them back with their additions and accessories according however to the dispositions which follow.

ARTICLE 6. The administration acts passed in accordance with the dispositions of Article 677 and following of the B.G.B. concerning the administration of business remain valid. In consequence, the respective rights and duties of the administrator of business and of the owner, and eventually the rights of third parties are determined according to the dispositions of the B.G.B.

For the application of the dispositions of Article 687 & I. of the B.G.B., the bona fide or dishonesty of the successive purchasers are taken into account. Only the purchasers who have had no knowledge of the character of spoliation of the initial act are considered as bona fide.

The profits which the successive dishonest purchasers will have to refund further to the dispositions of Article 694 of the B.G.B. will not be handed over to the owner who has been put back in possession, but will be allocated in each "Land" to a common fund intended for the indemnification of the victims of the Nazi regime. It will be possible to entrust with the administration of this fund a body formed or qualified for that purpose by the authority of the "Land."

ARTICLE 7. The owner who has been put back in possession of his estate and who will have received payment of the price will have to refund the amount to the purchaser.

In the same way the purchaser will have the right - on condition that he establishes his bona fide - to ask from the owner put back in possession, even in the case where the latter would not have received it, the payment of a sum which will correspond to the price the former will justify having paid.

ARTICLE 8. If, during the period when the owner was dispossessed, the estate has been burdened with real rights properly registered, the sums which may come back, further to the application of the present order, to the purchaser or his legal heirs, will have to be deposited up to the right amount, in order to be used as a guarantee for

the rights of the creditors properly registered. Upon the request of said creditors, the sums due to them become immediately exigible, from the date of the decision ascertaining the nullity or pronouncing the annulment of the act of disposition of the burdened estate.

Box 65 File 4
ARTICLE 9. The possessions, rights or interests of which the legitimate owners will have disappeared without leaving any heirs will be allotted to the fund defined under Article 6 above and used under the same conditions.

ARTICLE 10/ Any business agents, brokers or middlemen who, knowingly, will have refrained from revealing the origin of the possessions, rights or interests, can be sued by any evicted bona fide purchaser with a view to the refund of any brokerages, commissions or fees and eventually with a view to the payment of an indemnity corresponding to the loss, which loss was sustained through their fault.

ARTICLE 11. The rights arising from the application of the present order will not be the object of any deed of transfer between living persons.

CHAPTER III: PROCEDURE

ARTICLE 12. One or more special courts for dealing with the restitution of possessions having been the object of acts of spoliation are attached to each court of first instance.

These courts bear the name of Courts of Restitution. Each Court of Restitution is composed of a President and two assistants, one of them being obligatorily a victim of the Nazi regime appointed upon the proposition of the President of the Court by the Minister of Justice of the "Land." The courts thus formed are competent, exclusive of any other jurisdiction, to know of the claims of the victims of the acts referred to in the dispositions of the present order.

ARTICLE 13. The claims must be filed within eighteen months~~xxx~~ of the date of publication of the present order. For real estate matters, these claims come before the Court of Restitution attached to the Court having under its jurisdiction the place where the litigious estate is situated; personal property matters come before the Court of Restitution of the competent court in application of Articles 12 and following of the Z.P.O. (German Civilian Procedure Code).

ARTICLE 14. If the purchaser is absent or if his domicile is unknown, the procedure must be directed against the administrator who has been appointed in application of the dispositions of Law No. 52, or against the trustee (Pfleger) nominated further to Articles ~~xxx~~ 1909 and following of the B.G.B.

If the spoliated persons is absent, the action is filed either by his legal heirs or by the Superior Prosecutor (~~xxx~~berstaataanwalt) of the court to which is attached the competent Court of Restitution, upon a requisition of the Ministry of Justice of the "Land," or by the body entrusted with the management of the fund referred to under Article 6 above, or lastly by any legally formed association of ~~xxx~~ victims of the Nazi regime.

~~xxx~~ Within six months of the date of publication of the present order, the Ministry of Finances of each "Land" will send to the Ministry of Justice the list of possessions, rights and interests referred to under Articles 1, 2 and 3 so that same can be passed on to the Public Prosecutor.

This list will also be communicated to the bodies entrusted with the management of common funds referred to under Article 6 above.

ARTICLE 15. The Plaintiff is exempted from the obligation of being assisted by lawyer.

The legal notice of the claim will be served through the office of the clerk of the court.

The minutes of the legal notice will have to bear the mention that the defendant has 15 days to produce his means of defence.

ARTICLE 16. The decision ^{upon} ~~in~~ of the claim takes place either through a judgment (Endurteil) or an order (Beschluss).

The order or judgment which has taken place will be served through the office of the clerk of the court.

ARTICLE 17. There is no derogation whatsoever to the dispositions of common law concerning the means of redress and the opposition. The same applies to the intervention of third parties (Articles 64 and following of the Z.P.O.).

ARTICLE 18. In the interest of third parties, any procedure started according to the dispositions of the present order must be published in the Amtsblatt of the "Land."

This publication is done ex officio by the office of the clerk of the court.

CHAPTER IV: TRANSACTIONS OUT OF COURT

ARTICLE 19. The dispossessed owner liable to benefit from the dispositions of Chapter II of the present order may, instead of having recourse to a contentious procedure, conclude a settlement out of court with any purchaser of the possessions concerned. These agreements will only be valid on the condition that they are confirmed in court by the President of the Court who has been requested to act. The confirming decision will have to precise in ~~each~~ each case whether the purchaser will have to the common fund referred to under Article 6 above.

This decision will be notified to the Public Prosecutor on the one hand, and to the body entrusted with the administration of the fund referred to under Article 6 above on the other hand; these two authorities will be entitled to ~~oppose~~ oppose the decision within a month by means of a declaration to the office of the clerk of the court.

CHAPTER V: COSTS

ARTICLE 20. The various acts of procedure, judgments and other operations necessitated by the actions provided for in the present order do not give rise to any costs on behalf of the Public Finances. *for the Plaintiff*

The only payments to be made are the expenses and fees of the ~~xxx~~ experts, notaries or other legal officers. These expenses are borne according to the rules established by the German Civilian Procedure Code.

This special regime applies to the transactions confirmed under the conditions fixed in the previous chapter.

CHAPTER VI: LISTING OF THE FREEZING MEASURES PROVIDED FOR IN LAW NO. 52

ARTICLE 21. The judicial decisions of restitution passed further to the present order and which are of a final nature, as well as the settlements ~~xxx~~ out of court ~~xxx~~ properly confirmed, will involve the withdrawal of the protective measures which result from the application of Law No. 52 of the Supreme Interallied Command concerning the freezing and control of possessions.

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AJC (FAD 41-46)
Box 54
File 4

However, this withdrawal will have to be ^{ascertained} by the competent departments ~~in accordance to some~~ modalities which will be fixed by an ordinance. *with procedures*

ARTICLES 22. The present order will be published in the Official Gazette of the French Chief Command in Germany and executed as law in the French Zone of Occupation.

Baden-Baden, November 10, 1947

KOENIG
General
French C-in-C in Germany

MEMORANDUM

YIVO RG 347.1

Am. Jwsh Cmtee.

(FAD

41-46)

Box 65

File 4

FROM : ~~Max Isenbergh~~

TO : ~~Professor Cassin~~

Germany Prot-
Fr- Low

SUBJECT: Outline of Present State of Restitution and Indemnification Measures in Western Zones of Germany.

I - Existing Measures and Projects.

A - Restitution.

French Zone. Military Government Ordonance 120, as modified by Ordonances 156 and 186, provides for restitution of identifiable property, but it is deficient in three major respects: (1) Insufficient presumption of male fides in the case of purchases from Jews in the period 1933-38 (2) Retention of profits and increments for a "common fund" (see below) (3) Retention of heirless property for the common fund.

British Zone. Thus far, there is merely a provision for registration. A proposed restitution measure, now under consideration, is believed to be inadequate, but the text has not been generally released by the British.

American Zone. Military Government Law 59, in spite of numerous deficiencies is in principle acceptable. The time for filing claims has expired (Dec. 31, 1948), and the actual process of making return is about to begin.

B - Indemnification.

French Zone. Military Government Ordonance 164 provides for indemnification in certain respects for victims of nazi persecution, but payments are to be made out of the common fund referred to above. The source of most of the fund would be Jewish property, but the beneficiaries of the fund would in preponderant measure be non Jews.

British Zone. British officials in Minden state that they are "actively considering" a general claims (indemnification) measure, but as yet nothing has been promulgated.

American Zone. The German Laender themselves have submitted a proposed indemnification law (to be promulgated by themselves) to General Clay whose decision it awaits. Its major defects are (1) failure to include DP's as beneficiaries (2) establishment of arbitrary and inadequate ceilings for

certain classes of damages (3) arbitrary application, in making payments, of a conversion ratio which would reduce benefits to one tenth of their stated value. (4) failure to permit a successor organization to get heirless claims.

NOTE: There are no restitution or indemnification measures in the western section of Berlin.

II - Parliamentary and Political Conditions.

The expected creation of a trizonal German state affords a new occasion for pressing for adequate restitution and indemnification measures, on the ground of desirability of uniformity, at least in principle, in the entire trizonal area. The minimum objectives we seek in our own attempts are restitution along the lines of American Military Government Law 59 and indemnification along the lines of the measure passed by the American Zone Laender but with correction of the shortcomings listed above.

While it would doubtless be better to have these measures imposed by the three military governments acting together, we are attempting to evoke support on several fronts. We are urging German political groups to incorporate into the proposed constitution a provision favoring adequate restitution and indemnification measures. We are trying to win the support of American military government officials, and we continue to make representations to the State Department in Washington. We have also had informal conversations with French and British military government officials in Germany to present to them the American interest in unification in these fields.

Inclusion of the three western sections of Berlin within the scope of any trizonal program of restitution and indemnification would of course be desirable. Since prompt realization of this goal is at least uncertain, we have been urging separate tripartite measures for the three western sections of Berlin. Here to, we believe it is desirable to approach German political groups as well as the military government officials and Foreign Offices of the occupying powers

With respect to the French Zone, two major approaches appear to be needed. First, a plea should be made to the highest officials in the French Government responsible for French policy in Germany, urging them to enter into a tripartite program of restitution and

indemnification (comprehending the western zones and western sections of Berlin) meeting the above stated minimum standards. Second, a like plea should be made for immediate unilateral modification of the measures in the French Zone to meet these standards. In this connection, it may be pointed out that, although a contention to the contrary will probably be made, no action taken thus far under the existing French Zone measures is incapable of being readjusted to conform with the modified standards proposed here.

The apparent incongruity of pressing simultaneously for trizonal coordination and unilateral modification is a necessary practical expedient. Since no one can be confident that trizonal coordination will be achieved, the possibilities of effecting improvements in any single zone must not be neglected. Moreover any closer approach in a single zone to the standards outlined would make ultimate trizonal unification in these fields easier.

M. I.

YJVO (Am. Jew. Com.)
Rt 347.1 (Am 41-45)
Box 65, File 5

Box 65 File 5

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CABLES & TELEGRAMS
JOINTFUND-PARIS

July 19, 1948

Paris Letter No. 1254

To: AJDC NEW YORK, Attention Mr. Eli Rock

From: AJDC PARIS, Office of General Counsel

Re: OGE/GER/F/50 - French Zone Restitution Law

We are referring to our letter No. 1153 dated July 6, 1948

- (1) M. Huisman arranged a meeting between us and M. Debre, the Secretary General of the French Ministry for German Affairs. This meeting took place in the afternoon of July 16, 1948. Mr. Wolfsohn and the undersigned took part in the discussions.
- (2) M. Debre did not yet know of the new ordinance and had some difficulty in obtaining a copy of the official gazette although the ordinance had been issued on June 29, 1948.
- (3) We limited the discussions to the restriction of the right to inheritance stressing the fact that this restriction was a confiscation of rights established by the first restitution ordinance. M. Debre agreed that this was an act of confiscation and that it was a "strange" piece of legislation. He immediately called in some of his officials and very emphatically protested against the fact that Baden-Baden had issued such decree without prior consultation with him. He also gave instructions to call Baden-Baden on the phone the next day (July 17) and to ask for an immediate report.
- (4) M. Debre promised to do all he could to remedy what had happened and he arranged a second meeting with us for Monday July 26.
- (5) In the meantime we have learned that IRO is thinking of making representations to the French Zone Commander in order to have the proceeds of the heirless property funds used for D.Ps. in the French Zone. Such a solution, however, would not be favourable to the Jews, as there are approximately 30,000 D.Ps. in the French Zone out of which only about 800 are Jews. We do not think that IRO will do very much in this matter and we do not think that they will succeed. We will, however, watch their activities closely.

