

W
438

FO 1046/
184

Minute - Sheet.

I

Direct

At 3A are legal Division's preliminary comments on the American draft law on "Victims". The burden of criticism is that the scales are weighted too much in favour of the claimants.

We had assumed that the principle would be generally accepted that the burden of proof should be transferred to the opposite party - but perhaps the American law was too far in this respect.

~~Deutsche Linie~~

Hamberger

2/1/47

Note: Folio 3A. The Law was discussed in general terms by the Law Commission with the Reichsminister (Legal) today.

Hi
915

FIN/20648/6(PC)

FIN DIV

MINUTES

Minute 2. ~~(Temporary cover)~~

To: Chief, Finance Division.

18A

Will you please see Foreign Office telegram No.1761 of 19th June. It is possible that General Brownjohn may speak to you about it.

Its origin is in a Department of Foreign Office which has apparently only just become aware of the draft law on Victims. Hampshire has, I understand, been in full consultation with Robb and others, and we have acted steadily in full consultation with him. Political Division here receives all Property Control Committee Minutes, ^{papers} and all my telegrams on the subject to London. It has never made any comment.

I spoke to Hampshire this morning and he will clear the position in "Downing Street", and I have myself seen Pink and we drafted an explanatory telegram together.

On the text, the political aspects have been fully considered throughout. The Law does not apply only to Jews. The process of retransference cannot in the nature of things be sudden.

Allied owners will recover if they have been victimised.

If they have not been victimised, what happened to them was the fortune of War and is covered by reparations. We discussed in London and reached that conclusion. Successor organisations are to be the subject of regulations to be made by each Zone Commander which will be sufficient preventive in our Zone. (2) The Russians and French object to the principle, (which I dislike also) but Americans are adamant. The leakage therefore will only happen in American Zone. In any case the leakage will only occur when there are foreign exchange facilities, and that will coincide with a stronger and more German Government which is not likely to admit the American principle in practice.

A {

R.H.P.

Director,
Property Control Branch.
Finance Division.

27 June 1947.
RHP/SJW.

*3. I'm afraid I
don't understand A.
No one has
mentioned to me
as yet.*

*See RHP
5/11*

[Signature]
Sib.

FIN/20648/6(PC)

Strictly ConfidentialMINUTE SHEETMinute *E. 3 A. transferred*
*20648/7/PC*To: Chief, ✓
Finance Division.

Subject is draft law on restitution to Victims of Nazi tyranny.

I have this afternoon received a visit from Mr. Mason of Legal Division, OMGUS who is Adviser to General Clay on this subject, an official of the State Department, and (himself a Jew) a lawyer, well informed on the views of the American Jewish Organisations.

He told me that he had been telephoned to last night from Washington, that a cable is being sent to General Clay pressing him strongly to take immediate steps to promulgate the American draft law and not wait any longer for a doubtful Quadripartite agreement. He thought Clay would feel himself bound by the expiry of his own date line and give way.

I said that I personally thought such action on such a subject would be hasty and ill-advised for it might well imperil the effect of the large quadripartite agreement that we have, particularly in Berlin, and in Russian Zone: that if we were no longer to be acting in unison with the Americans, I did not know how far all their principles, and particularly that on successor organisations would be likely to find a place in our law, as it was not universally popular amongst us: that it would be a bad start for the intimacy of our proposed bizonal fusion, and might, added to other things, even have an effect upon the C.F.M. Conference in November. Russians and French have worked very hard and honestly on the draft, and it would be tactless and harsh to throw them over for the sake of saving a few weeks. I did not think that we should be in a position to join them in bilateral action if that took place within the next week or two, for we are bound to take German opinion, and we cannot do that till a draft being worked on Quadripartitely has come to a final settlement either in agreement or disagreement.

Our conversation was strictly confidential and informal, and he is most anxious that it should not get back to the Americans but he very courteously agreed that I should report it to you, Mr. Pink and Mr. Hampshire.

R. H. P.

Director,
Property Control Branch.
Finance Division.

27 June 1947.

Copy to: Mr. Pink, Political Division.
RHP/SJW.

[Signature]
286.

4

- No action need be taken on 995. for the following reasons:-
- (1) I discussed with Steel on my way home last week, & with Hampshire in London, who spoke to Leishman (written 1761] of the German political Division. The result was that it was decided to leave the matter as it is, & all Steel generally to be aware of the case. History has not for the first time, overtaken this reply [to 1761.] It may well be that Poldin should have given more consideration to its aspect on the law. I wish they had, for we should have much benefited from their views, and could have, in earlier days, given substantial effect to them. But the fact is that though they have received copies of every victim's paper, every agenda, and every minute for PCC, & copies of all my numerous telegrams to London: & though Hampshire consulted F.O. [reels] on the matter, & they were present at the two departmental meetings in London which settled the policy, Pink's people attached no importance to the matter & did not study it. Pink told me that he had read (& enjoyed!) my telegrams - but of his present telegram is right, their significance escaped him.
- (2) the subject is being discussed in Directorate today, & it is probable that in this or the next meeting - a quadripartite agreement (or disagreement) will be reached by compromises or permissive clauses in the 9 basic points in disagreement. If so, the matter will be settled but we shall be able to take advantage of some of the permissive compromises in law. No one can change the American law for the Americans & they will certainly put it in force in their zone whether F.O. like it or not.
- (3.) It is probable that if there is disagreement that General Clay will take unilateral action. He will, I believe, synchronize that with the issue of our General Order No 10 - to which Americans have agreed. Our law will follow but we need only feel bound, (& that is a point of honour only) by those principles which have received quadripartite agreement. The Americans will be satisfied when they have their law for themselves though they would like as much uniformity as possible.

5.

R.H.P.
11. VII

Chief.

