

possessor in respect of profits accruing during the years of dispossession. It is intended that these profits should be confiscated from the wrongful possessor and be made over to another Trust which will from the proceeds of these confiscations pay to victims who have successfully claimed under this Law a sum on account of losses profits and depreciation a sum not exceeding 4% of the capital value of the property at the time of dispossession for each year or part of a year of dispossession. The remainder of the monies will be spent in reinstating victims of all kinds in life again in Germany by the grant of capital sums to start or maintain businesses, pensions, payments of school fees on the model of the Hirsch Trust or a similar foundation, except that the Trust would make grants and not loans. It must be a situation of each of the Trusts to pursue their several claims. At the end of a period, say, fifteen years, the Trust is to be dissolved and its funds distributed in equal shares among the lender subject to any continuing liabilities for continuing needs of victims. These trustees would be appointed and removable by the Zone Commander who will have full power to make regulations in respect of the Trust and its management. All expenditure of both Trusts will be met from Trust funds and they will be audited by the Rechnungshof. We do not object to the victim having other rights as under German law if you think it necessary or desirable but they should not touch these profits or depreciation.

We wish to continue the full force of Law 53 in respect of all payments under this Ordinance.

### III

It is intended that under this Ordinance there should be established a Central Filing or Claims Agency for the whole Zone, to which all claims must be despatched. We wish the date of receipt to be the legal date of registration of the claim. (We have already set this procedure up under General Order No. 10).

This Agency will register the claims and distribute them for action to the Restitution Authority of which there will be one or more in each Land. The Authority will include the Restitution Courts but these will be the ordinary Courts specially empowered under this Ordinance. The Authority receives all claims from the Agency and if after publication and due delay they are not contested it will decide them.

If claims are contested it will send the claim for adjudication to the Restitution Court. These Courts will also hear all claims made against the "innocent third party". We should like the court proceedings to be made as brief as possible. All appeals may be as in German law but there must be a power of the Zone Commander to take such action as he thinks fit in respect of any judgment if it is made to appear to him that justice has not been done. The Authority is responsible for reporting all finalized cases to the Central Agency (Filing or Claims). The Authority will be an organ of the Land Government but subject to the authority and supervision of the Zone Commander. It is not intended that the claimant should pay any fees or costs in respect of his claim. But if the claimant fails in a contested case the Court may grant costs against him. The Restitution Courts have all the powers of an ordinary court. The Restitution Authority should have all the powers it needs for the determination of uncontested or compromised cases.

### IV

The Zone Commander should have power to make such regulations under this law as are consistent with it, as he deems fit.

We appreciate that this Ordinance cannot be applied to Berlin we shall

therefore/.....



PROPERTY CONTROL BRANCH  
FINANCE DIVISION  
HEADQUARTERS  
CONTROL COMMISSION FOR  
GERMANY (BRITISH ELEMENT)  
BERLIN  
BAOR

therefore seek to make a quadripartite arrangement there on the basis of the four Laws when they exist.

Subject to the principles set forth above, we wish, for certain reasons, that the American draft law as it was left in draft form to be used as a basis though we recognise that it will require redrafting into the English pattern.

*W.H.*  
Chief,  
Finance Division.

*Mr. Kelly*

- Copy to:
- ~~Governmental Sub-Commission~~
  - ~~Foreign Office (for Mr. Woodroffe)~~
  - ~~H.C. M.L. Gov. Land North Rhine/Westfalen - for Property Control~~
  - ~~" " " Hansestadt Hamburg " " "~~
  - ~~" " " Brit. Zone Berlin " " "~~
  - ~~" " " Land Niedersachsen " " "~~
  - ~~" " " Land Schleswig-Holstein " " "~~
  - Mr. Kelly, Central Claims Office, Bad Nauendorf.
- Political Division*



Control Commission for Germany (British Element)

71A

**Incoming Secret Telegram**

This document must not be reproduced

Copy No. 13

FROM: FOREIGN OFFICE

IYB 01086

343 BASIC

10TH JANUARY, 1948.

CYFHER



RECD: 0010 11TH JANUARY, 1948.

DECY: 0010 11TH JANUARY, 1948.

FOREIGN OFFICE TO BERCOB BERLIN NO. 343 BASIC OF 10TH JANUARY, 1948IMMEDIATE

For Property Control.

We have <sup>attached</sup> sent you separately a copy of comments prepared by the B.S.L.R.U. on CORC/P/4/253 of 17th December, 1947 which we understand, is due for discussion at CORC meeting on 13th January.

2. We agree generally with the arguments advanced in this paper, which, subject to what is said below, we consider should form the basis of approach on the British side in the CRC discussions.

3. Taking the four main points in the order of paragraph 4 of the CORC paper, our views may be summarised as follows:-

- (i) Application of restitution law. We have already told you that we consider that the law should apply to all victims of Nazi persecution whatever their nationality or wherever they reside. We understand that you also accept this view and will be prepared to maintain it in CORC discussions. We shall be placed in a highly embarrassing position if the British side are committed to any narrower application.
- (ii) Disposition of Mesne profits. We feel there is much force in the argument advanced by the B.S.L.R.U. and that the American solution of this problem is the right one. We should certainly be opposed to any part of Mesne profits going to Laender. If you consider formation of trust fund is most equitable solution we should not object to this in principle provided all monies in the fund are divided ultimately to benefit of the victims. Victims should not, of course, retain benefit of war profits any more than any other section of the community.
- (iii) Presumption of confiscation. Here again we consider that claimants should be given maximum benefit of doubt and that the American solution is the fairest. We should not wish to see British law more restrictive on this point.
- (iv) Successor organisations. On this point, as you know, we do not support view taken by B.S.L.R.U. it remains our view that a successor organisation should be
  - (a) Designated by zone Commander.
  - (b) Non-denominational in character.
  - (c) Incorporated in Germany.

INTERNAL DISTRIBUTIONACTION: Finance Div. (2) Copy No. 1-2DISTRIBUTION:

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Ecosc. (3)	" " 10-12	M. & M.C. File & Spares (6)	" " 21-26
RT/CVO			



R E S T R I C T E D17 December 1947CORC/P(47)253 718.ALLIED CONTROL AUTHORITYCOORDINATING COMMITTEERestitution to Victims of Nazi Persecution

(Note by the Allied Secretariat)

1. PURPOSE

To inform the Coordinating Committee of certain differences of principle which have arisen in discussions which have taken place in the Finance Directorate on the draft law on restitution to victims of Nazi persecution. If these differences can be removed, it is anticipated that other comparatively minor differences which exist will also be overcome in the Finance Directorate.

2. HISTORY

For a year the Finance Directorate has been preparing a draft law to be operative in the four zones and in the city of Berlin under which victims of Nazi persecution can recover the property of which they were wrongfully dispossessed. The present text has, after a great deal of discussion and modification, received a very considerable measure of agreement.

3. STATEMENT OF POINTS OF DIFFERENCE

The Finance Directorate agrees that it is necessary to proceed with the restitution of identifiable property, and that for this purpose it is necessary to set up the machinery for the filing and adjudicating of claims, and for assuring the actual restitution of property. In the course of discussion, the following questions were not agreed by the Finance Directorate.

(a) Point 1. Possessors

(1) The position of the U.S. Delegation distinguishes between the wrongful proprietor who did the wrong - the proprietor who knew of the wrong - innocent purchasers. In each of these cases, it provides for restitution, but whereas the wrongful original possessor becomes liable for every indemnification known to German law relative to unlawful possession, the innocent party is liable for little beyond mere restitution.

(2) In the opinion of the British, French and Soviet Delegations, the application of this U.S. conception would result in

- 1 -

R E S T R I C T E D



R E S T R I C T E DCORC/P(47)253

injustice. They, therefore, seek modification, though there is some difference of degree between the modifications acceptable to the British and French and those acceptable to the Soviet Delegation.

(3) The Soviet Delegation's opinion is that identifiable property is subject to restitution in the state in which it exists at the present time, and that the value of the property at the time of restitution should not exceed the actual value at the time of confiscation.

(4) The British, French and Soviet Delegations consider that although the unlawful possessor should certainly not be allowed to retain mesne profits, it would be equally wrong that one victim should have large amounts in addition to his original property, because the business had continued at a profit, whereas another victim would obtain no more than his original property because his business had been operated at a loss. Further, they feel that no individual victims should benefit by the acquisition of war profits.