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- (6) As it might be difficult for the ministry to have General Koenig's ordinance revoked, it may be that a compromise will be offered according to which the limitation of the right to inheritance might be maintained but the funds used only for Jews. We should like to add that there is no indication at present that such a compromise is contemplated by the French authorities, but it may be a possible development.

We therefore believe that the question should be discussed in New York as soon as possible and that instructions should be given to us (and to Mr. Wolfsohn) as to what attitude we should take in this matter. Should we insist on the revocation of the limitation to inheritance or should we take the line that the limitation would be acceptable if the proceeds of Jewish heirless property will be used only for Jewish victims of Nazi oppression, and if Jewish organisations would be given control in the administration of the funds.

- (7) Just now a new development has taken place. We have been informed that an ordinance regulating the indemnification of victims of Nazi oppression in the French Zone has been published. We will receive a copy of the ordinance tomorrow and will send it on to you immediately.

Dr. George Weis
Attorney

GW/hf

-2-

was very frank in his criticism of the new draft. When he, however, called M. Cassin, the president of the Conseil d'Etat and the leading Jewish personality in France, the only result of the interview was an appointment with M. Weill, the secretary general of the Alliance Israelite with whom, of course, we are in close and constant contact anyway.

- (4) Together with Mr. Wolfson of the American Jewish Committee we then saw Mr. Weill yesterday afternoon in order to impress upon him the urgency of the matter and our disappointment that after nine months of negotiations the French Jewish organisations have still no close contact with the French authorities and have to learn from us of new drafts which are prepared.

We also told M. Weill that we were surprised to see that the memorandum of June 30, 1948 had been signed by the World Jewish Congress whilst the American Jewish Committee and we had always been asked by M. Weill not to approach French authorities because we were foreign organisations.

- (5) Under our pressure M. Weill called the office of M. Schneiter in order to arrange an interview between M. Cassin, M. Meiss and M. Weill on the one hand and M. Schneiter on the other hand. We do not know yet when this meeting will take place, but we know already that M. Cassin will probably not go to see M. Schneiter but only Messrs. Meiss and Weill.
- (6) It is our and Mr. Wolfson's impression that the French Jewish organisations are not in a position to achieve real results. It takes them months before they prepare a memorandum or arrange an interview with the French authorities. They always hope that M. Cassin, who is the fourth highest dignitary of the French Republic, would take an active part in these negotiations, but up to now he was obviously very hesitant to do so.

Under these circumstances it seems to be of great importance to find some direct approach to the French authorities. From the new draft it is clear that at least the authorities in Baden-Baden are openly hostile to the Jewish point of view and do not hesitate to curry favour with the Germans at the expense of the Jews.

The undersigned is inclined to think that only an open protest against the new draft, and especially against the suggested confiscation of Jewish property in favour of the "Funds" could remedy the situation.

It must be borne in mind that any unfavourable legislation in the French Zone might have far reaching effects in other zones as well. If the restitution laws should be unified in the western zones, a compromise will have to be reached in regard to the three legislations, and the more unfavourable the legislation is in one of the zones, the more unfavourable will be the compromise.

There exists an American interest in the French Zone legislation for two reasons:

- (a) A great number of claimants under the French Zone restitution law are U.S. citizens;
- (b) a law favourable to the Germans in the French Zone must make the position of the U.S. authorities in the U.S. zone more difficult.

We are maintaining close contact with Mr. Wolfson and will report to you any further developments.

Dr. George ~~Wolfson~~
Attorney

GW/hf

Enc.

VIVO RG 347.1
Am Jwsh Cmtee
(Frgr Affrs Dept)

Restitution

Box 65
File 5 *French Zone*

*French text to
Henri
Manninay to
be read*

To: Dr. John Slawson

July 6, 1948

From: Joel D. Wolfsohn

Re: Restitution

We have learned that the French Military Government in Germany is planning to amend the restitution law which it promulgated last winter. The amendment, as far as we can ascertain, will only make the law worse from our point of view. I attach a copy of the proposed amendment.

Following a series of impromptu discussions by JDC representatives, M. Eugene Weill of the Alliance was designated by Professor Cassin to discuss the matter with the American agencies. At this meeting, at which M. Weill undertook to proceed expeditiously through Professor Cassin and Judge Weiss, to make representations to M. Pierre Schneiter, Secretary of State for Affairs in the French Zone of Germany and in Austria, he handed us a copy of a letter dated June 30 which had been sent to the Minister in further representation of the restitution law. I attach a copy of this.

Mr. George Weis of the JDC legal staff and I were greatly surprised on perusing the letter to find that not only was it signed by the president of the Alliance and the president of the CRIF, but also by a representative of the World Jewish Congress.

I protested vigorously to M. Weill that this seemed to be in violation of our understanding that the French organizations were to handle this matter and that no external group would participate. We pointed out that except for that agreement we would have approached the French Ministries involved directly. We were particularly concerned that to a considerable degree the arguments presented in the letter were those which had been developed at a conference in our office participated in last winter by representatives of the JDC, the Alliance, Milton Winn and myself.

Dr. John Slawson

NY 100-347-1
Am. Jewish Cmtee
July 6, 1948 (S. Dept. 41-46)
Box #65
File 5

It was obvious that M. Weill was somewhat taken aback. He suggested that it was the French branch of the World Jewish Congress that had signed the letter, and I pointed out that the signature did not so indicate and that in any event, it was contrary to our understanding.

I expressed to him the opinion that if that was to be the plan of action, then we would proceed directly since it seemed to me that the French organizations had not yet established the kind of liaison with the appropriate ministries so that they were informed of proposed developments in the field of restitution.

Mr. Weis of the JDC pointed out that in England, Jewish organizations have been invited to consider the drafts of restitution legislation. That in the American Zone we were well informed of the progress of restitution legislation, but in the French Zone we always learn about developments after the fact or when things have moved so far along that the problem of meeting objectionable drafts is more difficult.

I am hoping that we will not again run into this difficulty.

We are proceeding on the restitution problem. It may be that I will sit in on the meeting being arranged between representatives of the Alliance and the CRIF and Minister Schneider.

CC FAD

YIVO RG 347.1
Am Jwsh Cmtee
(Frgn Afrs Dept 41-46)
Box 65
File 5

New York, le 20 Janvier 1948

S. E. l'Ambassadeur
de la République Française
Washington, D.C.

Excellence:

Les organisations soussignées ont l'honneur de vous soumettre le mémorandum ci-inclus, au sujet de l'Ordonnance No. 120 relative à la restitution des biens ayant fait l'objet d'actes de spoliation, récemment promulguée dans la Zone d'Occupation Française en Allemagne.

L'Ordonnance 120 contient certaines dispositions qui, ou trop vagues, ou trop précises, s'appliqueraient au détriment des victimes mêmes du Nazisme. En tout état de cause, telle qu'elle soit, elle ne peut assurer la juste et équitable restitution des biens dont les victimes ont été dépouillées. Dans l'ensemble, il est évident que l'Ordonnance accorde aux Allemands qui ont profité des spoliations nazies, un traitement beaucoup plus généreux que la loi française n'accorde aux citoyens français qui ont acquis des biens de persécutés au cours de l'occupation de la France.

Nous vous prions de bien vouloir attirer l'attention de votre Gouvernement sur le contenu du mémorandum attaché. Nous espérons fermement que le Gouvernement de la République voudra bien modifier l'Ordonnance No. 120, afin que les victimes de la persécution nazie soient assurées d'un minimum de cette justice qui a été de tous temps dans la ligne de la politique et des traditions nationales françaises.

Veuillez agréer, Excellence, l'assurance de notre haute considération.

American Joint Distribution Committee Jewish Agency for Palestine

American Jewish Committee World Jewish Congress American Jewish
Conference

**Mémemorandum au sujet de l'Ordonnance No. 120 du
Commandant en chef de la Zone d'Occupation Française en Allemagne.**

No date (attached to Jan. 20, 1948) (Frgr Affrs Dept
41-46)
Box 65 File 5

L'Ordonnance No. 120, loin d'assurer la juste et équitable restitution des biens enlevés aux victimes du Nazisme, au contraire, contient un nombre de dispositions qui s'appliqueraient au détriment des victimes des lois spoliatrices nazies. Il est évident que les stipulations sous-énumérées de l'Ordonnance 120 accorde aux Allemands qui ont profité des lois spoliatrices nazies, un traitement plus indulgent que l'Ordonnance Française 45/770 du 21 Avril 1945 (journal officiel du 22 Avril 1945) n'accorde aux citoyens français qui ont acquis des biens des persécutés au cours de l'occupation de la France par l'ennemi ou que la Loi No. 59 récemment promulguée dans la Zone d'Occupation Américaine en Allemagne au sujet de la restitution des biens n'accorde aux Allemands de cette Zone:

1. Telle qu'elle est formulée dans l'Ordonnance No. 120, l'obligation prévue à la charge du propriétaire dépossédé, de rembourser le prix versé par l'acquéreur équivaut pratiquement à un déni de justice. Alors que dans tous les cas où des actes de disposition ont été accomplis en conséquence de mesures exorbitantes du droit commun et dans les cas d'acquisition de mauvaise foi par conventions directes avec le spolié, le Décret Français du 21 Avril 1945 exonère sagement le propriétaire dépossédé de l'obligation de rembourser le prix versé, dans la mesure où il n'en aura pas profité, l'Ordonnance No. 120 généralise l'obligation de remboursement à tous les cas sans exception (art. 7) y compris le cas où la victime n'aura pas perçu personnellement le prix versé par l'acquéreur. Ainsi, le propriétaire dépossédé serait tenu à remboursement, même si le prix n'aurait été que nominalelement payé, ou aurait été retenu par son agent, ou s'il en aurait été dépouillé par quelque autorité nazie sous un prétexte quelconque. Enfin (art. 7, par. 2), si l'acquéreur établit sa bonne foi, le propriétaire remis en possession est tenu à remboursement, même au cas où il n'aurait pas perçu le montant, même nominalelement, comme dans les cas où le bien, droit ou intérêt était confisqué et subséquentement vendu. Le propriétaire est aussi obligé de rembourser le prix versé par l'acquéreur même si cette somme est plus élevée que le montant perçu par le spolié.

2. Aucun délai n'est prévu à l'article 8 pour le remboursement du prix perçu et des impenses. (Voir par contre art. 46 de la Loi Américaine No. 59 et art. 8 de l'Ordonnance Française du 21 Avril 1945).

3. L'Ordonnance (art. 5) annule toutes charges, hypothèques et droits réels dont les biens, droits ou intérêts du dépossédé

auraient été grévés; mais elle ne contient aucune disposition explicite au sujet des dettes qui auront été contractées à la charge des entreprises commerciales ou industrielles. Si ces dettes sont destinées à rester valables, (aucun inventaire analogue à celui imposé par le Décret Français du 21 Avril 1945 (art. 17, par. 3), n'étant prévu par ailleurs), les bénéficiaires de l'Ordonnance en faveur du propriétaire dépossédé seraient purement illusoire.

L'Ordonnance omet d'établir un plafond aux montants que le propriétaire dépossédé est tenu rembourser, dans les cas même où la propriété restituée aura perdu substantiellement de sa valeur (voir art. 44 (IV) du Décret Américain No. 59).

