

ACC

10000/142/762
(VOL. 2)

DISCRIMINATORY LAWS
JUN. 1944 - NOV. 1945

1128

Declassified E.O. 12356 Section 3.3/NND No.

785016

FILE CLOSED 9 November 1945

59

19A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

9 November 1945

AC/4118 /L

SUBJECT: Inquiries on Yugoslav Law.

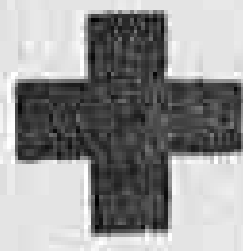
TO : CROCE ROSSA ITALIANA
Assistenza Giuridica agli Stranieri
Via Puglia, 6

1. In reply to your 1111/C-6-32 of 3 Nov. 1945 it is regretted that this Sub Commission is not in possession of the requested Yugoslav legislation.

2. You might wish to approach the Yugoslav Consul on this matter.

MUEGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor

58



CROCE ROSSA ITALIANA
SEZIONE AUTONOMA

AGIUS
ASSISTENZA GIURIDICA
AGLI STRANIERI

4118

18A

Roma, 11 November 3rd 1945
Via Puglia, 6
Tel. 484631

TO: LEGAL SUP- COMMISSION
AC Headquarters,
ROME.

We would greatly appreciate to know the law which the
actual Yugoslavain Government has issued, in order to abrogate the
measures, which the last Croatian Government issued against
Jews.

The knowledge of this law is indispensable to this office, for
having our juridical assistance to many Foreign Jews, who
have their estates in Yugoslavia.

Sorry to give you so much trouble, we thank you beforehand

and remain

Yours respectfully.

THE DIRECTOR

(Mr. Agababian)

Agababian

57

The knowledge of this law is indispensable to their office, for knowing our juridical assistance to many foreign firms, who have their estates in Yugoslavia.

Yours respectfully,

THE DASHLEY

(1997, 1998, 1999)

Adiponitrile

110	110
110	110
Chief Counsel	Chief Counsel
110	110
110	110
110	110

HEADQUARTERS ALLIED COMMISSION
APC 394
LEGAL SUB-COMMISSION

17A

AC/4118/L.

/rlp.
4 September 1945.

SUBJECT : Letter from Cav. Dr. Ing. Odoardo Pano.
TO : Displaced Persons and Repatriation S/C.

1. Reference your letter No. DPR/34/G-II(ET) of 31 August.

2. With regard to Dr. Pano's request to be advised as to the position of Jews under Italian law, while it is entirely outside the province of this sub-commission to advise private persons on matters of law I think Dr. Pano might be informed that the Italian laws removing the disabilities imposed by former legislation upon persons of the Jewish faith are in force in Northern Italy.

Am.
HUGHAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

36

16A

JFE/1b

HEADQUARTERS ALLIED COMMISSION
APO 394
DISPLACED PERSONS AND REPATRIATION SUB COMMISSION

DFR/34/G-II(IT) Tel. 489081 Ext. 594 31 August 1945

SUBJECT : Letter from Cav. Dr. Ing.: CDOAFDO FANO.

TO : Legal Sub-Commission, A.C.

Ref. copy of attached letter ref. A.F.H.Q. G-5 381-1 dated 15 August 1945.

1. May your opinion be given in answer to para 3 of the a/m letter.
2. Copy of Dr. Fano's letter dated 12 June 45 is enclosed for reference.

For the Director,

James F. Oliver
C.A. OLIVER, Capt.
Lt. Colonel,
G-1 Italian.

55

CLO

DCLO

Chief of

CL

CL

2 SEP 1945

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

JB/pc

204c
15 August 1945

G-5: 383-1

SUBJECT: Letter from Cav. Dr. Ing. ROARDO FANO

TO: Headquarters, Allied Commission, APO 394.

1. Inclosed is letter, with translation, to SACRED from Dr. FANO.
2. It is desired that an investigation be made to determine the whereabouts and welfare of the mother and sister of the writer who should be informed directly of the results of the investigation.
3. Your reply to Dr. FANO should also cover the point raised by him concerning anti-jewish legislation.

For the Assistant Chief of Staff, G-5:

JB
JULIUS EYLES,
Major, G.S.C.Encl:
as above.

To : Marshal Mr. Harold Alexander
Governor A.M.G.

Valstrona (Novara)
12th June 1945.

After undergoing dangerous and unhappy days under fascism, I beg your Excellency for a favour. I, the undersigned, Fano, Cav. Dr. Eng. Edward residing at Milano in Via Luzzi #15, until September 1943, and now residing at Valstrona (Novara), left in Milano all my work as a representative of a firm that sold utensils, because I did not wish to supply industries which worked for the Germans. I fled to Valstrona with my wife and daughter and our lives during the 20 months were in danger. (In the year 1939 I was dismissed from the General Insurance Company of Venice due to discriminatory laws of race)

In the year 1918, at 14, as a volunteer, I participated in the war as a young scout in the 27th Army Corps on the Montello and I received the campaign medal, the medal of Italy's Unity, an interallied medal. I am the son of Major General of the Italian Army Comm. Fano Oscar (Military Order of Savoia, Distinguished Service Medal). He died in the year 1941 after suffering punishment because of race and because in 1925, when he was still in the Service, he ordered to take away Mussolini's pictures from the barracks of the 14th Regiment Artillery in Ferrara. My mother Anna Araved. Fano and my sister Vittoria Fano on the 17th of March 1944 were arrested in Milano in the house of Engineer Gatta and, after a short stop at Fossoli, were sent to an unknown destination.

All my property : silver-plate, carpets, linen, shoes, coats, dresses, bicycles, cameras, etc. , have been carried away from my house which I had rent at Venegono (Verese), by fascist paratroopers. I have tried to re-gain my work at the General Insurance Company of Venice, but its direction has informed me that they are expecting instructions from Rome. Meanwhile I am without work and without means of support.

I beg you to order the Commands of the A.M.G. in Northern Italy, Austria etc. to make all possible inquiries to find the whereabouts of my mother and sister and kindly inform me. Allow me also to beg you to order that the laws of the year 1938, concerning race, be considered as no more in force and the administrations be compelled to call back in service, after a short time, the employees of Jewish race, in the territories which are still subject to the A.M.G. Worthier of consideration are people, who, like myself, people, who, like myself, have been several times deprived by Fascism of their their happiness and of what they possessed. The laws concerning races have already been abolished in the provinces which are controlled by the Italian Government of Rome.

33

I thank you very much, Sir. Please excuse me if I have allowed myself to write you. Please accept my respectful regards.

Yours
s/Dr. Fano.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

GGH/1c.

24 July 1945.

AC/4118/L.

SUBJECT : Reinstatement of Jewish officials dismissed under racial laws.

TO : Regional Legal Officer (Attn: Provincial Legal Officer Bolzano), VENEZIA Region.

1. Chief Legal Advisor on his return to this office reports the case of a Jewish doctor, who, at the time when the racial laws were promulgated was a State official in charge of Bolzano Hospital. He was subsequently dismissed.

2. DLL 301 of 19 Oct. 1944 deals with the reinstatement of State officials dismissed for racial or political motives.

3. It appears from the provisions of this decree that State officials are not only reinstated in their former grade, but may ever be promoted after six months of service if found satisfactory. The time they were absent from service does not count against them.

4. However there is no guaranty that such officials will be reinstated to the post they occupied prior to their dismissal. In other words the Director of the Bolzano Provincial Hospital in 1938 holding say grade VI, may very well be promoted to grade V and appointed to the Taranto Hospital or anywhere else.

5. Generally considerations of family, origin and residence are taken into account by the authorities before transferring officials. They are however not bound to do so by any regulations.

6. As you are aware such rules do not apply to the Magistracy which enjoys the benefit of a special statute.

By command of Rear Admiral STONE:

G. G. HANNAFORD,
Lt. Col.,
Officer i/c Italian Branch,
for Chief Legal Advisor

14A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AO/4118/L.

/rlp.
2 July 1945.

SUBJECT : Anti-Jewish Laws.

TO : CA Sec.

1. I have considered the proposed proclamation which is returned herewith. The proclamation itself follows exactly the form of RDL No. 25 of the 20th January 1944 except that in certain articles the functions which were imposed on Italian Government officials by the decree are by the proclamation imposed upon AMG authorities. This procedure is correct, and inevitable if the proclamation is to be issued in this form.

2. I do in fact agree with you that if any order of this kind is to be issued in this form ~~that~~ ^{there} is no reason why it should not be issued by the SCMO XIII Corps.

3. I have, however, grave doubt whether an order in this form is good in law.

In the first place, an occupying power has only the right to suspend, and not to abrogate the laws of the occupied territory; I have grave doubt as to what would be the true legal effect of a "suspension" of the anti-racial laws.

In the second place, an occupying power, since it is not the sovereign of the occupied territory "has no right to make changes in the laws or in the administration other than those which are temporarily necessary ^{in the} in the interests and maintenance and safety of his armies and the realization of the purpose of war. On the contrary, he has the duty of administering the country according to the existing laws and existing rules of administration." (Oppenheim's International Law, Vol. II, pg. 342.)

4. In construing the above quotation it should be borne in mind that the reference to the "purpose of war" means the destruction of the enemy forces; it does not refer to any ultimate purpose on the part of a belligerent.

5. I am of opinion that the proper way to give effect to this decree is to issue a Regional Order along the lines of General Order No. 18.

It will be recalled that when General Order No. 18 was originally issued the present policy of implementation had not been developed and the order was issued in its existing form for precisely the reasons given above.

6. I appreciate of course the objection to any action which appears to deviate from our policy of non-implementation of Italian legislation. I think however that from a legal point of view it is necessary to deviate in this case and I think that the existing preamble to the General Order can be enlarged so as to place the Yugoslav Government in a difficulty if they seek to object to the issue of the order. I suggest that some such clauses as the following might be inserted:-

"WHEREAS prior to 8 September 1943 the Italian Government had passed certain laws providing for discrimination against persons of Jewish faith, and

WHEREAS all such laws are contrary to the principles of all the United Nations for which all the United Nations have engaged in war against the Germans and against the Italian Fascist Government, and

WHEREAS since the 8 September 1943 the Italian Government has enacted a decree restricting to Jews their full civil and political rights, and ^{restoring}

WHEREAS such decree is in conformity with the spirit and principles of all the United Nations;

NOW, THEREFORE, I..."

7. I feel in this case that the Yugoslavs will not be slow to take advantage of the quandary in which we appear to be placed. I think it is better that they should be forced in the position of complaining against the enactment of a law of which they must manifestly approve rather than they should be in a position to criticize the legality of an order which we have actually issued.

W. E. BEHRENS,
Colonel,
Chief Legal Advisor.

Il Governo Reale ha provveduto, con vari decreti, alla abrogazione delle leggi razziali emanate prima dell'occupazione tedesca, cioè prima dell'8 settembre 1943.

Tali decreti di abrogazione sono:

R.D.L. 20/1/1944 n. 25 (in Gazz.Uff. 9/2/44 n. 5) sulla reintegrazione nei diritti civili e politici di cittadini italiani o stranieri dichiarati di razza ebraica.

D. Legisl. Lag. 24 agosto 1944 n. 183 (in Gazz.Uff. 5/9/44 n. 52)

sulla riassunzione in servizio di magistrati dell'ordine giudiziario dispensati per motivi politici o razziali.

D. Legisl. Lag. 10 agosto 1944 n. 195 (in Gazz.Uff. 14/9/44 n. 55)

relativo alla rettifica di atti di stato civile relativi a persone colpite da leggi razziali.

D. Legisl. Lag. 20 luglio 1944 n. 209 (in Gazz.Uff. 26/9/44 n. 60)

contenente norme per la riassunzione nell'esercizio professionale di notai colpiti da disposizioni di carattere razziale o

dispensati dall'ufficio per motivi politici e modificazioni alle norme del notariato.

D. Legisl. Lag. 5 ottobre 1944 n. 252 (in Gazz.Uff. 29/10/44 n. 72)

file Legitt. 13A
visum 4118

Contenuto
fol. 153038
15381

D. Legisl. Lag. 24 agosto 1944 n. 103 (in Gazz. Uff. 11/9/44 n. 55)
sulla riassunzione in servizio di magistrati dell'ordine giudiziaro
disoccupati per motivi politici o razziali.

D. Legisl. Lag. 10 agosto 1944 n. 195 (in Gazz. Uff. 14/9/44 n. 55)

relativo alla rettifica di atti di stato civile relativi a persone
colpite da leggi razziali.

D. Legisl. Lag. 20 luglio 1944 n. 209 (in Gazz. Uff. 26/9/44 n. 60)

regia contenente norme per la riammissione nell'esercizio profes-
sionale di notai colpiti da disposizioni di carattere razziale o
dispensati dall'ufficio per motivi politici e modificazioni alle nor-
me del notariato.

D. Legisl. Lag. 5 ottobre 1944 n. 252 (in Gazz. Uff. 20/10/44 n. 713)
relativo alla pubblicazione ed entrata in vigore del R.D.L. 30/1/1944
n. 26 contenente disposizioni per la reintegrazione nei diritti
patrimoniali dei cittadini italiani e stranieri già dichiarati o

condizionati di esilio ebraico.

D. Legisl. Luog. 19 ottobre 1944 n. 306 (in Gazz. Uff. 16/11/1944)

n. 82) contenente norme complementari alle disposizioni del

R.D.L. 20/1/1944 n. 25, concernente la reintegrazione nei diritti civili e politici dei cittadini italiani e stranieri già dichiarati

di razza ebraica.

D. Legisl. Luog. 14 settembre 1944 n. 308 (in Gazz. Uff. 18/11/1944)

n. 83) concernente modalità per la riammissione in servizio del

personale militare delle forze armate dello Stato di grado

non superiore al 4° già dispensato per motivi politici e raziali =

11.

D. Legisl. Luog. 1 novembre 1944 n. 328 (in Gazz. Uff. 28/12/44)

n. 100) sulla riammissione in carica degli agenti di cambio

dichiarati ammissionari per motivi razziali.

Tutti questi provvedimenti sono ora entrati in vigore anche

per la città e provincia di Milano col decreto 18/10/1945, e ciò

per disposizione del Governo Militare e dei proprii comandi.

D. Leg. l. Inq. 14 settembre 1944 n. 338 (in Gazz. Uff. 10/11/1944 n. 35) concernente la legge per la trasmissione in servizio del personale militare delle forze armate dello Stato di Gradowa non superiore al V° già dispensato per motivi politici o razzia -

11.

D. Leg. l. Inq. 1 novembre 1944 n. 333 (in Gazz. Uff. 28/12/44 n. 100) sulla rimessione in carica degli agenti di cambio dichiarati dimissionari per motivi razziali.

Tutti questi provvedimenti sono ora entrati in vigore anche per la città e provincia di Milano col numero 19/5/1945, e ciò in forza di beni del Governo Alleato e del provvedimento.

Le leggi sopra menzionate, pure essendo relativamente complete, prevedono la reintegrazione nei diritti e nei beni avuto riguardo,

-3-

come già detto, alla situazione d'ordine anteriore alla occupazione dell'Italia da parte dei tedeschi. Va però tenuto presente che, successivamente all'8 settembre 1943, si era determinata nell'Italia occupata una situazione di fatto e di diritto che va ripartita con specifiche disposizioni. Tale situazione, del resto ben nota, risulta dall'ordine di arresto e di concentramento di tutti gli ebrei, emanato il 30 novembre 1943 dal Governo fascista e particolarmente dal D. Legist. del Duce 6 gennaio 1944 n. 2 che la Repubblica Sociale Italiana applicò in quella parte dell'Italia rimasta sotto il governo tedesco. Tale decreto prevedeva sostanzialmente la completa applicazione degli ebrei di tutti i beni mobili e immobili di qualsiasi natura e valore senza tener conto di nessuna delle deroghe o discriminazioni previste dalla precedente legge razziale.

Come è noto, la situazione di fatto e di diritto di cui sopra determina l'isolamento ^{o la deportazione} e la fuga di tutti gli ebrei, i quali dovettero improvvisamente abbandonare le loro case, i loro beni e i loro impieghi lasciando insoddisfatti e inadempiute situazioni ^{economiche} personali di quei uomini o sottraendo quindi su di sé stessi,

1-144

tutti gli ebrei, emanato il 30 novembre 1943 dal Governo fascista e particolarmente dal D.Legisl. del Duce 6 gennaio 1944 n. 2 che la Repubblica Sociale Italiana applicò in quella parte dell'Italia rimasta sotto il governo tedesco. Tale decreto prevedeva sostanzialmente la completa spoliazione degli ebrei di tutti i beni mobili e immobili di qualsiasi natura e valore senza tener conto di nessuna delle deroghe o discriminazioni previste dalla precedente ^{o la denotazione} legge razziali.

È noto, la situazione di fatto e di diritto di cui sopra determinò l'occultamento, la fuga ^{o la denotazione} di tutti gli ebrei, i quali dovettero improvvisamente abbandonare la loro casa, i loro beni, ed impieghi lasciando inasoddisfatti e inadempiti situazioni contrattuali di ogni genere o estirpando quindi su di sé stessi, di involontarie, conseguenze, inadempimento, ecc.

Appena da tutto ciò necessario un provvedimento legislativo che venga predisposto a tale situazione e, oltre a ripristinare gli obblighi nel possesso e godimento dei propri beni e diritti, si metta in considerazione di togliere di mezzo tutte quelle difficoltà, incomplicanze, ecc. che il loro improvviso allentamento tende a determinare.

I approved it in toto legislative milio scheme

20 gennaio
Il termine che con il D. 19/1 n. 25 è con successivi provvedimenti

11. Jay also informed the respondent, stating, "I do process legal cases" (p. 2221).

Senza i provvedimenti del piano italiano
il debito pubblico si è accumulato ancora per 1942

to include mathematics...

WILSON, J. R. 1974. p. 25.

Intro

040714

●
●
●
●
●
●
●

100

[illegible]

«Si propone quindi l'approvazione di un testo legislativo sullo stesso

seguito:

20 gennaio

«Decreto che con D.L. 19/11 n. 25 e con successivi provvedimenti

il Governo italiano ha abrogato tutta la precorsa legislazione razziale.

Giuristi, parlamentari del primo Parlamento

IL o che *il* *Decreto* *non* *è* *essenziale* *anche* *per* *l'11/11*

Ma Italia radiante....

Visto il R.D.L. 20 gennaio 1944 n. 25....

Visto

Visto....

.....

.....

«Abbasso ora dai vertici allora ancora con gli dei tedeschi, il 48

Governo della Repubblica tedesca italiana aveva emanato ordine 30

novembre 1943 di arresto di tutti gli ebrei e del loro invito in

campi di concentramento, e che con successivo decreto legislativo

del Duce 4 gennaio 1944 n. 2 veniva inoltre disposta la confisca

di tutti i beni mobili e immobili di qualsiasi natura e valore, di spettanza di cittadini già dichiarati appartenenti alla razza ebraica.