(5) The British and French Delegations would, therefore, be willing to see a Trust founded for a term of years, with the balance to Laender Governments on liquidation, its funds being derived from the sum total of all mesne profits under an Allied Control Authority enactment and used

- (i) for some compensation to be granted as a first charge in the form of a small interest (to be established), on capital values, to all victims for the loss of mesne profits;
- (ii) for rehabilitation of all victims;
- (iii) for the payment, at a figure to be agreed upon, of monies in lieu of depreciation.

(6) The Soviet Delegation agrees to a preliminary examination of the proposal to found a trust.

(7) The Soviet Delegation is of the opinion that victims of Nazi persecution who have retained their German nationality and who are residing at present in Germany shall have the right to restitution, and also victims residing outside Germany provided that they return to Germany for permanent residence.

(8) The British Delegation is of the opinion that persons who have severed all connection with Germany by taking a new nationality should not benefit under this law.

(9) The French Delegation, on the contrary, feels that those persons should benefit thereunder who were usually residing in Germany at the time of dispossession irrespective of their nationality, even though the latter were derived from naturalization.

(b) Point 2 . Presumption of Confiscation

(1) The British, U.S., and French Delegations agree that any transaction by any claimant would be presumed to have been confiscatory unless

- (i) the transaction would have taken place in the absence of National Socialism, or
- (ii) the transferor had protected the interests of the claimant.

(2) In the course of discussion, the question arose whether those principles in (i) and (ii) should be applied when a fair

- 2 -

R E S T R I C T E D



R E S T R I C T E DCORC/P(47)253

price had been paid by the purchaser, and whether they should be applied in the same way during the whole period 1933 - 1945.

- (i) The U.S., British, and French Delegations agree that for the first few years after the Nazis came into power, the presumption of confiscation could be rebutted by showing that a fair price had been paid, unless the claimant could show that he did not have the free disposal of the proceeds,
- (ii) The U.S., British, and French Delegations agree that for the last part of the period there should be a greater degree of presumption of confiscation permitted to the claimant, and that the existence of a fair price should only be one element among many to be considered by the Restitution Court. The British and French Delegations felt that the date for this period should be from June 1938 or any earlier date when the claimant's commercial activities were subject to discriminatory laws. The U. S. Delegation felt that the date should be from 1935, when the first Nurnburg laws discriminating against classes of people were enacted.
- (iii) The Soviet Delegation considered that as a general principle, claims should not be satisfied if the property was sold for a fair price. He pointed out that property transferred in the first period (30.1.33 - June 1938) was on the basis of a normal commercial transaction and if the claimant cannot prove that the property was sold at a deliberately low price it shall not be subject to restitution. In the second period, property can be restituted if the difference between the purchase price paid and the value of the property was greater than a given percentage yet to be worked out. In the opinion of the Soviet Delegation, the date when the first period finishes should be the date of promulgation of the first Nazi law discriminating against persons in the economic field, i.e., June 1938.

(c) Point 3. Successor Organizations

- (1) It is generally agreed that where there is property to which there is no heir and no successful claim is made, that such property should be used for the benefit of victims. The difference of opinion is as to the method by which the victims should benefit from this property.
- (2) The Soviet Delegation proposes that the property should escheat to the Land where it is located in order to give help to all victims of Nazi persecution residing in the Land.
- (3) The U.S. Delegation's view is that such property should be vested in successor organizations to be appointed by the respective Zone Commanders. It further believes that in order better to assist the victims of Nazi persecution, the successor organizations should be denominational.

- 3 -

R E S T R I C T E D



R E S T R I C T E D

CORC/P(47)253

(4) The British Delegation held no very strong views between conveying the property to the Land and conveying it to a successor organization for the benefit of all victims, but could not agree to transfer the property to a successor organization of a denominational type.

(5) The French Delegation thinks that this property should escheat to successor organizations of a non-denominational character created in the Land under the authority of the Zone Commander.

(6) There is no difference of opinion that the use of this property should be restricted to Germany so long as foreign exchange restrictions are in force. The British, Soviet and French Delegations are of the opinion that the investment should be in a purely German organization. The U.S. Delegation believes that the property should vest in an organization subject to German law.

4. ACTION REQUIRED BY THE COORDINATING COMMITTEE

The Finance Directorate requests the Coordinating Committee to take decisions on the following points:

- (a) Shall the Restitution Law apply:
- (1) to all victims of Nazi persecution whatever their nationality or wherever they reside? or, X
  - (2) only to victims who have retained their German nationality? or,
  - (3) only to victims of German nationality residing in Germany, or returning to Germany for permanent residence?
- (b) What disposition shall be made of mesne profits?
- (1) shall they be restituted to the original owner? or,
  - (2) shall they go to a trust fund as explained above? X
- (c) Shall the payment of a fair price rebut a presumption of confiscation?
- (1) in the first period, to be deemed non-discriminatory, or
  - (2) in the second period to be deemed discriminatory. X
- When should the first period end?
- (d) Shall heirless property escheat to the Land or a successor organization?
- In the latter case,
- (1) should the successor organization be of a denominational character?
  - (2) should this successor organization be designated by the Zone Commander?

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R E S T R I C T E D



R E S T R I C T E D

CORC/P(47)253

5. This paper is submitted for the consideration of the  
Coordinating Committee at its 147th meeting on 13 January 1947.

H. A. GERHARDT, Lieutenant Colonel

R. G. RAW

H. J. JOOS

N. D. KOSTENKO, Lieutenant Colonel

Allied Secretariat

Directorate Reference:

DFIN/Memo(47)149

- 5 -

R E S T R I C T E D



From:- Sir Eric Coates, C.S.I., C.I.E.

70A

2.

86:5326.

12th. January 1948.

My dear Kit,

Will you please refer to your letter to Tester of the 10th December on the subject of the Restitution Ordinance for Victims.

In reply to it, I confirm that we have completely broken away from the American idea of successor organisations incorporated outside this country. In consequence of that and other changes of principle, a good deal of the draft American text will now be irrelevant.

Although there is something to be said for distinguishing between good consideration paid before 1938 and good consideration paid after, I am prepared to agree that we should not provide for restitution where the original owner received good consideration and there was no other form of duress, but I do not know that I object to the victim having to prove his duress at all times. Incidentally, I doubt very much if any victim received foreign assets as compensation owing to the German Exchange law except, perhaps, in very early days.

I am assuming that I have removed your only doubts by the foregoing reply, and am sending the Paper to Legal for drafting into an Ordinance. We are very anxious that there should not be any more gap between the French and Americans' legislation and ours than must be.

We shall have then the draft Ordinance to look at again in case any error has crept in.

Yours ever,

(Sgd.) E. COATES

Mr. C. E. Steel, CMG., MVO.,  
President,  
Government Sub-Commission,  
Lancaster House,  
BERLIN. B.A.O.R.2.

EC/FPW.



69<sup>A</sup>.

FOREIGN OFFICE,  
NORFOLK HOUSE,  
ST. JAMES'S SQUARE,  
LONDON, S.W.1.

## BRITISH REGISTRY

Whitehall 4477

Ext. 207

8th December, 1947.

FINANCE DIVISION  
REGISTRY

11. DEZ 1947

ENTRY

20648/6

TO FILE

Director

*Replied v*

*re submit.*

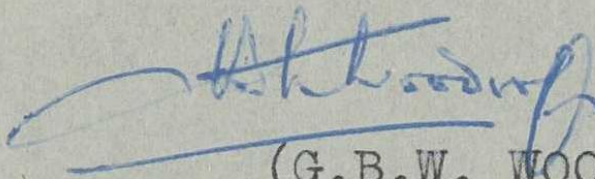
*please*

*Ref 11/12*

Dear Parker,

Referring to your FIN/20648/6/PC of the 10th November to Hampshire, we, too, had seen ZECO/01621/4/Sec C93(v). The position is that Solomon resigned months ago. The Jewish Board of Deputies approached Lord Pakenham to ask that not only should Solomon be replaced but that a Deputy in Germany to advise generally on Jewish problems be appointed. He would be attached to Bishop in the Secretariat. However, since then, one Rosensaft who is working in Germany with DP's has come forward opposing the idea. There the matter rests and, Solomon feels, is likely to do so. No successor, so far, has been nominated in London for Solomon, who, since he resigned, has already been out to Germany twice in the Jewish cause and at the request of the Foreign Office.