You may wish to be informed of the progress of negotiations on successor organisations. Folios 22^A to 26^A refer.

It would appear that either General Clay does not know what instructions he has received, or the State Department do not know what instructions they have sent.

M. 28
7

FIN/20648/6(PC)

MINUTE SHEET.

MINUTE NO. 6.

To: Chief,
Finance Division.

Folio 35A.

I understand that Gen. Brownjohn is inquiring whether either of the proposals made in para. 3 is acceptable to us.

2. Proposal (1) - A.C.A. Agency. This on the face of it seems unobjectionable, but I think we should have more details before being committed. The proposal for a separate Jewish Commission should be all right, since it is to be subject to the approval of each Zone Commander. We have always insisted that the proceeds from heirless property should be used for relief inside Germany and that we could not agree to the setting up of any Trust which would be a drain on the Germany economy for benefit outside Germany. I understand that the American view is that persons outside Germany (e.g. New York) are just as much entitled to benefit as persons still in Germany. Since there is to be unrestricted inheritance of property under the law, there should not in practice be a great deal of heirless property, but nevertheless I think it is important to preserve the principle of the restriction of benefit to persons inside Germany. The Soviet will I believe maintain their contention that heirless property should escheat to the State and will not I think accept this proposal. In that case, the Americans propose to turn to Proposal (2).

Proposal (2) - that the International Refugee Organisation should take over heirless property. Here again the above remarks about the proposed separate Jewish organisation apply. I have discussed this proposal with Mr. Kellam who has some personal knowledge of this organisation, which, as you know, is the successor organisation to UNRRA. He considers that it would be a mistake to hand over this problem to I.R.O. where there is always wire pulling and as U.S. are the largest contributors, they have the strongest pull. He makes the further point that H.M.G.'s policy is that I.R.O. should be wound up in Germany as soon as possible and he fears that this proposal would only provide an excuse for continuing its existence at the expense of the British taxpayer. Apart from this, it is extremely doubtful whether I.R.O. mandate from U.N.O. would cover this purpose.

3. We therefore think that if the Soviet won't come in on Proposal (1), it should be tried out tripartitely rather than pass on to Proposal (2) as the Americans suggest.

4. Mr. Parker, who has a wider personal knowledge of this subject than I have and will also be acquainted with London's reaction to 35A, will be back tomorrow and I suggest that any comments you may pass on to Gen. Brownjohn should be subject to anything Mr. Parker may have to say.

5. Para. 5 of 35A. The Staff Memorandum, submitting a new General Order to be kept "on ice" for use in case of American unilateral action, is being revised in the light of this telegram and will be submitted to you shortly.

27 August 1947.

JJE/SJW.

Wk.

Acting Director,
Property Control Branch.

M7

For Parker's view

I would welcome

Secretary

27.8

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

MINUTE SHEET

File No.
FIN/

Minutes

8.

Chief
 Minutes 7.
 I spoke with the P.O. yesterday and the proposals in 35A were mentioned. They have discussed it with Mr Parker & will be sending us a telegram shortly setting out their views — which I rather will follow closely those given in my minute 6, except that Mr Parker is much optimistic about which the Russians to give to Proposal (1)

Chi
29/8.

9.

Chief:

We Unkpts discussed this morning. London thinks that the IRO suggestion would be impossible for it would create an impression in the period, & ACC would be unable to control it in practice while still retaining responsibility that the practice would work. IRO is almost certain to refuse.

An organization on the lines of GEPAC is practicable — but when I mentioned it long ago in P.C. Cite, the Russians objected for they saw it as an Agency which was not one of those named in Potsdam

Agreement: Their views may have changed, or be changeable, now. The quasi-GEPAC arrangement would be equally practical whether it is tripartite or bipartite.

If unanimity cannot be obtained all the property in Berlin will remain unadministered; and this is very large.

Emberton tells me that August P. Contos thinks that there is no weight in the State Dept. instructions to Clay, & that he will take his own line.

MIN. 9 (CONTINUED).

I believe myself that General Clay is personally deeply committed to and in the grip of the New York Jewish organisations, & therefore cannot be pushed off his intention to give them control of German property at least in the American Zone.

The correspondence makes it clear that State Department's policy & his differs, & that the State Department's policy is the more reasonable & agreeable one.

Emerson tells me that during the past month the Americans proposed to amend ~~Article~~ the law in order to give the power to the Zone Commanders to deal with ^{loitering property} as he thought fit, & I liked a draft in accordance. I understand that

Mr. Debenham refused this and said that he was under instructions from London to refuse it. [20A] I think he must have misunderstood two telegrams 1761 & 1827 which were a request for information from a Division of F. O. & a reply to it from Pink in which he said that if the law was politically disapproved in London, further instructions must be sent. So far as I know no further instructions were sent, since the position was cleared between Hampshire & his opposite number after discussion with myself, & between myself and Stief. Mr. Debenham may however have consulted Stief further before he made the statement to which I refer. He did not consult Emerson.

The American proposal was one which we suggested informally to Mr. Mason ^{originally} as having the advantage of obtaining unanimity, if agreed, thus releasing the Berlin property though it has the disadvantage of allowing for other than a uniform procedure. I can see no objection to it.

Mr. Debenham's great wish was to prevent the Americans carrying out Clay's intention in their zone. But if Clay wishes to endow Jewish organisations with the proceeds arising in his zone, & will not act on S. Department instructions, it is obviously impossible to prevent him. There can be no fears until there is a foreign rate of exchange & no doubt a false German foot will alter the situation if it is found there to be injurious.

What is essential is to have quadripartite agreement.

which will have an universal principle, and release
for restitution all property.

On the point of whether there are new
instructions or not, you may wish to have a
further word with Slick.

R. H. P.
30. VIII.

LOOSE MEMO

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

Fin/20648/6(FC)

1 September 1947.

(10.)