4. L'Ordonnance omet de définir le "juste prix d'acquisition" (art. 3). On peut s'attendre dès lors à ce que la marge d'interprétation qui est ainsi laissée aux Cours Allemandes au sujet du terme "juste prix", soit utilisée pour écarter des réclamations légitimes. Il est donc indispensable de définir avec précision le "juste prix". La Loi No. 59 du Gouvernement Militaire Américain définit le "juste prix" d'un objet comme étant "la somme d'argent qu'un acheteur consentant payerait (librement) et qu'un vendeur consentant accepterait (librement), compte tenu, dans les cas d'une entreprise commerciale, de la valeur du fonds de commerce qu'une telle entreprise représenterait entre les mains d'une personne non sujette aux mesures de persécution mentionnées à l'article 1". (art. 3, par. 3, Décret Américain No. 59).

5. L'Ordonnance No. 120 accorde au possesseur le droit de prouver que le bien réclamé a été acquis sans contrainte. Il semble pourtant téméraire d'espérer que les Tribunaux Allemands évalueront avec objectivité les preuves qui seront soumises par le possesseur en vue d'écarter la présomption de contrainte. C'est en prévision de cette attitude probable des Tribunaux Allemands, et dans le but d'en obvier les inconvénients, que l'article 3 de la Loi No. 59 détermine que les seules preuves admises contre la présomption de contrainte qui s'attache à toutes les transactions conclues après la promulgation des lois de Nuremberg sont "la preuve que ces transactions auraient été conclues même en l'absence de toute domination nazie ou que l'acquéreur a prêté exceptionnelle assistance au propriétaire originel."

L'Ordonnance No. 120 ne contient aucune disposition obligeant l'acquéreur, en vue d'établir sa bonne foi, à prouver qu'il a consulté le Régistre Foncier ou le Régistre de Commerce (Voir Décret Américain No. 59, art. 31 (3)).

6. Alors que l'Ordonnance Française du 21 Avril 1945 prévoit l'annulation ab initio de tous actes de disposition accomplis durant la période de persécutions avec toutes conséquences de

droit, l'Ordonnance 120 restreint son application aux biens identifiables au moment de la réclamation. Cette disposition est de nature à encourager les possesseurs actuels soit à détruire, soit à cacher les biens indûment acquis, aux termes de l'Ordonnance. D'autre part, les Cours Allemandes peuvent l'interpréter de façon à exclure des objets non identifiables par nature (machines, instruments, marchandises, etc.). Enfin, les réclamations tendant à obtenir le remboursement de dommages causés par le fait de l'acquéreur, ou par sa faute, ainsi que les droits de subrogation des propriétaires dépossédés, ne semblent pas couverts; omission d'autant plus dangereuse, qu'aucune provision ne semble avoir tenu compte des risques de prescription. L'article 7 (1) et l'article 4 du Décret du 21 Avril 1945 et l'Article 29 de la Loi Américaine No. 59 créent une procédure dont on pourrait utilement s'inspirer.

7. L'article 9 affecte les biens, droits et intérêts dont les légitimes propriétaires seront disparus sans laisser d'héritiers, au Fonds d'Indemnification des victimes du Nazisme. Considérant que les biens de cette catégorie sont presque exclusivement juifs, il y a, dans cette formule de distribution, une criante injustice. Elle est aggravée par le fait que pleine autorité est donnée aux Laender dans le choix de l'organisation à laquelle les biens en déshérence peuvent être transférés. Enfin, aucune mention n'est faite des biens communaux ou des biens appartenant à des organisations sociales, charitables ou autres.

8. L'article 6 (III) affecte les "fruits" remboursés par les possesseurs de mauvaise foi à un fonds d'indemnification pour être distribués, dans chaque Land, aux victimes du Nazisme; il semble plus équitable de réserver les "fruits," pour autant qu'ils sont remboursés, aux propriétaires remis en possession, ou de l'attribuer à un fonds destiné à être distribué exclusivement parmi eux.

9. La rédaction des articles du Titre III relatifs à la Procédure n'est pas de nature à faciliter un règlement rapide et satisfaisant des réclamations.

Aucune procédure spéciale n'étant prévue pour des cas de restitution des biens ayant fait l'objet d'actes de spoliation, il est certain que les procès résultant de ces réclamations seront extrêmement longs. Seule une procédure spéciale, tenant compte des conditions particulières dans lesquelles se sont effectuées les transactions visées, pourrait assurer un règlement rapide. Le décret Français du 21 Avril 1945, art. 17, établit précisément le type de procédure dont il y aurait lieu de s'inspirer.

10. Etant donné que dans la plupart des cas de succession les anciens propriétaires ont été tués par les Allemands, il ne semble pas juste de réclamer aux intéressés le règlement des taxes. L'Ordonnance n'exonère pas les héritiers de cette catégorie des impôts de succession et d'autres redevances similaires, et en cela également elle diffère de la Loi Américaine No. 59.

11. L'article 20 de l'Ordonnance No. 120 semble exonérer les divers actes de procédure et autres, relatifs à l'application de l'Ordonnance, de tous frais judiciaires. Cependant, cette exonération n'est pas formulée de façon explicite. Par ailleurs, aucune disposition n'est prévue en ce qui concerne la cautio judicati solvi, (comparer à l'article 72 de la Loi Américaine No. 59). Il s'en suit que les tribunaux pourraient exiger de tels dépôts de garantie de demandeurs considérés comme étrangers, en vertu d'interprétations mal-intentionnées

12. L'application des dispositions prévues par l'Ordonnance No. 120 est confiée exclusivement aux Allemands. Il est évident que des dispositions imposées par des Autorités Militaires ne seront pas interprétées et exécutées consciencieusement par des Tribunaux Allemands. L'exercice d'un contrôle de la part des Autorités Occupantes semble donc être une conditio sine qua non. Les difficultés inhérentes à l'exercice d'un tel contrôle pourraient être éliminées si l'Ordonnance prévoyait la création d'un Conseil de Révision qui aurait le droit de soumettre à son examen toutes les décisions qui seraient prises dans des cas visés par l'Ordonnance. Ce Conseil devrait avoir la faculté de prendre toutes dispositions qui lui paraîtraient opportunes en application de l'Ordonnance. (Voir Art. 69 de la Loi Américaine No. 59).

THE



AMERICAN JEWISH COMMITTEE

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June 7, 1949

Dear Moose:

It is a hard job to get hold of a busy man like Prof. Cassin, and so I had to exploit the windfall of the presence here of Mr. Braunschvig to get some action along the lines suggested by your letter of May 4.

The outcome is that both Mr. Cassin and Mr. Braunschvig promised jointly to approach M. François-Poncet on the subject of heirless property in the French zone, in a manner which would exhaust all arguments available, including the intimation that the Jewish organizations here are about to apply for official U.S. intervention.

We agreed, of course, that we shall give some leeway to this action of our French friends and of your own Sub-Committee in Paris, before approaching the Secretary of State for a démarche in this matter. However, the delay will not be too long, since it will not be possible for us to postpone State Department action on Mr. David Bruce's request for instructions very long.

We have agreed with Mr. Braunschvig that your Sub-Committee will receive, through Mr. Weill or Mr. Monneray, full and prompt information about the Cassin-Braunschvig action launched here. I was assured that this action will be fully coordinated with that of your group in Paris.

As soon as I receive any written material from Mr. Braunschvig, I shall supply you with it promptly.

Sincerely,

Eugene
Eugene Hevesi

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

EH:rs

cc: Dr. Gray, Mr. Rock, Mr. Jerome I. Jacobson, Paris (JDC)

May 27, 1949

His Excellency
The American Ambassador
American Embassy
Rue Gabriel
Paris.

Dear Mr. Ambassador:

We are extremely grateful for your kindness in giving us the opportunity to discuss restitution in the French Zone of Germany and related matters with you on May 23.

Amplifying the discussion, we wish to propose for your consideration with the State Department that the United States Government communicate recommendations to the Government of France that the policy in the French Zone of Germany dealing with the restitution of heirless property once belonging to victims of Nazi persecution be brought into closer harmony with the policy adopted in the U.S. Zone.

This objective has been sought previously by U.S. Authorities. In fact the enactment of Law #59 by the U.S. Military Authorities for the U.S. Zone of Germany was delayed for some time until November 1947, in the hope that France and Great Britain would join in a uniform trizonal law embodying the principles suggested by the United States. Since neither of these western powers seemed prepared at the time to give recognition to the proposals of the United States, the U.S. Military Authorities issued Law #59 unilaterally for the U.S. Zone. This, of course, was done with the concurrence of the State Department.

While the French Zone Ordinance on restitution (Ordinance #120 as amended) differs from U.S. Zone Law #59 in several important features, it is felt that at least with respect to the crucial point of difference a change should be sought in the French Law. Under the American Law the unclaimed and heirless property remaining in the U.S. Zone of Germany of the victims of Nazi persecution is devoted to the relief, rehabilitation, and resettlement of the surviving victims of Nazi persecution. Specific and identifiable property which was taken from or transferred under duress by persons discriminated against on religious, racial or political grounds is restored to their owners or their heirs. It has been recognized by the major western powers as well as others (in the Five Power Agreement of June 1946) that nearly all of the property taken from people on these

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grounds of discrimination came from Jews against whom a complete scheme of extermination and expropriation was undertaken. Thus, the American Law provides for the utilization of unclaimed and heirless property according to classes or categories of victims, and property taken from Jews is dedicated for the aid of surviving Jewish victims, property taken from Catholics may be claimed for the benefit of surviving Catholic victims, etc. In carrying out these principles the U.S. Authorities have recognized the Jewish Restitution Successor Organization, a non-profit New York Membership Corporation, whose membership includes the representative Jewish relief and welfare organizations in the world, as the successor organization to receive unclaimed and heirless property of Jewish origin and to use such property for surviving Jewish victims. Under the American Law in no event can the German States be the beneficiaries of the property of persecutees.

In the French Zone no such provisions exist. Instead, heirless and unclaimed property is reserved for a Common Fund under the jurisdiction and administration of the German States. No provision is made that the property should be used for the classes of surviving victims according to the origin of the property. Another gross inequity exists in the French structure for dealing with heirless property. Under another Ordinance (#164) provision is made to indemnify persecutees for the personal injuries, harm, and non-identifiable property losses they suffered under the Nazis. Instead of having these wrongs remedied wholly by the German States, as is contemplated in the U.S. Zone, the French Zone Law provides that the Common Fund assets derived under the restitution law shall be one of the sources out of which victims shall be indemnified. Thus the error is compounded, and in the last analysis, victims of persecution and discrimination are redressed (to what little extent such matters can be redressed) out of the property of other victims, instead of by the German States.

The needed revision of the law for the French Zone is a provision that unclaimed and heirless property of persecutees be devoted to the relief, rehabilitation and resettlement of surviving victims according to the origin of the property and that execution of this principle be placed in the hands of responsible representatives of the various classes of victims. A representative Jewish successor organization should be empowered for property of Jewish origin, - a representative Catholic successor organization should be empowered for property of Catholic origin, etc. Moreover, the payment then of indemnification should be left to fall upon the German States where it belongs.

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The principles which the United States has adopted for the U.S. Zone are not unprecedented. They are in effect in Italy and Greece and are about to be put into effect in Holland. Other governments have indicated their intention to follow suit.

Moreover, the Five Power Agreement on Reparations of June, 1946, to which the United States, France and the United Kingdom are signatories, provides that heirless property should be used for surviving victims according to the classes of origin of the property. The Agreement expressly recognizes that at least 95% of such property found in neutral countries is of Jewish origin, and the assets made available under that Agreement have been utilized according to classes of victims. France, incidentally, was a co-sponsor with the United States of this Agreement.

Also, a bill now pending in Congress (H.R.1849 and H.R.2780) and approved by the State Department and Department of Justice would provide for the creation of several representative successor organizations to receive heirless property now in the hands of the U.S. Alien Property Custodian and to use it for the relief, rehabilitation and resettlement of surviving members of the same victimized groups to which the former owners belonged.

Several new factors seem to make it expedient that these recommendations by the United States to France be renewed:

Firstly, His Majesty's Government has at last recognized the equity and merit of the U.S. Zone law on restitution and is about to issue a law for the British Zone which is substantially patterned after ours. This was forthrightly stated by the British Minister of State, Mr. Hector McNail in a parliamentary debate in the House of Commons on March 8, 1949. In his remarks, Mr. McNail said:

"... when we made our first attempt (at drafting a law), neglecting the American model, we were eventually, not forced, but eager to admit that the American model worked very well. There was a great deal of amicable settlement, surprisingly little litigation, and most certainly, as far as we could see, no reaction which might have been interpreted as anti-Semitic feeling...