Yours sincerely,



(G.B.W. WOODROFFE)

R. H. Parker, Esq.,  
Property Control Branch,  
Finance Division,  
H.Q. C.C.G. (BE),  
BERLIN,  
B.A.O.R.



68A

My Dear Kit  
Steel,

Will you please refer to your letter to Tester of the 10th December on the subject of the Restitution Ordinance for Victims.

In reply to it, I confirm that we have completely broken away from the American idea of successor organisations incorporated outside this country. In consequence of that and other changes of principle a good deal of the draft American text will now be irrelevant.

~~[I think myself that there is something to be said in logic]~~ for distinguishing between good consideration paid before 1938 and good consideration paid after; but I

do not know that I object to the victim

having to prove his duress at all times. ]

<sup>accidentally</sup>

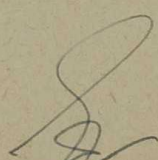
I doubt very much if any victim received

foreign assets as compensation owing to the German Exchange law except, perhaps, in very early days.

I am assuming that I have removed your only doubts by the foregoing reply, and am sending the Paper to Legal for drafting into an Ordinance. We are very anxious that there should not be any more gap between the French and Americans' legislation and ours elves than must be.

We shall have then the draft Ordinance to look at again in case any error has crept in.

Yours ever  
sincerely



Although there is something to be said

I am prepared to agree that we should not provide for restitution where the original owner received good consideration and there was no other form of duress



67A

Si John Shuby.

Will you please see enclosed.

When I was summoned to the Contracts Board on 5. xii. I managed to discuss these matters in London so as to prevent a serious waste of public money & time.

Chief however ruled that I was not to attend the Board.

Now the Gen London is anxious that I should go over, & has pressed me twice by telephone to do so.

I think it would be useful though very fatiguing. But I do not feel strongly.

My idea would be to leave by train on Sunday 14<sup>th</sup> arrive London on 16<sup>th</sup>: leave again on 18<sup>th</sup> arriving in Berlin on 20<sup>th</sup> I might try Air. but this is very uncertain.

What do you say?

R. H. Parkes.

8/12.



Whitehall 4477  
Ext. 293

67B  
FOREIGN OFFICE,  
NORFOLK HOUSE,  
ST. JAMES'S SQUARE,  
LONDON, S.W.1.

4th December, 1947.

F2/13.

My dear Parker,

I promised on the telephone to let you have a note of the points I would like to discuss with you when you come to London round about the 15th December.

The main question in which we are interested on your side at present is, of course, the Restitution Law, and in connection with this I would like to discuss the following matters with you:-

1. What progress has been made with the draft so far, and at what stage may we expect to be consulted. Is it likely that the necessary submission of the draft to Z.A.C. will cause considerable delay. (It seems to us that Z.A.C. are bound to dislike the Law in principle and may well adopt delaying tactics). If so, what can we do to limit the time given to them to consider it. I think it is very important on general political grounds that we should not fall too far behind the Americans and the French in this matter.
2. Your letter of 20th November about Restitution Board, Ltd. I think your objections are weighty ones, and I am telling Mr. Alexander that he must consider his proposal in abeyance for the time being. Meanwhile, I should like to discuss with you the service which this limited company was designed to perform and how it can best be performed. Our own ideas here are moving in the direction of a joint non-profit-making body embracing all the bodies in this country interested in Restitution Claims, whether Jewish or not.
3. Successor Organisations.  
I should like to discuss with you exactly what we are going to say in the Law on this point. We have had representations from the Central British Fund, which is the most <sup>important</sup> ~~active~~ Jewish body interested in this question in London, strongly pressing for a solution on the American model. They have asked for discussions on the point, and I believe it will be useful to see their representative after we have made up our minds.
4. Non-German Victims.  
Are we both agreed on the line taken in my telegram No. 4963 Basic of 27th October to you for the purposes of the draft Law for the British Zone.
5. Your letter to me of 31st October. I am not quite sure how the difficulties you refer to in this letter over priority applications in Restitution cases have arisen. I should like to discuss with you and establish exactly how you think we can help you in this obviously tiresome matter.

/Apart



Apart from these questions on the Restitution Law I should also like to discuss

6. Your letter of 21st November about the Commercial Councillor proposal. Hoyer-Millar is interested in this one, and I think quadripartite discussion with ourselves, him, and Weir would be useful.

FIN/20701/30  
71A

7. Reinvestment.  
Hoyer-Millar and I would like to discuss with you Sir Eric Coates' letter to Sir Cyril Jones proposing that we go back to the formula which we all originally thought here was too restrictive for our purposes.

I think this covers the field as far as I am concerned. You, on your side, will, no doubt, have one or two matters you wish to raise with me. I should propose to bring Sir Alfred Brown in on all our discussions on the Restitution Law, and I will put him on notice that you are coming and that we would welcome his help in discussing the detail of it. If, of course, you are able to bring over with you a preliminary draft, we should be in a much better position to get down to it.

Yours sincerely,

*G.P. Hampshire*  
(G.P. HAMPSHIRE)

R. H. Parker, Esq.,  
Property Control Branch,  
Finance Division,  
HQ CCG(BE),  
BERLIN,  
B.A.O.R.

COPY TO:- Sir Alfred Brown.

Mr. Hoyer-Millar.



to be acquainted  
4 send to  
Mr Tanker

Catalogue Reference:FO/1046/184/1



CCG. Form 8

**IM****PORTANT**

PDU. CCG. 1291B 50M 11.46

Catalogue Reference:FO/1046/184/1





Governmental Sub-Commission,  
Headquarters,  
Control Commission for Germany,  
(British Element),  
BERLIN,  
B.A.O.R.

66A. ~~66A.~~

Pol. 57/136/47

FINANCE DIVISION  
REGISTRY  
11. DEZ 1947  
ENTRY 20648/10  
TO FILE Driscoll

BRITISH REGISTRY

10th December, 1947.

Dear Tester

I have read your memo of November 24th, about the proposed law on restitution to the victims of Nazi oppression.

I gather that we are now committed to the general lines of the U.S. draft, and that it is to be used as a basis for legislation by the Military Governor since it has proved impossible to reach quadripartite agreement on it. As I understand it, however, the Foreign Office originally agreed to the U.S. draft in the hope of securing quadripartite agreement, and I think we ought to make sure they realise that all hope of quadripartite agreement has been abandoned, and approve our intention to go ahead unilaterally on the basis of the U.S. draft.

(1.)

They do

Since any legislation now will be a unilateral affair, I do not think we need adopt all the provisions of the U.S. draft when legislating solely for the British Zone. On the assumption that we are entitled to remove or alter any provisions to which we object, there are two points which I should like to see safeguarded.

we (2)  
want

Firstly can I take it that the proposed arrangements you describe in Part II of your memo for dealing with property whose original owner is dead or presumed dead, and to which no heir can be identified, means that we have turned our back resolutely on the U.S. proposal to provide for "successor organisations" outside Germany? This was the most objectionable feature of the American proposals and one which is quite unacceptable to us.

(3)  
yes

The other point on which I have some misgivings is raised in the first paragraph of Part I of your memo. I do not think we should provide for restitution in cases where the original owner received good consideration, and there was no other form of duress. Where a person received adequate compensation - conceivably in assets abroad - it seems clear that he cannot reasonably expect to receive restitution. If put into effect in Germany at the moment, this clause might well cause bitterness. Though it may be desirable to provide for restitution in cases where the compensation was inadequate or duress can be shown, it would, in my opinion, be wrong to make a general provision for restitution in all such cases.

we (4)  
want

Yours ever  
L. Tester

L. Tester, Esq., C.M.G., M.C.,  
Deputy Chief,  
Finance Division,  
H.Q. C.C.G. (B.E.),  
Berlin,  
B.A.O.R.2.



span 65A

24th November, 1947.

File: FIN/20648/PG

To: President,  
Governmental Sub-Commission.

I annex below the principles of a Law to be promulgated in the British Zone enabling certain classes of victims of Nazi persecution to recover their tangible and identifiable property, for your concurrence.

The intention is to enact an Ordinance in the British Zone embodying the principles set forth below.

It is common knowledge that the former German Government and the Nazi Party performed acts of tyranny not less tyrannous because they were sometimes done under colour of existing law and sometimes by means of discriminatory legislation. Acts of tyranny were also committed which were contrary to the law of that time. But certain classes of persons, and certain individuals could have no recourse to, and no remedy from, the law because its administration was in the hands of partial judges and police and because these classes and individuals were regarded as enemies, either voluntary or involuntary, of the creed of German National Socialism.