To: Chief, ✓
Finance Division.

I have this moment, 1115hrs., finished speaking to Mr. Hampshire.

I explained to him that you regarded the latest telegram quoting Sir Alfred Brown's opinion as settling the policy in regard to Victims but that Mr. Pink was less certain and was himself speaking to Foreign Office about it. I have asked Mr. Hampshire to contact whoever it is that Mr. Pink has spoken to, so as to avoid our having two sets of instructions.

I explained to him that you wished to be in a position to agree with the Americans tomorrow that all responsibility for heirless property, including successor organisations should be transferred to the sole responsibility of the respective Zone Commanders. He agrees to your accepting this compromise provided that the Americans are explicit that they will not vest title in German property in any organisation external to Germany.

Hampshire was most insistent that no organisation should be set up, e.g. in the United States, which would be an owner of property situated in Germany. He will repeat his concurrence by telegram.

R. H. P.

Director,
Property Control Branch.

RHP/SJW.

Handwritten signature (11.)

Handwritten notes:
 8.1.9. (12)
 Mr. Pink rang me up
 today to say that he had heard from
 the FO, let. 228.2 of 3.8. gives the
 official line.
 (4.9.4)

MINUTE SHEET

(13)

To: Chief

If the successor organisation is incorporated under German Law in Germany it will be a German entity vested with title in the German economy, and will have no privileges or rights except those which any other similar German entity has. What it does with the property is what is laid down in the Articles of Association, which articles would necessarily conform to German Law.

If there is merely a local German Branch of an organisation incorporated and located in the United States, it will be an American entity able to do everything that any other comparable American entity could. The American Corporations user of the property here will be subject, of course, to German Law. But the property would have become an adjunct to the American economy, and its profits could flow thither, when flow is free, for the benefit of world Jewry. What it does with the property is what is laid down in its American Articles of Association. These might not prescribe its use for Germans in Germany at all. We, in Germany should have no control over those, and no power to interfere apart from Foreign Exchange and similar laws. We should also be creating a piece of entirely new U.N. (American) property in Germany, to be used (presumably) when foreign exchange allows, for non-German purposes. .

I think the material point of difference is that one would be an American entity: the other a German entity.

R. H. F.

30.9.47Director,
Property Control Branch.

MINUTE SHEETCONFIDENTIAL (14)To: D/Chief (Exec)

In turning over in my mind the problem of heirless property under the proposed Law for restitution, the following problem has occurred in the new circumstances of which you know.

Since Jewish family ties are very strong, I have always thought that there would be very little Jewish heirless property, and that the bulk of such property would be Aryan.

We have a great deal of Polish property in control which was confiscated by the Germans and is in many cases identifiable and restitutable.

I have seen a letter to OMGUS in which the Polish Government lays claim as such to Polish property in the American Zone, and it has been making similar claims in ours: it alleges that almost all the Polish former owners are dead without heirs, and infers that in that case, the Polish Government is the rightful inheritor.

Up till now we have always been in sympathy with the proposal that heirless property should fall to the Lander Government: but the claim of the Polish Government imparts a new aspect to that and we must make up our minds whether we ought to disregard their view which has some logic, ~~held~~, or not, and, if not, on what grounds we should disregard it.

Whatever principle we apply would I think govern the case of heirless property formerly belonging to other nationals.

I am not sure how far the Polish Government will press its theory that all Polish owners are now dead, and that it is their heir: but if they do maintain it they will certainly prevent Polish owners from coming forward unless that entails the loss of the property e.g. to a Land Government.

If we had had Quadripartite agreement, that would have been perhaps sufficient answer: but it does not seem that we shall have a Quadripartite law.

RHP

4/10/47

Director,
Property Control Branch.

RHP/IC

Copy to Mr. Pink (Political Division)

" " Mr. Periera (Legal Division)

FIN DIV FILE NO.

MINUTE SHEET NO.

(15.)

D. P.C.

T return file as spoken for
a further enclosure.

2. You will have enclosures &
minutes numbered? $\frac{6}{10}$

MINUTE SHEET

Point 6. This is a good deal a question of drafting. I think Russians point of view would be that if property had been taken for public purposes from the victim what he gets is a fair expropriation price for it. If the wrongful possessor received the expropriation price, then he must pay that to the victim, or, at least, he must pay the difference between that and the consideration paid the victim, if that was "deliberately low". If the property is not now required for public purposes, the victim gets it back. If an innocent third party received the expropriation price, the reimbursement could come from the Trust.

Point 7. Legal objects to the Articles dealing with mesne profits, accretions, loss through Act of God etc. For the purpose of establishing the Trust we shall have to define what profits are and we could reasonably agree to any definition that the Russians and French could be brought to agree on, because our object is not to be legally logical from the base of unlawful possession but to establish a Fund sufficiently large to take care of all fair claims for rehabilitation - except those when the unlawful possessor must make good. Legal Division has not really attacked the problem of 15 years mesne profits. I feel sure that we can get tripartite agreement on that without a great deal of discussion. Almost any formula would suit us so long as it establishes an ample fund.

R. H. P.

8/10/47

RHP/IC

Director,
Property Control Branch.

15B.

D/Chief (Exec.)

~~The file is with you.~~

P. Secy
T. 24/11
P. 10/10
15/10

Three replies
again to the
Poles etc are
at 54A. r
56 A.

On 2nd October Chief sent for me and asked me to obtain from Legal Division a paper containing its main objections to the American Draft Law on Victims. I saw Mr. Pereira that afternoon and the paper enclosed is the result. 57A

I sent to you on Saturday a Minute (copied to Pereira and Pink) inviting attention to the problem that arises in a unipartite law (even if that is repealed three times) over heirless property, when the original owner was not a Jew but an "Aryan" not only an "Aryan" but a foreigner, and not only a foreigner but a Pole.