Ritornando pertanto che occorre ripristinare i cittadini già dichiarati appartenenti alla razza ebraica nel possesso e godimento di tutti i loro beni e diritti ad essi tolti, o da essi perduti, in conseguenza delle persecuzioni e confische di cui sopra, si emanò il seguente

DECRETO

Art. 1 Fermo il disposto del R.L. 20 gennaio 1944 n. 25 e successive Decreti Luogotenenziali circa l'abrogazione delle così dette leggi razziali e la reintegrazione dei cittadini già dichiarati di razza ebraica nei beni, impieghi e incarichi, tutti coloro che, per effetto di disposizioni o persecuzioni razziali, furono allontanati o dovettero allontanarsi dagli impieghi e incarichi presso enti o ditte private, dovranno essere reintegrati immediatamente a loro richiesta e comunque non oltre sei mesi dall'entrata in vigore del presente decreto, salvo in ogni caso, il disposto del D.M. 27 luglio 1944

ritenuto pertanto che occorre ripristinare i cittadini de-
già dichiarati appartenenti alla razza ebraica nel possesso e
godimento di tutti i loro beni e diritti ad essi tolti, o da
essi perduti, in conseguenza delle persecuzioni e confische di
cui sopra, si emanò il seguente

DECRETO

Art.1 Fermo il disposto del R.L. 20 gennaio 1944 n. 25 e
successivo Decreto luogotenenziale circa l'abrogazione della
così dette leggi razziali e la reintegrazione dei cittadini
già dichiarati di razza ebraica nei beni, impieghi e incarichi,
tutti coloro che, per effetto di disposizioni o persecuzioni
razziali, furono allontanati o dovettero allontanarsi dagli
impieghi e incarichi presso enti o ditte private, dovranno es-
sere reintegrati immediatamente a loro richieste e comunque
non oltre sei mesi dall'entrata in vi ore del presente decreto,
salvo in ogni caso, il disposto del D.Luog.27 luglio 1944
n.159 sull'epurazione.

necessario, chiedere di essere sottoposti alle prove, concessi od
esame necessari per conseguire le promozioni ai gradi superiori
cui avrebbero avuto diritto se avessero continuato a prestare ser-
vizio ininterrotto.

Art. 4. Gli effetti dei limiti di età fissati o da fissarsi in
bandi di concorso di ogni genere o per il collocamento a riposo,
per i cittadini già dichiarati appartenenti alla razza ebraica,
non verrà computato il tempo di tempo intercorso tra il giorno
in cui furono contratti ed abbandonare l'impiego, l'incendio e
uicilo in cui vennero reintegrati.

Art. 5. Tutti i beni, di qualsiasi natura, appartenenti ad enti
ebraici o a persona fisiche, già considerate di razza ebraica,

dovranno essere loro restituiti unitamente ai frutti eventualmente
interessi.

Gli stessi enti e persone rientrano altresì nell'esercizio
dei diritti trasmissibili o di godimento, dei quali fossero stati pri-
vati per effetto di leggi o provvedimenti razziali.

Art. 6. Qual alienazione o trapasso di beni e diritti di enti ebraici
o di cittadini già considerati di razza ebraica, compiuto in ap-
plicazione o in conseguenza di leggi o provvedimenti razziali, deve
considerarsi nullo anche se avvenuto a seguito di giudizio, nullo
alla substantazione.

Art. 7. Ove l'E.S.E.L.I. abbia trasferito i beni o i diritti ebraici
a terzi, questi dovranno costituirli a colui cui fossero stati
tolti in forza delle leggi razziali o al di lui eredi od aventi
causa. Detti terzi riceveranno in restituzione dell'E.S.E.L.I. il
prezzo da essi pagato per l'acquisto, mentre l'E.S.E.L.I. riceverà
dal proprietario originario la somma a lui eventualmente versata
o i titoli consegnatigli.

Qualora la proprietà o i diritti abbiano formato oggetto di ul-

teriori trasferimenti i proprietari successivi dovranno chiedere

1132

plicazione o in conseguenza di lesi o provvedimenti razziali, deve considerarsi nullo anche se avvenuto a seguito di giudizio, sino alla subastazione.

Art. 7. Ove l'U.C.B.L.I. abbia trasferito i beni o i diritti cenziali a terzi, questi dovranno restituirli a colui cui fossero stati tolti in forza delle leggi razziali o ai di lui eredi od aventi causa. Detti terzi riceveranno in restituzione dall'U.C.B.L.I. il prezzo da essi pagato per l'acquisto, mentre l'U.C.B.L.I. riceverà dal proprietario originario la somma a lui eventualmente versata o i titoli consegnatili.

Qualora la proprietà o i diritti abbiano formato oggetto di ulteriori trasferimenti i proprietari successivi dovranno chiedere il rimborso del prezzo pagato ai loro danti causa. Il prezzo risultante dall'atto notarile è vincolato ivo o non potrà essere impiegato

to.

Art. 8. Le ipoteche e gli altri diritti reali iscritti o gravanti sui beni dei quali viene chiesta la restituzione, che siano successivamente all'espropriazione in danno di colui già dichiarato di razza ebraica, si considerano come non esistenti ed i competenti uffici provvederanno alle debite cancellazioni su istanza dell'interessato, senza pregiudizio dei diritti dei terzi. Parimenti le procedure esecutive in corso dovranno essere sospese con effetto immediato e tutti gli atti compiuti in precedenza dovranno considerarsi come non avvenuti.

Art. 9. Tutti i beni appartenenti ad enti ebraici o a cittadini già dichiarati appartenenti alla razza ebraica, dovranno essere loro restituiti nello stato in cui si trovano, salvo il diritto del proprietario reintegrato al risarcimento dei danni.

Ove l'E.O.D.L.I. o l'acquirente dei beni o il terzo possessore di essi abbia effettuato riparatoni, migliorie o addizioni, si applicano le disposizioni degli articoli 1150 e 996 C.C. L'eventuale contestazione sul prezzo delle migliorie non potrà sospendere la restituzione dei beni.

Art. 10. Tutti gli atti e le alienazioni compiuti per affiggere all'ap-

1154

governano essere assese con effetto immediato e tutti gli atti compiuti in precedenza dovranno considerarsi come non avvenuti.

Art. 9. Tutti i beni appartenenti ad enti ebraici o a cittadini già dichiarati appartenenti alla razza ebraica, dovranno essere loro restituiti nello stato in cui si trovano, salvo il diritto del proprietario reintegrato al risarcimento dei danni.

Ove l'L. 9.3.43 o l'acquirente dei beni o il terzo possedere di essi abbia effettuato riparazioni, migliorie o addizioni, si applicano le disposizioni degli articoli 1150 e 950 C.C. L'eventuale contestazione sul prezzo delle migliorie non potrà recitare la retrocessione dei beni.

Art. 10. Tutti gli atti e le alienazioni compiuti per sfuggire all'applicazione e alle conseguenze delle leggi razziali o in violazione di tali leggi, possono essere impugnati ove si provi che furono compiuti

unicamente per tale motivo.

Art. 11. I cittadini già considerati di razza ebraica inclusi in emigrazioni o inadempienze posteriormente all'8/9/43 sono ammessi a essere tali emigranti ed inadempienze ove provino che esso furono determinate dalla situazione di fatto o di diritto esistente durante l'occupazione tedesca.

Ove, in seguito alle omissioni ed inadempienze, sia intervenuta sentenza passata in giudicato, gli interessati ed i loro eventuali eredi potranno proporre istanza per revocazione nelle forme di cui agli art. 395 e segg. C.P.C.

Art. 12. I diritti e le azioni relativi a quanto preveduto agli artt. 10 e 11 dovranno esercitarsi, a pena di decadenza, entro un anno dall'entrata in vigore del presente decreto.

Art. 13. I possessori a qualunque titolo di beni di qualsiasi natura, sia *o a persona che sia indebita di viaggi stranieri* appartenenti a genti ebraiche sono considerati ad ogni effetto custodi e depositari dei beni stessi dei quali nessuno pertanto la piena responsabilità per la custodia e la conservazione. Essi dovranno, nel termine di trenta giorni dall'entrata in vigore del presente decreto, farne denuncia, a mezzo di lettera raccomandata con ricevuta di ritorno,

Ove, in seguito alla omissione ed inadempienza, sia intervenuta senza
tenza passata in giudicato, gli interessati od i loro aventi causa potran-
no proporre istanza per revocazione nelle forme di cui all' art. 395 e

reg. C.P.C.

Art. 12. I diritti e le azioni relativi a quanto preveduto agli artt. 10 e
11 dovranno esercitarsi, a pena di decadenza, entro un anno dall'entrata
in vigore del presente decreto.

Art. 13. I possessori a qualunque titolo di beni di qualsiasi natura, già
o a persona che già possiede di legge o di fatto
appartenenti a/nti ebraici, sono considerati ed così offetto custodi

e depositari dei beni stessi dei quali saranno pertanto la piena respon-
sabilità per la custodia e la conservazione. Essi dovranno, nel termine
di trenta giorni dall'entrata in vigore del presente decreto, farne
denuncia, a mezzo di lettera raccomandata con ricevuta di ritorno,
alla Comunità Israelitica nella cui giurisdizione i beni si trovano.

I contravventori saranno puniti con la multa da L. 3.000 a L. 30.000

salvo le maggiori variazioni previste dalla legge fondi.

Art. 14. La Comunità Israelitica, a mezzo del suo organo rappresentativo, provvederà a riciclare alle competenti autorità tutte le misure cautelative e conservative nell'interesse dei beni degli ebrei deportati o comunque assenti.

Art. 15. L'Unione delle Comunità Israelitiche Italiane, quale organo rappresentativo degli ebrei italiani, in deroga alle vigenti disposizioni legislative in materia, verrà considerata quale successore dello Stato ebreo che si renderanno vacanti in conseguenza della morte di persone già considerate di razza ebrea e per le quali lo Stato assumerà il diritto di successione.

Disposizioni fiscali e civili

Art. 16. Tutti gli atti e provvedimenti relativi ad ottenere l'attestazione delle precedenti disposizioni sono esenti da qualsiasi imposte e tasse di bollo, di registro, di trascrizione, cancellazione ed annotazione.

Le spese notabili per atti di retrocessione dei beni non sono prelevate a debito dello Stato.

Art. 17. Le tasse pagate sulle alienazioni già fatte in base alle

ereditativo in materia, verrà considerato quale successore delle persone eredità che si renderanno vacanti in conseguenza della morte di persone già considerate di razza ebraica e per le quali lo Stato non farebbe il diritto di successione.

Disposizioni finali e finali

Art. 16. Tutti gli atti o provvedimenti diretti ad ottenere l'attuazione delle precedenti disposizioni sono esenti da qualsiasi imposta o tassa di bollo, di registro, di trascrizione, cancellazione ed annotazione.

Le spese notabili per atti di retrocessione dei beni saranno prelevate a debito dello Stato.

Art. 17. Le tasse pagate sulle alienazioni già esse tutte in base alle leggi fiscali verranno rimborsate dallo Stato.

Art. 18. Con successivi provvedimenti verranno emanate le norme operative, interregionali e regionali per l'attuazione del presente decreto, il quale entra in vigore il...

12A

Notes on D.L. No. 12 of 12 April 1945 completed, D.L. No. 26 of 20 January 1944, and establishing rules for restoration of their property rights to Italian and foreign citizens who have suffered loss as the result of discriminatory racial legislation.

1. In cases where property rights in the nature of uses and easements have been established on immovable properties which, according to racial laws, were transferred by Jews to the "ente di liquidazione immobiliare" and also where contracts for leases have been stipulated, by virtue of D.L. No. 222 such rights are extinguished, the holders of such rights being entitled to restitution of the amounts which they paid to constitute them. Contracts for leases, stipulated for more than three years, are to be reduced to three years, subject to the current provisions concerning the prorogation of lease.

2. Under Art. 6 of R.D.L. 9.2.1929, No. 126, Jews were allowed, to transfer their own estates by donation to relations not considered as Jews, or to charitable institutions. Such donations may be revoked within 180 days from the date on which the present D.L. No. 222 becomes effective, third party rights excepted.

The donor shall be entitled to demand from the donee the amount obtained by the latter through the alienation of the property, if it occurred.

In cases where inheritances have been waived for fear that the maximum limits of wealth, fixed by racial laws, might be exceeded, the waivers are revocable; third party rights always excepted.

3. All fictitious deeds (shares, sales, etc.) entered into to evade racial persecutions may be rectified, any means of evidence, oral evidence being admissible even beyond the limits fixed by ordinary rules of the civil code (Art. 1721 Cod. Civ.).

4. Factories must be given back to prior owners within 30 days from the date of the application and extensible by the President of the Tribunal to a maximum of 60 days.

Applications for restitution of confiscated estates may be filed within 1 year after the peace.

Immovable property must be given back in the same state as it was at the moment of the application.

5. The prior owner may ask for payment in cash "Interest" for restitution; in any case the rate of interest on the bonds delivered by the "ente di liquidazione immobiliare" is raised from 4% to 5% from the day on which the ownership was transferred to the said "ente".

property, if it occurs within one year after that date. In cases where inheritances have been waived for fear that the maximum limits of wealth, fixed by racial laws, might be exceeded, the waivers are revocable; third party rights always excepted.

3. All fictitious deeds (shares, sales, etc.) entered into evade racial persecutions may be rectified. Any means of evidence, oral evidence being admissible even beyond the limits fixed by ordinary rules of the civil code (Art. 1321 Cod. Civ.).

4. Factories must be given back to prior owners within 30 days from the date of the application and extensible by the President of the Tribunal to a maximum of 60 days.

Applications for restitution of confiscated estates may be filed within 1 year after the peace.

Immovable property must be given back in the same state as it was at the moment of the application.

5. The prior owner may ask for payment in cash instead of restitution; in any case the rate of interest on the bonds delivered by the "Ente di restituzione e di liquidazione immobiliari" is raised from 4% to 5% from the day on which the generally was transferred to the said "Ente".

Whereas the R.N.L. 20.1.44, No. 26, prescribed the reimbursement of any expenses resulting from improvements to the property, the present decree binds the prior owner, who has recovered his property, to refund also the expenses resulting from the repairs occasioned by war, forced majeure, and circumstances beyond control.

6. Transferences of ownership and any instrument intended for reestablishment of the status quo situation, are exempted from taxes, moderate fees for registration excepted. The fees of notation and Bank charges are reduced to one half.

7. Action for rescission is permitted if the lesion exceeds one quarter of the value of the property alienated after 6.10.1938, whereas the ordinary rule (Art. 1448) admits the action for rescission only in cases where lesion exceeds one half of the value.

11A

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

AC/4118/L.

WEB/pa.
24 February 1945.

SUBJECT : Restoration of Jewish Property.

TO : The Commissioner to the Union of Jewish
Communities in Italy.

10A

1. In reply to your letter No. 301 of 20 Feb 45 to Admiral Stone I regret to inform you that the Allied Commission is concerned solely with the administration of Italian Territory and that it is no part of the Commission's functions to deal with property belonging to Italian nationals and situated in the territory of one or more of the United Nations.

2. If you wish to take the subject further you must arrange for the matter to be brought through proper channels to the attention of the individual governments concerned.

G. E. Upjohn
G. E. UPJOHN, Brig.
VP CA Sec, HQ AC

UNIONE

DELLE

COMUNITA' ISRAELITICHE ITALIANE

R. D. 30 Ottobre 1930 N. 1731

FEB 21 RECD

27 FEB 1945

C A SEC

1017

Roma, 20 Febbraio 1945
Lungotevere Sanzio N. 9. - Telef. 52 397

Prot. N. 301.

Admiral STONE

Allied Commission H.Q.

R O M A -
Via Vittorio Veneto

Sir,

As Commissioner of the Union of the Jewish Communities in Italy, I beg to submit to the Chief of the Allied Commission as Representative of the United Nations the following:

As is known, under the Laws emanated by the Fascist Government, a discrimination was established in Italy against the citizens who were declared to belong to the Jewish race. This discrimination was turned into actual persecution and reached its climax with Order under which, those regarded as belonging to the Jewish race were declared to be enemy aliens, whose properties, of every kind and nature, had to be confiscated, while the individuals

Sir,

As Commissioner of the Union of the Jewish Communities in Italy, I beg to submit to the Chief of the Allied Commission as Representative of the United Nations the following:

As is known, under the Laws emanated by the Fascist Government, a discrimination was established in Italy against the citizens who were declared to belong to the Jewish race. This discrimination was turned into actual persecution and reached its climax with Order under which, those regarded as belonging to the Jewish race were declared to be enemy aliens, whose properties, of every kind and nature, had to be confiscated, while the individuals had to be interned in Concentration Camps.

The Italian citizens regarded as Jews under Italian Law having been declared to be enemy aliens, because implicitly allies of the United Nations and, in fact, there is no questions that every one of them have, either directly or indirectly, worked or fought

24

./.

189

UNIONE delle COMUNITÀ ISRAELITICHE ITALIANE

segue lettera N. 501 foglio N. 2

for the triumph of the Allies against Nazi-Fascism.

In these circumstances, it seems unfair that Italian citizens, which under the laws of 1938 are regarded as belonging to the Jewish race, should continue to be treated as enemies by the United Nations, and it would be proper to bring about the immediate release of private properties belonging to such Italian citizens in any one of the United Nations, wherever they may have been sequestered, in accordance with war legislation.

Thanking in anticipation for your kind attention,

I beg to remain,

Sir,

Yours faithfully,

IL COMMISSARIO GOVERNATIVO:

(Giuseppe Nathan)



SUBCOMMITTEE

Chief Counsel

CJO

1 1 6 3

immediate release of private properties belonging to such Italian citizens in any one of the United Nations, wherever they may have been sequestered, in accordance with war legislation.

Thanking in anticipation for your kind attention,

I beg to remain,

Sir,

Yours faithfully,

IL COMMISSARIO GOVERNATIVO:

(Giuseppe Nathan)

Giuseppe Nathan

SUBCOMMITTEE

Chief Counsel

CJO

Italian Section

CLERKS

23 FEB 1943

10B

Il ^{la} ~~la~~ Ottolenghi dice che
c'è imminente la pubbli-
cazione del decreto di
attuazione delle leggi di
reintegrazione dei diritti
dei perseguitati politici
(compresi gli Ebrei) e che
perciò ritiene opportuno
attendere ~~alla~~ ^{tale} pubbli-
cazione, onde fare poi le
osservazioni agli effetti
del futuro Testo Unico
che riassumerà e inte-
grerà siffatte leggi.

Scriversi una lettera in
tale senso.

20.2.1945

no further action
JBT

COMUNITA ISRAELITICA

di
ROMA

Roma, 5 FEBBRAIO 1945
Lungotevere Cenci (Tempio)
Telefono 54302 564648

ALLA A. C.

Sub Legal Commission

ROMA

=====

Numero di protocollo

Risposta a nota del

Allegati

OGGETTO:

La legge del 20/1/43 emanata dal Governo Italiano in Se-
lerno, è inapplicabile sotto molti profili se non sono emana-
te le norme integrative e di applicazione. Come è noto tali
norme sono state da tempo studiate ed il relativo progetto
legge è pronto da qualche mese. Però non è stato approvato
dal Consiglio dei Ministri ancora, e quindi gravi conseguenze
si stanno verificando nei confronti di quei cittadini di re-
ligione ebraica che di tali norme dovrebbero giovare e che
sono ancora soggetti ad irregolarità per quanto riguarda la
loro proprietà. Sarà quindi grato alla Commissione di Control-
lo se, nella sfera delle sue competenze, vorrà affrettare
l'applicazione delle norme stesse.

Con ossequi

IL COMMISSARIO STRORDINARIO

(Aut. Silvio Ottolenghi)

785016

lerno, è inapplicabile sotto molti profili se non sono emanate le norme integrative e di applicazione. Come è noto tali norme sono state da tempo studiate ed il relativo progetto legge è pronto da qualche mese. Però non è stato approvato dal Consiglio dei Ministri ancora, e quindi gravi conseguenze si stanno verificando nei confronti di quei cittadini di religione ebraica che di tali norme dovrebbero giovare e che sono ancora soggetti ad irregolarità per quanto riguarda la loro proprietà. Sarà quindi grato alla Commissione di Controllo se, nella sfera delle sue competenze, vorrà affrettare l'applicazione delle norme stesse.