I

The form of tyranny which it is now intended to redress is the wrongful dispossession of their tangible and identifiable property of persons when that wrongful (or tyrannous) dispossession or dispossession by duress was by reason of the race, creed, nationality or political opinion of the person who was dispossessed. It is however intended that when good consideration was paid as between the possessor and the dispossessor [prior to June 1938,] the former possessor shall not be entitled to restitution unless he can prove duress in another way. [Where the transaction took place after June 1938, the former possessor is to be entitled to restitution in spite of having received good consideration even if there was no other form of duress.] [By that time the discriminatory laws were in full force, and persons affected by these had no longer any freedom of action.]

By "identifiable" is meant identifiable either at the date of dispossession or now: By "wrongful dispossession" is meant dispossession as a result of tyranny or duress: by "person" is meant any person victimised on account of his race, nationality, creed or political opinion wherever resident and of whatever present nationality and includes his lawful heir and successor (but not his assigns).

Where a victim was not allowed to enjoy the proceeds of a sale the law should provide for its restoration. For example some proceeds were paid in to blocked accounts which are still identifiable. Where the original wrongful possessor withheld payment it might be either an additional claim against him, or perhaps it can be covered by a reference to German Law. Where it was withheld by third or subsequent or other parties it might be a charge against the First of the trusts mentioned below - perhaps after the claimant has pursued the with holders unsuccessfully. The intention is that no circumstances should there be a liability against Budgetary funds. In other cases, it is intended that restitution should involve repayment of the original consideration paid to claimant.

/We wish.....



We wish to prevent any assignment of claim, or assignment of property previous to its adjudication under claim. Otherwise a speculative market promoting a flight from the Mark, and other disagreeable possibilities will spring up.

It will be necessary to establish a new formula for the presumption of death since the existing German law is too stringent for the special purposes of this Ordinance. We suggest basing it upon <sup>1.5</sup> ~~the~~ years disappearance when the victim was last heard of in the hands of the authorities.

It must be borne in mind that many of the members of Hitler's Court kept what were virtually private armies, and maintained bravoos and led-captains. It is probable that the worst tyrannies were perpetrated by these. It is particularly important that rights lost in this way should be recoverable.

So much for the position as between the possessor and the original wrongful dispossessor subject to what is said later on mesne profits. The Victim will receive back his property such as it is and such as it lies. The remedy of the victim against persons who acquired title from the wrongful dispossessor is the remedy given in wrongful possession by the ordinary German Civil Code (vide 617-684, 1909 etc.).

We wish to establish a time limit after which no claims can be entertained for restitution. This might be two years after the promulgation of this law.

## II.

There will, however, be property whose original owner is dead or is presumed dead and is not represented by any lawful heir or successor. All such property is to be devised to an undenominational body of Trustees and used by it for the benefit of all victims of Nazi oppression on the wide principles (as one might imagine in an English Charitable Trust) of reinstating them in life. The Trustees will be appointed by and removable by the Zone Commander who will also have power to make regulations concerning its management. The Trust is not to be used for the direct benefit of any person who is not resident in Germany. We do not wish to create a perpetual trust, and provision should therefore be made for winding it up and dividing the property among Lander governments in equal parts. Some part of these benefits will be by way of pension for aged, or infirm persons or for persons unable to earn a living. The period must, therefore be reasonably long, unless it is possible to provide a means of reviewing the Trust for example in ten or fifteen years taking account of the continuance of these stipends.

It is not intended that the victim should be able to claim against the wrongful possessor in respect of profits accruing during the years of dispossession. It is intended that those profits should be confiscated from the wrongful possessor and be made over to another Trust which will from the proceeds of these confiscations pay to victims who have successfully claimed under this law a sum on account of loss of mesne profits and depreciation a sum not exceeding 4% of the capital value of the property at the time of dispossession for each year or part of a year of dispossession. The remainder of the monies will be spent in reinstating victims of all kinds in life again in Germany by the grant of capital sums to start or maintain businesses, pensions, payments of School fees on the model of the Hirsch Trust or a similar foundation, except that the Trust would make grants and not loans. It must be a function of each of the Trusts to pursue their several claims. At the end of a period say fifteen years, the Trust is to be dissolved and its funds distributed in equal shares among the Lander subject to any continuing liabilities for continuing needs of victims. These trustees would be appointed and removable by Zone Commander who will have full power to make regulations in respect of the Trust and its management. All expenditure of both trusts will be met from trust funds and they will be audited by the Rechnungshof. We do not object to the victim having other rights as under German law if you think it necessary or desirable but they should not touch mesne profits or

/depreciation.....



We wish to continue the full force of Law 53 in respect of all payments under this Ordinance.

### III

It is intended that under this Ordinance there should be established a Central Filing or Claims Agency for the whole Zone, to which all claims must be despatched. We wish the date of receipt to be the legal date of registration of the claim. (We have already set this procedure up under General Order No. 10)

This Agency will register the claims and distribute them for action to the Restitution Authority of which there will be one or more in each Land. The Authority will include the Restitution Courts but these will be the ordinary Courts specially empowered under this Ordinance. The Authority receives all claims from the Agency and if after publication and due delay they are not contested it will decide them.

If claims are contested it will send the claim for adjudication to the Restitution Court. These Courts will also hear all claims made against the "innocent third party". We should like the Court proceedings to be made as brief as possible. All appeals may be as in German Law but *there must be a* power of the Zone Commander to take such action as he thinks fit in respect of any judgement if it is made to appear to him that justice has not been done. The Authority is responsible for reporting all finalised cases to the Central Agency (Filing or Claims). The Authority will be an organism of the Land government but subject to the authority and supervision of the Zone Commander. It is not intended that the claimant should pay any fees or costs in respect of his claim. But if the claimant fails in a contested case the Court may grant costs against him. The Restitution Courts have all the powers of an ordinary Court. The Restitution Authority should have all the powers it needs for the determination of uncontested or compromised cases.

### IV

The Zone Commander should have power to make such *regulations* ~~negotiations~~ under this law as are consistent with it, as he deems fit.

We appreciate that this Ordinance cannot be applied to Berlin: we shall therefore seek to make a quadripartite arrangement there on the basis of the four Laws when they exist.

Subject to the principles set forth above, we wish, for certain reasons, that the American draft law as it was left in directorate to be used as a basis though we recognise that it will require redrafting into the English pattern.

RHP/IC

for Chief,  
Finance Division.



*Spore*

24th November, 1947.

File: FIN/20648/PG

To: President,  
Governmental Sub-Commission.

I annex below the principles of a Law to be promulgated in the British Zone enabling certain classes of victims of Nazi persecution to recover their tangible and identifiable property, for your concurrence.

The intention is to enact an Ordinance in the British Zone embodying the principles set forth below.

It is common knowledge that the former German Government and the Nazi Party performed acts of tyranny not less tyrannous because they were sometimes done under colour of existing law and sometimes by means of discriminatory legislation. Acts of tyranny were also committed which were contrary to the law of that time. But certain classes of persons, and certain individuals could have no recourse to, and no remedy from, the law because its administration was in the hands of partial judges and police and because these classes and individuals were regarded as enemies, either voluntary or involuntary, of the creed of German National Socialism.

I

The form of tyranny which it is now intended to redress is the wrongful dispossession of their tangible and identifiable property of persons when that wrongful (or tyrannous) dispossession or dispossession by duress was by reason of the race, creed, nationality or political opinion of the person who was dispossessed. It is however intended that when good consideration was paid as between the possessor and the dispossessor prior to June 1938, the former possessor shall not be entitled to restitution unless he can prove duress in another way. Where the transaction took place after June 1938, the former possessor is to be entitled to restitution in spite of having received good consideration even if there was no other form of duress. By that time the discriminatory laws were in full force, and persons affected by these had no longer any freedom of action.

By "identifiable" is meant identifiable either at the date of dispossession or now: By "wrongful dispossession" is meant dispossession as a result of tyranny or duress: by "person" is meant any person victimised on account of his race, nationality, creed or political opinion wherever resident and of whatever present nationality and includes his lawful heir and successor (but not his assigns).