Chief's wish was that we should analyse Legal Division's paper so as to inform him of where it differed from the views expressed by USSR, and to advise him of what consequential compromises might be necessary in order to obtain identical triplex Laws in French, USSR and British Zones.

I do not find in Legal Division's paper any observations that, in my judgement, will embarrass us with the Russians or the French but I note on them point by point.

Legal Division's point 2. I think the Russians would fully agree to the absolute protection of the innocent purchaser. But this will only entitle a victim to restitution if he can cite the original unlawful possessor as the present possessor. In other cases he will have no redress. This is not equitable, and it does not carry out H.M.G.'s policy of rehabilitation. My own view is that these cases should be a charge against the Trust.

Point 3. The Russians, I think, did not notice specifically the effect of the phrase "free right of disposal was denied". I do not think that they would support it as it stands. We could redraft allowing the privilege where the claimant proves that it was the unlawful and present possessor who denied him disposal. In other cases it might be a charge against the Trust.

Point 4. The series of rebuttals and surrebuttals derived from attempts to reach a compromise. The Russians themselves, I think, only recognised two (1) that a transfer for good consideration was prima facie not a transfer under duress - (2) that a transfer without good consideration at a patently bargain figure was prima facie one under duress. We could agree with that.

Point 5. This is successor Organisations. We are in agreement with USSR and Legal Division and French against Americans on this. USSR demand, and we sympathise, with, the idea that heirless property should go to Land Governments. D.M.G. however, had not considered the problem referred to in my second para. above. French would wish an undenominational successor organisation (which might be our Trust). I think this point will need more discussion on the Tripartite level.

/Point 6.....

Confidential

16

D.C. [Exec.]

I heard "off the record" yesterday, that General Clay will take unilateral action and promulgate a law on restitution to victims in the American Zone. (1512 memo to Chief.)

He has already seen the Stuttgart draft of the law, - amended as far as bipartite agreements went - down to the Land Govts with a recommendation that they should enact it. My opposite number Reissel has gone down to the Zone for about a fortnight.

Our General Order no 10 - is completely ready save for the signing of a fair letter to D.N.G. by Chief, & signature by D.N.G. but promulgation will take roughly a fortnight. I have cleared this issue with London.

The Americans are rather sore with us, and I think it possible, (though I do not know,) that General Clay may give notice of his intended action within a very short time before his promulgation; & we may not then have time to synchronize. If we don't, it looks again as if we had been dragged at the American tail.

A

Perhaps if Chief were to speak to Mr. Ball, the latter would give us a date, & our order could be timed to meet it?

We could take action now, but I hesitate to advise it since it might cause bad blood and idle conjecture. I should prefer all to be done in a friendly way. I don't want to be caught short.

Would you please consider it?

You agree my last paragraph but one, have a word with Chief?

R.H.P.
8. x.

17

Chief.

Re A of M16: you will wish to speak with Mr. Ball? 15. 8/10/47

FIN DIV FILE NO

MINUTE SHEET NO.

18.

Mr. Ball told me I think, the 18th. I assumed that we could get our order in 4/5 days. He said he would give me that much notice.

19.

10.10

I rang Mr. Ball who said that as far as they were concerned we could go ahead & get our order. Please do so as quickly as possible.

11.X

20. G.O. No 10.

Chief was good enough to speak also, & signed the forwarding letter to DTG, which I saw and by hand to DTG at 1140. Chief will speak to Gen. Westropp as well. Col. Fillingham has been told. I explained to Chief that I have already cleared with London. Mr. Kelley wanted

RHP
11.X

21.

On Saturday 11 October Chief authorised me to proceed with the publication of G.O. No. 10 as fast as possible as D.M.G. had approved its issue. I had already informed Mr. Kelly at Bad Nendorf of the situation and asked him to call me before 9.30 on Monday morning.

At 9.20 am on 13th Mr. Kelley spoke to me and I gave him instructions to go to Legal Division at Herford to Mr. Moller and make arrangements for immediate publication. I added that I had instructed Mr.

/Buddicom.....

MINUTE SHEET

M.21 (cont.)

Buddicom, who is aware of all the preliminary arrangements made by my instructions to Mr. Highton, including German translation, to proceed to Herford at once by car and meet Mr. Kelley there. If possible, I wished complete publication and distribution as promised to Mr. Highton, to take place in 5 days: but if that was impossible, then the Order itself must be published even if the implementation of means to get on it were perforce delayed. I also instructed Mr. Buddicom to inform all P.C.O.'s of our intention, and say that he would give the exact date as soon as he had learned it at Herford.

I also telegraphed all Regions to this effect, and at 10.20 a.m. spoke to Mr. Woodroffe at Norfolk House in the above sense. They will not take any action, however, till I clear the way for them.

RHP

Director,
Property Control Branch.

RHP/IC.

1230. I add that I have spoken to Dr. Balfour Morgan - who is the manager of German Press for Prisc & said that we will deal with her only, to save the immense confusion that occurred last time by its being handled by 3-4 PRISC people who all asked the same questions but proposed different modes of obtaining publicity. Any day is good for the ordinary German press - but Fridays are the best days for 'die Welt' - which appears on Tuesdays after the weekend. We agreed that the British Press should have a hand-out, of which I have given him the text: I said that we would not, in any case, have a Press Conference, since the questions that would be asked - i.e. 'Why no quadripartite, why no bi-partite?' - would be impossible to answer diplomatically or truthfully - & we must, therefore, be embarrassed, & even worse in the future, when the difference between the laws is apparent. Shortage of newsprint, & UK feeling against Jew, makes it unlikely that we shall get space except in Times, and, Mrs. Stalman. Dr. Morgan agreed. We placed the letters to RC's etc before DNG this morning, & he signed them & orders before lunch. I have retained duplicates - for publication in advance of the Herford machine, one we have number and date, & that is too slow. Col. Prescott of DNG's office punctilio in insisting on corrected papers to sign has delayed us one day.