Con ossequi

30

IL COMMISSARIO STRORDINARIO

(Avv. Silvio Ottolenghi)

[Handwritten signature]

LEGAL SUBCOMMITTEE	
CLO	
DCLO	
Chief Counsel	
CJO	
Italian Section	
CL RKS	

6 FEB 1945

HEADQUARTERS ALLIED COMMISSION
APO 194
LEGAL SUB-COMMISSION

8A

AC/4118/L.

ES/ap.

8 December 1944.

SUBJECT : Draft law on restoration of Jewish property.

TO : Interamerican and Central European Law Offices,
Washington, D.C. 1409, N.W.

1. Col. POLETTI referred to this Sub-Commission your letter of 25 Aug 1944 with the above draft law.

2. Your project has been read with interest. Please find enclosed as requested copies of the decrees No. 25 and 26 of 20 Jan 1944 enacted by the Italian Government on this matter.

G. G. HANNAFORD,
Lt. Colonel,
Officer i/c Italian Branch,
for Chief Legal Advisor.

2 Incls.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
LAZIO-UMBRIA REGION
APO - 394

B/2643

21 November 1944

SUBJECT: Draft of a Restoration Law for Axis and Axis occupied countries.

TO : Legal Sub-Commission
Headquarters, Allied Commission

The inclosed document was received from Emilio Von Hofmannsthal, Inter-American and Central European Law Offices, Washington, D.C., and is forwarded to you for information and whatever action you deem necessary.

Charles Politti
CHARLES POLITTI
Colonel
Regional Commissioner

INCL: 2

Letter from:
Emilio von Hofmannsthal
25/8/44

"Draft of a Restoration Law for Axis
and Axis Occupied Countries".
Page 1 - 16

LEGAL SUB-COMMISSION	
CLO	✓
DCLO	✓
Chief Counsel	
CJO	
Italian Section	
CL RKS	
23 NOV 1944	

33

*Just - a bit late perhaps - you might
like to study it - otherwise the
"action necessary" appears to be nil.*

INTERAMERICAN & CENTRAL EUROPEAN LAW OFFICES.

DR. EMILIO von HOFMANNSTHAL

1937-39 Expert of Central European and
International Law at London. 1939-40 at Buenos Aires.
Adh. Member of the Académie Diplomatique Internationale;
Member of the Argentine Institute of International Law etc.

ARGENTINE BRANCH:

connected with the office of Messrs. Ruiz Moreno
Director:

DR. ISIDORO RUIZ MORENO

President of the Argentine Institute of Intern. Law
Member of the Intern. Juridical Inst. (The Hague) etc.

LONDON BRANCH:

DR. PAUL ABEL

CANADIAN BRANCH:

DR. GEORGE de WEYZL, Vancouver, B. C.

Branches & Representatives in most Latin American countries

COLLABORATORS:

for French law: Maître E. Bourbousson

for Hungarian law: Prof. R. Vambéry

for Italian law: Avv. E. L. Pavia

for Polish law: Prof. J. C. Witenberg

for Russian & Soviet law: Prof. L. Zaitzoff

WASHINGTON, D. C.
1409 L. NW—Tel. UN. 0919

NEW YORK 17 /
67 East 64th Street
Room 1063—Tel. MU. 2-7036

"III/25.1944

Lt.Col.

Charles A. Poletti

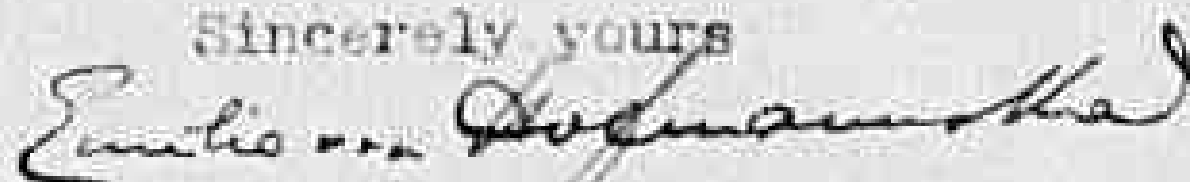
Allied Commissioner

Rome, Italy.

My dear Lt.Col. Poletti:

I have been informed that a special commission is now studying in Rome the ways to restore property robbed by Nazis and Fascists from the Jewish population, but, I daresay, not only from the Jewish population. That is why I take the liberty to forward to you for the use of this commission a draft for a respective law which I published a short time ago. Likely some of the ideas developed in this draft, especially those concerning the so-called "good faith" of the acquirer of stolen goods and the independence of the right to restoration of all personal qualities of the damaged individual, could facilitate the work of this commission. It is important, that the first law of this kind gives a good example for other countries too, in order to enable the greatest uniformity possible.

Sincerely yours



Emilio von Hofmannsthal

P.S. In order to conform with postal regulations I have to send the draft in two letters not exceeding 2 ounces. - If you could kindly send me the corresponding Italian decrees, I would highly appreciate it.

P4 to RC 70

Special print before publication

Copyright 1944 by Emilio von Hofmannsthal. - No part of this Draft may be reproduced without permission except in articles or reviews with indication of the source.

12 NOV 1944
Draft of a Restoration Law
for Axis and Axis occupied countries

By Emilio von Hofmannsthal,
University of Maryland

Translated by Ferdinand W. Coudert

I have to express my special
gratitude to Mr. J. S. Chalot
for his valuable support in
editing this draft.

M O T T O
"Pirata non mutat dominium"
(note 6)

Contents:

A.) Basic Elements of the Draft.

- I.) Right to Restitution.
- II.) Illegality of all transactions in Occupied and Axis countries.
- III.) Main controversies.
- IV.) Should Reparation and Restitution be accorded to the individual or to the state? - To the individual.
- V.) The problem should be solved internationally, not nationally.
- VI.) R. and R. should be based on justice, not on victory.
- VII.) Stopping of economic activities prevented by the formation of special corporations.
- VIII.) Evidence.
- IX.) Restitution at the option of the claimant.
- X.) Prevention of Money Restrictions.
- XI.) International Trustee.
- XII.) Statute of Limitations.
- XIII.) International Central Register
- XIV.) Illegitimate warfare - war crimes.
- XV.) Cooperation of neutral countries.
- XVI.) Full Appeal to an International Court.
- XVII.) International Prohibition of Confiscation.
- XVIII.) Individual Restitution or General Reparation, - Equality of Sacrifice.
- XIX.) Common interest of the claimants and of the countries of their residence.
- XX.) Principal features of the draft.

B.) Text of Draft.

C.) Notes.

Basic principles of the Draft

I.) The incredible spoliation of property which has been carried on in Germany, Italy and all Axis occupied countries (1), must, insofar as it is possible, be made good. The countries in which the individuals who have been robbed, or their successors in interest now live, have an interest in this. Not only will justice be restored, similar crimes will be prevented, but also their economy will be enriched in this manner, or more correctly: wrong which they have suffered will be at least partially redressed. On the basis of principles of International Law (2) these nations could have required that their immigrants be allowed to retain their property. They can now make up for the fact that for political reasons they did not consider themselves in a position to take action against powerful totalitarian countries which did not recognize International Law. There is no statute of limitations in this.

II.) This spoliation, even when carried out pursuant to so-called laws, was so widespread that it must be remedied by means of an universal law. If redress were granted only against legal acts which resulted in individual hardship the establishment of duress would impose too heavy a burden of proof on the plaintiff. Duress may reasonably be presumed where the contrary cannot be proved. It would, moreover, be an error to limit the invalidity of legal acts to such acts as affect members of groups which have been discriminated against. The whole legal system in these countries was dominated by principles which are foreign to these countries where real law prevails. This fact is only too little known. Myriads of examples could be given. (3) One thing must be grasped clearly: Under totalitarian rule there is no real law. Certainly not what is known as law in civilized countries. Wherever things were run purely by and for the party in power, (3a) there must be an opportunity for a general housecleaning. Whoever may be prejudiced by this housecleaning may, in any event, claim damages, (4) from his predecessor in interest, but in the final analysis he is only a possessor of stolen goods (5) and should be treated as such. In the conflict of interest between him and the individual who has been robbed the latter should prevail. Persons who acquired these stolen goods knew or had to know that to be such and profited hereby. Their "good faith" (6) rested only in their belief that the authority of the occupying nation or of the dominant group, which seized control of Germany and Italy like an invading horde, would last long enough to permit them to retain their ill-gotten gains (7). The proposed law treats them even with more consideration than they deserve and then was usual under the laws of the governments to which they owe their possession (sect. 4, 7c).

In the event that the last possessor cannot recover his damages from his predecessor, either because the predecessor has disappeared or is insolvent and in the event that no redress is given by the principle of skipping the former owner (sect. 6c), it is only just that the person who derived the benefit from the confiscation should bear the loss and not the person who was deprived of his property.

III.) There are opposite trends of thought as to the manner of treating the

the establishment of duress could impose too heavy a burden of proof on the plaintiff. Duress may reasonably be presumed where the contrary cannot be proved. It would, moreover, be an error to limit the invalidity of legal acts to such acts as affect members of groups which have been discriminated against. The whole legal system in those countries was dominated by principles which are foreign to these countries where real law prevails. This fact is only too little known. Myriads of examples could be given. (3) One thing must be grasped clearly: Under totalitarian rule there is no real law. Certainly not that is known as law in civilized countries. Wherever things were run purely by and for the party in power, (3a) there must be an opportunity for a general housecleaning. Whoever was prejudiced by this housecleaning may, in any event, claim damages, (4) from his predecessor in interest, but in the final analysis he is only a possessor of stolen goods (5) and should be treated as such. In the conflict of interest between him and the individual who has been robbed the latter should prevail. Persons who acquired these stolen goods knew or had to know that they were such and profited hereby. Their "good faith" (6) rested only in their belief that the authority of the occupying nation or of the dominant group, which seized control of Germany and Italy like an invading horde, would last long enough to permit them to retain their ill-gotten gains (7). The proposed law treats them even with more consideration than they deserve and then was usual under the laws of the governments to which they owe their possession (sect. 4, 7a).

In the event that the last possessor cannot recover his damages from his predecessor, either because the predecessor has disappeared or is insolvent and in the event that no redress is given by the principle of skipping the former owner (sect. 6c), it is only just that the person who derived the benefit from the confiscation should bear the loss and not the person who was deprived of his property.

III.) There are opposite trends of thought as to the manner of treating the problem of Restitution and Reparation:

- A.) Shall they be accorded to the individual or to the State?
- B.) Should the problem be treated nationally or internationally?
- C.) Should Reparation and Restitution be based on Victory or on Justice?

IV.) Should Reparation and Restitution be accorded to the individual or to the State?

To the individual, very definitely. It was the individual who has been deprived of his property and the individual should therefore recover it. If States claim it as their right, they are free to redistribute the proceeds as they please, and the

individual will have no efficient protection against injustices of his government⁹⁾. To prevent that, a special international machinery would have to be created (sect.15). Otherwise the Nazi spoliation would become permanent, wholly or partly, and would be used only for another, more popular aim. By recognizing an individual right, independent of nationality or any other specific quality of the claimant, many difficulties disappear which originate from statelessness (whether recognized or not, whether recognized by one state and not by another), double nationality, contested nationality, valid or invalid change of nationality, change of nationality recognized by one state and not by another¹⁰⁾; EFG. It is necessary to eliminate all these very delicate questions from the problem or restitution and reparation which is sufficiently complicated in itself. It will avoid useless work, and deprive the defendants of arguments based on legal niceties in order to circumvent or delay their obligations. All these benefits will be obtained by recognizing the individual right of the person deprived - or his legal successor - to obtain restitution or reparation irrespective of creed, race, nationality or residence - just as any other right to reacquire stolen property is recognized.

V.) Should the problem be solved nationally or internationally?

It would seem convenient and enticing to leave the solution to each state independently. But what would be the result? Each state would try to seize as many assets as possible for the indemnization and to restrict the number of the claimants. Each state would apply different methods to achieve this aim. One or the other state may even use obviously unjust means, e.g. by depriving refugees of their salvaged property, as some states already have done¹¹⁾. The dividend of recovery will be different: Guatemala f.i. which may seize considerable assets and have comparatively few claimants, may distribute a dividend of 100 percent or more; the United States which has few assets in comparison with the great number of claimants may be able to distribute only a low dividend. Within each state conflicts may arise between the groups of creditors each one of which will strive for an advantage over the others. The politically weak will lose, though his claim may be stronger in law and equity. Citizens will try to obtain preferred treatment over mere residents, even though the claim of the latter may be better founded; the native citizen may oppose the naturalized, the naturalized of longer standing may oppose the younger. A struggle between the creditor groups might lead them to forget to prosecute the defendants who will then profit thereby. Such struggle will not only injure groups of claimants, but also pervert the idea of justice in indemnization. The justice of a claim is not affected by the mere fact that the injured has, had, or acquired one or the other nationality; its justice is based on the circumstances of the injury, not on the personality of the injured. Otherwise the principle of equality before the law is violated.

The idea of the "universality of bankruptcy" was never more justified than in the case of the bankruptcy of the Nazi system. This bankruptcy is not confined to the national boundaries of Germany but affects the whole world. Its liquidation must therefore be undertaken on an international basis. Otherwise there will be a great number of national bankruptcy proceedings, each applying different principles and methods for seizure and distribution of the assets. It would then be a matter of chance alone, not more justified than any gamble as to which state would seize a given asset or in which

ties in order to circumvent or delay their obligations. All these benefits will be obtained by recognizing the individual right of the person deprived - or his legal successor - to obtain restitution or reparation irrespective of creed, race, nationality or residence - just as any other right to rescure stolen property is recognized.

V.) Should the problem be solved nationally or internationally?

It would seem convenient and enticing to leave the solution to each state independently. But what would be the result? Each state would try to seize as many assets as possible for the indemnization and to restrict the number of the claimants. Each state would apply different methods to achieve this aim. One or the other state may even use obviously unjust means, e.g. by depriving refugees of their salvaged property, as some states already have done¹¹). The dividend of recovery will be different: Guatemala f.i. which may seize considerable assets and have comparatively few claimants, may distribute a dividend of 100 percent or more; the United States which has few assets in comparison with the great number of claimants may be able to distribute only a low dividend. Within each state conflicts may arise between the groups of creditors each one of which will strive for an advantage over the others. The politically weak will lose, though his claim may be stronger in law and equity. Citizens will try to obtain preferred treatment over mere residents, even though the claim of the latter may be better founded; the native citizen may oppose the naturalized, the naturalized of longer standing may oppose the younger. A struggle between the creditor groups might lead them to forget to prosecute the defendants who will then profit thereby. Such struggle will not only injure groups of claimants, but also pervert the idea of justice in indemnization. The justice of a claim is not affected by the mere fact that the injured has, had, or acquired one or the other nationality; its justice is based on the circumstances of the injury, not on the personality of the injured. Otherwise the principle of equality before the law is violated.

The idea of the "universality of bankruptcy" was never more justified than in the case of the bankruptcy of the Nazi system. This bankruptcy is not confined to the national boundaries of Germany but affects the whole world. Its liquidation must therefore be undertaken on an international basis. Otherwise there will be a great number of national bankruptcy proceedings, each applying different principles and methods for seizure and distribution of the assets. It would then be a matter of chance alone, not more justified than any gamble as to which state would seize a given asset or in which state an injured party could seek redress. Instead of an international court of justice we would have an international gambling house, where losing or winning would not depend on justice, but on unpredictable whims of chance. Through obsolete principles of international law the debtor would find himself as the lucky bankholder who can only profit from the zeal of the gamblers.

Universal international principles, protected by an international legal machinery (sect. 15) against separate endeavors of single states, are needed to place the greatest reparation problem in history¹² on a basis of international justice.

- 3 -

matter of chance alone, not more justified than any gamble as to which state would win. A person aspect or in which state an injured party could seek redress. Instead of an international court of justice we would have an international gambling house, where losing or winning would not depend on justice, but on unpredictable whims of chance. Through obsolete principles of international law the debtor would find himself as the lucky bookholder who can only profit from the zeal of the gamblers.

Universal international principles, protected by an international legal machinery (sect. 15) against supporters and owners of single states, are needed to avoid placing the greatest reparation problem in history (1) on a basis of international justice.

VI.) Should Restitution and Reparation be based on Victory or enlarged human justice?

Is there a difference when victory is in the hands of the victors? There is one, and an essential one. Should reparation be based on victory, the Brazilian Nazi who bought "Rueckwandermark" will be indemnized, but the Hungarian refugee whose house in Germany, whose farm in Hungary have been confiscated, will not. On the other hand, if it should be based on justice, the Brazilian Nazi will not be indemnized, but the Hungarian refugee will. In other words, the individual's advantage will not be affected by his country's position, the individual's crime will not be condoned by fortunate citizenship in a victorious nation. Furthermore, the reparation would create a desirable psychological effect. It is not the same effect, if one must pay because he has conquered or because he was wrong. Every payment of reparation shall not only make good an individual wrong done, but shall also prevent future wrongs. In one case the conquered will pay, guarding their interests, as they did after the other war, but with the feeling that it was bad fortune to lose the war, not that it was bad to rob innocent people. They will not understand that their creditors were right, but only that they were stronger. That will only more only foster the wish to be stronger, not the determination to do no more wrong. It is not unimportant, why you have to pay! The aim to educate the conquered nations for a new world is possible, is not less important than the aim to educate for the crimes as much as possible. Therefore, these two aims must be combined in such a way that they support each other. Reparation then must be based on justice, not on victory. Also victorious countries, if and when they have done wrong should pay reparation to the damaged. (12) Those comparatively small amounts will be well applied. They will be helpful in convincing the world, the nations, the conquered countries, the neutral countries and the future generations, that this peace is based on justice and not on mere victory. Never in history has it been so easy to make this distinction, because never in history was the right been so much on one side.

Thus we come to the following conclusions concerning restitution and reparation after this war:

Justice?

Is there a difference when victory is on the same side as justice? There is, and an essential one. Should reparation be based on victory, the Brazilian Nazi who bought "Ruckwundermark" will be indemnized, but the Hungarian refugee whose house in Germany, whose farm in Hungary have been confiscated, will not. On the other hand, if it should be based on justice, the Brazilian Nazi will not be indemnized, but the Hungarian refugee will. In other words, the individual's right will not be affected by his country's position, the individual's crime will not be condoned by fortunate citizenship in a victorious nation. Furthermore, the reparation would create a desirable psychological effect. It has not the same effect, if one must pay because he was conquered or because he was wrong. Every payment of reparation shall not only make good an individual wrong done, but shall also prevent future wrongs. In one case the conquered will pay, granting their victims teeth, as they did after the other war, but with the feeling that it was done for them, not that it was done to rob innocent people. They will not understand that their creditors are right, but only that they are stronger. That will make more only foster the wish to be stronger, not the determination to do no more the same wrong. It is not unimportant, why you have to pay! The aim to educate the conquered nation as far as may be possible, is not less important than the aim to give a collector for the crimes as much as possible. Therefore, these two aims must be combined in such a way that they support each other. Reparation then must be based on justice, not on victory. Also victorious countries, if and when they have done wrong should pay reparation to the damaged. (12) Those damp rationally all accounts will be well applied. They will be helpful in convincing the world, including the conquered countries, the neutral countries and the future generations, that this peace is based on justice and not on mere victory. Never in history has it been so easy to make this distinction, because never in history has the right been so much on one side.