Where a victim was not allowed to enjoy the proceeds of a sale the law should provide for its restoration. For example some proceeds were paid in to blocked accounts which are still identifiable. Where the original wrongful possessor withheld payment it might be either an additional claim against him, or perhaps it can be covered by a reference to German Law. Where it was withheld by third or subsequent or other parties it might be a charge against the First of the trusts mentioned below - perhaps after the claimant has pursued the with holders unsuccessfully. The intention is that no circumstances should there be a liability against Budgetary funds. In other cases, it is intended that restitution should involve repayment of the original consideration paid to claimant.

/We wish.....



We wish to prevent any assignment of claim, or assignment of property previous to its adjudication under claim. Otherwise a speculative market promoting a flight from the Mark, and other disagreeable possibilities will spring up.

It will be necessary to establish a new formula for the presumption of death since the existing German law is too stringent for the special purposes of this Ordinance. We suggest basing it upon ~~the~~<sup>two</sup> years disappearance when the victim was last heard of in the hands of the authorities.

It must be borne in mind that many of the members of Hitler's Court kept what were virtually private armies, and maintained bravoes and led-captains. It is probable that the worst tyrannies were perpetrated by these. It is particularly important that rights lost in this way should be recoverable.

So much for the position as between the possessor and the original wrongful dispossessor subject to what is said later on mesne profits. The Victim will receive back his property such as it is and such as it lies. The remedy of the victim against persons who acquired title from the wrongful dispossessor is the remedy given in wrongful possession by the ordinary German Civil Code (vide 617-684, 1909 etc.).

We wish to establish a time limit after which no claims can be entertained for restitution. This might be two years after the promulgation of this law.

## II.

There will, however, be property whose original owner is dead or is presumed dead and is not represented by any lawful heir or successor. All such property is to be devised to an undenominational body of Trustees and used by it for the benefit of all victims of Nazi oppression on the wide principles (as one might imagine in an English Charitable Trust) of reinstating them in life. The Trustees will be appointed by and removable by the Zone Commander who will also have power to make regulations concerning its management. The Trust is not to be used for the direct benefit of any person who is not resident in Germany. We do not wish to create a perpetual trust, and provision should therefore be made for winding it up and dividing the property among Lander governments in equal parts. Some part of these benefits will be by way of pension for aged, or infirm persons or for persons unable to earn a living. The period must, therefore be reasonably long, unless it is possible to provide a means of reviewing the Trust for example in ten or fifteen years taking account of the continuance of these stipends.

It is not intended that the victim should be able to claim against the wrongful possessor in respect of profits accruing during the years of dispossession. It is intended that those profits should be confiscated from the wrongful possessor and be made over to another Trust which will from the proceeds of these confiscations pay to victims who have successfully claimed under this law a sum on account of loss of mesne profits and depreciation a sum not exceeding  $\frac{1}{5}$  of the capital value of the property at the time of dispossession for each year or part of a year of dispossession. The remainder of the monies will be spent in reinstating victims of all kinds in life again in Germany by the grant of capital sums to start or maintain businesses, pensions, payments of School fees on the model of the Hirsch Trust or a similar foundation, except that the Trust would make grants and not loans. It must be a function of each of the Trusts to pursue their several claims. At the end of a period say fifteen years, the Trust is to be dissolved and its funds distributed in equal shares among the Lander subject to any continuing liabilities for continuing needs of victims. These trustees would be appointed and removable by Zone Commander who will have full power to make regulations in respect of the Trust and its management. All expenditure of both trusts will be met from trust funds and they will be audited by the Rechnungshof. We do not object to the victim having other rights as under German law if you think it necessary or desirable but they should not touch mesne profits or

/depreciation.....



We wish to continue the full force of Law 53 in respect of all payments under this Ordinance.

### III

It is intended that under this Ordinance there should be established a Central Filing or Claims Agency for the whole Zone, to which all claims must be despatched. We wish the date of receipt to be the legal date of registration of the claim. (We have already set this procedure up under General Order No. 10)

This Agency will register the claims and distribute them for action to the Restitution Authority of which there will be one or more in each Land. The Authority will include the Restitution Courts but these will be the ordinary Courts specially empowered under this Ordinance. The Authority receives all claims from the Agency and if after publication and due delay they are not contested it will decide them.

If claims are contested it will send the claim for adjudication to the Restitution Court. These Courts will also hear all claims made against the "innocent third party". We should like the Court proceedings to be made as brief as possible. All appeals may be as in German Law but *there must be* a power of the Zone Commander to take such action as he thinks fit in respect of any judgement if it is made to appear to him that justice has not been done. The Authority is responsible for reporting all finalised cases to the Central Agency (Filing or Claims). The Authority will be an organism of the Land government but subject to the authority and supervision of the Zone Commander. It is not intended that the claimant should pay any fees or costs in respect of his claim. But if the claimant fails in a contested case the Court may grant costs against him. The Restitution Courts have all the powers of an ordinary Court. The Restitution Authority should have all the powers it needs for the determination of uncontested or compromised cases.

### IV

The Zone Commander should have power to make such *regulations* ~~negotiations~~ under this law as are consistent with it, as he deems fit.

We appreciate that this Ordinance cannot be applied to Berlin: we shall therefore seek to make a quadripartite arrangement there on the basis of the four Laws when they exist.

Subject to the principles set forth above, we wish, for certain reasons, that the American draft law as it was left in directorate to be used as a basis though we recognise that it will require redrafting into the English pattern.

RHP/IC

for Chief,  
Finance Division.



Spain

24th November, 1947.

File: PIN/20648/PC

To: President,  
Governmental Sub-Commission.

I annex below the principles of a Law to be promulgated in the British Zone enabling certain classes of victims of Nazi persecution to recover their tangible and identifiable property, for your concurrence.

The intention is to enact an Ordinance in the British Zone embodying the principles set forth below.

It is common knowledge that the former German Government and the Nazi Party performed acts of tyranny not less tyrannous because they were sometimes done under colour of existing law and sometimes by means of discriminatory legislation. Acts of tyranny were also committed which were contrary to the law of that time. But certain classes of persons, and certain individuals could have no recourse to, and no remedy from, the law because its administration was in the hands of partial judges and police and because these classes and individuals were regarded as enemies, either voluntary or involuntary, of the creed of German National Socialism.

### I

The form of tyranny which it is now intended to redress is the wrongful dispossession of their tangible and identifiable property of persons when that wrongful (or tyrannous) dispossession or dispossession by duress was by reason of the race, creed, nationality or political opinion of the person who was dispossessed. It is however intended that when good consideration was paid as between the possessor and the dispossessor prior to June 1938, the former possessor shall not be entitled to restitution unless he can prove duress in another way. Where the transaction took place after June 1938, the former possessor is to be entitled to restitution in spite of having received good consideration even if there was no other form of duress. By that time the discriminatory laws were in full force, and persons affected by these had no longer any freedom of action.

By "identifiable" is meant identifiable either at the date of dispossession or now: By "wrongful dispossession" is meant dispossession as a result of tyranny or duress: by "person" is meant any person victimised on account of his race, nationality, creed or political opinion wherever resident and of whatever present nationality and includes his lawful heir and successor (but not his assigns).

Where a victim was not allowed to enjoy the proceeds of a sale the law should provide for its restoration. For example some proceeds were paid in to blocked accounts which are still identifiable. Where the original wrongful possessor withheld payment it might be either an additional claim against him, or perhaps it can be covered by a reference to German Law. Where it was withheld by third or subsequent or other parties it might be a charge against the First of the trusts mentioned below - perhaps after the claimant has pursued the with holders unsuccessfully. The intention is that no circumstances should there be a liability against Budgetary funds. In other cases, it is intended that restitution should involve repayment of the original consideration paid to claimant.

/We wish.....



We wish to prevent any assignment of claim, or assignment of property previous to its adjudication under claim. Otherwise a speculative market promoting a flight from the Mark, and other disagreeable possibilities will spring up.

It will be necessary to establish a new formula for the presumption of death since the existing German law is too stringent for the special purposes of this Ordinance. We suggest basing it upon <sup>two</sup> ~~the~~ years disappearance when the victim was last heard of in the hands of the authorities.

It must be borne in mind that many of the members of Hitler's Court kept what were virtually private armies, and maintained bravoes and led-captains. It is probable that the worst tyrannies were perpetrated by these. It is particularly important that rights lost in this way should be recoverable.

So much for the position as between the possessor and the original wrongful dispossessor subject to what is said later on mesne profits. The Victim will receive back his property such as it is and such as it lies. The remedy of the victim against persons who acquired title from the wrongful dispossessor is the remedy given in wrongful possession by the ordinary German Civil Code (vide 617-684, 1909 etc.).