"... we directed ourselves to producing a third text, closely following the American model. That, I am glad to say, we received four days ago. I and my advisers have had only a preliminary look at this, but I should say to the House that I think it is a satisfactory instrument if we are to base ourselves on the American experience. I want to assure the House that so far

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as I can see there will be little delay in formalizing this instrument."
(Matter in parenthesis added.)

Hence, with the British view now approaching that of the United States it is timely that France as the remaining western power re-examine its position.

Secondly, American interest following closely upon new demarches made by the representative Jewish organizations of France may provide sufficient impetus to bring about the desired change. The present attitude of the British Government, which has been brought to the attention of French organizations of Jewry by the American Jewish Committee and American Joint Distribution Committee has encouraged the French Jewish organizations to renew their efforts with the French Government. We are informed that M. Rene Cassin, President of the Conseil d'Etat, has written to M. Parodi, Secretary General of the Ministry of Foreign Affairs urging that the law in the French Zone be changed as suggested herein, and M. Cassin has enclosed a memorandum prepared by the Conseil Representatif des Juives de France and the Alliance Israelite Universelle, the representative French organizations of Jewry. Renewed effort in many directions is being made by the French-Jewish organizations .

You will be interested in knowing that we were asked by the French-Jewish organizations to seek your aid in making recommendations to the Government of France. While for obvious reasons they could not formally present such a request, they felt that similar recommendations coming at this time from the United States could be persuasive in having the French law corrected.

Thirdly, in connection with the Occupation Statute for Germany recently agreed among the United States, United Kingdom and France, an agreement contemplating tripartite control was likewise adopted. Restitution matters and claims against Germany, among other things, are specifically reserved to the Occupation Authorities (Sec. 2 "b" Occupation Statute). These developments and the present discussions with Russia seem to warrant bringing the policies of the western powers into harmony. The endeavours for harmonizing French restitution legislation with that of the United States (and we can now expect with that of the United Kingdom as well) are supportable not only on the merits of equity and moral persuasion involved in the specific question, but also in terms of uniting and combining the activities of the western powers in as many spheres as possible for dealing with Russia on questions affecting Germany. Moreover, it would be in the interest of France herself that she re-examine her own position and make her own changes in harmonizing the laws on restitution, rather than have the matter brought up by the High Commissioners of the United States and United Kingdom as appears possible from the text of the Tripartite Controls Agreement.

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The American Joint Distribution Committee and the American Jewish Committee, as you will appreciate, regard themselves as having a justified concern with this problem. Together with other Jewish relief and welfare organizations we have been urging that the surviving victims of Nazi persecution who in the main are Jews and were persecuted because they are Jews, and who in many cases American Jewish organizations are now assisting, should be accorded the sympathy and assistance which they deserve on grounds of humanity, equity and decency. In the same context, the property which was expropriated from those less fortunate Jews who, with their families, were themselves wiped out, should be used for the relief and comfort of the survivors. The United States has consistently demonstrated its belief in these high purposes and has urged their acceptance by the nations of the world. We hope that you will find the occasion now opportune to renew the recommendation of the United States for their acceptance by the Government of France.

We wish to reassure you of our gratitude for the interest and courtesy which you have extended us.

Most sincerely yours,

H. W. Beckelman
Vice-Chairman for
American Joint
Distribution Committee

Max Isenbergh
Counsel for
European Operation
American Jewish Committee

JJJ/hf

cc. Max Isenbergh
Eli Rock
M&B
JJJ

C O P Y

YIVO RG 347.1
Am Jwsh Cmtee
(Frng Affrs Dept 41-46)
Box 65 File 6
May 24, 1949

TO: Dr. Hevesi, Mr. Rock, Mr. Boukstein

FROM: N. Robinson

Re: Heirless property in the French zone of Germany

According to information received, the filing date in the French Zone was extended until Aug. 15 for individuals and common funds. It may be assumed that no further extension will be granted.

In this connection the following problem arises:

If we press only for a change of the provisions of the decree relating to the composition of the funds and the purposes for which the property should be used, we may lose the precious time for filing claims in regard to these properties. In other words, even if we succeed in this point - after considerable delay - the funds may have no assets because they may not be able to file the claims before the expiration of the time limit. On the other hand, if the funds provided for in the present law or the Staatsanwaelte are required to file all claims in time, these assets will not remain in the hands of the present illegal possessors and will represent property whose disposition may be determined even later in accordance with our request. The objection against such a procedure would be that in asking for action by the funds we recognize them implicitly. However, this could be alleviated by stating clearly our point of view.

I would suggest that our friends in Paris be asked to give us their view on whether, in approaching the Department of State, we should not ask for both: change of the provisions of the decree so as to adapt them to the U.S. zonal law, and - in order not to lose the time provided for filing of claims - until such time as the amendment will be made and Jewish funds be established, the present machinery under the decree be used to file all claims for masterless and unclaimed property, acting for the benefit of the organization which we advocate. It should be made clear that the second request is dictated solely by questions of expediency and urgency and does by no means represent the recognition of the present set-up. However, the urgency of action by the funds or the Staatsanwaelte should be stressed and the Department of State requested to convey to the French Government the obvious necessity of speedy action in filing the claims. We could request that the JRSO which has vast experience in this question should be given a possibility of assisting in filing the claims.

The above suggestion is based on the fear that, if we restrict ourselves to changes in the law, the French may not establish the funds at all in time and may not advise the Staatsanwaelte to file claims (as happened in France proper) contending that they did not act because of our requests for changes in the decree.

YIVO RG 347.1
Am Jwsh Cmtee
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Box 65 File 6

30 MAI 1949

DRAFT LETTER

May 12, 1949

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

Dear Mr. Acheson:

The undersigned desire to bring to your attention certain facts regarding present restitution of heirless Jewish property in the French Zone of Germany. These facts in our opinion are sufficiently serious to warrant the intervention of the U.S. Government. The approach taken by the French authorities and the paradoxical implications of that approach may be summarized as follows:

In international conferences France has taken the position that heirless Jewish property in neutral countries should be used for the relief of the Jewish survivors; when dealing with the same question in the French Zone of Germany, France has enacted a contrary policy. In the French Zone, unless remedial steps are taken, the property of heirless Jews who were wiped out by the Nazis is in jeopardy of falling to the very state or people who destroyed these Jews rather instead of going to the surviving Jewish victims. The French policy vis-a-vis other countries has been based on principles of justice and equity; in the French Zone of Germany these principles have been negated.

I. France's policy in dealing with heirless Jewish property found in neutral countries.

France was a co-signatory of the Five Power Agreement concluded by the United States, France, Great Britain, Czechoslovakia and Yugoslavia in June, 1946.

Under that Agreement, "in the interest of Justice, the French Government on behalf of the Five Governments.....are making representations to the neutral powers to make available all assets of victims of nazi action who died without heirs.....". France, with the U.S. and the other signatories, declared the policy that the surviving Jewish victims should be aided with the heirless

property in neutral countries. It was recognized that the preponderance of such property had belonged to Jews destroyed by Nazi action. Article E of the Agreement signed by France says:

".....the conclusion that ninety-five percent of the 'heirless funds' thus made available should be allocated for the rehabilitation and resettlement of Jewish victims takes cognisance of the fact that these funds are overwhelmingly Jewish in origin, and the five percent made available for non-Jewish victims is based upon a liberal presumption of 'heirless funds' non-Jewish in origin. The 'heirless funds' to be used for the rehabilitation and resettlement of Jewish victims of nazi action should be made available to appropriate field organizations..."

Thus, France, as a co-signatory and as the agent of the five powers, proposed to the neutral powers that ninety-five percent of the heirless property found in those countries should go for the rehabilitation and resettlement of surviving Jewish victims of Nazi actions. The Agreement went further. It provided that the heirless funds intended for surviving Jewish victims of Nazi action "should be made available to appropriate field organizations." Thus, the proceeds were to "be made available directly and jointly to the American Jewish Joint Distribution Committee and the Jewish Agency of Palestine, organizations best fitted to use these funds for the rehabilitation and resettlement of Jewish victims of German action." Hence, world-wide representative Jewish organizations were entrusted to use the proceeds of the agreement for the benefit of Jewish victims of German action; and ~~the~~ funds made available as a result of the Five Power Agreement for the benefit of Jews have been turned over to these Jewish organizations for use in the projects approved.

II. What France has done in the German Zone under his administration.

A diametrically different policy is being pursued in the French Zone of Germany than was incorporated in the Five Power Agreement. In November 1947, the French Commander in Chief in Germany issued ordinance 120, concerning the restitution of despoiled property, for the French Zone of occupation. No provision was made to make available heirless property for the surviving Jewish

victims of Nazism. Instead, this property is to go into ~~a~~ "a common fund (to ~~be~~ be created) in each Land for the indemnification of victims of Nazism."

While in the Agreement of June, 1946 France recognized that the preponderance of heirless property was of Jewish origin and that not more than 5% could be presumed to be of non-Jewish origin, yet in the French Zone France has failed to recognize the same principle. The basic facts are the same in Germany as in the neutral countries.

It must be inquired as to who are the "victims of Nazism" in the French Zone of Germany, in which the Jews either have been wiped out as elsewhere in Germany, or from which the few survivors are emigrating? Non-Jewish victims are not properly the beneficiaries of this Jewish heirless property, nor are there such numbers of them in the French Zone as to warrant a division of even 5%, such as was made in the Five Power Agreement. ~~Manifestly~~ Certainly the preponderance of the heirless property should not go to non-Jewish victims. Moreover, the absence of such non-Jewish victims will leave only the German property, Land as the recipients of heirless/almost all of Jewish origin - a result very much contrary to the "justice and morality" which were the foundation of the Five Power Agreement.

In addition, the body which is to administer the common fund, under the French Law, does not place responsibility for administration in the hands of the surviving victims or a representative "organization best ~~fit~~ fitted to use these funds for the rehabilitation and resettlement of Jewish victims of German action." The French ~~Zone~~ Zone law places the responsibility of administration in an organization to be "created or empowered for the purpose by the Land Government." It can hardly be assumed that the Land Government would have greater concern for the victims of Nazism than it has for itself. Particularly is this so where inaction or failure to act vigorously will leave the Land itself as the beneficiary of the heirless Jewish property. This fact must have been recognized by France

~~responsibility of the Land Government~~

when deciding to empower representative Jewish bodies with this responsibility under the Five Power Agreement. The same conclusions are valid for the French Zone as for the Five Power Agreement.

III. What has been done in the other Zones of Germany.

In the American Zone of Germany, Military Government Law 59, issued in November 1947, provides for a Successor Organization to be appointed by the Military Government and not by the German Land. This Successor Agency is to be entitled to the heirless property. (Article 10). "Neither the State nor any of its sub-divisions nor a political self-governing body will be appointed as Successor Organization." In June 1948 the American Military Government appointed the Jewish Restitution Successor Organization, a non-profit membership corporation of representative Jewish organizations as the successor organization to ~~xxx~~ receive the entire estate of all heirless Jewish property. Thus in keeping with the policy first set down in the Five Power Agreement, Jewish heirless property in the American Zone is vested in a representative Jewish organization to be used for the benefit of surviving Jewish victims.

In the British Zone, a draft restitution law is presently under consideration and copies of it have been circulated by the authorities to representative Jewish organizations. It follows largely the pattern of the American Zone Law. Provision is made for one or more "trust corporations" to be found in the British Zone for the purpose of claiming unclaimed and heirless property. (Article VIII). The British Draft Restitution Law also provides for regulation to be issued by the Military Government for the establishment, composition and scope of the Trust Corporation. There is no indication in the British Zone Draft Law that the Land will be the administrators of heirless property in the Trust Corporations and it is anticipated that the British Regulations dealing with Trust Corporations will enable a Jewish Trust Corporation to be established in the British Zone to succeed to unclaimed and heirless Jewish property, to be used for the relief and rehabilitation of surviving Jewish victims. There is ground then to assume that the British Zone law in turn is coming to the principles set down

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File 6

in the Five Power Agreement.