Thus we come to the following conclusions concerning reparation and reparation after this war:

They must be based on justice, not on victory. They must be granted to the damaged individuals or their legal successors without any distinction of race, religion, nationality or residence: and they must be granted on an international basis.

(13) A dislocation of the economy of the occupied territories is avoided as far as possible by sect. 12. Enterprises (13) must be protected against the danger of the owner in fact abandoning them before they are returned to their lawful owners. In the interest of the national and the international economy they must be kept going if that is economically possible. The Corporation Law of all countries concerned provide a good mechanism for the accomplishment of this purpose. A corporation should be formed for each enterprise and the owner in fact should, in the

eye of the law be deemed the manager of said corporation and accountable as such. That is the consequence of his having acquired property illegally. He will be subject to the supervision of the International Trustee (XI.) who shall have the right to replace unsatisfactory managers. This means under the laws of most countries concerned, that he will act as manager and the International Trustee as a supervisory committee.

Thus each enterprise will be merged for the benefit of the lawful owners, who will become the stockholders of the respective corporations. Until their identity is established the International Trustee would act in their place. After their identity shall have been established the ownership of the shares as well as the management of the enterprise would devolve upon them. In this fashion also the difficulty of carrying on a business on behalf of unknown owners will have become obviated by the creation of legal entities which may acquire rights and incur obligations irrespective of the persons who are entitled to beneficial ownership.

VIII.) Not only all decisions which were rendered but likewise all evidence which was submitted during the domination of the occupying power is under suspicion of bias. It is easy to obtain evidence in support of this assertion and such evidence would fill volumes. Whoever understands the principles of totalitarian legal systems knows it. E.g., witnesses of particular groups were simply not believed or they were not permitted to testify. This was quite officially asserted to be a "legal" principle. Witnesses favorable to the party discriminated against were intimidated. Other witnesses were bound by their party rules to give false evidence in certain cases. (24) In order to obtain a just result under the new proceedings it is, therefore, better to bar entirely evidence given during the occupation (sect. 2d). Parenthetically, the foregoing demonstrates the necessity for the parties concerned to collect without delay as much evidence in support of their claims as may be possible. Witnesses are dispersed over the whole world and may not be available at a future trial.

The foregoing is true for civil proceedings and even more for criminal and administrative proceedings. The sentences imposed under the domination of the Axis governments are usually based on legal concepts which are diametrically opposed to those prevailing in civilized countries (crimes et poena sine lege, retroactivity 15), inequality before the law, etc.) Conviction by an Axis dominated court does not adversely affect the character of an individual, it is rather a badge of honor.

IX.) There shall be no compulsion to exercise this right of repulsion of former evidence, or the right to restitution (restoration of the property in kind) in lieu of reparation (damages for the property taken. (15) However, the exercise of the right of restitution does not deprive the claimant of any further right to incidental damages by way of reparation against the owner in fact (sect. 7) and/or the guilty state. The rules governing reparation are not included in this draft.

X.) The essence of compensation does not lie in a number, but in a value (16). A credit of one million marks in a blocked account which cannot be used

VIII.) Not only all decisions which were rendered but likewise all evidence which was submitted during the domination of the occupying power is under suspicion of bias. It is easy to obtain evidence in support of this assertion and such evidence would fill volumes. Whoever understands the principles of totalitarian legal systems knows it. E.G., witnesses of particular groups were simply not believed or they were not permitted to testify. This was quite officially asserted to be a "legal" principle. Witnesses favorable to the party discriminated against were intimidated. Other witnesses were bound by their party rules to give false evidence in certain cases. (24) In order to obtain a just result under the new proceedings it is, therefore, better to bar entirely evidence given during the occupation (sect. 2d). Parenthetically, the foregoing demonstrates the necessity for the parties concerned to collect without delay as much evidence in support of their claims as may be possible. Witnesses are dispersed over the whole world and may not be available at a future trial.

The foregoing is true for civil proceedings and even more for criminal and administrative proceedings. The sentences imposed under the domination of the Axis governments are usually based on legal concepts which are diametrically opposed to those prevailing in civilized countries (crimes et poena sine lege, retroactivity 15), inequality before the law, etc.) Conviction by an Axis dominated court does not adversely affect the character of an individual, it is rather a badge of honor.

IX.) There shall be no compulsion to exercise this right of repulsion of former evidence, or the right to restitution (restoration of the property in kind) in lieu of reparation (damages for the property taken. (15) However, the exercise of the right of restitution does not deprive the claimant of any further right to incidental damages by way of reparation against the owner in fact (sect. 7) and/or the guilty state. The rules governing reparation are not included in this draft.

X.) The essence of compensation does not lie in a number, but in a value (16). A credit of one million marks in a blocked account which cannot be used is worth less to the creditor than 10,000 marks which he can freely use. This concept is the basis of sect. 8 and 10. An abrogation of this principle, even in part, through governmental intervention is prevented by sect. 11.

XI.) In many cases the legal embers will not be able to act efficiently or quickly enough to protect their rights and to prevent the further deterioration of their property. An International Trustee should be created to act for them. The International Trustee (I.T.) must be independent of all governments; in fact, it may be obliged sometimes to protect rights of individuals against governments; this is an organ of international authority and much more efficiently than a private

- 5 -

individual. This idea was first put forward by Prince Paul Sapieha in the deliberations of the Pan-European Conference at New York in spring 1943 (16c), and I am glad with his permission to use and further develop the same.

XII.) The provisions concerning the statute of limitations and the tolling thereof (sect. 13) are necessary in order, on the one hand, that the legal position may not remain uncertain too long and, on the other hand, that due consideration may be given the fact that claimants are scattered throughout the whole world and that there are difficulties in establishing the legal chain of titles. The time limits should not be absolutely inflexible. In this respect, as in other provisions, the experiences of the Mixed Arbitral Tribunals after the First World War must be taken into consideration. Whenever the period of limitation expires within too short a time after the Second Effective Date, the maintenance of rights is rendered possible by means of the one-year extension provided in sect. 13d.

XIII.) The difficulty of locating confiscated chattels, which may have been acquired by third persons, is decreased by the imposition of an obligation to report to an International Central Register all property acquired after the First Effective Date. The enforcement of this obligation can be secured by penal provisions. Similar decrees in totalitarian and totalitarian occupied countries have been quite effective (17). A system which worked for a bad purpose, can also be used for a good one. For the purpose of concentrating information it is advisable to institute one Central Register for all countries, eventually with branches for collecting and distributing information. In this respect too the collaboration of the neutral countries is important, in order to extend this obligation to persons residing in their respective territories.

XIV.) The owner in fact cannot be made responsible for the consequences of legitimate warfare. The consequences of such acts escape the regulation by private law. But not all acts committed (18a) by armed forces are to be deemed acts of war (18). When they exceed the rights of belligerents under international law, every one who ordered or committed them is subject to penal and civil responsibility. Acts of bestiality against civilians, acts of piracy (19) on the high seas, acts of robbery and blackmail are not covered by the laws of war. The problem of civil liability for war crimes touches the problem of penal prosecution of war criminals. In addition to the penal responsibility the civil liability of the war criminal may be of value in many cases and bring relief to the injured parties. Care must be taken to prevent extinction of the civil liability by the death of the war criminal or of his victim. His estate must be subjected to liability for his wrongs also for personal injuries as is the case under many European systems. Conviction in the criminal proceedings while not a condition precedent for civil responsibility, should have nevertheless the effect of an adjudication of the defendants guilt of transgressing the bounds of legitimate warfare and should be binding on him in the proceeding to enforce his civil liability. It might even be advisable to authorize the trial of the issues of civil liability in the criminal proceeding as is the case in some European jurisdictions (20). However, the further discussion of these problems

182

XIII.) The difficulty of locating confiscated chattels, which may have been acquired by third persons, is decreased by the imposition of an obligation to report to an International Central Register all property acquired after the First Effective Date. The enforcement of this obligation can be secured by penal provisions. Similar decrees in totalitarian and totalitarian occupied countries have been quite effective (17). A system which worked for a bad purpose, can also be used for a good one. For the purpose of concentrating information it is advisable to institute one Central Register for all countries, eventually with branches for collecting and distributing information. In this respect too the collaboration of the neutral countries is important, in order to extend this obligation to persons residing in their respective territories.

XIV.) The owner in fact cannot be made responsible for the consequences of legitimate warfare. The consequences of such acts escape the regulation by private law, but not all acts committed (18) by armed forces are to be deemed acts of war (18) when they exceed the rights of belligerents under international law, over anyone who ordered or committed them is subject to penal and civil responsibility. Acts of hostility against civilians, acts of piracy (19) on the high seas, acts of robbery and blackmail are not covered by the laws of war. The problem of civil liability for war crimes touches the problem of penal prosecution of war criminals. In addition to the penal responsibility the civil liability of the war criminal may be of value in many cases and bring relief to the injured parties. Care must be taken to prevent extinction of the civil liability by the death of the war criminal or of his victim. His estate must be subjected to liability for his wrongs also for personal injuries as is the case under many European systems. Conviction in the criminal proceedings while not a condition precedent for civil responsibility, should have nevertheless the effect of an adjudication of the defendants guilt of transgressing the bounds of legitimate warfare and should be binding on him in the proceeding to enforce his civil liability. It might even be advisable to authorize the trial of the issue of civil liability in the criminal proceeding as is the case in some European jurisdictions (20). However, the further discussion of these problems may well be postponed until the publication of the drafts relating to prosecution of war criminals.

XV.) A limitation of this or similar laws to Axis and Axis occupied countries is not sufficient. The property may have been transferred to another, f.i.

(21)

neutral country. No country shall become a haven for war criminals or for property unjustly taken (22). Measures of spoliation often extend to property abroad (23). Similar provisions in all countries are necessary for the avoidance of conflicts of law. In this way the effectiveness of related measures of the United Nations against Trading with the Enemy (23) may be strengthened. Warnings against the acquisition of property of doubtful origin were issued often enough (24). Therefore, such a law should be promulgated within the framework of the Peace Treaties and should likewise be adopted by neutral countries.

XVI.) In order to prevent decisions which may be influenced by national bias the right of a full appeal to an international court is necessary. It is as yet impossible to foretell how the tribunals will be filled in all the territories concerned. A notorious sympathy with the Nazi-Fascist ideology at one place, an understandable antipathy against everything connected with the former occupying power in other places, discrimination in favor of nationals as against foreigners or certain groups of foreigners, discrimination against certain parts of the population, may often tinge the decisions of nationally composed tribunals. As an example, the experience with the national tribunals of the first instance in the Saar Territory which were held in check by an internationally composed tribunal may be recalled. Indeed, it would greatly facilitate the decision of international legal questions if a network of international courts were established in all countries, to which legal problems of international import could be submitted (25) - district courts if possible to which private persons may have access more easily and which would be subject to an International Court of Appeals (26) - similar to the U.S. Federal Courts which decide Federal and Interstate matters in the various states of the Union. As long, however, as this is still in the realm of wishful thinking there are no means available to guarantee impartiality and uniformity on an international basis other than an appeal as a last resort to the International Court which will undoubtedly again be called into existence. The International Court shall bear the same relation to the highest national tribunals as the Privy Council in London bears to the highest courts of the independent parts of the British Empire. This right of appeal must likewise be extended to questions of fact even where under national laws of procedure a review of the facts is not possible on appeal, so that a biased weighing of evidence may be corrected. Indeed, the mere possibility of such an appeal to an international court may prevent abuses on the part of national courts which otherwise might be committed.

XVII.) It is indispensable that after the war the legal world returns to the well settled principles of international law (27), that also in times of war private property may not be confiscated and that, if confiscated, its owner is to be indemnified. Only avowed or concealed property of the enemy state may be confiscated. In this connection cognizance should be taken of the import of totalitarian doctrine which proclaims that all private property belongs to the state in the first instance - that private owners enjoy such ownership only at the sufferance and in the interest of the state (28). By subscribing to these doctrines

example, the experience with the national tribunals composed tribunal Saar Territory which were held in check by an internationally composed tribunal may be recalled. Indeed, it would greatly facilitate the decision of international legal questions if a network of international courts were established in all countries, to which legal problems of international import could be submitted (25) - district courts if possible to which private persons may have access more easily and which would be subject to an International Court of Appeals (26) - similar to the U.S. Federal Courts which decide Federal and Interstate matters in the various states of the Union. As long, however, as this is still in the realm of wishful thinking there are no means available to guarantee impartiality and uniformity on an international basis other than an appeal as a last resort to the International Court which will undoubtedly again be called into existence. The International Court shall bear the same relation to the highest national tribunals as the Privy Council in London bears to the highest courts of the independent parts of the British Empire. This right of appeal must likewise be extended to questions of fact even where under national laws of procedure a review of the facts is not possible on appeal, so that a biased weighing of evidence may be corrected. Indeed, the mere possibility of such an appeal to an international court may prevent abuses on the part of national courts which otherwise might be committed.

XVII.) It is indispensable that after the war the legal world returns to the well settled principles of international law (27), that also in times of war private property may not be confiscated and that, if confiscated, its owner is to be indemnified. Only avowed or concealed property of the enemy state may be confiscated. In this connection cognizance should be taken of the import of totalitarian doctrine which proclaims that all private property belongs to the state. In the first instance - that private owners enjoy such ownership only at the sufferance and in the interest of the state (28). By subscribing to these doctrines the followers of the Nazi-Fascist ideology in all countries have effectively recognized the Axis states as the real owners of all property "privately" owned by them and so exposed it to legal confiscation. (29)

XVIII.) Individual Restoration or General Reparation. - Equality of Sacrifice.

(Compare IV.) The view is sometimes expressed that it would be an injustice to grant restoration to those owners whose property by a lucky chance is still recoverable whereas all others whose property cannot be retrieved are relegated to the much more precarious remedy of reparations. It would be preferable,

according to this view, to pool all recoverable property and to satisfy all claims therefrom pro rata. The thought is tempting but dangerous.

- a) Lawful owners of property which can be recovered have a right to its return. (30) Their position is similar to that of owners whose property was stolen. Their right to get their property back is not affected because others less fortunate are not able to get their property back.
- b) In a general settlement too large a proportion of the fund is eaten up by the expense of the administrative machinery which must be set up.
- c) Experience has shown that huge pools are not always equally distributed among the beneficiaries. (9b)
- d) There is the danger that these claims, competing along with more powerfully supported claims, will be relegated into an inferior position. They can escape this danger only insofar as their right to restoration of the specific property is respected in the bankruptcy of the Axis, analogous to claims for turnover.
- e) A specific article of property is as a rule more valuable to the former owner than to an impersonal administrative body. (31) It can be more satisfactorily administered and put to better use by him.

Therefore, the principle of restoration in kind for those who can recover their specific property should be accepted.

This course does not exclude the application of the principle of equality of sacrifice. It can be put into effect through an international loan secured by a part of the property so restored, which loan could be redeemed by the owners of this property and the proceeds distributed amongst the victims who could not obtain restoration or full reparation. It is not necessary within the framework of this discussion to determine the exact method for obtaining such contributions. Perhaps the methods used by some Central European countries after the First World War in obtaining a percentage of the privately owned property within their respective states ("Levy on Wealth") may be partly applied. (32)

XIX.) The victims of the multiple spoliation were the first shock troops who were left to the lawless onslaught of the common enemy of the civilized world. They have therefore a right to demand all possible assistance from the victor nations in the effort to regain their property. (33) The nations to which they immigrated have a direct financial interest in this recovery (I.). They have a common interest with the victims in seeing to it that these claims are espoused and enforced by the victors with the assistance of all civilized nations. A failure to obtain redress for these victims would have fateful economic, legal and moral consequences.

e) A specific article of property is as ^{rule} more valuable to the former owner than to an impersonal administrative body. (31) It can be more satisfactorily administered and put to better use by him.

Therefore, the principle of restoration in kind for those who can recover their specific property should be accepted.

This course does not exclude the application of the principle of equality of sacrifice. It can be put into effect through an international loan secured by a part of the property so restored, which loan could be redeemed by the owners of this property and the proceeds distributed amongst the victims who could not obtain restoration or full reparation. It is not necessary within the framework of this discussion to determine the exact method for obtaining such contributions. Perhaps the methods used by some Centrauropean countries after the First World War in obtaining a percentage of the privately owned property within their respective states ("Levy on Wealth") may be partly applied. (32)

XIX.) The victims of the multiple spoliation were the first shock troops who were left to the lawless onslaught of the common enemy of the civilized world. They have therefore a right to demand all possible assistance from the victor nations in the effort to regain their property. (33) The nations to which they immigrated have a direct financial interest in this recovery (I.). They have a common interest with the victims in seeing to it that those claims are espoused and enforced by the victors with the assistance of all civilized nations. A failure to obtain redress for these victims would have fateful economic, legal and moral consequences. 21

XX.) Therefore, the Restoration Law should embody the following:

P R I N C I P A L F E A T U R E S

A.) All legal transactions, judgments and determinations during the period of occupation shall be voidable at the option of any person aggrieved thereby. The aggrieved person shall be aided by the presumption of invalidity of all such acts and decisions. Prima facie the legal situation of the date immediately preceding the occupation should be restored (sect. 1, 2).

B.) The owner in fact shall deliver the property to the lawful owner free and clear of any claim on his part, but without prejudice to any claims which he may have against his predecessors. Alleged "good faith" shall be of no avail as against the lawful owner (sect. 4-5).

C.) The legal owner shall be entitled to relief without regard to his race, creed, nationality or residence.

D.) His claim shall be protected internationally against arbitrary national laws and decisions (sect. 8, 10, 15).

E.) Continuing functioning of enterprises prior to the establishment of legal ownership shall be vouchsafed (sect. 12). The creation of a Central Registrar shall facilitate the discovery of property unlawfully taken (sect. 16).

F.) Cognizance shall be taken of the dispersal of claimants throughout the whole world by suitable provisions for limitation of actions and the creation of an International Trustee without losing sight of the necessity of shortening the period of uncertainty. (sect. 11, 13).

* * * * *

Dr. E. von Hofmannsthal
University of Maryland

Sept. 1, 1943

DRAFT OF PROPOSED RESTITUTION LAW
FOR AXIS AND AXIS OCCUPIED COUNTRIES.

Sect. 1. a) All laws and regulations made subsequent to the date of the actual occupation (34) (hereinafter called the First Effective Date - FED) of a country by an Axis power are invalid and repealed.

b) The laws and regulations which were effective immediately prior to the FED are reinstated, to the extent that they are not in conflict with International Law or the constitution of the respective country as it was in effect immediately prior to the FED.

c) The provisions of this law shall also apply to the realms of the Axis powers. For Germany the FED is the 1st of February 1933; etc. The provisions of this law shall likewise be applicable to the nations which have retained their formal independence (e.g. Slovakia, Rumania, etc.) but which were actually under the control of an Axis power. The FED for these nations are...respectively...

Sect. 2 a) All judgments of judicial tribunals, all regulations, decisions and orders of administrative bodies, and all proceedings had before such tribunals and administrative bodies; all private acts and transactions, including corporate acts, had in these territories or affecting persons or property within these territories, subsequent to the FED shall on demand of an interested party (sect.3) be treated as null and void. The legal situation prevailing immediately prior to the FED shall be restored. Evidence adduced after the FED in countries enumerated in sect. 1 can be used only with the consent of all interested parties.

b) A transaction is exempted from the provisions hereof only when the transferee of a property or a right acquired thereby conclusively proves that no transferor in the chain of title thereof after the FED was under direct or indirect duress.