We wish to establish a time limit after which no claims can be entertained for restitution. This might be two years after the promulgation of this law.

## II.

There will, however, be property whose original owner is dead or is presumed dead and is not represented by any lawful heir or successor. All such property is to be devised to an undenominational body of Trustees and used by it for the benefit of all victims of Nazi oppression on the wide principles (as one might imagine in an English Charitable Trust) of reinstating them in life. The Trustees will be appointed by and removable by the Zone Commander who will also have power to make regulations concerning its management. The Trust is not to be used for the direct benefit of any person who is not resident in Germany. We do not wish to create a perpetual trust, and provision should therefore be made for winding it up and dividing the property among Lander governments in equal parts. Some part of these benefits will be by way of pension for aged, or infirm persons or for persons unable to earn a living. The period must, therefore be reasonably long, unless it is possible to provide a means of reviewing the Trust for example in ten or fifteen years taking account of the continuance of these stipends.

It is not intended that the victim should be able to claim against the wrongful possessor in respect of profits accruing during the years of dispossession. It is intended that those profits should be confiscated from the wrongful possessor and be made over to another Trust which will from the proceeds of these confiscations pay to victims who have successfully claimed under this law a sum on account of loss of mesne profits and depreciation a sum not exceeding 4% of the capital value of the property at the time of dispossession for each year or part of a year of dispossession. The remainder of the monies will be spent in reinstating victims of all kinds in life again in Germany by the grant of capital sums to start or maintain businesses, pensions, payments of School fees on the model of the Hirsch Trust or a similar foundation, except that the Trust would make grants and not loans. It must be a function of each of the Trusts to pursue their several claims. At the end of a period say fifteen years, the Trust is to be dissolved and its funds distributed in equal shares among the Lander subject to any continuing liabilities for continuing needs of victims. These trustees would be appointed and removable by Zone Commander who will have full power to make regulations in respect of the Trust and its management. All expenditure of both trusts will be met from trust funds and they will be audited by the Rechnungshof. We do not object to the victim having other rights as under German law if you think it necessary or desirable but they should not touch mesne profits or

/depreciation.....



We wish to continue the full force of Law 53 in respect of all payments under this Ordinance.

### III

It is intended that under this Ordinance there should be established a Central Filing or Claims Agency for the whole Zone, to which all claims must be despatched. We wish the date of receipt to be the legal date of registration of the claim. (We have already set this procedure up under General Order No. 10)

This Agency will register the claims and distribute them for action to the Restitution Authority of which there will be one or more in each Land. The Authority will include the Restitution Courts but these will be the ordinary Courts specially empowered under this Ordinance. The Authority receives all claims from the Agency and if after publication and due delay they are not contested it will decide them.

If claims are contested it will send the claim for adjudication to the Restitution Court. These Courts will also hear all claims made against the "innocent third party". We should like the Court proceedings to be made as brief as possible. All appeals may be as in German Law but there must be <sup>a</sup> power of the Zone Commander to take such action as he thinks fit in respect of any judgement if it is made to appear to him that justice has not been done. The authority is responsible for reporting all finalised cases to the Central Agency (Filing or Claims). The Authority will be an organism of the Land government but subject to the authority and supervision of the Zone Commander. It is not intended that the claimant should pay any fees or costs in respect of his claim. But if the claimant fails in a contested case the Court may grant costs against him. The Restitution Courts have all the powers of an ordinary Court. The Restitution Authority should have all the powers it needs for the determination of uncontested or compromised cases.

### IV

The Zone Commander should have power to make such negotiations under this law as are consistent with it, as he deems fit.

We appreciate that this Ordinance cannot be applied to Berlin: we shall therefore seek to make a quadripartite arrangement there on the basis of the four Laws when they exist.

Subject to the principles set forth above, we wish, for certain reasons, that the American draft law as it was left in directorate to be used as a basis though we recognise that it will require redrafting into the English pattern.

RHE/IC

for Chief,  
Finance Division.



65 A.

The intention is to promulgate a law embodying the following principles:-

It is common knowledge that the former Reichs government and the Nazi party performed acts of tyranny, not less tyrannous because they were sometimes done under the colour of existing law and sometimes by means of special discrimination by legislation. Tyranny was also committed which would have been forbidden by the law of that time. But certain classes of persons and certain individuals could have no recourse or remedy from the law because its administration was in the hands of partial judges and police, and these persons were regarded as enemies, voluntary or involuntary, of the creed of German National Socialism.

This form of tyranny which it is now intended to redress is the wrongful dispossession of persons of their tangible and identifiable property when that wrongful, or tyrannous, dispossession was on account of the race, creed, nationality or political opinion held by the person who was dispossessed. By "identifiable" is meant identifiable either at the date of dispossession or now: and by "wrongful dispossession" is meant any dispossession as a result of duress. It is however intended that when good consideration was paid as between the possessor and dispossessor prior to June 1938, that the former possessor shall not be entitled to restitution unless he can prove other duress. Where the transaction took place after June 1938, the former possessor shall be entitled to

/restitution.....

(1)



restitution in spite of having received good consideration, even though there was no other form of duress. By that date, the discriminatory laws were in full force, and persons affected by these, had no longer any freedom of action. And this was unjust. There should however be a reasonable time bar - say 2 years from promulgation for the submission of claims. By "person" is meant victim and includes his lawful heir and successor.

Whereas resident  
of whatever  
nationality

X. Where a victim was not allowed to enjoy the proceeds of a sale, whether for good or bad consideration (for example the proceeds were paid into a blocked account which is identifiable) the law should provide for its restoration. Where the wrongful possessor withheld payment, it might be an additional claim against him, or it might be covered by German law. Where payment was withheld by third or other parties it might be a charge against the <sup>(mentioned below),</sup> Second Trust, if the claimant has sought satisfaction unsuccessfully against the withholder. The intention, however, is that there should be no contingent liability on Budgetary funds.

It is intended that restitution should involve the repayment of the original consideration paid to the claimant.

benefits will be for persons unable through age

/or.....



restitution in spite of having received good consideration, even though there was no other form of duress. By that date, the discriminatory laws were in full force, and persons affected by these, had no longer any freedom of action. And this was unjust. There should however be a reasonable time bar - say 2 years from promulgation for the submission of claims. By "person" is meant victim and includes his lawful heir and successor.

Whereas resident  
of whatever  
nationality

So much for the position between the possessor and the wrongful dispossessor. The victims will receive back his property such as it is and such as it lies. The remedy of the victim against persons who took title from the wrongful possessor is the remedy given in wrongful possession by the ordinary German Civil Code Articles 1909 and 599. 677-684 NZ.

There will, however, be property whose original owner is dead, or disappeared, and who is not represented by any lawful successors. All such property is to be devised to an undenominational body of Trustees, (to be nominated by the Zone Commander) and used by it for the benefit of all victims of Nazi oppression on the wide principles of reinstating them in life as one might imagine in an English Charitable Trust. These victims must be resident in Germany. We do not wish to create a perpetual trust. There should therefore be a date settled at which the Trust should be wound up, and the property divided among the Land Governments in equal parts. Some part of these benefits will be for persons unable through age

/or.....



or sickness to earn their living, and without any other sufficient means of support and therefore the period of the trust must be reasonably long. It is suggested that this should be thirty years, unless means can be devised for reviewing the trust taking account of such cases of pension say in ten years.

It is not intended that the victim should have any claim to mesne profits against the wrongful possessor. He should have all other claims under the German Code. It is intended that the mesne profits for the years of dispossession should be forfeited, <sup>by the wrongful possessor</sup> and made over to another Trust which will, from the proceeds, pay to all victims who have successfully claimed under this law a sum on account of loss of profits and depreciation on the original capital value of his property, <sup>not exceeding 4%</sup> ~~taking 6%~~ of that value for each year of dispossession. The remainder of the fund will be applied to reinstating victims of all kinds in life again by the grant of capital sums, pensions, payment of school fees, etc., on the model of the Hirsch Trust or any similar foundation. The trust will make grants, not loans. At the end of 15 years the trust is to dissolve and its funds are to be divided amongst the Land Governments subject to any continued liabilities in respect of continuing needs of victims. The trustees will be appointed and removable by the Zone Commander.