IV. Conclusions.

It remains for France to modify the Restitution Law of the French Zone to bring it fully into harmony with the principles of the Five Power Agreement, of which France was a co-drafter and signatory and which her Western partners in Germany are undertaking to apply in their zones of occupation.

In the opinion of the undersigned, the U.S. government is directly affected by the inadequacies of the French Zone restitution legislation. The present legislation departs fundamentally from underlying principles of international accords to which both the U.S. and France are signatories. It conflicts with the approach taken by the U.S. Military Government in its zone of Germany, thereby weakening the effectiveness of this government's own position vis-a-vis the Germans. And it is in conflict with fundamental morality and justice. We feel that the United States is warranted in making representations to this effect to the French Government. We are sincerely hopeful that our government will find it possible to intervene promptly to the end that the serious situation which now exists may be corrected at an early date.

Sincerely yours,

American Jewish Committee

American Jewish Congress

Paris, 3 Mai 1949

Monsieur le Président Cassin
Palais Royal
Paris.

Monsieur le Président,

Nous vous sommes vivement reconnaissants d'avoir bien voulu nous recevoir hier pour examiner les questions de restitution dans la zone française d'occupation. Nous sommes persuadés que la démarche personnelle que vous avez proposé d'effectuer auprès du Ministre des Affaires Etrangères marquera un pas décisif vers l'unification des lois de restitution dans les trois zones d'occupation d'Allemagne et la promulgation des mesures appropriées de restitution dans les trois secteurs ouest de Berlin.

Comme vous le savez, la Loi N° 59 du Gouvernement militaire pour la zone américaine, prescrit notamment, que les biens en déshérence d'origine juive seront déferés à une organisation successorale chargée de les recueillir et de les employer à assister, relever et réinstaller les survivants juifs des persécutions nazies. En outre, par suite des récentes améliorations apportées aux tout derniers projets législatifs pour la zone britannique, il semble maintenant probable que l'application d'un principe analogue sera effectuée dans cette zone. A la lumière de ce développement satisfaisant en Allemagne occidentale, l'occasion nous paraît propice pour renouveler les efforts tentés en vue d'harmoniser la loi française avec les autres. A ce propos nous soulignons que les mesures prises à ce jour en zone française ne feraient pas pratiquement obstacle aux revisions dans le sens que nous proposons.

Le principe même de consacrer les biens en déshérence à l'assistance, le relèvement et la réinstallation des survivants du groupe auquel appartenaient les propriétaires antérieurs est un devoir de justice. Les minorités ont subi les pires persécutions en raison de leur rattachement à un groupe, ce serait une cruelle ironie que de contester maintenant l'identité des mêmes groupes au moment où l'on envisage de leur accorder une manière de compensation. Seules des mesures

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permettant d'utiliser les biens des Juifs persécutés au profit des Juifs survivants, les biens des Catholiques persécutés au profit des Catholiques survivants, etc.. etc., permettront d'introduire une équité relative dans cette oeuvre de reconstruction. Pour atteindre cet objectif il convient que la charge de recueillir et administrer les biens soit confiée à des organisations successorales distinctes représentant chacune un groupe de victimes.

En ce qui concerne les biens en déshérence dans les pays neutres, le principe de l'utilisation, dans la mesure du possible, des biens en déshérence au bénéfice des survivants du groupe auquel appartenaient les victimes a été soutenu, ainsi que vous le savez, par l'Accord de Réparations des Cinq Puissances, signé par la France. Ce principe vient d'être mis en oeuvre récemment en Grèce, il est en voie de l'être en Hollande et aux Etats Unis il est incorporé dans le projet de loi sur l'attribution des biens étrangers en déshérence, projet dont nous prévoyons la ratification d'ici la fin de la session actuelle du Congrès.

Votre suggestion d'une démarche de source américaine, utilisant les bons offices de l'Ambassade des Etats Unis, nous paraît judicieuse dans l'état actuel des choses et nous nous proposons de l'entreprendre prochainement.

Vous apprendrez sans doute avec intérêt que nous avons attiré sur cette question l'attention du Général Clay, celui-ci nous a assuré qu'il s'efforcera personnellement d'obtenir l'application en Allemagne occidentale et dans les trois zones occidentales de Berlin, du principe des organisations successorales indépendantes.

Nous sommes heureux de pouvoir nous joindre à vous dans ce commun effort. Vous nous obligeriez très vivement en nous tenant au courant des suites en ce qui vous concerne et nous en userons, naturellement, de même à votre égard.

Veillez agréer, Monsieur le Président, l'assurance de notre respectueuse considération.

N.W. Heckelman
Vice-Chairman, European Council

Jerome J. Jacobsen
General Counsel, European Council
AMERICAN JOINT DISTRIBUTION COMMITTEE

Max Isenbergh
Counsel for European Operations
AMERICAN JEWISH COMMITTEE

*Reimbursement - Rehabilitation
French Zone
April 27, 1949*

RESTITUTION OF JEWISH HEIRLESS PROPERTY

IN THE FRENCH ZONE.

The policy of France with respect to the heirless property of Jewish victims of nazism is paradoxical. When considering in international conference with other nations the question of heirless Jewish property remaining in neutral countries, France gave leadership which resulted in a policy of justice, sympathy and equity to the surviving Jewish victims of nazi oppression, yet when dealing with the same question in the French Zone of Germany, France has neglected to give recognition to the same policy which she has urged for the neutral powers. In the French Zone, unless remedial steps are taken, the property of heirless Jews who were wiped out by the nazis, is in jeopardy of falling to the very state or people who destroyed these Jews rather instead of going to the surviving Jewish victims.

I. France's policy in dealing with heirless Jewish property found in neutral countries.

France was the Co-sponsor of the Five Power Agreement concluded by the United States, France, Great Britain, Czechoslovakia and Yugoslavia in June 1946.

Under that agreement, "in the interest of Justice, the French Government on behalf of the Five Governments..... are making representations to the neutral powers to make available all assets of victims of nazi action who died without heirs.....". France jointly with the U.S. proposed as a policy for the neutral powers that the surviving Jewish victims should be aided with the heirless property, the preponderance of which France and the other signatory powers recognized had belonged to Jews destroyed by Nazi action. Article E of the agreement sponsored by France says:

"..... the conclusion that ninety-five percent of the 'heirless funds' thus made available should be allocated for the rehabilitation and resettlement of Jewish victims taken cognizance of the fact that these funds are overwhelmingly Jewish in origin, and that five percent made available for non-Jewish victims is based upon a liberal presumption of 'heirless funds' non-Jewish in origin. The 'heirless funds' to be used for the rehabilitation and resettlement of Jewish victims of nazi action should be made available to appropriate field organizations....."

Thus, France proposed to all the neutral powers that ninety five percent of the heirless Jewish property found in those countries and belonging to Jewish victims of nazi actions should go for the rehabilitation and resettlement of the surviving Jewish victims. The proposal went further. It provided that the heirless funds intended for surviving Jewish victims of nazi action "should be made available to appropriate field organiza-

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tions." Thus the policy provided that the proceeds "should be made available directly and jointly to the American Jewish Joint Distribution Committee and the Jewish Agency of Palestine, organizations best fitted to use these funds for the rehabilitation and resettlement of Jewish victims of German action". The funds made available as a result of the Five Power Agreement for the benefit of Jews is still being turned over to these Jewish organizations for use in the projects established. Hence, world-wide representative Jewish organizations were entrusted to use the proceeds of the agreement for the benefit of Jewish victims of German action.

II. What France has done in the German Zone under her administration,

A more obscure policy is being pursued in the French Zone of Germany than was proposed to the neutral powers. In November 1947, the French Commander in Chief in Germany issued ordinance 120, concerning the restitution of destroyed property, for the French Zone of occupation. No provision was made to make available Jewish heirless property for the surviving Jewish victims of nazism, but instead this property is intended to go into "a common fund (to be created) in each Land for the indemnification of victims of nazism." While on one hand France recognized that the preponderance of heirless property was of Jewish origin in neutral countries and that 5% granted to be of non-Jewish origin was a liberal presumption, yet on the other hand in the French Zone France fails to recognize the same principle though the same facts exist there. For the neutral countries, France vigorously and correctly contends that Jewish survivors should be the beneficiaries of Jewish heirless property but in the French Zone of Germany, the policy is ambiguous. Who then are the "victims of nazism" in the French Zone of Germany where the Jews either have been wiped out as elsewhere in Germany, or the few survivors are emigrating? Non-Jewish victims are not properly the beneficiaries of this Jewish heirless property, nor are there such numbers of them in the French Zone as to warrant a division of even 5%, such as was made in the Five Power Agreement let alone the preponderance of heirless property. Hence, the policy ultimately will leave only the German Land as the recipients of heirless Jewish property, very much contrary to the "justice and morality" which were the foundation of the Five Power Agreement. Moreover, the body to administer the common fund is not conceived under the French Law as to place responsibility in the hands of the surviving victims or a representative "organization best fitted to use these funds for the rehabilitation and resettlement of Jewish victims of German action." The French Zone law places primary emphasis of administration upon an organization to be "created or empowered for the purpose by the Land Government". It can hardly be assumed that the Land Government would have greater concern for the victims of nazism than it has for itself especially where to pursue a less vigorous interest will leave the Land itself as the beneficiary of the heirless Jewish property. This fact must have been recognized, by France when considering the Five Power Agreement and deciding to empower representative Jewish bodies with the responsibility. The same consideration is warranted in the French Zone.

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III. What has been done in the other Zones of Germany .

In the American Zone of Germany, Law 59, issued in November 1947, provides for a Successor Organization to be appointed by the Military Government and not by the German Land. This Successor Agency is to be entitled to the heirless property. (Article 10). "Neither the State nor any of its subdivisions nor a political self-governing body will be appointed as Successor Organization." In June 1948 The American Military Government appointed the Jewish Restitution Successor Organization, a non-profit membership corporation of representative Jewish Organization as the Successor Organization to receive the entire estate of all heirless Jewish property. Thus in keeping with the policy first set down in the Five Power Agreement, Jewish heirless property in the American Zone is vested in a representative Jewish Organization to be used for the benefit of surviving Jewish victims.

In the British Zone, a draft restitution law is presently under consideration and copies of it have been circulated by the authorities to representative Jewish Organizations. It follows largely the pattern of the American Zone Law. Provision is made for one or more "trust corporations" to be formed in the British Zone for the purpose of claiming unclaimed and heirless property. (Article VIII). The British Draft Restitution Law also provides for regulation to be issued by the Military Government for the establishment, composition and scope of the Trust Corporation. There is no indication in the British Zone Draft Law that the Land will be the administrators of heirless property in the Trust Corporations and it is anticipated that the British Regulations dealing with Trust Corporations will enable the formation of a Jewish Trust Corporation to be established in the British Zone to succeed to an unclaimed and heirless Jewish property for the relief and rehabilitation of surviving Jewish victims. Provision for more than one Trust Corporation under the British Draft permits such interpretation as reasonable. There is ground then to assume that the British Zone in term is coming to the principles set down in the Five Power Agreement.

It remains for France to modify the Restitution Law of the French Zone to bring it fully into harmony with the principles of the Five Power Agreement which France sponsored and which her Western partners in Germany are undertaking to apply in their Zones of occupation.

15 April 1949

MEMORANDUM

HQ. JRSO Paris Letter No 61.

SUBJECT: French Zone Restitution Problems X

TO : Mr. Jerome J. Jacobson
American Joint Distribution Committee
Paris.

I have just had a long talk with M. Hertzfelder of the ADIVA (Association pour la defense des victimes de l' Axe). He has just returned from Baden Baden where he spoke to M. Souchard of the French Property Division and M. Junkin of the French Legal Division. Both of these gentlemen are extremely familiar with the restitution problems in the French Zone.

Dr. Wehle has probably given you the general background concerning the French law. Ordinance No 120 of the French Military Government was enacted on 10 November 1947 and provides for restitution of certain individual properties in the French Zone. Heirless or unclaimed property was to go to a common fund together with the profits derived from all confiscated properties. The heirless properties could be claimed by either

- a) the Oberstaatsanwalt (Chief District Attorney)
- b) the persons in charge of the common fund
- c) any lawfully constituted association of victims of National Socialism.