Sect. 3 An interested party is every natural or legal person whose personal or property rights have been affected by any judgment, decision, regulation, order, act or transaction as stated in sect. 2.

Sect. 4 A person who at the effective date of this law (hereinafter called the Second Effective Date - SED) is the owner of property or rights which he acquired after the FED (the "de facto owner") in consequence of a law or regulation, decision or transaction which pursuant to sect. 1 and 2 is declared to be null and void, shall be deemed to be a possessor in bad faith from or after the SED.

Sect. 5 The de facto owner shall restore the property or the right to the

c) The provisions of this law shall also apply to the realms of the Axis powers. For Germany the FED is the 1st of February 1933; etc. The provisions of this law shall likewise be applicable to the nations which have retained their formal independence (e.g. Slovakia, Rumania, etc.) but which were actually under the control of an Axis power. The FED for these nations are...respectively...

Sect. 2 a) All judgments of judicial tribunals, all regulations, decisions and orders of administrative bodies, and all proceedings had before such tribunals and administrative bodies; all private acts and transactions, including corporate acts, had in these territories or affecting persons or property within these territories, subsequent to the FED shall on demand of an interested party (sect.3) be treated as null and void. The legal situation prevailing immediately prior to the FED shall be restored. Evidence adduced after the FED in countries enumerated in sect. 1 can be used only with the consent of all interested parties.

b) A transaction is exempted from the provisions hereof only when the transferee of a property or a right acquired thereby conclusively proves that no transferor in the chain of title thereof after the FED was under direct or indirect duress.

Sect. 3 An interested party is every natural or legal person whose personal or property rights have been affected by any judgment, decision, regulation, order, act or transaction as stated in sect. 2.

Sect. 4 A person who at the effective date of this law (hereinafter called the Second Effective Date - SED) is the owner of property or rights which he acquired after the FED (the "de facto" owner) in consequence of a law or regulation, decision or transaction which pursuant to sect. 1 and 2 is declared to be null and void, shall be deemed to be a possessor in bad faith from or after the SED.

Sect. 5 The de facto owner shall restore the property or the right to the legal owner or his legal successors in interest in the same legal status as existed with reference thereto on the day immediately preceding the FED and in its actual condition as it existed on the SED.

Sect. 6 a) The de facto owner shall be entitled to recover the consideration furnished by him for the property or right in question from the private or public person to whom such consideration was furnished.

b.) If the immediate predecessor in interest of the de facto owner is not available or is not capable of performance, the claim may be directed against the nearest available and solvent predecessor to the extent of the amount which the latter would have been obligated to pay to his successor. This does not apply against the legal owner or his legal successors in interest.

c.) Such claims of the de facto owner or his predecessors in interest shall not affect the rights under sect. 2 hereof, nor shall such claims be treated as a set-off against such rights. A claim for compensation can be made against the legal owner or his successors in interest only to the extent that compensation has actually been received by the legal owner.

Sect. 7 e) In the event that the property or right is no longer in existence at the SED, the claim for restoration thereof shall be extinguished without prejudice for the claim for damages (reparation).

b) In the event of destruction or reduction in the value the legal owner or his successors in interest shall be entitled to recover the loss from the de facto owner and his predecessors jointly. It shall be a defense to such claim that a respondent has in no way caused or contributed to the damage or loss and the burden of proving such defense shall be on the person availing himself of same.

c) Acts of legal warfare are not to be considered as intentional acts within the meaning of this section.

Sect. 8 The risk of the devaluation of the currency in which a claim has to be paid until the actual payment thereof shall be born by the debtor.

Sect. 9 All payments under this law are to be made to the creditor at his residence in the currency which is in circulation there. No regulations, particularly currency restrictions, export prohibitions, taxes, etc., which are contrary to the spirit and purpose of this law, shall apply to them.

Sect. 10 All transfers of property and rights under and pursuant to this law and all proceedings had hereunder shall be free from any fees, taxes and other charges. A plaintiffs bond may not be requested.

Sect. 11 An International Office shall be created to be known as the International Trustee. It shall be composed of a group of persons elected in a similar manner as the judges of the International Court, (35) shall be independent from all governments and have the jus standi in all countries. It shall be the duty of the International Trustee (I.T.) to represent the unknown claimants for all purposes and to assist the known claimants.

Sect. 12. If the I.T. lays claim to an enterprise, the continued existence of the enterprise shall be safeguarded by incorporating each enterprise as a separate business corporation. The I.T. shall hold all the stock of said corporation for the benefit of the persons who will be determined to be ultimately entitled thereto.

owner or his successors in interest shall be entitled to recover the loss from the do facto owner and his predecessors jointly. It shall be a defense to such claim that a respondent has in no way caused or contributed to the damage or loss and the burden of proving such defense shall be on the person availing himself of same.

c) Acts of legal warfare are not to be considered as intentional acts within the meaning of this section.

Sect. 8 The risk of the devaluation of the currency in which a claim has to be paid until the actual payment thereof shall be born by the debtor.

Sect. 9 All payments under this law are to be made to the creditor at his residence in the currency which is in circulation there. No regulations, particularly currency restrictions, export prohibitions, taxes, etc., which are contrary to the spirit and purpose of this law, shall apply to them.

Sect. 10 All transfers of property and rights under and pursuant to this law and all proceedings had hereunder shall be free from any fees, taxes and other charges. A plaintiff's bond may not be requested.

Sect. 11 An International Office shall be created to be known as the International Trustee. It shall be composed of a group of persons elected in a similar manner as the judges of the International Court, (35) shall be independent from all governments and have the ius standi in all countries. It shall be the duty of the International Trustee (I.T.) to represent the unknown claimants for all purposes and to assist the known claimants.

Sect. 12. If the I.T. lays claim to an enterprise, the continued existence of the enterprise shall be safeguarded by incorporating each enterprise as a separate business corporation. The I.T. shall hold all the stock of said corporation for the benefit of the persons who will be determined to be ultimately entitled thereto. Pending such determination the owner in fact shall manage the affairs of such corporation under the supervision and subject to the approval and dismissal of the I.T. From the SED on the owner in fact shall have all the duties and responsibilities of a manager of a corporation.

b) Such corporations shall be exempt from all national taxes and fees upon organization and dissolution. The business shall not be taxable in any manner more onerous than enterprises of private individuals who are citizens and residents of the respective country.

Sect. 13 a) No proceedings upon any claim under sect. 2a) hereof shall be maintainable after the expiration of 5 years from the SED, unless the court on the application of an interested party showing good cause thereof extends that period, provided no hardship is thereby caused to the defendant or third parties.

b) No proceedings upon any claim under sect. 6) hereof shall be maintainable after the expiration of either the following dates, whichever occurs first: A) one year from the date on which the claimant has satisfied the corresponding claim made against him, or B) one year after the rendition of a final judgment rendered thereon. The term may be extended under the conditions set forth in sect 13a).

c) The owner in fact may demand that the legal owner or his successors in interest institute legal proceedings for the enforcement of his claim under this law. In the event that no legal proceedings are instituted within one year after the date on which the demand reaches the person entitled to make the claim, no proceedings shall be maintainable for the enforcement of such claim thereafter. In the event that the person upon whom such demand is served is no longer the legal owner of the claim, he shall be required, at the risk of subjecting himself to liability for any damage caused, to inform the sender of the request without delay of the name and address of his immediate successor in interest.

d) Time limitations provided by statutes or by judicial or administrative authorities shall be deemed suspended from the FED until one year after the SED.

Sect. 14. Proceedings for the adjudication or enforcement of claims specified in sect. 3 and 6 hereof shall be brought in the courts within the territorial limits of which the res or incumbered property is situated or the debtor or the chaser in action resides.

Sect. 15. In addition to any appeals provided by the laws of the respective countries there shall be allowed a final appeal to an International Court which shall have power to review questions of law and fact.

Sect. 16. a) The person who at the SED shall own any property or property rights which he acquired subsequent to the FED shall enter within 30 days after the SED a complete report of the transaction by which he acquired same to an International Central Register at

b) Any person who between the two Effective Dates has acquired and disposed of any such property or property rights shall file the same information to this Register within 6 days after receipt of a request to file it.

c) After the death of the person in question, the obligation shall be considered binding upon their legal representatives, heirs and legatees jointly.

d) Failure to report as above required involves confiscation of the

c) The owner in fact may demand that the legal owner or his successors in interest institute legal proceedings for the enforcement of his claim under this law. In the event that no legal proceedings are instituted within one year after the date on which the demand reaches the person entitled to make the claim, no proceedings shall be maintainable for the enforcement of such claim thereafter. In the event that the person upon whom such demand is served is no longer the legal owner of the claim, he shall be required, at the risk of subjecting himself to liability for any damage caused, to inform the sender of the request without delay of the name and address of his immediate successor in interest.

d) Time limitations provided by statutes or by judicial or administrative authorities shall be deemed suspended from the FED until one year after the SED.

Sect. 14. Proceedings for the adjudication or enforcement of claims specified in sect. 2 and 6 hereof shall be brought in the courts within the territorial limits of which the res or incumbered property is situated or the debtor or the chose in action resides.

Sect. 15. In addition to any appeals provided by the laws of the respective countries there shall be allowed a final appeal to an International Court which shall have power to review questions of law and fact.

Sect. 16. a) The person who at the SED shall own any property or property rights which he acquired subsequent to the FED shall enter within 30 days after the SED a complete report of the transaction by which he acquired same to an International Central Register at

b) Any person who between the two Effective Dates has acquired and disposed of any such property or property rights shall file the same information to this Register within 8 days after receipt of a request to file it.

c) After the death of the person in question, the obligation shall be considered binding upon their legal representatives, heirs and legatees jointly.

d) Failure to report as above required involves confiscation of the property or property right not reported and is punishable by a fine of twice its value and imprisonment not exceeding Such violation shall, furthermore, impose full liability for any loss or damage resulting therefrom upon all violators jointly.

e) The International Central Register shall be open for inspection to the public.

- 12 -

Notes

- 1) It amounts until the end of 1943 to not less than 160 billion dollars, namely:
- | | | | |
|-------------------------|-------------|-------------------------------|-------|
| Germany: own population | 11 | transport | 34.5 |
| foreign investments | 5 | Poland | 13 |
| Austria | 4 | Russia | 13 |
| Czechoslovakia | 7 | Western Countries (Norway to | |
| Slovakia | 1 | France): occupation costs | 32.75 |
| Balkan States | 6 | visible loot | 20.3 |
| Baltic States | 0.5 | invisible loot | 27.32 |
| | <u>34.5</u> | Neutral European countries | 12.5 |
| | | Neutral American countries | 2.25 |
| | | Italy | 6 |

Exploitation of 13 million foreign workers for over

149.62
10.38
<u>160.--</u>

- 2) Pradier, Fodart, Antokoletz II/571; Draft of the Institute of International Law 1897, p.262-70; Hofmannsthal-Berger "International Protection of Axis Victims and Revindication of their Property Rights" New York University 1942, p.4

- 3) The "Memorandum of a Group of Czechoslovak Lawyers in London" (Drs Weis, Bobasch, Hermann, Muller) edited by Dr George Weis, enumerates in XVII-XXIII the following methods:

Confiscation (compare Hofmannsthal-Berger supra note 2, p.21

Pseudo-Taxation (ibid. p.24)

Pseudo-Judgments and -Decrees

Pseudo-Contracts (under duress)

Enforcement of administrators and directors of juridical persons (ibid.p.23)

For the concept of "Contracts under Duress" compare Post v. Jones, 19 How. 150, 160 (U.S.1857): " ... where one party has absolute power, and the other no choice but submission - where the vendor must take what is offered or get nothing - is a transaction which has no characteristic of a valid contract."

Compare preamble of the Spanish law of I/30.1940 concerning expropriated and alienated property: "En muchos casos es imposible distinguir los actos de expoliación o de robo, perpetrados con todos los características de los delitos comunes, de aquellos otros en que se pretende cubrir, con el aspecto externo de una finzada legalidad, el despojo realizado por gentes que se atribulan funciones de autoridad de gobierno." (see note 9).

- 3a) E.E. legal controversies between members of the Nazi party which were decided by party courts exclusively on the basis of the membership ticket. Such conceptions are perfectly in accordance with the aims of Nazi law and economy, see Rauschning "Hitler told me", ch. XVI.

- 4) See sect. 6 of the Draft.

- 5) Sack in New York Times of II/22.1942: "The principle of personal responsibility of war criminals is, of course, firmly established in international law ..."

3) The "Memorandum of a Group of Czechoslovak Lawyers in London" (Drs Weis, Robasch, Hermann, Muller) edited by Dr George Weis, enumerated in XVII-XXIII the following methods:

Confiscation (compare Hofmannsthal-Berger supra note 2, p.21

Pseudo-Taxation (ibid. p.24)

Pseudo-Judgments and -Decrees

Pseudo-Contracts (under duress)

Enforcement of administrators and directors of juridical persons (ibid. p.23)

For the concept of "Contracts under Duress" compare Post v. Jones, 19 How. 150, 160 (U.S. 1857): " ... where one party has absolute power, and the other no choice but submission - where the vendor must take what is offered or get nothing - is a transaction which has no characteristic of a valid contract."

Compare preamble of the Spanish law of 1/30.1940 concerning expropriated and alienated property: "En muchos casosos imposible distinguir los actos de expoliación o de robo, perpetrados con todos los características de los delitos comunes, de aquellos otros en que se pretendió cubrir, con el aspecto externo de una fingida legalidad, el despojo realizado por gentes que se atribuían funciones de autoridad de gobierno." (see note 9).

2a) E.g. legal controversies between members of the Nazi party which were decided by party courts exclusively on the basis of the membership ticket. Such conceptions are perfectly in accordance with the aims of Nazi law and economy, see Rauschning " Hitler told us ", ch. XVI.

4) See sect. 6 of the Draft.

5) Sack in New York Times of 11/22.1942: "The principle of personal responsibility of war criminals is, of course, firmly established in International Law ... They must also be made to restore property of any kind acquired by them as the result of, or in connection with, their criminal activities, and to pay compensation for damages caused by their crimes". - Hofmannsthal-Berger supra note 2, p.35.

6) Under common law good faith would not protect the de facto owner against liability for conversion, if the property was taken away from the legal owner in an illegal way (Galvin v. Bacon 11 Maine 28). Not so under most of the European laws. Under those laws acquisition in good faith of goods which the seller acquired unlawfully, is recognized under certain conditions (e.g. sect. 337, 441 Austrian Civil Code, art. 633, 631, 714 Swiss C.C., sect. 932 German C.C.). But if the

purchaser "ought to know" that the seller was not the lawful owner, he does not get good title (sect. 142/2, 929/2 German C.C., Staudinger sect. 922, II, 1, 9.). On "presumed knowledge" see Memorandum of Czechosl. lawyers supra note 3, XXVIII, on bona fides concerning immoveable property XLV.

Under the maritime law of the Italian States goods sold by a legal captor could not be reclaimed by the former owner except by payment of the price for which they had been sold. The same principle was not applied to goods bought from pirates, even through acquisition in good faith; because acquisition from pirates did not defeat the right of the former owner (pirata non mutat dominium). Gentili, Hispalense advectionis libridae, Book I, chs. XII, XV. A.P. Saroni, Italian Conception of International Law, p. 34, 113.

Resolution 7 of the Conference of the International Law Association at London July 10th to 12th, 1943 leaves loopholes: "A person who acquires, even in good faith, any property ... will not acquire an internationally valid title ... unless such title is valid by the laws of the occupied country as applied by the reconstituted authorities after the liberation of the country." Just encourages possible discriminations. - Also Resolution 8 is a little vague: "It will be for the lawful government to take steps ... in order to restore any property or status ..."

7) The "Memorandum of Czechosl. lawyers" supra note 3, by tackling the problem in a less radical way and restricting itself mostly to the existing legal provisions comes to a very complicated combination of cases and remedies and must suggest various changes in the law. The proposed general and sweeping rule could work more simply and efficiently.

Compare Treaty of Münster X/24, 1648 (translation by W. Orley 1697, compilation Dr G. Weiss London, July 1943) art. XXXVII-ALI, exceptions XLVII.

Art. XXXVII: "That the Contracts ... made by constraints of threats and extorted illegally from States or Subjects ... shall be so annulled and abolished, that no more Enquiry shall be made after. - Treaty of Nimwegen IX/17.1678, art. XXII.

That the proposed provisions are not too sweeping, seems to be evidenced by the fact, that the various Governments in exile issued decrees along the lines of the proposed Draft:

Poland XI/30.1939, II/26. and III/3.1940

Norway VII/29.1941

Belgium I/10.1941

Czechoslovakia X/17.1941

Luxembourg IV/23.1941

Yugoslavia VI/18.1942

and by the declarations of the United Nations and the French Committee of I/5. 1943 and the concurring declarations of Neutral Countries, e.g. Argentina and Uruguay of I/15.1943 and Egypt of I/25.1943. The British Foreign Office declared, that these provisions will be applicable to all forms of loot from open robbery, to sly and disguised financial penetration. - Compare Resolution of the Inter-American Economic and Financial Committee of VII/10.1942, I, a, c.

8) See Holmes - Harvard supra note 2, p. 28 and note 2 and authorities

July 10th to 12th, 1943 leaves loopholes: "A person who acquires, even in good faith, any property ... will not require an internationally valid title ... unless such title is valid by the laws of the occupied country as applied by the reconstituted authorities after the liberation of the country." That encourages possible discriminations. - Also Resolution 8 is a little vague: "It will be for the lawful government to take steps ... in order to restore any property or status ..."

7) The Memorandum of Czechosl. lawyers" supra note 3, by tackling the problem in a less radical way and restricting itself mostly to the existing legal provisions comes to a very complicated combination of cases and remedies and must suggest various changes in the law. The proposed general and sweeping rule could work more simply and efficiently.

Compare Treaty of Münster X/24, 1648 (Translation by W. Orley 1897, compilation Dr G. Weiss London, July 1943) art. XXXVII-ALI, exceptions XLVII.

Art. XXXVII: "That the Contracts ... made by constraints of threats and extorted illegally from States or Subjects ... shall be so annulled and abolished, that no more Enquiry shall be made after. - Treaty of Nijmegen IX/17.1678, art. XXII.

That the proposed provisions are not too sweeping, seems to be evidenced by the fact, that the various Governments in Eile issued decrees along the lines of the proposed Draft:

Poland XI/30.1939, II/26. and III/3.1940 Czechoslovakia X/17.1941
Norway VII/29.1941 Luxembourg IV/22.1941
Belgium I/10.1941 Yuoslavia VI/18.1942

and by the declarations of the United Nations and the French Committee of I/5. 1943 and the concurring declarations of Neutral Countries, e.g. Argentina and Uruguay of I/15.1943 and Egypt of I/25.1943. The British Foreign Office declared, that these provisions will be applicable to all forms of loot from open robbery: to sly and disguised financial penetration. - Compare Resolution of the Inter-American Economic and Financial Committee of VII/10.1942, I, a, c.

8) See Hermannsthal - Berger supra note 2, p. 26 and note 2 and authorities quoted.