*and according*

*later police to carry*

*and both trusts will be governed by regulations to be issued by him*

*and he will have wide powers of regulating payments from them.*

~~Both Trusts will be under his supervision and subject to his authority;~~ Their expenses

/will.....



will be at the cost of the trust and they will be audited by the Rechnungshof.

As said before, the rights of the victim against the innocent third party are those provided in cases of wrongful dispossession by German Law.

It will be necessary to establish a new formula for the presumption of death which should base itself at two years disappearance when the victim was last heard of in the hands of the Authorities.

It should not be forgotten that some of the members of Hitler's Court kept private armies, and led-captains and the worst of the tyrannies, probably came from them. It is important that rights lost in this way should be recoverable.

2.

It is intended that there should be established a Central filing agency for the whole Zone - to which all claims should be despatched, and the receipt of which by the Agency, should be the moment at which the claim is lawfully made. This Agency will forward the claims for action to the Restitution Authority of which there will be one or more in each land. This authority will include the Restitution Court. The Restitution Courts (which may be the ordinary Courts) will hear and determine all contested claims under this law including those against the innocent third party. We should like to shorten Court proceedings as much as possible. Ordinary appeal may be as in German Law, but the power



of the Zone Commander<sup>↑</sup> to set aside any judgement must be maintained (if he deems that justice has not been done. This is quadripartitely agreed, and we have always attached great importance to it. It is not necessary to prescribe how the Zone Commander will exercise his prerogative. The other part of the Authority may be called the Agency, or some such name. It receives claims from the Central filing agency and if these are uncontested it will proceed to adjudicate them. If they are contested, ~~it~~<sup>it</sup> will transfer them to the Court. It will report the close of all cases to the Central Filing Agency. The Authority will be an organism of Land Government - subject to the authority, and supervision of the Zone Commander.

It is not intended that the claimant should pay any fees or costs in respect of his claim. But if the case is contested, and the claimant fails, the Court may decree costs against him.

The Restitution Courts have all the powers of the ordinary Courts. The Restitution authority should be given such powers as it needs for the determination of uncontested cases.

The Zone Commander should have power to issue regulations under this law if he deems fit.

We should wish to treat Berlin in the same way as the Zone if that is possible. If not, we will process an agreement in the Kommandatura on the basis of the fact that there are four laws when these come into existence.

Subject to those principles laid down

/above.....



above we wish for certain reasons that the  
American draft law as it reached the directorate  
should be used as <sup>a</sup>basis, though we recognise  
that it will require redrafting into the English  
pattern.

*R. H. P.*

RHP/IC

Director,  
Property Control Branch.



64 A.

(COUNCIL OF JEWS FROM GERMANY)

KA/HC

S.P. Hampshire, Esq.  
Foreign Office  
(German Section)  
St. James's Square  
S.W.L.

*Handed me by  
Mr. Schayer on  
6/11/47.*

30. October 1947

Dear Mr. Hampshire,

*This is only a project. I  
gave us answers other  
than those we wd study  
R.H.P.*

With reference to the interview Dr. Breslauer had with you on Thursday, 23rd of October, we should like to repeat very briefly our plans for an agency to be set up in Germany to assist victims of Nazi oppression claiming the return of their property.

I beg to mention that I did not discuss these plans with Mr. Parker while I was in Berlin.

- (1) A limited Company, called Restitution Board Ltd., shall be established in London. This company shall mind the interests of the refugees wherever resident, but the shareholders and directors shall be resident in the Sterling area exclusively.
- (2) As this Council is establishing the limited Company, this will be a Jewish institution, but it will look after the interests of all individual claimants living outside Germany who wish its assistance without discrimination as to race and religion. If there should be a small number of British claimants whose claims fall under the Restitution Law without their being refugees and who wish to be assisted, the limited Company will be quite prepared to do this under the same rules as it will assist refugees.
- (3) The limited Company shall establish offices in Germany, viz. in Berlin and at least one in each of the three Western Zones. The work over there shall be done by resident employees under the management of a small staff of five to six experts chosen by the Directors from refugees in the Sterling area (England, Palestine) and sent over to Germany. ~~They~~
- (4) The work of the limited Company shall consist in assisting claimants in the preparation of their claims, in their presentation before the Restitution Agencies and Courts, the administration of

p. t. o.



their property and related activities.

(5) No claimant shall be forced to use the services of this Restitution Board.

The Restitution Board will not be concerned with the matter of the heirless and unclaimed property.

We shall be glad if you could let us know as soon as possible that you agree to our suggestions and recognise our Restitution Board Ltd. as a proper agency to deal with the work undertaken, including the admittance of our representatives to the Zones and to the authorities in Germany, like the Zentralamt fuer Vermoegensverwaltung in Bad Nenndorf, and permitting that the few managers who are supposed to work in the British Sector of Berlin and/or the British Zone will reside there.

Yours sincerely,

(K. Alexander)



ORDONNANCE No.

63A

relative à la restitution des biens ayant  
fait l'objet d'actes de spoliation.

Le Commandant en Chef Français en Allemagne,

VU le décret du 15 Juin 1945 portant création d'un  
Commandement en Chef Français en Allemagne, modifié par  
celui du 18 Octobre 1945,

VU l'ordonnance No.1 du 28 Juillet 1945 maintenant en  
vigueur les ordonnances et règlements promulgués par ou sous  
l'autorité du Commandement Suprême Interallié,

VU la loi No.1 du Commandement Suprême Interallié por-  
tant abrogation des lois nazies,

VU la loi No.52 du Commandement Suprême Interallié re-  
lative au blocage et au contrôle des biens, modifiés par  
l'ordonnance No.81 du 3 Mars 1947,

VU l'arrêté No.24 du 8 Décembre 1945 concernant la dé-  
claration des actes de spoliation <sup>ou</sup> préjudice de personnes,  
même allemandes, en raison de leur race ou de leurs opinions

Sur la proposition de l'Administrateur Général Adjoint  
pour le Gouvernement Militaire de la zone française d'occu-  
pation,

Le Comité Juridique entendu,

ORDONNE :

TITRE I.

Actes nuls et annulables.

Article 1er. Sont nuls tous actes de dispositions de biens,  
droits ou intérêts accomplis postérieurement au 30 Janvier  
1938 sans le consentement de leur propriétaire (personne phy-  
sique ou morale) en conséquence des mesures qui ont établi  
des discriminations fondées sur la nationalité, la race, la  
religion, les opinions ou activités politiques hostiles au  
régime nazi.

Les personnes physiques ou morales ou leurs ayants-cau-  
se dont les biens, droits ou intérêts ont été l'objet de tels  
actes, peuvent en faire constater la nullité dans les condi-  
tions prévues par la présente ordonnance.

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Article 2.- Les Tribunaux prononceront l'annulation des actes de disposition effectuées sans le consentement du propriétaire en exécution d'une législation antérieure au 30 Janvier 1938, lorsqu'il sera établi que ces actes ont été, en réalité, accomplis en raison de la nationalité, de la race, de la religion, des opinions ou activités politiques de l'intéressé et dans l'intention de lui nuire.

Article 3.- Les tribunaux prononceront de même l'annulation des actes de disposition accomplis avec le consentement du propriétaire, lorsque ce consentement n'a été donné que sous l'empire de la contrainte physique ou morale.

Sont présumées avoir été passées sous l'empire de la contrainte les contrats et actes juridiques intervenus depuis le 30 Janvier 1938 et portant sur des biens, droit ou intérêts appartenant à des personnes physiques ou morales dont la situation a été réglée avant ou après la date de ces actes, par les mesures discriminatoires visées aux articles précédents.

Cependant, pour tous les actes passés entre le 30 Janvier 1938 et le 14 Juin 1938, si l'acquéreur rapporte la preuve que son acquisition a été faite au juste prix, la preuve de la contrainte incombera au propriétaire dépossédé.

Article 4.- Les dispositions de la présente ordonnance ne sont applicables que dans la mesure où les biens, droits ou intérêts ayant fait l'objet d'actes de disposition sont identifiables au jour de la demande en justice.

## TITRE II : EFFETS DE LA NULLITE

Article 5.- Lorsque la nullité est constatée ou l'annulation prononcée, les parties sont équitablement rétablies, dans toute la mesure du possible, dans la situation résultant de leurs droits antérieurs à l'acte déclaré nul ou annulé. Le propriétaire dépossédé reprend ses biens, droits ou intérêts exempts de toutes charges, hypothèques et droits réels dont l'acquéreur ou les acquéreurs successifs les auraient grevés. Il les reprend avec leur augmentés et accessoires sous réserve des dispositions ci-après.