All of these had to claim before 14 May 1949. If the previous owner was still alive, claim filed before the filing deadline would accrue to his benefit. Otherwise it would go to the common fund.

According to the information obtained by M. Hertzfelder, only about 1000 claims have been filed up to date in the French Zone. On the other hand, about 7000 properties have been taken under control or have been reported by persons in possession as having been acquired under duress. M. Hertzfelder has a list of these 7000 properties and lists have also been given to the Oberstaatsanwalt of each land in the French Zone.

It seems to me that there are 4 problems in connection with restitution in the French Zone, namely:

- 1) how to prevent the interests of the individual claimants from being extinguished by the 14 May deadline;
- 2) how to make sure that all Jewish property is claimed;
- 3) how to have the common fund used for Jewish purposes;
- 4) who is to take the necessary measures.

1) How to prevent the interests of the individual claimants from being extinguished by the 14 May deadline.

If either the Oberstaatsanwalt or an organization of Nazi victims claims the individual properties before the deadline the individual rights are preserved. No organization has yet been established for the common fund so that there is no such administration to claim properties. French Military Government has not recognized any Nazi victims' organization as being authorized to claim under the law. The ADIVA is a French and not a German organization and M. Junck doubts whether it complies with the intent of the law. In any event, the ADIVA has neither the funds nor the facilities to file 7000 claims in the next month so that as a practical matter we can not count on them to do it. It was agreed, however, that every effort should be made to have the Oberstaatsanwalt file the claims before 14 May. What this would mean is simply that M. Hertzfelder will try to visit them and urge them to do so, or if he is unable to spare the time, he will write to them on the very impressive ADIVA stationery. This, I will confess, is a rather weak effort but I do not think it is a major problem. We considered the possibility of getting the French to extend the filing deadline to preserve the rights of individual claimants. The indications in Baden Baden were that they would not consider such action. Because of our experiences in the American Zone and principally because I did not think the number of individual claimants who were unable to take action up to now was very great I did not think it advisable for us to start to campaign to get the French law extended on that point.

In short, as to problem No 1, I think there is practically nothing we can do, but not much has been lost because individuals have had a fair time in which to take action.

2. How to make sure that all Jewish property is claimed.

M. Hertzfelder was assured that the French were going to extend the filing deadline until 31 December 1949 for the claiming of properties which would go into the common fund. They already had a mimeographed draft of a combined restitution and indemnification law which included that extension. Either of the three agencies mentioned could claim the heirless properties but it would not accrue to the benefit of any individual even if he should appear.

I think, therefore, that this problem has been faced by the French officials and will be resolved. In any event, we can watch the progress on it and have sufficient time to take corrective action.

3. How to have the common fund used for Jewish purposes.

On 9 March 1948, a delegation consisting of M. Weil, Secretary General of the Alliance Israelite, M. Adam, Treasurer of CRIF and representing the World Jewish Congress, and M. Kallman, Secretary -

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General of the ADIVA, sought to achieve certain improvements in the French law. I understand that the AJDC as well as the American Jewish Committee also participated in these efforts, likewise without success. What is required therefore is a new effort to persuade the French to be more reasonable in their attitude to the Jews. The fact that the Americans and the British (we hope) have taken a more liberal view should now be strong arguments in our favor. We can also point to the Paris reparations agreement on the non-monetary gold as an argument allowing the Jews to receive a substantial portion of the assets in the common fund. Whoever will lead the drive for either Jewish management in the common fund or Jewish participation in the assets will certainly think of additional arguments once he tackles the problem.

4) Who is to take the necessary measures.

The Jewish groups which have been interested in the French Zone re-stitution law have been the AJDC, the Jewish Agency, the American Jewish Committee, the World Jewish Congress, ADIVA, the Alliance Israelite and CCNY. I understand that a committee of these organization was once formed but is now dormant. It was unanimously agreed by those present in Muer-berg that the one most competent to rally these dormant powers was none other than one Jerome J. Jacobson. What this would mean would be that you would have to pick up all the threads, assemble the various groups and agree on a common plan for action. Since the pressure would have to be put on in Paris it is the logical site for such a gathering. Dr. Wehle should be able to brief you as to past events or he can obtain the information from the other groups in Paris.

I can think of no one (except possibly you) who would object to your taking the ball. Of course it will be essential to coordinate the whole business with the other groups but new blood may be an important catalyst.

I would be pleased to receive your favorable acceptance of these suggestions.



BENJAMIN B. FERENCZ

cc to :
Mr. Eli Rock
Mr. Max Isenbergh
Mr. Hertzfelder

June 7, 1950

To: Mr. M.W. Sedgalman
From: Jerome J. Jacobson
Re: Meeting at Quai d'Orsay concerning amendment of restitution law
in the French Zone.

I returned this morning in time to attend a meeting at the Quai d'Orsay with M. Favreau, economic and finance adviser of the French High Commission of Germany, and M. Rodocanacchi, the representative at the Quai d'Orsay concerned with restitution problems in the French Zone. M. Joseph Fisher represented CRIP, Eugene Weill - Alliance Israelite, Cahn-Debre - World Jewish Congress, Herzfelder - ADIVA.

We had a two-hour meeting with the French authorities during which they furnished us with copies of a draft amendment to French Ordinance #120 prepared by M. Jacomet, legal advisor to the French High Commissioner, the purpose of which amendment is to provide for the establishment of separate successor organizations to receive heirless and unclaimed property whose former owners belonged to the same class as the claiming successor organization. A copy of the translation is attached for your perusal. The organizations did not have an opportunity as yet to compare this draft with the one submitted by the Jewish organizations, and I am unable as yet to comment on the significance of this draft as compared with our own. A supplement analyzing the draft will be sent you.

One thing is definite from the discussions had at the Quai d'Orsay, and that is that the French are completely prepared now to amend their Ordinance and to provide for a Jewish successor organization to claim and receive heirless and unclaimed property of Jewish origin.

From our superficial examination of the document given to us it seemed to us that some ambiguity might exist between possible claims by a Common Fund in conflict with those of the successor organizations, inasmuch as the French propose retaining a Common Fund as a residual claimant for such property as is not allocated to specific successor organizations. The officials immediately responded to our observations and noted that the language must be sharpened up to remove any ambiguity, impediment or possible conflict between a Common Fund and a successor organization.

It was agreed that the Jewish organizations should meet after having studied the government draft and submit a memorandum to the Quai d'Orsay as to whether they approved the draft or concerning such points on which they have different opinions. The attitude reflected by the French authorities was a positive one concerning the change and in turn a friendly one towards the Jewish organizations.

The question was raised by M. Rodocanacchi that the French wished to be informed by what manner the proposed Jewish successor organization would be broadly representative of all Jewish interests. It was explained that three groups of Jewish bodies

would/....

would participate in the successor organization, namely the French Jewish organizations as represented by CRIF, Alliance Israelite and ADIVA, the German Jews as represented by delegates from the French Zone Gemeinden and the Jewish Committee for Relief Abroad, and the international Jewish bodies as represented by JDC, JAFF and the World Jewish Congress. Moreover, it was explained that this coincided with the representative character of JRSO (in which the French were also represented through CRIF's membership) and the Jewish Trust Corporation. The French officials acknowledged that this suggestion satisfied their concern.

The question was then raised by the French authorities concerning the manner in which surviving Jewish victims would participate in the benefits of the successor organization, since they were concerned that there should be no discrimination with respect to any group of surviving Jewish victims. They received the assurances, which apparently satisfied them, that in the basic objects of the successor organization as well as in its practices all groups of surviving Jewish victims of Nazi action wherever they may be would be entitled to equal consideration, and that the property acquired by the successor organization would be used for relief, rehabilitation and resettlement of such surviving victims without special emphasis in favour upon any particular group. I assured the French authorities that this was in harmony with the objects of JRSO and the Jewish Trust Corporation.

Finally they queried what form the successor organization would take, and a considerable part of our time was devoted to discussing this problem. Eugene Weill took the lead by pointing out that they had made a study of the law and found that it was impossible to establish a Societe Anonyme and almost impossible to have special approval of an "association" under French law within a reasonable time to enable it to function under the restitution law. He went on to explain that for tax, moral and political reasons we could not establish a successor organization under German law. Hence, as a matter of practical alternative the only apparent solution seemed to be the establishment of a French department in either the Jewish Trust Corporation or JRSO which should be recognized by the High Commissioner for the French Zone.

The immediate reaction was unfavourable and in fact hostile, and from the glances both French officials cast at me there appeared no doubt in their minds that I was the culprit present in their midst. M. Favereau even expressed himself frankly and sternly against the idea, pointing out that it was politically inexpedient. Since it appeared in the attitude as if I may be misleading the French organizations I responded by saying that we were energetically in favour of a French organization under French law, and that this would in turn follow the precedents of the other two zones. Unfortunately, none of the Jewish organizations were responsible for the obstacles found under French law, and if for the moment we assume that these obstacles are real, then we are forced to consider the only existing alternatives, namely German law or affiliation with one of the existing organizations. As to the German law I pointed out, and M. Favereau agreed, that the problem of the Equalization of Burdens tax was a serious one that would fall as a penalty on a successor organization of German personality. He expressed in turn understanding and sympathy with the view that Jews for moral reasons did not wish to be part of a German corporation. Hence, I led him through the reasoning on the unavoidability of affiliation by special agreement with either JRSO or the Trust Corporation, at the same time pointing out that only in a limited sense would the organization be American or British in character, but that in an administrative sense it would be

French and subordinate to the French High Commission. He replied saying that he did not rebel against the suggestion and in fact favoured affiliation with JRSC rather than with the Jewish Trust Corporation, but that the French would be confronted with a delicate problem of prestige, which he thought could be overcome with satisfaction to the French if we could persuade the British to accept a single successor organization, namely JRSC, in which event there would be one successor organization for all of western Germany. Morag, he argued there would be a precedent for this proposal, inasmuch as it was his understanding that JRSC would be recognized for all three sectors of Berlin.

I replied saying I held no disagreement with his suggestion, but that unfortunately the hour was late and events had passed us by, since I had this morning returned from London where the Jewish Trust Corporation was launched, and its corporate papers are being filed probably at this very moment of our conference, and moreover, that arrangements were made that within two or three weeks the British High Commissioner would publish a regulation designating the Jewish Trust Corporation as the successor for Jewish heirless and unclaimed property in the British Zone.

The French authorities appeared then to take a more sympathetic attitude toward the problem, saying that the question should be submitted to President Rene Cassin and other leading legal personalities, and if a way could not be found to organize under French law, that we should obtain statements of opinion from distinguished members of the French bar affirming the impediments, so as to enable the High Commission to have some basis for considering our alternative proposal. They were naturally hopeful that a way could be found under French law, though both of them seemed to be lawyers and seemed to concur in the legal presentation made by Eugene Weill.

M. Favreau suggested, if it were possible that a French Jewish body, if it existed, which had broad social purposes, might be used as the basis for recognition for a successor organization, but the French Jewish representatives pointed out that no French Jewish organization is established with sufficiently broad powers. Favreau then suggested that perhaps a joint organization embodying both the Jewish Trust Corporation and JRSC might form the basis for building the successor organization, but when I pointed out to him that we had to have the juridical personality of one or the other and could not fall somewhere in between them, he agreed and abandoned his suggestion.

In any event, the notion of affiliating with JRSC has been planted and ultimately was not regarded with hostility but rather sympathy. Hence, unless a way can be found to bring a French organization into being, I believe the French authorities can be sold this alternative.

Eugene Weill, M. Herzfeldt and I are meeting tomorrow to analyze the French draft and prepare comments on it for submission to a meeting of all of the interested organizations fixed for next Tuesday.

JJJ/hf

Jerome J. Jacobson

cc: R. Filpel
Eli Rock
JJS
B. Perence
E. Schuster

YIVO RG 347.1
Am Jwsh Cmtee
(Frng Frs Dept 41-46)

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CAHLES & TELEGRAMS
JOINTFUND-PARIS

May 26, 1950

Mr. Z. Schuster
American Jewish Committee
30 rue la Boetie
Paris 8e.