9) a) The suggestion in Anderson v. Transandina Montschappi 28 NYS (2d) 547 is practically illusory.

b) See the distribution of the Russian agrarian reparation payments to Hungary, and of the "indemnity" paid by the Fascist to the Nazi Government for the confiscation of the movable property of the expropriated German inhabitants of South Tyrol 1939.

c) See the Decree of the Spanish Government of I/30.1940 which declared all personal property, jewelry, securities, objects of art etc. situated in Spain, belonging to the State, any public or private corporation or private persons, which had been expropriated, confiscated, converted or taken by robbery

or theft, to be the property of the Spanish State, retroactive as of the day on which these acts were committed, and promises to restore them to the legitimate owners (Art. 3). Similarly persons and property situated abroad which had not been reclaimed by its lawful owners before the issuance of the decree is equally declared to be property of the Spanish State (Art. 4). It is worth noting that Argentina has already refused to give effect to this decree in its territory, because it is contrary to the spirit of the Argentine law (Opinion of the Legal Adviser of the Argentine Foreign Office Dr. Ricardo Molini del Panto of VI/22.1942). For the effect of such decrees in USA consider the dangerous arguments in US v. Belmont 301 US 324 and US v. Pink 315 US 203 recognizing the effect of Soviet confiscation decrees and of Andersen v. Transamerica 289 NY 9, 43 NW (2d) 502 recognizing the effect of the Dutch Decree whereby the Dutch Government confiscated certain property rights (also "for the protection of their honors"), deservedly criticized by Berchard in AJIL 1937, p. 375 and 1942, p. 275, Jessup *ibid.* 1942, p. 232, Zaitzeff in his opinion of IV/1.1942 (Hofmannsthal - Berger *supra* note 2, p. 20).

10) Oppenheim 293, Moore 1433, Zaballos, Lepithenz, Hofmannsthal-Berger *supra* note 2, p. 3, Juan Lessing "Right of Nationality and its Cancellation" and his dubious theories in *Revista Argentina de Derecho Internacional* n. 2 and 3, 1945.

11) Brazil after amending art. 186 of its Constitution on III/11.1942.

12) Campese Treaty of Munster X/24.1648, art. VI - VIII.

13) Klans, Commentary to the Austrian C.C., p. 1137: "Business establishment represents property of a separate and distinct character. It is an organized opportunity to make profits and it has its own individual status."

14) Sect. 11 of the Instruction for members of the National Socialist Party found in Austria 1937, which obliges them to give false evidence in order to protect a party member when accused.

15) Debates of the Second Conference for Comparative Law, The Hague 1937. - Even in occupied territories, as in Holland on VI/23.1943, the Nazis introduced decrees defining a crime as "an act punishable according to a healthy sense of justice". This decree declared penal provisions to be applicable even if the act does not come in the purview of the text, but falls under the "basic principle underlying an article of the law".

16c) Memorandum *supra* note 5, XIV: "The victim will be under no obligation to prefer a claim to restitution"

16) Hofmannsthal - Berger *supra* note 2, p. 22; Danke, Trading with the Enemy in World War II, p. 313 ss.; Memorandum of USA in re *Worhol v. Zimnostenska Banka* *ibid.* p. 317.

16a) Further developed by Paul de Manne, New York.

17) A Nazi decree of II/10.1941 provides that all individuals and corporate entities having the majority of the Jewish population has

- 11) Brazil after amending art. 166 of its Constitution on III/II.1942.
- 12) Camparo Treaty of Amator X/24.1948, art. VI - VIII.
- 13) Klans, Commentary to the Austrian C.G., p. 1137: "Business establishment represents property of a separate and distinct character. It is an organized opportunity to make profits and it has its own individual status."
- 14) Sect. 11 of the Instruction for members of the National Socialist Party issued in Austria 1937, which obliges them to give false evidence in order to protect a party member when accused.
- 15) Debates of the Second Conference for Comparative Law, The Hague 1937. - Even in occupied territories, as in Holland on VI/23.1943, the Nazis introduced decrees defining a crime as "an act punishable according to a healthy sense of justice". This decree declared penal provisions to be applicable even if the act does not come in the purview of the text, but falls under the "basic principle underlying an article of the law".
- 16c) Memorandum supra note 3, XIV: "The victim will be under no obligation to prefer a claim to restitution"
- 16) Hofmannsthal - Berger supra note 2, p. 22; Donko, Trading with the Enemy in World War II", p. 313 ss.; Memorandum of USA in re Werfel v. Zivnostenska Banka ibid. p. 317.
- 16a) Further developed by Paul de Manxot, New York.
- 17) A Nazi decree of II/10.1941 provides that all individuals and corporate bodies in Latvia and Lithuania here the majority of the Jewish population has been massacred by the Nazis, must register with the local German authorities all Jewish property irrespective of whether such property is at present in their possession or not. "Any property acquired after June 20, 1941 will be considered as originally Jewish, unless a different origin can be proved," the order reads. Outstanding debts due to Jews must also be registered with the German authorities, indicating that the Nazis intend to collect them for the Reich.
- 18) Leitlinie zu warfare ... Machines and factories were not destroyed but were taken to Germany even during the war (1914-18). This was pure theft amount-

ting to billion of marks." n.Pol. "The hidden enemy", p.138. - Stockholm, VII/19 1943. A warning against sending parcels into Nazi held Poland was issued by the Swedish General Post Office saying that senders of parcels to Poland are to be notified that German authorities in Poland confiscate all packages addressed to Jews without paying any compensation to the senders. - Lugano, IX/18.1943. Hitler has assumed the same powers in Italy as he has in Germany, according to orders which he issued on policy to be pursued by German occupying troops. The order includes these points: 1) The Italian people are to be treated as traitors to the Axis cause, over whom the individual German soldier, whom they have "personally betrayed" has power of life or death. He also has authority to "requisition" for his own purpose any private property he desires.- 2) The scorched earth policy is to be applied throughout Italy by official requisitioning. The population will be deprived of everything but necessities.- 3) Deportation of all able-bodied Italians, first men and subsequently women, as labor slaves.- A traveller from Genoa saw German soldiers stop women in the streets and remove their jewellery.

18a) Principle accepted even by the Voelkischer Beobachter V/1.1944 (referring to allied flyers) :

19) Under the definition of Carlos Calvo: "illegal acts of violence committed on the seas"; Fauchille points out as essential elements: "a ship the crew of which commits illegal acts of violence on the sea, a danger for the commerce of all nations". The Dictionary issued by the Académie Diplomatique Internationale is of the opinion, that authorization by a state destroys the character of piracy and that an unlawful aim is an essential prerequisite.

20) E.g. Austria.

21) Report from Buenos Aires IV/29.1942: "The Grand Cellar of the French Legion of Honor, a priceless jewel-studded chain, has been secretly brought to Argentina by Nazi agents, intended to be introduced into the collectors market in the Americas." - Laval trying to smuggle 50,000 \$ into Argentina (N.Y. Times VI/5.1944). - The Swiss correspondent of a Swedish newspaper reports that wealthy Germans recently have smuggled large quantities of precious jewels and valuable paintings into Switzerland. (PM IX/29.1943, p.6/2).

Resolution 1 of the Conference of the IIA, para 6: "The rules governing the validity (of acquisition of robbed property) in third countries ... are rules of international law the non-observance of which entails international responsibility". - 6: "... rightful ownership remains in the person who has been dispossessed ... the title of a party in a third country ... is invalid."

22) President Roosevelt VII/30.1943 finds it difficult to believe that any neutral country would give asylum or extend protection to any war criminal.

" I can only say that the Government of the USA would regard the action of a neutral government in affording asylum to Axis leaders or their tools as inconsistent with the principles for which the United Nations are fighting and the USA Government hopes that no neutral government will permit its territory to be used as a place of refuge or otherwise assist such persons in an effort to escape their just desert." - Lectures Hofmannthal at the University of Buenos

on the seas"; Fauchille points out as essential elements: "a ship the crew of which commits illegal acts of violence on the sea, a danger for the commerce of all nations". The Dictionary issued by the Académie Diplomatique Internationale is of the opinion, that authorization by a state destroys the character of piracy and that an unlawful aim is an essential prerequisite.

20) E.g. Austria.

21) Report from Buenos Aires IV/29.1942: "The Grand Collar of the French Legion of Honor, a priceless jewel-studded chain, has been secretly brought to Argentina by Nazi agents, intended to be introduced into the collectors market in the Americas." - Level trying to smuggle 50,000 \$ into Argentina (N.Y. Times VI/5.1944). - The Swiss correspondent of a Swedish newspaper reports that wealthy Germans recently have smuggled large quantities of precious jewels and valuable printings into Switzerland. (PM IX/29.1943, p.6/2).

Resolution 1 of the Conference of the ILA, note 6: "The rules governing the validity (of acquisition of robbed property) in third countries ... are rules of international law the non-observance of which entails international responsibility". - 6: " ... rightful ownership remains in the person who has been dispossessed ... the title of a party in a third country ... is invalid."

22) President Roosevelt VII/30.1943 finds it difficult to believe that any neutral country would give asylum or extend protection to any war criminal. "I can only say that the Government of the USA would regard the action of a neutral government in offering asylum to Axis leaders or their tools as inconsistent with the principles for which the United Nations are fighting and the USA Government hopes that no neutral government will permit its territory to be used as a place of refuge or otherwise assist such persons in an effort to escape their just desert." - Lectures Hofmannsthal at the University of Buenos Aires on "International Problems of Corporation Law in Times of War" 1940, Revista Argentina de Derecho Internacional no. 2 & 3, 1941.

23) Denke, "Treating with the Enemy in World War II", ch.1. - Resolution of the Inter-American Economic and Financial Committee of VII/10.1942, I, a, c. See note 7.

24) London III/12.1943 (ONL). The Belgian Government -in-Exile is warning the population of Belgium by radio against acquiring private property where ownership has been affected by acts of the German occupation authorities. Justice Minister A. Delfosse declared that when the occupation ends, the rightful owners whether they be Jews or others, would resume title to their property. Those who

had taken their property, meanwhile, would not be reimbursed for any payment. Washington IX/21.1943 (JTA). Britain and USA struck today at a plan for safeguarding Nazi loot by fake transfer to neutrals. In a statement issued simultaneously the State Dep. and the Foreign Office said that "the two Governments reserve the right to treat as invalid any transfer to neutral ownership of any enemy-owned rights or interest in property in Italy. "Nationals or firms in neutral countries acquiring or purporting to acquire such rights or interests render themselves liable to all sanctions at the disposal of the two Governments." The Nazi have regularly acquired choice property of all kind - from sculptures to securities - in occupied countries, following "strictly legal" forms, but using extralegal pressures including tortures and threat of tortures of the property's owners. This system was first applied in Germany itself to Jews and anti-Nazis, who were thoroughly lectured before they were driven from the country, imprisoned or murdered.

25) Compare the Declaration and Draft Resolutions of Officers and Members of Certain Legal Associations and Societies of USA of III/29.1943, since this date adopted verbatim by the Amer.Branch of Int.Law Assoc., the Amer.Foreign Law Assoc., the Fed.Bar Assoc., and similar resolutions of the Amer.Soc.of Intern.Law and the House of Delegates of the Amer.Bar Assoc.

26) Hofmannsthal's paper before the Conference of the Int.Law Ass.at Buenos Aires 1922 on a legal mechanism for the protection of minority rights. ILA Rep.31, 1906

27) Hague Regulations art.46: "Private property cannot be confiscated". Ruiz Morono, Lecciones de Derecho Intern.Público "Pestilimum" II, par.295. Borchard at the Conference of the Amer.Soc.of Intern.Law V/1.1943, p.74.

28) Karl Loewenstein "Hitlers Germany", p.121/2: "In the concept of private property the convergence of Bolshevism and National-Socialism became clearly visible. Property is only on trust for the community."

29) Hofmannsthal at the Conference of the Amer.Society of Intern.Law V/1.1943, AJIL Report p.73, 74.

30) Compare art.297 (f) Treaty of Versailles. - Memorandum note 3, II: "It is not in itself a privilege. Restitution ... is merely the removal of changes in the distribution of property brought about by the acts of the occupying power ... Restitution cancels privileges. It does not create them."

31) This accounts partly for the failure in practice of the methods employed by some Central European States in the collection of the Levy on Wealth. See 32.

32) Compare Hofmannsthal "The Levy on Wealth in Austria, C38, Germ., Switz." 1931

33) Hofmannsthal "International Justice for Refugees" 1943, p.8

34) The controlling circumstance is not the date of the formal occupation (in Austria III/13.1938) as for other legal problems, citizenship etc., but the date of the actual occupation (the evening of III/11), because from the latter moment on decisions of the authorities and prior transactions were undertaken under duress. In Sudetenland the dates of actual and formal occupation are also different.

1203

adopted verbatim by the Amer. Branch of Int. Law Assoc., the Amer. Foreign Law Assoc., the Fed. Bar Assoc., and similar resolutions of the Amer. Soc. of Intern. Law and the House of Delegates of the Amer. Bar Assoc.

26) Hofmannsthal's paper before the Conference of the Int. Law Ass. at Buenos Aires 1922 on a legal mechanism for the protection of minority rights. ILA Rep. 31, 1922

27) Hague Regulations art. 46: "private property cannot be confiscated". Ruiz Moreno, Lecciones de Derecho Intern. Publico "Postliminium" II, par. 295. Borchard at the Conference of the Amer. Soc. of Intern. Law V/1.1943, p. 74.

28) Karl Loewenstein "Hitlers Germany", p. 121/2: "In the concept of private property the convergence of Bolshevism and National-Socialism became clearly visible. Property is only on trust for the community."

29) Hofmannsthal at the Conference of the Amer. Society of Intern. Law V/1.1943, AJIL Report p. 73, 74.

30) Compare art. 297 (f) Treaty of Versailles. - Memorandum note 3, II: "It is not in itself a privilege. Restitution ... is merely the removal of changes in the distribution of property brought about by the acts of the occupying power ... Restitution cancels privileges. It does not create them."

31) This accounts partly for the failure in practice of the methods employed by some Central European States in the collection of the Levy on Wealth. See 32.

32) Compare Hofmannsthal "The Levy on Wealth in Austria, CSR, Germ., Switz." 1921

33) Hofmannsthal "International Justice for Refugees" 1943, p. 8

34) The controlling circumstance is not the date of the formal occupation (in Austria III/13.1938) as for other legal problems, citizenship etc., but the date of the actual occupation (the evening of III/11), because from the latter moment on decisions of the authorities and private transactions were undertaken under duress. In Sudetenland the dates of actual and formal occupation are also different.

35) The Permanent Court of International Justice (World Court) of the Hague under the Protocol of XII/16.1920, amended 1936. The number of members of the International Trustee is not important, they must be however jurists and economists elected in a way that guarantees their independence.

* * * * *

NORME DI ABROGAZIONE; REINTEGRAZIONE NEI DIRITTI; RETROSCICIVE;
RIPARAZIONI ECC. IN MATERIA RAZZIALE

1. R.D.L. 6.1.1944, N. 9 (G.U. 15.1.1944, N. 2; Race. Uff. p. 134) - Entrato in vigore il 15.1.1944.

Riammissione in servizio degli appartenenti alle Amministrazioni dello Stato, degli Enti locali e parastatali e controllati dallo Stato, Aziende che gestiscono servizi pubblici o di interesse nazionale, già licenziati per motivi politici

(Si considerano dispensati o licenziati per motivi politici coloro ai quali siano state applicate le leggi razziali Art. 2).

2. R.D.L. 20.1.1944, N. 25 (G.U. 9.2.1944, N. 5; Race. Uff. p. 168) Entrato in vigore il 9.2.1944

Disposizioni per la reintegrazione nei diritti civili e politici dei cittadini italiani e stranieri già dichiarati di razza ebraica o considerati di razza ebraica.

Art. 1 abroga:

R.D.L. 5.9.1938, N. 1390 (provvedimenti per la difesa della razza nella scuola fascista);

R.D.L. 7.9.1938, N. 1381 (provvedimenti nei confronti di ebrei stranieri);

R.D.L. 17.11.1938, N. 1728 ("carta della razza" - provvedimenti per la difesa della razza italiana);

R.D.L. 15.12.1938, N. 1729 (testo unico delle norme per la difesa della razza nella scuola italiana);

L. 13 luglio 1939, N. 1024 (dichiarazione di non appartenenza alla razza ebraica anche in difformità delle risultanze degli atti dello stato civile);

L. 29 giugno 1939, N. 1054 (disciplina dell'esercizio delle professioni da parte dei cittadini di razza ebraica);

L. 13 luglio 1939, N. 1055 (disposizioni in materia testamentaria e disciplina dei cognomi per gli appartenenti alla razza ebraica);

L. 19 aprile 1942, N. 517 (esclusione degli ebrei dal campo dello spettacolo);

◆ L. 9 ottobre 1942, N. 1420 (limitazioni di capacità degli appartenenti alla razza ebraica residenti in Libia);

Art. 1, terzo comma C.C. (rimando alle leggi razziali);

Art. 91 C.C. (matrimoni soggetti a limitazioni per diversità di razza o di nazionalità);

Art. 155, secondo comma C.C. (affidamento dei figli al coniuge ariano in caso di separazione da coniuge non ariano);

Art. 292 C.C. (divieto di adozione per diversità di razza);

Art. 342 C.C. (il genitore non ariano che passa a nuove nozze con un non ariano perde la patria potestà sui figli considerati ariani);

Art. 346 C.C. (il non ariano non può essere tutore di un ariano);

Art. 404 C.C. (il non ariano non può chiedere l'affiliazione se non di un non ariano);

tutte le disposizioni che per qualsiasi atto o rapporto richiedono accertamento o menzione di razza;

ogni altra disposizione o norma, emanata sotto qualsiasi forma, di carattere razziale o comunque contraria al D. o con esso incompatibile.

I cittadini italiani, dichiarati o considerati di razza ebraica, sono reintegrati nel pieno godimento dei diritti civili e politici eguale a quelli di tutti gli altri cittadini dei quali hanno eguali doveri.

Art. 2 = Annulla le revoche di cittadinanza e ne stabilisce il riacquisto di pieno diritto.

Art. 3 = Le annotazioni di carattere razziale nei registri dello stato civile e della popolazione sono da considerarsi inesistenti.

Art. 4 = Riammissione in servizio di tutti coloro che ne furono dispensati per motivi razziali.

Art. 6 = Validità di esami superati in scuole estere da cittadini italiani colpiti dalle leggi razziali

Art. 7 = Estinzione dei procedimenti penali per violazioni delle leggi razziali.

Inefficacia delle condanne.

Eliminazione delle relative schede.

(Per gli altri atti, vedi al N. 7 l'art. 1 del D.L.L. 19 ottobre 1944, N. 306).

3. R.D.L. 20.1.1944, N. 26 (G.U. 20.10.1944, N. 71, pag. 431, D.L.L. 5.10.1944, N. 252: pubblicazione ed entrata in vigore del medesimo col 21.10.1944, ibidem):

Disposizioni per la reintegrazione nei diritti patrimoniali dei cittadini italiani e stranieri già dichiarati o considerati di razza ebraica.

Abroga il R.D.L. 9.2.1939, N. 126, contenente norme di attuazione e di integrazione delle disposizioni di cui all'art. 10 del R.D.L. 17 novembre 1930, relative ai limiti di proprietà immobiliare e di attività industriale e commerciale per i cittadini italiani di razza ebraica.

Mantiene in vita l'Ente di gestione e liquidazione immobiliare (EVELI).

Ordina e disciplina la retrocessione

- a) degli immobili trasferiti
- b) delle aziende alienate o rilevate.

4. D.L.L. 10.8.1944, No. 195 (G.U. 14.9.1944, No. 19, pag. 338; entrato in vigore il 15.9.1944)

Rettifica di atti di stato civile, relativi a persone colpite da leggi razziali.

Il procuratore del Re può promuovere la modificazione di atti dello stato civile non conformi al vero, relativi a persone colpite da leggi razziali, formati fra l'8 settembre 1943 e il giorno di liberazione del territorio dalla occupazione nemica.