We will give him the list clear as soon as I hear from Herford.

RHP. 13/x.

MINUTE SHEET

M.22

To: Chief
D.C. (Exec.) 15. 16. 10. 46

Chief wished this file to be submitted to him immediately on his return so that he may begin negotiations with M. Leroy, Beaulieu and Maletin for a triplicate law.

There are two subjects now to be treated of herein.

The first is General Order No. 10. M. 16 - 21 cover this, but the material point is that Mr. Kelley has just telephoned me (11.20) that the Order will be formally promulgated on Monday next - 20th October. You were good enough to speak just now and agreed that I should inform London and PR/ISC (Dr. Betty Morgan) accordingly.

The second is the proposed Law on Victims. On this, 15B refers, which is my analysis of the Legal Division Memorandum at 57A. M.14 also refers on the question of the escheat of heirless property. In this I called attention to possible difficulties if heirless property escheats, not to the government of the former proprietor, but to the German government which destroyed the former proprietor. 54A and 56A are Legal and Political Divisions' comments. Summarized they are against restitution in heirless cases though for different reasons.

I am nevertheless still uneasy on the subject. The problem arises from the assertion of the Polish Government (which could be, though it has not been made by any other Government) that the former Polish owners of property in Germany were all murdered by the Germans. Where a property is really heirless, this will, in most cases, be true. In England where there is no legal inheritor, estates fall to the Crown: but if we follow this maxim, the Poles will argue, with some appearance of logic, that we are merely perpetuating the iniquities of the former German government, and that we are breaking into the established principles of restitution in order to deprive a foreign government of the rights over immovable property that it already possesses over moveable property.

On the other hand, if we concede this restitution we not only fall into the objections stated by Political and Legal, but also we shall create a series of enclaves of property owned in Germany by a foreign government: this will lead in the future to a great deal of trouble, and to a loss of revenue: for since Governments do not die, there are no death duties in respect of their property. I would agree that this is more likely to occur in respect of Polish property than any other, for other Governments are unlikely to trouble themselves unless someone gives them a lead.

If U.S.S.R. and France agree with us on excheat to Lander Governments we shall be on reasonable good ground for there will be three Zone Commanders saying the same thing. I feel therefore that it might be better not to raise the point noted upon in the discussions for they may very well not have thought it. If it is raised I believe we should do well to consult London before taking a definite line.

(1)

/as.....

MINUTE SHEET

M.22 (cont)

As for my opinion, I think we should refuse claims by the Polish (or any other) Government for the reasons given above, but if we do so, we must be fortified by valid arguments which do not add fuel to flame. The best argument is the agreement to transfer the property to Land Governments between U.S.S.R., France and ourselves. I do not think Poland will argue against U.S.S.R.

The Americans are still anxious to use Bad Nenndorf as their central filing Agency, and, indeed would be in a very difficult position if they did not, for they have no easy means of financing a Central Agency in their Zone. I gave them an assurance that we should gladly afford them the use of it, partly because it is the neatest way of managing the operation from the Victims point of view, partly, because if it does not soothe their feelings, it, at least, does not exacerbate them, and partly because it is now a charge on the Zonal budget and it will, if they use it, become a charge on the bizonal budget which will relieve us from some expenditure.

R. H. P.

13.10.47

RHP/IC

Director,
Property Control Branch.*Dr. Pc.*M. 23

*58.A. copy attached as requested.
Relevant minute has been placed at A3A.*

July 16. 47

MINUTE SHEET

Chief, Finance Division. M. 24. IMMEDIATE

[Cassoday from Ball]

The Americans came to see me on Sunday morning to tell me

- (i) that they have run into a series of technical - not of principle - difficulties with their Legal Division on their Law for victims.
- (ii) that they had referred to the Land Governments to know whether these would pass the Law through the Landtags as their own. The Land Governments have refused as they disagree with the principles and doubt obtaining a majority.
- (iii) that they reported to General Clay who instructed them, in a cable which they showed me, to "hold everything" till he gets back on Wednesday next.
- (iv) The Americans are pleased for they do not like the Law or respect the principles any more than we do, and they hope that the New York Jews have decided that they would prefer a quadripartite law which will achieve little though promising much. They emphasize, however, that they now do not know in the least what their position is.
- (v) I understand that Leroy Beaulieu has sent you a new draft law.

to an unipartite law

I submit that we need take no further action for a few days till we know how far you have called the American bluff.

Your General Order will be promulgated today and publicised in German and U.K. press tomorrow. Americans are perfectly happy about it.

R. H. P.

RHP/IC

Director,
Property Control Branch.

Copy to D/Chief (Exec.)

25

[Handwritten signature]
M. 24.

*In wait developments
to slow on Bad Neudorf: we
might have some amendments
from it.*

[Handwritten signature]
M. 24.

Chief spoke to me this afternoon & said that after a conversation with Mr. Paul this morning, he understood that General Clay had a new draft time at November 8th. He thought that General Clay felt that the "old manuscript" was meeting Paul and he was Beauclerc at lunch tomorrow when the Victims Law would be discussed. Chief wished us to compare the French draft with the American law and advise him which of the Articles in the American law he would wish to modify in order to meet it. He also wanted our legal Division's opinion related. Chief was willing to keep American text as much as he could. In reply to a question, I said I thought it was quite unnecessary to get a parallel law over by the 8th XI. for the mechanical process would take about 6 weeks even if we had all initial agreements. Americans had told Chief that if we accepted French drafts we should have some opposite regulations.

R.H.P.
27. XI.