Ref. OGC/GER/F/52

Dear Zach:

I am enclosing a copy of the note presented by M. Eugene Weill at the meeting called by CRIF last Tuesday night in connection with French Zone restitution problems. I am also enclosing a copy of the translation made in our office.

You will be interested to know that I met with Eugene Weill and Me. Kovarski, as a result of which we agreed on a proposal which would contemplate the establishment of a separate department in JRSO for the sole purpose of operating in the French Zone and administering separately the heirless property required there. The plan would anticipate the establishment of a special committee within JRSO who would have jurisdiction over the French Zone property. This committee naturally would have greater French representation than now exists in the JRSO Board of Directors. Hence, there would be no need for the establishment of any additional body in France, since the entire problem would be dealt with within the framework of JRSO. Procedurally M. Weill and Me. Kovarski are revising the note which they previously drafted to embody the terms of this proposal so that it will be presented to our meeting on Tuesday by the French organizations.

I have advised our New York office of these developments in order to have them initiate discussions within JRSO, and I hope that we will not run into any technical or political obstacles within JRSO which would impair the development of this plan.

Kindest regards,

Sincerely yours,


Jerome J. Jacobson
General Counsel

JJJ/hf
Encs.

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YIVO RG 347.1
Am Jwsh Cmtee
May 19, 1950

(Frngn Afrs Dept 41-46)
Box 65 File 7

MEMORANDUM

concerning the establishment of a Jewish Successor Organization in
the French Zone of Germany

Attch. May 26, 1950

(prepared and submitted by M. Eugens Weill and Mo. Kovarski of the
Alliance Israelite)

Following the systematic spoliation and the mass extermination of the Jews of Europe by the Nazis, a considerable quantity of assets, rights and interests which belonged to Jews, are now in the hands of German acquirers or other people who profited by the Nazi regime. By reason of the restitution laws the property must be returned by the present holders. On the other hand, a great number of these properties, and in general all kinds of Jewish properties, are heirless and unclaimed following the massacres in which the Jews were the victims during the Hitler regime. It is only fair that these properties be recovered, if not by their owners or their heirs, both of whom have disappeared, then at least for the benefit of other Jews, themselves victims of the Nazi regime.

This was early understood by the American Military Government which in November 1947 promulgated in its occupation zone law #59, according to which neither the State nor a communal organism, nor any State organism, could be eligible to acquire the heirless and unclaimed property; the American law #59 provides that a Jewish successor organization should be eligible to receive unclaimed and heirless Jewish property. The successor organization would be nominated by the Military Government and not by the German Land. In June 1948 the American Military Government designated the "Jewish Restitution Successor Organization", a non-party corporation, composed of Jewish national and international organizations, to secure the Jewish heirless assets and utilize them for the benefit of Jewish victims of Nazism, individuals or communities.

It is desirable to extend this system which is found satisfactory in the American Zone.

Thus, a similar system was made possible in the British Zone as early as 1949 in their restitution law, which enables the creation of a Jewish successor organization. We have in our files the draft of the charter for the British corporation; however, we have no advice that the plan is in operation yet in the British Zone.

However, in the French Zone of occupation which particularly concerns us, the interested Jewish organizations have so far no reason to be satisfied with the measures taken by the military authorities, either concerning the restitution law or the use of property of Jewish origin.

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Indeed, the restitution ordinances of the French Zone are flatly insufficient and much less satisfactory than the law of the American Zone, especially concerning the use of profits of heirless property and the heirless property itself, both of which are given to an organism of the German Land for use among all victims - or claiming to be - of Nazism, so that only a small part of the unclaimed or heirless property of Jewish origin would be used for Jewish victims of Nazism.

The French restitution ordinances were therefore strongly criticized, and one may expect that they will soon be revised and brought into harmony with the legislation in the American Zone. It may also be expected that the revision will provide for the creation of a Jewish successor organization whose rights and functions would parallel those in the American system.

The competent authority has in fact given assurances that it was not opposed to such a system, provided it was satisfied that the principle of non-discrimination among the various Jewish victims of Nazism be observed, viz. that the successor organization should represent the whole of the Jewish victims of Nazism, and that all Jewish victims without any discrimination should be eligible to assistance from the recovered property according to their needs.

It does not appear that such a provision constitutes any obstacle; in fact it would be simple to insert into the statutes of the new organism a clause stipulating that:

"The successor organism represents the whole of the Jewish victims of Nazism, wherever they are; only the Jewish victims of Nazism and all the Jewish victims of Nazism are eligible to aid out of heirless property by the successor organism, without any discrimination between the recipients, with a view to their rehabilitation."

The sole difficulty remaining to be solved would then be the question of the juridical personality under which this organization should function. The question, however, raises a serious problem on account of the obstacles which the French legislators imposed on the free functioning of "associations", and the incompatibility created between the conception of "society" (corporation) and that of non-lucrative aim. The problem is not trivial as it involves fundamental principles of the French law. The successor organization to be created like the American organism can only be a non-profit organization.

Now, according to French law, a non-profit organization can be created only in the form of an "association" regulated by the law of July 1, 1901. Indeed, the successor organization would be in fact an "association", which the French legislation defines as "the convention by which two or several persons permanently put together their knowledge or their activities for another purpose than to divide profits."

Unfortunately, owing to the historical development, the French legislator is haunted by the mortmain property, and to avoid the accumulation of such property he has subjected the "association" to an extremely rigorous control; in short, an association can acquire neither donations nor legacies, it can acquire only the immoveable property strictly necessary to its functioning; finally, a foreign association must obtain an authorization. It is unlikely that a successor organization could usefully function under the restrictive regime of the "association" law.

The alternative is to turn to the form of the company (societe), civil or commercial, which is considerably more flexible and broader. But the "societe" is defined by art. 1832 of C.C. as "a contract by which two or several persons agree to put something together with a view to divide the benefit which may result therefrom".

The fundamental distinction between the company and the "association" is therefore found in the motive of profit.

But, since the successor organization can only be a non-profit organization, it appears impossible to create it in the form of a company, especially since the jurisprudence is very strict in its interpretation to require a profit motive.

At first, the obstacle appears insurmountable. Two ways, however, can be suggested for solution.

First, starting from the premise that the legislator is supreme, one proposal would be the establishment of a "company sui generis", the existence of which would be sanctioned by a regulation of administration of the French High Commission in the French Zone of occupation, and the company which would be defined as a non-profit one could be granted the largest possible scope.

One can indeed refer to certain precedents. For instance, the law of July 24, 1867 on cooperatives regulates the status of consumers cooperative societies which, not realizing actual profits but only savings, are associations which are clothed in the attributes of companies by the legislator because of their beneficial purpose. Another example, still more persuasive if possible, can be found in the law of August 15, 1920 (D.F.1921-4-201) on the cooperative societies for reconstruction of devastated areas. In this instance, the association to be created was to function to a certain extent both as a company and an association; in the course of the parliamentary debates, the Commission of the Senate rightly thought that neither the civil company nor the association could suit the cooperative reconstruction society, and that the law should establish a company sui generis of a special character answering the needs created by the war for the reconstruction of devastated areas.

Nothing therefore prevents the French legislator for the French Zone of occupation in Germany to follow these precedents and to promulgate an Ordinance modifying Ordinance #120 and others providing in the amendment that:

".... if the victim of an act of spoliation died without leaving any successors, parents, husband or wife as legal heirs, the legal heir for the whole of the succession is a successor organization which will be designated by the High Commissioner of the French Zone of Germany..."

In this case it will be necessary to obtain, in addition, a regulation effectively designating the successor organization as a *societe sui generis* with a non-profit aim, in conformity with the articles which will have been prepared on the other side by the interested Jewish organizations.

One could then usefully adopt in the language of the articles precedents taken from the "*societes a but non lucratif*" (companies with non-profit aim) which formerly functioned under the local regime of Alsace-Lorraine before the local law was abrogated by French legislation after the war of 1914-1918.

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However, and though the company sui generis seems to be an ideal solution to the difficulties created by the French law, it is possible to suggest another solution, namely a successor organization composed of the interested French and international Jewish organizations but functioning in the form of a German society with limited responsibility, GmbH. This solution would offer certain advantages, and especially it seems that under the form of the GmbH the successor organization could have its widest latitude to achieve its aim. Moreover, in case of legal difficulties, the litigation would be judged by German courts, and one may assume that the German judge will interpret the law which he knows well, the German law, better than any other.

Besides it has been suggested that if the successor organization was created as a GmbH it would be considered as a German resident regarding the exchange regulations, whereas a French organization would find its activities severely hindered by the Exchange Control.

The point seems to be serious; however, we must observe that JRSC has its seat in the States and is constituted in the form of an American company; it would be interesting to learn whether its activity is paralyzed by the Exchange Control, and no doubt the Joint which is interested in JRSC could give us the information.

As far as the organizations are concerned with may be asked to belong to the Jewish Successor Organization in the French Zone, it might be those which already belong to JRSC in the US Zone and to the Successor Organization proposed for the British Zone, viz:

The Central British Fund
Agudas Israel World Organization
Jewish Agency for Palestine
World Jewish Congress
American Joint Distribution Committee
Board of Deputies of British Jews
Council for the Protection of the Rights of Jews from Germany
Anglo-Jewish Association,

or only some of them, amongst the most representative, to which would have to be added in any case for the Successor Organization in the French Zone;

L'Alliance Israelite Universelle
CRIF
ADIVA

This memorandum deals only with the legal form of the Jewish successor organization in the French Zone and touches only upon the amendments to be sought for the French Zone legislation on restitution of spoliated, heirless and unclaimed assets.

However, regarding the restitution law it might be useful to suggest the establishment of a Supreme Court, intended to unify and control the jurisprudence in restitution matters in the French Zone. One could take as an example the Court of Appeals of Nurnberg which is functioning for the US Zone.

RUBIN AND SCHWARTZ
ATTORNEYS AT LAW

YIV) RG 347.1
Am Jwsh Cmtee
(Frgn Affrs Dpet 41-46)
Box 65 File 7

Forwarding with the Enemy Act
French Zone
Box 65 File 7
PHONE: REPUBLIC 0504
CABLE ADDRESS: RUBINLEX

SEYMOUR J. RUBIN
ABBA P. SCHWARTZ

1822 JEFFERSON PLACE, N.W.
WASHINGTON 6, D.C.

February 16, 1950

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

Dear Moose:

I enclose a copy of a letter from George Baker confirming that the reserved power over restitution applies to internal restitution. This settles, at least vis-a-vis the United States, the question raised by the French.

Glad to be able to deliver fairly promptly.

Best regards,


Seymour J. Rubin

cc: Dr. Hevesi
Mr. Wolfsohn

c
o
p
y

DEPARTMENT OF STATE
Washington D. C.

YIVO RG 347.1
Am Jwsh Cmtee
(Frng Affrs Dept 41-46)
Box 65
File 7

February 14, 1950

In reply refer to GER

My dear Mr. Rubin:

Receipt is acknowledged of your letter dated February 8, 1950, by which you advise that the representatives of the American Jewish Committee in Europe have received the suggestion from persons other than American officials that the powers reserved to the occupation authorities under the Occupation Statute apply only to external restitution and not to matters of internal restitution in Germany.

This will confirm your understanding that this suggestion is erroneous. The reserved power over restitution in the Occupation Statute applies to internal restitution.

With best personal regards, I remain

Sincerely yours,

George W. Baker
Officer in Charge, German Property Affairs
Bureau of German Affairs

YIVO RG 347.1
Am Jwsh Cmtee
(Frngn Affrs Dept 41-46)
Box 65
File 7

*Restitution French Zone
Germany*
Box 65 File 7

February 8, 1950

Mr. George W. Baker
Office of German Affairs
Department of State
Washington, D.C.

Dear Mr. Baker:

I write on behalf of the American Jewish
Committee.

It has been suggested to representatives of
the Committee in Europe (though not by American officials)
that the term "restitution" as used to define the reserved
powers in the Occupation Statute refers only to external
"restitution", or reparation, and not to the type of resti-
tution dealt with in the various "restitution laws" in
Germany. We believe that this interpretation is clearly
erroneous, particularly since the laws on restitution for
both the British Zone and the Western Sectors of Berlin were
issued subsequent to the Occupation Statute.