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Article 6.- Les actes d'administration conformes aux dispositions des articles 677 et suivants du B.G.B. sur la gestion d'affaires demeurent valables. En conséquence les droits et devoirs respectifs du gérant d'affaires et de propriétaire, et, éventuellement les droits des tiers sont déterminés conformément aux dispositions du B.G.B. Il est tenu compte pour l'application des dispositions de l'article 687, 1 du B.G.B. de la bonne ou mauvaise foi des acquéreurs successifs. Sont considérés comme <sup>de</sup> bonne foi, les acquéreurs qui n'ont pas eu connaissance du caractère de spoliation de l'acte initial.

Les fruits que les acquéreurs successifs de mauvaise foi seront tenus de rembourser en exécution des dispositions de l'article 684 du B.G.B. ne seront pas versés entre les mains du propriétaire remis en possession, mais affectés dans chaque Land à un fonds commun destiné à contribuer à l'indemnisation des victimes du nazisme. La gestion de ce fonds pourra être confiée à un organisme créé ou habilité à cet effet par l'autorité du Land, *sous le contrôle du Gouvernement militaire.*

Article 7.- Le propriétaire rétabli dans ses droits rembourse en principe à l'acquéreur le prix qu'il a perçu lors de sa dépossession.

Si le prix a été payé par l'acquéreur mais non perçu par le propriétaire, il sera remboursé par ce dernier seulement si l'acquéreur est de bonne foi au sens de la présente ordonnance. Dans cette dernière hypothèse le propriétaire supporte en outre les frais et coûts légaux de l'acte d'acquisition.

Article 8.- Si, pendant la période de dépossession, le bien a été grevé de droits réels régulièrement inscrits, les sommes pouvant revenir, par application de la présente ordonnance, à l'acquéreur ou à ses ayants-droit, devront être déposées, jusqu'à concurrence, pour servir de garantie des droits des créanciers régulièrement inscrits. A la demande de ceux-ci, les sommes qui leur sont dues deviennent immédiatement exigibles à dater de la décision constatant la nullité ou prononçant l'annulation de l'acte de disposition du bien grevé.

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Article 9.- Les biens, droits ou intérêts dont les légitimes propriétaires seront disparus sans laisser d'héritiers au degré successible seront affectés au fonds défini à l'article 6 ci-dessus et utilisés dans les mêmes conditions.

Article 10.- Tous agents d'affaires, courtiers ou intermédiaires qui se sont sciemment abstenus de révéler l'origine des biens, droits ou intérêts peuvent être poursuivis par tout acquéreur de bonne foi évincé en vue de remboursement de tous courtages, commissions ou honoraires et éventuellement du versement d'une indemnité correspondant au préjudice subi par leur faute.

Article 11.- Les droits tirés de l'application de la présente ordonnance ne pourront faire l'objet d'aucune cession de quelque ordre que ce soit.

#### TITRE III. PROCEDURE.

Article 12.- Il est institué auprès de chaque Tribunal de 1ère instance, une ou plusieurs chambres spéciales chargées de la restitution des biens ayant fait l'objet d'actes de spoliation.

Ces chambres portent le nom de Chambre des Restitutions. Chaque chambre des Restitutions est composée d'un Président et de deux accessseurs dont l'un sera obligatoirement une victime du nazisme, désigné sur proposition du Président du Tribunal par le Ministre de la Justice du Land. Les Chambres ainsi constituées sont compétentes, à l'exclusion de toute autre juridiction, pour connaître les demandes des victimes des actes visés par les dispositions de la présente ordonnance.

Article 13.- Les demandes doivent être déposées dans les dix-huit mois suivant la publication de la présente ordonnance. Elles sont présentées en matière immobilière devant la Chambre des Restitutions, instituée auprès du

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..... Tribunal dans le ressort duquel est situé l'immeuble litigieux, et, en matière mobilière, devant celle du Tribunal compétent par application des articles 12 et suivants de la Z.P.O. (Code de procédure Civil allemand).

Article 14.- En cas d'absence du propriétaire actuel ou si le domicile de celui-ci est inconnu, la procédure doit être dirigée contre l'administrateur qui a été nommé par application des dispositions de la loi No.52 ou le curateur (Pfleger) institué par application des articles 1909 et suivants du B.G.B.

En cas d'absence du spolié, l'action est intentée soit par ses ayants-cause, soit par le Procureur Supérieur (Oberstaatsanwalt) auprès le Tribunal auquel est rattachée la Chambre des restitutions compétente, sur réquisition du Ministère de la Justice du Land; soit par l'organisme chargé de la gestion du fonds commun visé à l'article 6 ci-dessus, soit enfin par toute association de victimes du nazisme légalement formée.

Dans un délai de six mois à compter de la mise en vigueur de la présente ordonnance, le Ministre des Finances de chaque Land adressera au Ministre de la Justice la liste des biens, droits et intérêts visés aux articles 1, 2 et 3 aux fins de transmission au Ministère public.

Communication en sera également donnée aux organismes chargés de la gestion des fonds communs visés à l'article 6 ci-dessus.

Article 15.- Le demandeur est dispensé de l'obligation de se faire assister d'un avocat.

La signification de la demande sera faite par les soins du greffe.

Mention devra être faite sur le procès-verbal de signification qu'un délai de 15 jours est imparti au défendeur pour présenter ses moyens de défense.

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Article 16.- La décision sur la demande intervient soit par jugement final (Endurteil) soit par ordonnance (Beschluss).

L'ordonnance ou le jugement intervenu sera signifié par les soins du greffe.

Article 17.- Il n'est en rien dérogé aux dispositions du droit commun en ce qui concerne les voies de recours et l'opposition. Il en est de même pour l'intervention des tiers (art. 64 et suivants du Z.P.O.).

Article 18.- Dans l'intérêt des tiers, toute procédure intentée en vertu des dispositions de la présente ordonnance, doit faire l'objet d'une publication dans l'Amtsblatt du Land.

Cette publication est faite d'office par les soins du Greffe.

#### TITRE IV - TRANSACTIONS AMIABLES.

Article 19.- Le propriétaire d'un bien susceptible de bénéficier des dispositions du Titre II de la présente ordonnance peut, au lieu de recourir à une procédure contentieuse conclure un accord amiable avec tout acquéreur des biens en cause. Ces accords ne seront valables qu'à la condition d'être homologués en justice par le Président du Tribunal saisi sur requête. La décision d'homologation devra préciser dans chaque cas si l'acquéreur est ou non tenu, en raison de sa mauvaise ou bonne foi, à la restitution des fruits et fixera dans l'affirmative, le montant des fruits à verser au fonds commun visé à l'article 6 ci-dessus.

Notification de cette décision sera faite d'une part au Ministère Public, d'autre part à l'organisme chargé de la gestion du fonds ~~commun~~ visé à l'article 6 ci-dessus; ces deux autorités pourront faire opposition dans le délai d'un mois.

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TITRE V- FRAIS

Article 20.- Les divers actes de procédure, les jugements et autres opérations nécessités par les instances prévues par la présente ordonnance ne donnent lieu à aucune perception au profit des Finances Publiques.

Sont seuls dûs les frais et honoraires des experts notaires ou autres officiers ministériels. Ces frais sont supportés conformément aux règles établies par le Code de Procédure Civil allemand.

Ce régime de faveur s'applique aux transactions amiables homologuées dans les conditions fixées à l'article précédent.

TITRE VI.LEVÉE DES MESURES DE BLOCAGE EDICTÉES PAR LA  
LOI No. 52.

Article 21.- Les décisions judiciaires de restitutions prises en application de la présente ordonnance et ayant un caractère définitif, ainsi que les transactions amiables régulièrement homologuées, emporteront mainlevée des mesures conservatoires résultant de l'application de la loi No.52 du Commandement Suprême Interallié, relative au blocage et au contrôle des biens.

Cette mainlevée devra toutefois être constatée par les services compétents suivant des modalités qui seront fixées par arrêté.

Article 22.- La présente ordonnance sera publiée au Journal Officiel du Commandement en Chef Français en Allemagne, et exécutée comme loi dans la zone française d'occupation.

Baden-Baden, le

Le Général d'Armée KOENIG  
Commandant en Chef Français en Allemagne.