MINUTE SHEETChief.

27

I enclose a copy of the French Draft which M. Leroy-Beaulieu says is the final one. GOA.

It is silent on the subject of heirless property and it does not provide for any machinery for the filing of claims.

It does not, in short, take care of any of the administrative part of the problem, the whole of which it leaves to the Court. It is possible that this will work in the French Zone which will have comparatively few claims. It would not work either in ours, or the American where the claims will be very large or between the Zones. The French have looked only at the curial aspect and have not recognised any problem other than the curial one.

We need to retain the statutory procedure laid down in American draft and inspired by us and also the Article which gives Zone Commander power to do justice in spite of the Courts if he thinks fit. We have always been most anxious to have this, and it was quadripartitely agreed.

Apart from the above I see only one principle difference with the Americans. This is in Title Two. The French give the relationship between the dispossessed person and the dispossessor to the authority of the German Civil Code, though the case will be heard in the Restitution Courts. Both Legal Division and I would agree with that and we should therefore have to modify Articles 12 - 28 of the American draft.

The French restitute property "as is where is" on the date on which the claim is filed. The Americans restitute all property on evidence as at date of spoliation. Personally I think this is logical.

I believe the differences are very much a question of drafting the French principles, except that the French do not distinguish between categories of victims. Their test is whether someone was victimised or not. This would entail amendment of Article II first line, and Article XI to excise the presumptions particularly paragraph 2.

Legal Division will wish to draft our whole Law after an English pattern.

I do not consider that we should need to make many regulations. All that can be taken care of by the draftsmen following the common principles of the two laws but adding to our law and subtracting from its principles as above.

RHP

RHP/IC

Director,
Property Control Branch.

59 B is a
bad translation.

✓
✓

✓
✓

✓
✓

Discussed with Mr. Ball

Mr. Leroy Beauchamp.

Mr. Ball will be bringing out his law on the 8.11. So will Mr. Leroy Beauchamp.

We must for a moment on with our. Taking the U.S. draft as the basis for our review etc, in full consultation with Leg. Div. we intend to include the following points:

- a. Successor organization non-proprietary for business property.
- b. A trust for revenue profits - interest & dividends to be paid.
- c. Residence may be restitution whatever his nationality past or present.
- d. Presumption of good consideration if fair price paid up to June 38?? Presumptive date to be set from London.

Let me have a firm date when it can be sent. American say that they can wait for a compromise but time for us particularly since they want to come in on our filing office. The French are not yet sure whether they wish to join this office of ours yet - but will refer to Paris - let us know.

J.C.E. 15/28/10
J.C.P.C.

Geo. A. C. B.
: 27.1.

MINUTE SHEET

File No.
MIN/ 20648/6/PC

Minutes

Chief

29.

IMMEDIATE

I saw Mr. Pereira this morning on the draft law.

He says that the drafting will only take a few days. After that, the Ordinance must be approved by Governmental Sub-Commission and by D.M.G. and London. These are all matters which can be done quickly. But there is a rule that all Ordinances must be shown to Z.A.C. before promulgation. On a matter of this sort Z.A.C. would probably have it examined by a Sub-Committee. The Sub-Committee might take months to report, and Z.A.C. might take months in discussion. It would be possible to tell Z.A.C. that we will "brook no delay" - and that would shorten proceedings. The Z.A.C. meets on average once a month.

D 1

I doubt if we could persuade D.M.G. to depart from the rule of consulting them, particularly in the case of a law of this character and I think London will attach its former importance to committing the Germans themselves since your Law will be a Zonal one.

Pereira could not therefore give any guess at a date, but it seems that two months delay would be conservative, and three months the better guess, from the date of the draft.

He raised also one point of substance on (d) of your Minute at 28. This is, is the intention that no claim should lie in respect of transactions before June 1938 when good consideration was paid? Or, is

A —
B —

it open to claimant to prove duress otherwise? If the transaction took place after June 1938, is it the intention that claimant shall be able to prove other duress in spite of the fact that he received good consideration?

C

I venture my personal opinion as being that we might perhaps dispense with any presumption and allow a claimant to allege any form of duress, and prove it if he can. Otherwise, the presumption as stated will debar any person from recovery if he received a fair price in spite of the fact that he was threatened with, or subjected to, force in some form. This might be difficult to defend.

I have placed myself at Herchenroeder's disposal to help with the draft.

RHP

RHP/IC

30

Director,
Property Control Branch.

D.P.C.

I want A & B.

29/10/47

Is it going to be for? I don't mind if legal & pol. people accept it. 2. Please see with the draft & let me know position (then I return from tour). 3. I would also please sound Jovsee on D.
S: 30.2

31.

MINUTES

VII 111

Mr. Linnam and Suchard came to see me today. Suchard is the Zone head of French P.C. They handed me their latest project - which is at 63 A. It has been modified, & they expect others. They are most anxious to be consistent with ours, and said I would send them a copy of our project - which is now being typed, when it had been approved.

They are very angry with the Americans, and greatly concerned over the line of the declaration of unilateral action. They think the Americans will 'kick' them. They appear to have political reasons for not seeming to be led by the Americans.

General Koenig has signed their law - though they have likely to change it - they will promulgate it simultaneously if a telephone message from Linnam to the Zone can convince that.

They are anxious to use Bad - Neudorf - but await instructions from Paris.

R.H.P.
4
X.

32

- Note for draft:
- (a) repayment of consideration
 - (b) where owner was deprived of the use of compensation, he gets that back if the account is still in existence; if not, Charge against Trust II
 - (c) add further references in G. Civil Code R.H.P.

- 1. D. C. [Exec.]
- 2. Chief.

31.

62A

Legal Division declined to proceed with drafting until
 (a) they had a clear statement of principles,
 & (b) that statement was agreed by Govsec.