Non punibilità per tali atti.

5. D.L.L. 24.8.1944, N. 183 (G.U. 5.9.1944 No. 52, pag. 307; entrato in vigore il 6.9.1944).

Riassunzione in servizio di magistrati dell'ordine giudiziario dispensati per motivi politici o razziali.

Riammissione (art. 1). Grado e graduatoria (Art. 2). Collocati a riposo (Art. 3). (Esteso ai magistrati del Consiglio di Stato e della Corte dei Conti, nonché agli Avvocati dello Stato -vedi N. 5: Art. 12 D.L.L. 19.10.1944, N. 301).

- 4 -

6. D.L.L. 19 ottobre 1944, N. 301 (G.U. 14.11.1944, N. 81, pag. 525; entrato in vigore il 15.11.1944).

Revisione delle carriere dei dipendenti dalle pubbliche amministrazioni.

Riammissione in servizio di chi l'art. 1 del R.D.L. 6.1.1944, N. 9 (vedi sopra N. 2) anche nei casi di collocamento a riposo o comunque di cessazione del rapporto d'impiego, determinati da motivi politici. - Ricostruzione della carriera dei riammessi. A tal fine gli ufficiali delle Forze Armate dallo Stato sono considerati appartenenti all'aliquota di scrutinio nella quale essi sarebbero stati compresi se fossero rimasti in servizio.

I limiti d'età si considerano in relazione al grado che il dipendente avrebbe potuto conseguire se non fosse stato rimosso.

Il tempo intercorso è computato ai fini del trattamento di quiescenza.

A chi non può essere riammesso per limiti di età o per inabilità dev'esser fatta una nuova liquidazione, previa ricostruzione della carriera. Analogamente in caso di decesso del pensionato (Art. 11).

Ai magistrati del Consiglio di Stato e della Corte dei Conti, nonché agli Avvocati dello Stato si applica il D.L.L. 24.8.1944, N. 183 (Art. 12).

I dipendenti riassunti vanno ridestinati alla sede precedente (Art. 13).
Nomina dei dipendenti non di ruolo ai posti iniziali di carriera (Art. 16).

7. D.L.L. 19.10.1944, N. 306 (G.U. 16.11.1944, N. 82, pag. 534; entrato in vigore il 17.11.1944).

Norme complementari alle disposizioni del R.D.L. 20.1.1944, N. 25, concernente la reintegrazione nei diritti civili e politici dei cittadini italiani e stranieri già dichiarati di razza ebraica o considerati di razza ebraica (vedi N. 2).

- 5 -

- ART. 1 Rettifica di atti in cui, per motivi razziali, dopo l'8 settembre 1943, sia stato dichiarato un nome diverso dal vero.
(Per gli atti dello stato civile, vedi al l.º 4, D.L.R. 10.8.1944, N.º 195).
- ART. 2 Facoltà di ripristino del cognome cambiato in base alla L. 13.7.1939, N.º 1055.
- ART. 4 I matrimoni, celebrati davanti a ministri del culto cattolico e non trascritti nei registri dello Stato civile per il disposto dell'art. 6 del R.D.L. 17.11.1938 N.º 1728, possono esservi trascritti su richiesta di entrambi i contraenti.
I matrimoni civili non possono essere più annullati per il motivo della diversità di razza.
- ART. 5 Reintegrazione nella patria potestà del genitore che ne sia stato privato in applicazione dell'art. 11 del R.D.L. 17.11.1938, N.º 1728.
- ART. 6 I militari collocati in congedo assoluto in applicazione del R.D.L. 22.12.1938 N.º 2111 sono iscritti d'ufficio, se idonei, entro il 17.6.1945, nella categoria e posizione che ad essi competerebbe se il collocamento in congedo assoluto non avesse avuto luogo.
- ART. 7 I cittadini, esclusi dalle scuole per motivi razziali, possono essere ammessi alle Università e Istituti superiori in base a titoli di studio conseguiti all'estero o nei corsi di tipo universitario istituiti a Roma e a Milano.
- ART. 8
- ART. 9 I cittadini, esclusi dalle scuole per motivi razziali, sono ammessi a qualsiasi esame negli istituti di istruzione media, con dispensa dall'obbligo di presentare titoli di studio inferiori.

- 6 -

- ART. 10 I cittadini cancellati da un albo professionale in applicazioni di norme razziali possono esservi reinscritti, a loro domanda, anche in soprannumero. Coloro che sono stati iscritti negli elenchi speciali sono reinscritti d'ufficio nell'albo professionale.
- ART. 11 I membri delle accademie, istituti, associazioni di scienze, lettere ed arti, radiati per motivi razziali sono riammessi nel loro posto.
- ART. 12 I liberi docenti sono reintegrati nella loro abilitazione.
- ART. 13 Gli insegnanti medi sono abilitati a impartire l'insegnamento senza limitazioni.
- ART. 14 I candidati in concorsi a posti di ruolo nelle amministrazioni pubbliche, vincitori, ma non nominati per disposizioni razziali, possono ottenere la nomina anche in soprannumero.
- ART. 15 I congiunti di prigionieri di guerra che devono essere riammessi in servizio d'ufficio percepiscono le somme loro spettanti come se i prigionieri fossero in servizio.
- ART. 16 Non è punibile chi, per evitare persecuzioni razziali a sé o ad altri, dopo l'8.9.1943, in territorio occupato o controllato dai Tedeschi, abbia commesso:
frode processuale (art. 374 C.P.),
falsi in atti (art. 475-485, 488-490 C.P.),
falsità personale (art. 494-496 C.P.),
alterazione di stato (art. 567 C.P.).
Non è punibile chi, per favorire il proprietario, sottrae o danneggia cosa sequestrata o pignorata per persecuzione razziale (art. 334 C.P.).
- ART. 17 Cessano tutti gli effetti delle condanne per detti casi.

- 7 -

- 8) D.L.E. 14.9.1944, N° 308 (d.U. 16.11.1944, N° 83 pag. 541;
entra in vigore il 18.11.1944):

Modalità per la riammissione in servizio del personale mili-
tare delle Forze Armate dello Stato di grado non superiore
al 5° già dispensato per motivi politici e razziali.

Le valutazioni delle premesse e dell'idoneità sono deman-
date alle competenti commissioni di avanzamento per la Mari-
na e Aeronautica e a una commissione nominata dal Ministro
per la guerra per l'Esercito.

~~File~~
SECRET

5A

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

Ref: AGG/4118/L

3 NOV 44

SUBJECT: Discriminatory Laws.

TO: Civil Affairs Branch, UNR, REF.

1. This Commission has considered your no. 11442/53/CA of 9 Oct 44.

2. It is contrary to the policy of this Commission to suggest, even unofficially, to the Italian Government, that they have any interest in their former colonies, especially in view of recent statements made in the House of Commons. It is regretted, therefore, that it is not possible to take the step suggested by you in your letter.

3. From the practical point of view, it appears to this Commission that when the future status of the Italian colonies in Africa is decided, the necessary steps can be taken by the Government then concerned to abolish this decree together with any other discriminatory legislation. The number of persons who are likely to be ultimately prejudiced by this delay should be small.

G. B. John
G. B. JOHN, Brig.,
VP CA Sec.,
SCCS.

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4116/L.

RRW/mt.
21 Oct. 44.

SUBJECT: Discriminatory Laws.

TO : Acting Chief Commissioner.

Referring to previous correspondence between the Prime Minister and yourself on the subject of legislation to restore Jewish property etc., the Council of Ministers has ordered published and thus made effective currently the decree which was approved in January but never published. This decree was far reaching and well drawn. It should appear in the Official Gazette of next week.

Incidentally the Jewish group with which I worked seems much pleased that through the efforts of ACC this long deadlock has been broken.

RICHARD H. WILMER,
Colonel, GAC,
Chief Legal Advisor.

4118
INTER GOVERNMENTAL COMMITTEE
ON REFUGEES
HEADQUARTERS ALLIED CONTROL COMMISSION
APO 394

3A
21 October 1944

Dear Colonel Wilmer:

I am deeply sorry to learn of the serious illness of Mrs. Wilmer and that it is necessary for you to return to Washington. We shall miss you very much indeed.

Before you go, I want to express to you for myself and on behalf of the agency which I represent, our sincere appreciation for the valuable service you and your staff have given in your efforts to induce the Italian Government to restore to the Jewish people of Italy the property and status of which they were deprived by the vicious racial laws of the Fascists. In my judgment, no one could have done more than you in successfully resolving this problem.

All of my good wishes go with you. May you have a speedy journey and may you find your wife improved.

Yours sincerely,

/s/
Arthur D. Greenleigh
for American Joint
Distribution Committee

Colonel R. H. Wilmer
Legal Sub-Commission
Allied Control Commission

6

C O N F I D E N T I A LES/rlp
18 Oct 44

MEMO:

1. Reference letter of MEF on half breeds.

2. I pointed out in my memo for CLO of 4 Jan 44 as follows:

(b) • The decree (i.e., the present decree No. 25 of 1944) does not repeal the Law of 13 May 1940, No. 822 on the Status of Persons of Mixed Race (half breeds). Perhaps this law has been consolidated with one of the repealed laws and abrogated therewith. Whatever the case may be, the Italian Government should be asked to explain the status of persons of mixed races.

3. The content of the above was communicated to the Ministry in the meeting of 8 Jan 44. The minutes read as follows:

"The Undersecretary points out that... it was not the intention of the Government to restore the status of halfbreeds. Another decree will deal with this matter. Comm. Spinelli explains that for psychological reasons it is intended to separate the legislation pertaining to Jews from that concerning the half-breeds. However, the present decree repeals the restrictions upon the Jews in Libya.

4. The interpretation of the MEF as to the present status of half breeds is correct; (a) the only law prohibiting marriages between any non-aryan (including obviously ~~half-breeds~~) and Italian aryan citizens was the law 1728 which has been expressly abrogated by law No. 125 of 1944. Thus ~~half-breeds~~ and Italian arians may now intermarry. (b) The law No. 822 on halfbreeds has not been expressly repealed by law No. 25, nor can it be considered repealed by implication; the title of law No. 25, its preamble, text and history definitely limits its scope to the field of Jewish non-aryans only.

5. It follows from the above that the

African natives (unc)
(a) ~~half-breeds~~ Italian arians may inter-marry since the effective date of law No. 25;

out of the mixed marriage
(b) halfbreeds born before such date cannot be legitimized by the aryan father nor can they be allowed to assume his name;

(c) halfbreeds born from the same wedlock as under (b) after such date are legitimate children.

6. If it should be decided to approach the Italian Government on this matter we should consider that

(a) the problem is so distinctly of a colonial character that no matter in what manner the query is presented the question of legislating for colonies will always loom in the background;

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

(b) If the Minister is approached more or less unofficially his private opinion and the opinion of his legislative staff could not give the guidance contemplated by MEF. The question is within the jurisdiction of the Presidency of the Council, Minister of Interior and the Acting Minister for Italian Africa.

7. It would appear that the only practical remedy at this moment would be to repeal law No. 822 by a provision of a British Military authority. In view of the fact that the law No. 25 by repealing law No. 1728 (forbidding mixed marriages) removed the basic rule on this subject it would be perhaps advisable that the provision of the Military Authority repealing law No. 822 should have the same effective date in Italian Africa as law No. 25.

(Note: We are told by our Italian experts that a convenient "Italian" way would be to issue an "authoritative interpretation" of the ~~para~~ penultimate para of Art 1 of law No. 25 stating that the repeal of all rules of racial character does cover the laws discriminating against nonaryans other than Jews. This would in effect be an extension of law No. 25 to nonaryans other than Jews with a retroactive effect).

The repeal of law no 822 would rest re the prefascist status of half-breeds and there is not much doubt that any nonfascist Italian Government, should they resume the powers over Italian colonies, would in substance follow the same general line of action. When drafting the provision effecting the repeal the British Military Administration should also consider the repeal of RDL No. 880 of 19 April 1937 converted into law by law No 2590 of 30 Dec 1931. on penalties for quasi-~~marital~~ ^{matrimonial} relations between Italian citizens and natives.

P. Although undoubtedly the present situation is unsound and creates individual hardship I think that any legislation on this subject involving personal status should be delayed until the fate of the Italian colonies is decided or until some general policy is agreed upon assuring uniformity.

Furthermore

ES

SECRET

4118 ✓ 457
No. 11442/53/CA. (17)

CIVIL AFFAIRS BRANCH
G.H.Q., M.E.F.,

9th October, 1944.

Headquarters,
Allied Control Commission, APO 394.

DISCRIMINATORY LAWS.

Italian Royal Decree Law No. 25 of the 20th January, 1944, (which from its title and preamble appeared to be solely designed to abolish discrimination against Jews) was introduced into the occupied territory of Eritrea by Proclamation No. 12 of 1944, of which a copy is attached. From this there has unexpectedly resulted the following anomaly concerning which I should be grateful for your assistance.

2. As you are aware, among the Discriminatory Laws abrogated by R.D.L. No. 25 was R.D.L. 1728 of 17th November, 1938, Chapter I of which prohibited the marriage of Italian citizens of "Aryan" race with persons belonging to other races and declared that marriages celebrated in contradiction of this prohibition were void. R.D.L. 1728 accordingly put a stop to inter-marriage in Eritrea between Italians and Natives, which had previously been not uncommon and which had resulted in a considerable population of half-breeds. With the introduction into Eritrea of R.D.L. 25 of the 20th January 1944, such intermarriage has again become lawful and is taking place.

3. It has now transpired, however, that on the 13th May, 1940, the Italian Government enacted a further Discriminatory Law, No. 822, relating to half-breeds, which is not included in the Laws repealed by R.D.L. 25 of 20th January, 1944. Inter alia, Law 822 prohibits the recognition of illegitimate half-breed children by

2. As you are aware, among the Discriminatory Laws abrogated by R.D.L. No. 25 was R.D.L. 1728 of 17th November, 1938, Chapter I of which prohibited the marriage of Italian citizens of "Aryan" race with persons belonging to other races and declared that marriages celebrated in contradiction of this prohibition were void. R.D.L. 1728 accordingly put a stop to inter-marriage in Eritrea between Italians and Natives, which had previously been not uncommon and which had resulted in a considerable population of half-breeds. With the introduction into Eritrea of R.D.L. 25 of the 20th January 1944, such intermarriage has again become lawful and is taking place.

3. It has now transpired, however, that on the 13th May, 1940, the Italian Government enacted a further Discriminatory Law, No. 822, relating to half-breeds, which is not included in the Laws repealed by R.D.L. 25 of 20th January, 1944. Inter alia, Law 822 prohibits the recognition of illegitimate half-breed children by their citizen fathers, except for those who were already Italian Metropolitan citizens on the 13th May, 1940, or who acquired Metropolitan citizenship under Article 10 of Law 822; but only those who were twelve years old when Law 822 came into force may so acquire Metropolitan citizenship.

4. This has led to an anomaly in mixed marriages contracted since the abrogation of R.D.L. 1728 in as much as the children of the union born before the date of the marriage (not being legitimised ipso facto by the marriage under Italian law) retain the status of illegitimates and natives, whereas their brothers and sisters born after the date of the marriage are both legitimate and vested with Italian Metropolitan citizenship. The provisions of Law No. 822, which are still in force, prevent the citizen father from making at the time of the marriage the formal act of recognition

...../...

required to legitimise the children born before the marriage.

5. The annulment of Law 822/Proclamation by the Military Administration would be a dangerous remedy since unless such annulment is certain of obtaining full and permanent recognition outside the territory it would be unwise to interfere in such a delicate matter of personal status. The title and preamble of R.D.L. 25 of the 20th January, 1944, suggest that the Italian Authorities in promulgating that Decree may not have appreciated that in repealing R.D.L. 1728 of the 17th November, 1938, they would make mixed marriages legal once more. It would be of great assistance therefore if you would be good enough to point out to the Italian Government the anomaly which has resulted from our application to Eritrea by Proclamation of their repeal of R.D.L. 1728 while Law 822 remains in force. When we hear from you the reactions of the Italian Government to this information, we shall be in a better position to decide upon the next step.

6. We are reluctant to address a definite request through you to the Italian Government to repeal Law 822 as this might lead them to unwarranted conclusions as to their right to legislate for Eritrea and as to the future of that territory. Nevertheless if they decide on their own initiative to repeal Law 822 by a Decree Law which we could then introduce into Eritrea by a Proclamation in the same way as was done with R.D.L. 25 of the 20th January, 1944, this would probably be the best solution to the difficulty.

N. M. Anderson

Brigadier,

CHIEF CIVIL AFFAIRS OFFICER

sition to decide upon

6. We are reluctant to address a definite request through you to the Italian Government to repeal Law 822 as this might lead them to unwarranted conclusions as to their right to legislate for Eritrea and as to the future of that territory. Nevertheless if they decide on their own initiative to repeal Law 822 by a Decree Law which we could then introduce into Eritrea by a Proclamation in the same way as was done with R.D.L. 25 of the 20th January, 1944, this would probably be the best solution to the difficulty.

R. W. Braden

Brigadier,
CHIEF CIVIL AFFAIRS OFFICER.

2

Copy to:- Chief Administrator,
H.Q., British Military Admin.,
ERITREA.

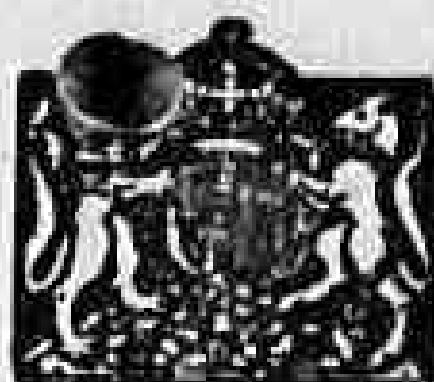
PAM/AA.

Encl.

Col. Braden

LEGAL SUBCOMMISSION	✓
CLO	✓
DCLO	
Chief Counsel	✓
CBO	
Italian Sec.	
CL RKS	

14 OCT 1944



THE ERITREAN GAZETTE

PUBLISHED BY THE BRITISH MILITARY ADMINISTRATION, ERITREA
ON THE AUTHORITY OF THE CHIEF CIVIL AFFAIRS OFFICER

VOL. III (1944) No. 10

PART II

*See p 72
for Page 12.*

1st. June, 1944.

Price: 50 cents.

201



THE ERITREAN GAZETTE

PUBLISHED BY THE BRITISH MILITARY ADMINISTRATION, ERITREA
ON THE AUTHORITY OF THE CHIEF CIVIL AFFAIRS OFFICER

Vol III, No. 10

1st June, 1944

Price : 50 cents

PART II

Proclamations and Orders

I (i).

Proclamation No. 11 of 1944 (Eritrea).

CONTROLLED GOODS

(Amendment) (No. 2)

It is hereby proclaimed by the Chief Secretary acting by virtue of the powers delegated to him by the Chief Administrator under an instrument dated the 26th day of April 1944, as follows :-

1. — INCREASE OF PENALTIES FOR CONTRAVENTION OF TRADE COMMISSIONER'S ORDERS UNDER PROCLAMATION No. 40 OF 1942. - Article 6 of the Controlled Goods (Rationing) Proclamation No. 40 of 1942, as amended by Proclamation No. 33 of 1943, is hereby revoked and replaced by the following article :-

" 6. — Any person who contravenes any Order issued by the Trade Commissioner under this Proclamation shall be liable for a first offence to a fine up to ten thousand (10,000) East African shillings or imprisonment up to one (1) year or both, and for any subsequent offence, to a fine up to

fifty thousand (50,000) East African shillings or imprisonment up to five (5) years or both. Upon a first or any subsequent conviction under the provisions of this Proclamation the Court may, in addition or in substitution of any of the aforesaid penalties, order that all or any of the goods to which the offence relates, shall be confiscated."