We would appreciate it if you could confirm our
understanding to us.

With best personal regards, I am

Sincerely,

Heymour J. Rubin

*cc Herzi
Szabo*

YIVO RG 347.1
Am Jwsh Cmtee
(Frgn Affrs Dept 41-46)
Box 65
File 7

TO: Foreign Affairs

DATE: January 30, 1950

FROM: Max Isenbergh

COPY: Mr. Seymour Rubin

SUBJECT: Restitution
French Zone, Germany

Last week (January 24-28) I spent in the French Zone of Germany in the company of Mr. Jacobson of Joint, M. Weill of l'Alliance Israelite Universelle, and Dr. Hartzfelder of the ADIVA (Association pour la Defense des Interets des Victimes de l'Axe). Our purpose was to present to M. Jacomet, Conseiller Legislatif to the French High Commissioner, M. Francois-Poncet, a draft we had prepared of an ordinance modifying the existing restitution legislation in the French Zone to bring it into basic harmony with the legislation in effect in the American and British Zones and Western sectors of Berlin.

Prior to our meeting with M. Jacomet and his assistant, M. Merlin, we consulted with leaders of the Jewish community in the French Zone, and at our first meeting with the French authorities we were accompanied by M. Nathan Rosenberger, President of the Jewish Community of Land Baden, and Mr. Karl Marks, editor of the Allgemeine of Dusseldorf.

With the community leaders there was general agreement as to methods and objectives, although Mr. Rosenberger indicated that there was some feeling among the community that the formation of a Jewish Successor Organization in the French Zone would create antisemitism and that the Government of Baden which is now giving the Jewish community a subvention of 30,000 marks a year would cease making this payment if a Jewish Successor Organization should come into existence.

Mr. Rosenberger also said that some members of the community had expressed regret that they had not received our draft earlier in order to permit fuller study. In response to the latter point we called attention to the fact that the completion of our draft and its submission to the French authorities had been accelerated at the request of the Jewish community who had urged us to prepare it as soon as possible and that we had made it available to the community as soon as we had finished it.

There were hints, completely anticipated by us, that the question of the form and extent of the community's participation in the proposed Successor Organization would raise the same vexatious problems that have had to be dealt with in the American and British Zones. Moreover the question is complicated by the fact

that there is legislation in the Land Baden declaring the present Jewish communities as legal successors to the pre-war Jewish communities and entitled to their property. (Similar legislation has also been enacted within the last few weeks in one other Land.)

Except for insisting upon the principle that the Successor Organization should be comprehensively representative of all interested Jewish groups in accordance with the extent of their legitimate interest, we did not pursue this question, since the important immediate issue was to accomplish the needed legislative changes.

At our first meeting with the French authorities at Bad-Godesberg (January 26th) we were greeted by M. Merlin, M. Jacomet's assistant and chairman of a new legislative sub-committee charged with preparing the necessary revision of the restitution laws. While we were waiting for M. Jacomet, who was detained at another meeting, M. Merlin informed us that a tripartite committee on property control had been created to deal with the question of harmonizing restitution legislation, composed of Mr. Parker representing the United Kingdom, M. Suchard representing France, and Mr. Stern representing the United States. He then read to us a cable which M. Francois-Poncet had sent on January 21st to the Quai d'Orsay asking for instructions on this issue. The telegram reported a meeting on January 15th at Frankfurt of the tripartite "harmonization" committee. The British representative had asked for a single law for the three Zones on the model of the law now in force in the Western sectors of Berlin. The American representative had reserved his position pending instructions from Washington. The French representative had pointed out that cases already decided or in progress in the French Zone would make adoption of a trizonal law on the Berlin model very difficult in the French Zone.

M. Merlin said that he did not know what response to the cable had been received, but that he thought that unilateral modification by the French of the law of their zone would be the better solution. We pointed out that, in accordance with our discussion with M. Jacomet late in October, we had prepared our draft on that assumption.

M. Merlin then raised a point which greatly troubled us. He said that in his view the term "restitution" as used to define the reserved powers in the Occupation Statute probably refers only to external restitution (i.e. reparations) and does not include the internal restitution with which we were concerned. He added that "almost certainly" the term does not include indemnification. We did not quarrel with him on the second point (since that seems to be the American position) beyond pointing out that so far as the United States is concerned, internal restitution and indemnification had been declared to be fundamental objectives of occupation policy.

On the other question of including internal restitution within the reserved powers, we pointed out that both the laws for the British Zone and the Western sectors of Berlin had been promulgated since the issuance of the Occupation Statute, thereby clearly confirming the view that internal restitution was a reserved power. M. Merlin said that he did not disagree with us, but he thought it would be prudent on our part to present our position to the Ministère des Affaires Etrangères, the Foreign Office, and the State Department, since the German Government had recently submitted to the occupying powers a list of the laws promulgated by the occupier

which in their view should be repealed because not within the reserved area and that they had included all restitution legislation in this list.

We shall arrange the necessary representations on this point at the Quai d'Orsay and the British Foreign Office. We urge you to verify this point with the State Department as promptly as possible. While we should be astounded not to get official American support on this issue, we think it would be advisable to seek assurances from the State Department right away, in view of M. Merlin's statement.

M. Merlin also showed us a copy of a letter to the High Commissioner from M. Roger Bloch of the French Ministry of Foreign Affairs in which M. Bloch stated for the Ministry that there would be no objection to the creation of a Jewish Successor Organization in the French Zone provided it used whatever proceeds it received for general purposes of indemnification. We were engaged in pointing out how unacceptable this position was when M. Jacomet entered the meeting.

M. Jacomet's attitude was much more reassuring. He told us that the decision had already been made to modify the French law so as to provide a Jewish Successor Organization which would use the proceeds of heirless and unclaimed property it received for the relief, rehabilitation, and resettlement of surviving Jewish victims of Nazi persecution. He asked that we leave our proposed draft with him and promised to study it immediately and proposed that we reconvene on the next day.

When we met the next evening, M. Jacomet raised some technical difficulties with our draft and left us with M. Merlin to work them out. As a matter of draftsmanship, the problems raised are rather vexatious but do not seem to amount to a rejection of the major objectives of our draft. In brief, the French appear reluctant to divorce the common fund entirely from heirless and unclaimed property but wish to give it residual rights to any unclaimed and heirless property which does not devolve to a Successor Organization. We think that this is primarily a face-saving device for the French authorities, who do not wish to appear to admit that the common fund mechanism has no merit whatsoever. It would not be profitable to discuss these and other drafting problems here.

We were wary about attempting to revise our draft extemporaneously, since we wanted to be certain of not falling into any traps. M. Merlin agreed that the mechanical problems were too complicated to attempt to resolve on the spot and suggested that we submit a revised draft to him. Agreeing to this, we spent the rest of the meeting running over our draft and discussing generally the type of changes to be made. Our Paris drafting committee meets again this afternoon to start work on the revision.

In the words of Molière:

On n'exécute pas tout ce qui se propose,
Et le chemin est long du projet à la chose.

Nevertheless I have the sense that we are making real progress and we can reasonably expect before long a decently revised restitution law for the French Zone. My colleagues share this view.

I attach copies in French and German of the draft we submitted to M. Jacomet together with an English version of our letter of transmission. As soon as the revised edition is out I shall send you copies.

JRSO

January 7, 1952
File 1101

CONFIDENTIAL

Mr. Saul Kagan - JRSO NY

Dear Saul:

JRSO Hq. Letter #1236
Restitution as a Reserved Power
C O R A

While in Bonn on Thursday and Friday on various JRSO problems, I received word that Mr. McCloy wanted to see me. It was in connection with the Court of Restitution Appeals under the contractual agreement and the position was not good.

As indicated in my letter #1215 of December 20, the Allies were urging the Germans to accept a court composed of 3 Americans and 2 Germans and the Germans were countering with the demand for a court composed of 2 Germans, 2 Americans and one neutral. All parties met last week and the Allied position was formally presented to the German delegates. The German delegates stated that the Allied position was not acceptable to them and hinted that a neutral instead of one American would be a good compromise. The Allies were all anxious to reach an agreement and the German position did not strike them as being unreasonable. Mr. McCloy wanted to know my views.

I told McCloy that I considered any deviation from the status quo as very dangerous since it would stimulate new hopes on the part of the restitutors and encourage them to further appeals to the new Supreme Court. I also pointed out that German judges would be much more likely to be influenced by the prevailing German public opinion than American judges and since the opinion was so unfavorable toward restitution, the Jewish organizations could only regard with great fear any change whereby Germans would be added to the court. To place the Americans in a minority would certainly encourage the Germans to believe that the U.S. interest in the entire program had collapsed and that the small U.S. representation was merely a face-saving device. I also told McCloy that from our information about the German attitude, we believe that a firm insistence upon no further concessions would cause the Germans to accept the status quo rather than a mixed court with a German minority, and therefore by a firm position we might achieve what we should have insisted on in the first place. Mr. McCloy weakly agreed with what I said but urged that I take it up with Debevoise, the General Counsel.

Kagan #1236

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January 7, 1952

When I saw Debevoise the next morning I further pointed out to him that whereas Mr. McCloy had spoken to Mr. Adenauer about a retention of the status quo and Adenauer had been inclined to agree in order not to upset the program which will soon be completed, Mr. Debevoise had at the same time been negotiating with the Germans on the basis of a mixed court. Debevoise tried to cover up as McCloy had done by some quick reference to British and French opposition. I did not let him off the hook by pointing out that I could not understand French opposition to the status quo while accepting a 3:2 mixed court since in their case the status quo was a 3:2 mixed court. I also could not understand British opposition to retaining the present arrangement since it would then indicate that they had no confidence in their own system. It was clear however that it was now too late to set the clock back.

Debevoise tried to carry the ball by showing how much of the U.S. position the Germans had finally accepted and by implying that some of it had been accepted with difficulty. (The other points in the contractual agreement will be the subject of separate letters.) He also argued that speed was of the essence and that the restitution court was only one tiny point on the total agenda.

I countered that CORA was the key stronghold in what was once the major U.S. government policy in Germany and that if CORA fell, the entire restitution program would be jeopardized. If the fears of the Jewish organizations were to materialize by just a few adverse decisions which could undermine the entire program, then the responsibility would clearly have to fall upon HICOG which was certainly made aware of the dangers.

I also stated that I could not agree that the German position was reasonable, particularly in view of Adenauer's recent declaration which was supported by every political party. If as Adenauer stated the Germans recognize that insufficient restitution had been made, and the Germans were anxious to improve on the situation, then the least that could be expected of them would be to accept the Jewish requests for the retention of the present system, without seeking new German or neutral encroachment. It seemed to me that the contractual agreement negotiations were either unaware or were deliberately undermining the Chancellor's and the Germans' publicly expressed opinions.

Kagan #1236

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January 7, 1952

This argument seemed to impress Debevoise and I am sure he will try it on the Germans.

I am confident that the U.S. will insist upon the 3:2 court without any further concessions, at the next meeting with the Germans. I do not have the impression that the U.S. will hold out on this point for any indefinite period, or even for any considerable period. Since the Germans and the Allies are in almost constant session on the contractual agreement, a considerable period in this instance means two weeks. I fear that unless something drastic is done and quickly, the Allied courts of restitution appeals will be changed to place the Allies in a minority position.

I therefore conclude that speedy action on the highest levels is essential if we are to prevent the Allies from prostrating themselves at the German feet on this point as well. Since most of this information is highly classified, the best approach would probably be to start sending inquiries about the earlier Jewish demands that the status quo be retained. I am again sounding the alarm in the U.S. It should mean calls to the State Dept. in the name of the major organizations (not the JRSO), visits to Congressman Javits and others, as well as Senator Lehman and others, a follow-up by Blaustein on his letter to Truman and similar steps by our British colleagues.

Cordially yours,

BBF.b

BENJAMIN B. FERENCZ

cc:JJJ-KWD

Dr. Kreutzberger - Dr. Landauer
S. Rubin
Mr. Easterman
Dr. Kapralik - Dr. Lachs
Mr. Shuster