At 65 A. is a half margin draft of such a paper which, if you approve it, may go to Govsec for concurrence. If you would be good enough to speak to the President about it, it might greatly accelerate disposal. What enquiries I have been able to make do not suggest that we can be dispensed from going with the draft Ordinance to ZTC. - but it is possible that you might be able to persuade the Military Governor personally if you spoke to him.

I interviewed Mr. Schayer this morning who is the local representative of the Council of Jewish refugees in London. He tells me that General Clay addressed a meeting of first ministers on Tuesday last in Stuttgart as a result of which they are appointing Committees to study the American draft. This will in part further delay. The date had already been changed from 8th till 10th. If this is true, General Clay can hardly have told them that he will accept no modifications; and the door to quadripartite agreement will still be open. I do not think, however, that we can ever bring USSR and USA into agreement.

On the draft.

I have not stated a principle on the situation of a victim who was not allowed to enjoy the proceeds of a sale - whether for good or bad consideration. Where the money was paid into a blocked account - which is still identifiable - there are many - the law could provide for its restoration. Where the wrongful possessor with held payment, it might either be a legitimate additional claim against him, or it might be covered by German law. Where the money was withheld by third & other parties, it might be a charge against the Second Trust - at all events after the claimant has sought satisfaction unsuccessfully against the with holders, if he has been able to find them. The only other source I can think of is the funds of the former Reich. But we have no power to dispose of these.

I think I ought also to have included that restitution involves repayment of the original consideration paid to the payee.

For oratio.

R. H. P.
6. XI.

FIN/20648/6(PC).

M.32.

Director,
P.C. Branch.

We spoke: in regard to para. 4 of 31 I think we should incorporate in 65A the principle referred to on the lines discussed, i.e., as indicated in para. 4 of 31 and without any eventual recourse to Budgetary Funds.

2. I think para. 5 of 31 should be included in 65A after referring again to 19A.

3. In regard to both Trusts I suggest that you should include a reference implying that the Zone Commanders should have wide powers of ^{regulating} ~~requesting~~ payments from them: it seems to me essential that we must envisage a position in which the Trusts will not have funds to meet in full the claims made on it either eventually or from time to time.

4. Is the matter to be left there, e.g., scaled down payments with priorities laid down by the Zone Commander - or is there any accepted idea that if the Trust Funds are not sufficient some other funds will make up the deficit?

L.S.
D.C. (Exec.).

7.11.47.

M 33.

Received
by me
at 11 am
12/11/47
ME

D.C. (G.)

Yours M 32.

Unfortunately something went wrong with the migration of this file & it was not released in time for Mr Parker to deal with the points raised in your memo before he left for Bangkok.

2. Since the matter is urgent I have made the necessary amendments to 65A so far as I am able, without having been present at the discussions between you & Mr Parker.

3. Your para 4. It is not intended that any other funds should be made available.

ME
12/11

M 34

Mr Robertson.

PC ask Mr Parker to review this proposal on his return & Mr
will be *L.S.* 14/11

m 35

Dupuis brief (2)

London (Woodruff) came up last night asking whether we could give them any background information about the attached Article in last Sunday's Observer.

As today is an American holiday I had some difficulties in getting hold of anyone who could explain what it is all about.

It seems that the Americans wanted their Länder Governments to enact a law on the lines we have been discussing in A.C.A. But the Länder Governments objected to some half a dozen Articles & rather than modify the law the Americans decided to have a Unitary Government law.

Mr. Reinke also told me ("in the news") that when we have a law he thinks they will be willing to reopen the question of asking a joint filing review at Bad Nauheim.

The American law, enacted on the 18th Nov, is said to be a cross between the original text drafted at Stuttgart by Germans and their own text we have been discussing in A.C.A.

The title of the Observer's Article was also mentioned in the BBC news last night.

I am passing on the above to Woodruff

W.D.

11/71

J. PC

Sean

15, 11

Germans Reject Restitution Law

From Our Own Correspondent

STUTT GART, November 8.—German officials of four States in the American Zone to-night refused to enact draft legislation to return property confiscated by Hitler to victims of Nazism.

The American Military Government had failed to get support for the restitution law from the other occupying Powers, but had been trying for more than a year to persuade the German Laenderrat to pass it in the American Zone. The officials' decision not to pass the legislation may force the American authorities to issue it shortly as a decree.—Copyright.

[Culling from 'Observer' of 9/11/47]

Richard
The
with
Chief]

m 35

Reprints brief (2)

London (Woodroffe) came up last night asking whether we could give them any background information about the attached Article in last Sunday's Observer.

As today is an American holiday I had some difficulty in getting hold of anyone who could explain what it is all about.

It seems that the Americans wanted their London Government to enact a law on the lines we have been discussing in A.C.A. But the London Government objected to some half a dozen Articles & rather than modify the law the Americans decided to have a unilateral Government law.

Mr. Reindel also told me ("off the record") that when we have a law he thinks they will be willing to return the question of which a Joint Film Review at New Mendon.

The American law, enacted on the 18th Nov, is said to be a cross between the original text drafted at Stuttgart by Germany and their own text we have been discussing in A.C.A.

The title of the Observer's Article was also mentioned in the Post news last night.

I am passing on the above to Woodroffe

W.R.
11/11

J. PC

Seen 15, 11

gauche and ... from a cast unflinching in its responsive sympathy.

* Any stage version of **The Picture of Dorian Gray** must be a thing of shreds and purple patches. Constance Cox, at the Q Theatre, has chosen the proper shreds: some of her patches are dipped in the Tyrian dye of Wildean wit, others in the muddy purple of his melodrama. Jack de Leon has added baleful lighting; and Barry Morse (as the apostle of hedonism), Vernon Greeves (seeking to animate Dorian's wax), and Lesley Brook (gliding gracefully down the years), do much for a play that trails the stage like a resplendent and tattered cloak. J. C. T.