2. — DATE OF COMING INTO FORCE. — This Proclamation shall come into force on the 1st day of June, 1944.

Given under my hand at Asmara,
this 16th day of May, 1944.

W. J. MILLER,
Colonel,
Chief Secretary,
Acting for Chief Administrator,
Eritrea.

1 (ii).

Proclamation No. 12 of 1944 (Eritrea).

DISABILITIES OF JEWS (Removal)

WHEREAS the United Nations desire that in all territories liberated from Fascist domination Jews shall be restored to their full civil and political rights

AND WHEREAS to this end it is necessary to extend to the occupied territory Royal Decree-Law of the 20th January, 1944, No. 25, issued by the Italian King restoring to all of the Jewish race their previous rights

NOW THEREFORE it is hereby proclaimed by the Chief Administrator as follows :-

1. — EXTENSION OF ITALIAN LAW TO ERITREA. — Royal Decree-Law of 20th January 1944, No. 25, set out below shall become operative and have full force of law throughout the territory as from the date of the coming into force of this Proclamation, and effect will be given to it for the period of the occupation of Eritrea by His Britannic Majesty's Forces.

1st June

F. Italian Gazette

73

ROYAL DECREE LAW 20 JANUARY 1944 No. 25.
CONTAINING PROVISIONS FOR RESTORATION OF
CIVIL AND POLITICAL RIGHTS TO ITALIAN CITIZEN
AND FOREIGNERS DECLARED TO BE OF JEWISH RACE
OR CONSIDERED AS BEING OF JEWISH RACE.

VICTOR EMANUELE III
by Grace of God and Will of the Nation
KING OF ITALY

Having seen the R.D.L. 7 September 1938 No. 1381;
Having seen the R.D.L. 5 September 1938 No. 1390;
Having seen the R.D.L. 17 November 1938 No. 1728;
Having seen the R.D.L. 15 November 1938 No. 1779;
Having seen the Law 13 July 1939 No. 1024;
Having seen the Law 29 June 1939 No. 1054;
Having seen the Law 13 July 1939 No. 1055;
Having seen the Law 19 April 1942 No. 517;
Having seen the Law 9 October 1942 No. 1420;
Having seen the Articles 1, 91, 155, 292, 342, 348, & 404
of the Civil Code;
Having seen the Article 18 of the Law 19 January 1939
No. 129;
Having considered the urgent and absolute necessity to restore
to the Italian citizens of Jewish race their previous rights and to repair
promptly the grave disparities of moral and political character created
by a policy unjustly conceived to promote the defence of race;
Having seen the R.D.L. 30 October 1943 No. 2/B;
Having seen the R.D.L. 10 November 1943 No. 5/B;
Having heard the Council of Ministers;
Upon proposal of the Chief of the Government in agreement with
the Under-Secretaries for Pardon and Justice and for finance;

WE HAVE DECREED AND WE DECREE

Art. 1.

The following R.D.L. and following laws are hereby
abrogated:

R.D.L. of 7 Sept. 1938 No. 1381, containing provisions for
foreign Jews;

R.D.L. of 5 Sept. 1938 No. 1390 containing provisions for the defence of race in the Fascist schools;

R.D.L. of 17 Nov. 1938 No. 1728 containing provisions for the defence of the Italian race;

R.D.L. of 15 Nov. 1938 No. 1779 relative to the integration & coordination into a single text of rules previously enacted for the defence of the race in the Italian schools;

Law of 13 July 1939 No. 1024 with provisions integrating the R.D.L. of 17 Nov. 1938 No. 1728 on the defence of the Italian race;

Law of 29 June 1939 No. 1054 regulating the practice of professions by citizens of Jewish race;

Law of 13 July 1939 No. 1055 containing provisions on testamentary matters and regulation of Jewish surname;

Law of 19 April 1942 No. 517 on exclusion of Jewish elements from the field of theatrical enterprise;

Law of 9 October 1942 No. 1420 regarding the limitations upon juridical capacity of Jews residing in Lybia;

Art. 1 Third para. 91, 155, second para. 292, 342, 348, last para. 404 last para of the Civil Code;

Also abrogated are all those provisions which for whatever purpose require ascertainment and mentioning of race, as well as any other provision or rule, in whatever form enacted, of racial character and in any way contrary to or incompatible with this decree.

The Italian citizens whom Art. 8 of the R.D.L. of 17 Nov. 1938 No. 1728 declared to be of Jewish race or considered to be of Jewish race are restored to full enjoyment of the same civil and political rights and made subject to the same duties as all other citizens.

Art. 2.

The annulments of citizenship in pursuance of Art. 3 of the R.D.L. of 7 Sept. 1938 No. 1381 and of Art. 23 of R.D.L. of 17 Nov. 1938, No. 1728 are void ipso iure (by force of law).

Those whose certificate of citizenship has been revoked in accordance with the provisions cited in the preceding para. reacquire it ipso (by force of law).

Art. 3.

Entries of racial character made in the registers of the civil status and in the registers of population will be considered non-existent.

1st June

E. n Gazette

75

These entries must never be reproduced in the extracts or copies of civil status acts or certificates of vital statistics except upon an express request of the judicial authority or in pursuance of a specific authorization of the Royal Procurator upon application of the interested party.

Art. 4.

All those who have been dismissed from service in consequence of the application of R.D.L. of 15th Nov. 1938 No. 1779 and of the R.D.L. of 17th Nov. 1938 No. 1728 or of any other provision or rule of racial character in whatever form enacted, are readmitted to service.

Notwithstanding article 1 and article 3, first para of R.D.L. of 6 January 1944, No. 9, the readmission in service of those who belonged to the state administration or to local government bodies will take place automatically (*d'ufficio*) within one year from the effective date of this decree.

Readmission in the case of employees of other administrations, however, will take place upon application of the interested party.

All other provisions of R.D.L. of 6 January 1944, No. 9, relating to re-admission to service, as aforesaid, shall, in so far as they are not inconsistent with the provisions hereof, remain in full force.

Art. 5.

For the purpose of age limits fixed or to be fixed in respect of competitive examinations of any kind, and candidates already affected by the racial law, no account shall be taken of the lapse of time between the 5th of September 1938 and the expiration of 6 months after the coming into operation of the present decree.

Art. 6.

Upon request of interested parties and by act of the Minister of National Education any examination passed, within the period beginning on the 5th of Sept. 1938 and ending 6 months after the conclusion of peace, in foreign schools by Italian citizens who were affected by racial laws, will be considered valid for the purpose of obtaining degrees in Italian schools of every grade in such subjects as the Ministry of National Education will in his sole discretion determine.

With respect to the other subjects, the applicant will be admitted to take additional examinations in Italian schools.

Wherever there are age limits the period lapsed between the 5th of Sept. 1938 and 6 months after the effective date of this decree will not be computed.

Transitory and executory provision

Art. 7.

All penal proceedings now pending for violation of the racial laws are quashed.

Sentences already passed on a conviction after trial in respect of the aforesaid violations shall be of no further judicial effect.

Record cards concerning the said sentences shall not be compiled; those already compiled shall be struck out of the interested party's judicial record within one month from the effective date of the present decree.

Art. 8.

The Chief of Government is authorized to issue by his own decrees, after hearing the Ministers of Justice and Pardon, and of Finance, any complementary consolidating and regulatory rules for the enforcement of the present decree which becomes operative on the day of its publication in the Official Gazette.

The present decree shall be laid before Parliament to be converted into law.

The Chief of Government is authorized to present the appropriate bill.

We order whomever it may concern to obey the present decree, and cause it to be obeyed as a law of the land.

By the Supreme Command the 20th January 1944.

VITTORIO EMANUELE

De Santis - Jung

Countersigned by the Keeper of the Great Seal

BADOGLIO

2. — DATE OF COMING INTO FORCE. - This Proclamation shall come into force on the first day of June 1944.

Given under my hand at Asmara,
this 16th day of May, 1944.

W. J. MILLER,
Colonel,
Chief Secretary,
Acting for Chief Administrator,
Eritrea.

1st June

Eritrean Gazette

77

II (i).

ORDER BY THE POLICE COMMISSIONER

In exercise of the powers vested in me as Commissioner of Police, Eritrea, and in pursuance of article 1 of the Ordinamento di Polizia per l'Africa Italiana I hereby make the following order:—

ORDER

1. — No Eritrean native or assimilated person in terms of Italian law shall publicly carry or be in possession of any stick, cane, club or similar object measuring more than one (1) metre in length or one and a half (1 1/2) centimetres in diameter within the municipal area of Asmara

2. — Any person contravening this Order shall be liable to the penalties prescribed by the War Crimes Proclamation No. 5 of 1943 for disobeying a lawful Order, that is to say, a fine or imprisonment up to 5 years or both.

3. — This Order shall come into force on the first day of June 1944

Asmara, 24th May, 1944.

G. S. A. ROLFE,
Lieut.-Colonel,
Commissioner of Police,
Eritrea.

II (ii).

ORDER BY THE TRADE COMMISSIONER

In exercise of the powers vested in me by the Chief Administrator under the provisions of Art. 5 of the Controlled Goods (Rationing) Proclamation No. 40 of 1942 I hereby make the following order:—

ORDER

1. — Refined Sesame Oil and Refined Neuk Oil will no longer be rationed when put up for sale in bottles and may consequently be

sold freely both to the native and non-native public without ration-coupons, but only at the fixed maximum prices published in the Eritrean Daily News.

2. — Notwithstanding Sec. 1 of this Order, no person or firm may offer for sale or sell bottled edible oil without first having obtained my written authority, or that of an Officer delegated by me, to do so.

3. — No person or firm shall be authorised to sell edible oil in bottles unless such bottles bear printed labels specifying the name of the firm which bottled the oil, the type and the quantity of the oil contained, the degree of acidity, and the price.

4. — This Order does not affect in any way the sale of Refined Cottonseed Oil and Refined Groundnut Oil, which may continue to be sold only against ration-coupons as heretofore.

5. — Any person contravening this Order shall be liable to the penalties prescribed by Art. 6 of Proclamation No. 40 of 1942, that is to say, may, on a first conviction, be sentenced to a fine not exceeding one thousand (1,000) E.A. Shillings or imprisonment not exceeding three months, or to both such fine and imprisonment and on any subsequent conviction, to a fine not exceeding five thousand (5,000) E.A. Shillings or imprisonment not exceeding one year, or to both such fine and imprisonment.

The Court may, upon convicting any person under the provisions of this Proclamation, order that all or any of the goods to which the offence relates shall be confiscated.

6. — This Order shall come into force on 22nd May 1944.

Asmara, 17th May, 1944.

A. W. ROBINSON,
Major,
Trade Commissioner.

II (iii).

ORDER BY THE TRADE COMMISSIONER

In exercise of the powers vested in me under the Farinaceous Substances (Control) Proclamation No. 29 of 1942, I hereby make the following order :-

1st June

Eritrean Gazette

79

ORDER

1. — As from 29th May 1944, all wheat flour produced in or imported into Eritrea shall be classified under one of the following four types according to its chemical analysis :-

DENOMINATION		Maximum Humidity %	Maximum Ash %	Maximum Cellulose %	Gluten Dry Minimum %	Insoluble Ash residue Max. %
Type	0	14.—	0.50	0.15	9.—	0.3
Type	1	14.—	0.80	0.30	10.—	0.9
Type	2	14.—	1.25	0.80	10.—	1.5
Farinetta		14.—	1.80	1.00	10.—	2.0

2. — Wheat flour which does not comply with the lowest standard specified above will NOT be considered fit for human consumption.

3. — All invoices, consignment notes or other documents relating to flour shall specify the grade of the flour.

4. — Any person contravening this order shall be liable to the penalties prescribed in Article 4 of the aforesaid Proclamation, that is to say, imprisonment up to three months or a fine up to five thousand (5000) E.A. Shillings or both.

5. — This Order shall come into force on the 29th day of May 1944.

Asmara, 8th May, 1944.

A. W. ROBINSON,
Major,
Trade Commissioner.

II (iv).

FIXED PRICES ORDER BY THE TRADE COMMISSIONER

In exercise of the powers vested in me by the Chief Administrator under the provisions of the Fixed Prices Proclamation No. 17 of 1941, I hereby make the following order :-

750

Eritrean Gaz

1st June

ORDER

1. — *Maximum Prices of Prime Quality Fruit and Vegetables in Asmara, Massawa, Decamerè and Keren.*

ASMARA

VEGETABLES:

E.A. Shs. per Kilo	
Wholesale	Retail
0.70	0.90
0.80	0.96
0.25	0.30
each. 0.15	0.20
0.50	0.60
0.50	0.60
1.30	1.56
0.50	0.65
0.60	0.78
1.30	1.56
0.30	0.40
0.50	0.60
0.25	0.30
0.50	0.60
0.25	0.30
0.35	0.55
0.35	0.55
0.50	0.65
0.40	0.52
0.70	0.90
0.60	0.78
1.00	1.30
0.20	0.26
0.40	0.52
0.20	0.30
0.30	0.45
0.30	0.45
0.25	0.38
0.65	0.98
0.40	0.60
0.30	0.45

Garlic, Fresh
 Garlic, Dry
 Beetroot, without leaves, max. weight 800 gr.
 Artichokes
 Carrots
 Onions, Dry
 Dry Beans
 Green Beans
 Butter Beans
 Broad Beans
 Egg Plant
 Potatoes new
 Potatoes old
 Turnip
 Pumpkin
 Broccoli
 Broccoli (small)
 Cauliflower
 Cabbage
 Onions, Fresh
 Fennel, without leaves
 Sweet peppers
 Radishes
 Celery
 Beet Leaves
 Chicory
 Endives
 Lettuce
 Tomatoes
 Parsley
 Scarola

1st June	F. an Gazelle	81
Spinach	1.00	1.50
Zucchini, weight less than half kilo	0.45	0.67
FRUIT:		
Water Melon	0.30	0.39
Oranges Local	1.20	1.50
Oranges Imported	1.30	1.70
Bananas	0.77	1.00
Casimiri	0.50	0.65
Lemons	1.30	1.63
Mandarines	1.60	2.00
Papaie	0.77	1.00
Psidium	0.80	1.04

MASSAWA

2. — *Wholesale*: 10 per cent increase on Asmara wholesale prices.

Retail: 20 per cent increase on Asmara retail prices.

DECAMERE

3. — *Fruit*: 10 per cent increase on Asmara wholesale and retail prices.

Vegetables: 10 per cent less than Asmara wholesale and retail prices.

KEREN

4. — *Fruit*: 15 per cent less than Asmara wholesale and retail prices.

Vegetables: 10 per cent increase on Asmara wholesale and retail prices.

5. — This Order shall come into force Sunday 14th. May, 1944.

Asmara, 11th May, 1944.

A. W. ROBINSON,
Major,
Trade Commissioner.

90

II (v).

FIXED PRICES ORDER BY THE TRADE COMMISSIONER

In exercise of the powers vested in me by the Chief Administrator under the provisions of the Fixed Prices Proclamation No. 17 of 1941, I hereby make the following order :-

ORDER

1. — Maximum Prices for EDIBLE OIL.

DISTRICTS	Importer or Factory to wholesaler E.A. Sh. including cost of bottles		Importer - Factory or wholesaler to RETAILER E. A. Sh. per Kilo including cost of bottles		Retailer to Public E.A. Sh. per BOTTLE including cost of	
	Bottle of gr. 500 net	Bottle of gr. 100 net	Bottle of gr. 500 net	Bottle of gr. 100 net	Bottle of gr. 500 net	Bottle of gr. 100 net
ASMARA						
1st Quality Ethiopian Neut. Oil	—	—	5.35	6.50	2.80	0.68
2nd " " " "	—	—	4.75	5.90	2.50	0.62
3rd " " " "	—	—	4.55	5.70	2.40	0.60
Mixed Seed Oil	—	—	4.35	5.50	2.30	0.58
SESAME OIL REFINED	—	—	7 —	—	3.65	—
NEUK OIL "DA TAVOLA"	—	—	—	—	—	—
SAGANEITI - ADIUGRI - DECAMERE						
1st Quality Ethiopian Neut. Oil	5.35	6.50	5.60	6.85	2.90	0.71
2nd " " " "	4.75	5.90	5 —	6.25	2.60	0.65
3rd " " " "	4.55	5.70	4.80	6.05	2.50	0.63
Mixed Seed Oil	4.35	5.50	4.60	5.85	2.40	0.61
SESAME OIL REFINED	7 —	—	7.25	—	3.75	—
NEUK OIL "DA TAVOLA"	—	—	—	—	—	—

ADI CAIEH - SENAFE'				
1st Quality Ethiopian Neuk Oil	5.35	6.50	5.63	6.90
2nd "	4.75	5.90	5.03	6.30
3rd "	4.55	5.70	4.83	6.10
Mixed Seed Oil	4.35	5.50	4.63	5.90
SESAAME OIL REFINED	7.00	—	7.28	—
NEUK OIL "DA TAVOLA"	—	—	—	—
MASSAWA - KEREN - AGORDAT				
1st Quality Ethiopian Neuk Oil	5.35	6.50	5.67	6.94
2nd "	4.75	5.90	5.07	6.34
3rd "	4.55	5.70	4.87	6.14
Mixed Seed Oil	4.35	5.50	4.67	5.94
SESAAME OIL REFINED	7.00	—	7.32	—
NEUK OIL "DA TAVOLA"	—	—	—	—
BARENTU - TESSENEI				
1st Quality Ethiopian Neuk Oil	5.35	6.50	5.95	7.20
2nd "	4.75	5.90	5.35	6.60
3rd "	4.55	5.70	5.15	6.40
Mixed Seed Oil	4.35	5.50	4.95	6.20
SESAAME OIL REFINED	7.00	—	7.60	—
NEUK OIL "DA TAVOLA"	—	—	—	—

2. — Retailers will repay the sum of E.A. Shs. 0.15 for every empty bottle of 500 gm. returned to them in good condition, which sum will in turn be repaid to them when returned to the Refinery, Factory or Wholesaler. Bottles of 100 grms. are not returnable.

3. — This Order shall come into force on 22nd May 1944.

Asmara, 17th May 1944

A. W. ROBINSON,
Major,
Trade Commissioner.

84

Eritrean Gazette

1st June

II (vi).

FIXED PRICES ORDER BY THE TRADE COMMISSIONER

In exercise of the powers vested in me by the Chief Administrator under the provisions of the Fixed Prices Proclamation No. 17 of 1941, I hereby make the following order :-

ORDER

1. — The maximum prices in MASSAWA for the under-mentioned rationed goods will be as follows :

	Manufacturer to wholesaler E.A. Shgs. per Ql.	Wholesaler to Retailer E.A. Shgs. per Ql.	Retailer to public E.A. Shgs. per kilo
Flour "Tipo Unico" for Bread No. 1	52.58	59.70	0.64
Flour for Pasta "Tipo Unico"	56.85	64.00	—
Bread "Tipo Unico"	—	63.00	0.66
Ordinary Pasta	—	81.50	0.84
Egg Pasta	—	143.50	1.50

2. — This Order shall come into force on the 1st June 1944.

Asmara, 19th May, 1944.

A. W. ROBINSON,
Major,
Trade Commissioner.

Government Press, Eritrea.

1 2 3 6