Travers Otway's **THE HIDDEN YEARS** which will continue its Boltons run until November 23, will be staged later in the West End.

[Notes
for
Chief]

MINUTE SHEET

M.36

D. Chief (Exec.)

Your M. 32.

I have read the amendments made on 65A by Mr. Emberton and agree with them.

You were good enough to discuss with me this morning and I observed that the problem is in two halves. The first might be called "Property" and the other "Profit".

In the first case the victim recovers his property. If there is no victim but there is property it goes to the first trust.

In the second case, on a claim being decreed in favour of a victim, (or if there is no victim) ~~by~~ the Heirless Trust, The Second Trust has a claim for mesne profits during dispossession. The Trust claims these from the Restitution Authority against the wrongful possessor. If it succeeds, (and it can only fail if there are no profits or no wrongful possessor) it pays the proceeds into the Trust account. It expends those proceeds within the terms of its reference. We shall have to arrange for notification to the Trust of all decided claims, by Bad Nenndorf.

I do not think that anyone can now forecast whether the funds which the Trust will obtain will be sufficient or will be insufficient. No one can have any idea of how many indigent victims there will be who will require pensions, or victims who require temporary or continuous medical treatment, or how many indigent persons will require capital sums to start up in business, or how many costs of education will arise. I would say that all these would be fair charges on the Trust. Second, no one can say how far it will be possible to realise mesne profits, which (in many cases) may be due from bankrupt firms, or from men of straw. I think the only thing to do is to give power to the Trustees, when we draw up its terms, to manage their affairs as seems best to them having regard to the necessity of using the money as and when they get it for our humanitarian purpose. If I were a trustee, for example, I should begin with the pursuit of substantial and recoverable claims, and when I had sufficient in hand for a minimum volume of claimants I should then give priority to pensions, sick relief and education.

I would propose to add in consequence of 19A to the paper a paragraph which will say that we wish to prevent any assignments of property, or any assignment of claim, by any victim being valid. Otherwise an highly speculative market will grow up by sale by people who do not wish to return to Germany to Spivs (if Parliamentary usage authorizes that word!) in Germany.

R.H.P.

Director,
Property Control Branch.

RHP/IC

17th November 1947.

FIN/20648/6(PC).

M.37.

To: Chief.

Director, P.C. informs me you wish urgently to see 65A.
M. 31, 32 and 36 refer.

2. I recommend the substance of the last paragraph of M.36 should be incorporated in 65A.

3. There is no certainty that either of the Trusts will have sufficient funds to meet in full claims legitimately lodged against them and I understand that it is accepted policy that no eventual recourse to Budgetary funds will be provided for in the law now to be prepared.

LS

D.C. (Exec.).

18.11.47.

38.

See the following points brought out. Slightly amended.

- a. All victims wherever resident of whatever nationality.
- b. Payments to be subject to Law 53?

2. Giving the D.C. wide powers. In the he will need advice and an administration. Is he likely to get this for any length of time? Can we not have more to the Trustees.

3. Simultaneously to sending this to Leg. Div. should it go to London, a shall we await Leg. Div's draft first. I rather favour the latter as M. desires.

Grant

*J.C.
D.P.C.*

[Signature]
23.11

Discuss. Pl. pursue

as arranged.

[Signature]
24.11

D. C. (e)

S. G. H.

15.

257 "

I enclose a fair memorandum of the principles of the Law of restitution for your signature and despatch to the President G.S.C. if you agree.

I have amended the primitive text at 65 A in the light of the minutes from 31.

You will notice too that I have rearranged the text in order to make its development more precisely logical, and have separated the different groups of principles into four parts for convenience in drafting.

I have also re-written a few sentences, and inserted a few sentences in order to clear away latent or patent ambiguities in the text.

You will however notice one change.

In the inserted amendment to 65 A, recourse is given in the first instance when a victim did not receive consideration to the Second - the mere profits - trust. I have conceded this in favour of the First Trust - the heirless property - for it seemed to me to be more certain, since we know that that will possess property, and more logical since it will represent a deduction from what the donor will ultimately receive; and they are the descendants of that State which allowed the wrong to be done.

We cannot really hold the original dispossessor responsible through mere profits for the wrongs done by other people, since the benefit of that Trust is wholly for victims in general it would be giving this kind of victim a special claim as against others or injurious to others.

Would you be good enough to speak personally to Mr. Steel and beg him to make all the speed he can in his examination & concurrence in the paper. He can do no more than that is done.

You might also ask whether the draft Ordinance must go to ZAC. (M. 29. 30.)

I think it ought for that is the general rule, and this is particularly a matter in which we ought to commit the Germans themselves, which they would have fair grounds for complaint as respects if they were not consulted. But it will consume a great deal more time - perhaps 2 or 3 months.

RHP

I will.

V.

(40.)

Duncanson
 Now Hampshire that his Eric didn't want
 you to go to London until early in January - when
 the position about resolutions should be clearer.
 He seemed rather taken aback & said that they were
 under considerable pressure in London to get on as
 quickly as possible with the resolution ordinance. Now
 him that although we had been pressing hard we hadn't
 yet got the comments of Gov. Sub on the principles
 that therefore it would be unwise to make any
 proposals to the Privy Council in London at this time.
 He appreciated that point, but went on to say that
 he thought that the question of re-employment could
 wait until early January. He would however discuss
 with Mr. Miller and if necessary he would ring his
 Eric.

M.
 9/12

MINUTE SHEET

File No.
PIN/

Minutes 41.

IMMEDIATE

Sir John Sheehy.

Would you please see M.40. I was out yesterday but found a message from James that London wish me to attend a Board after all, the date not being fixed but possibly next week. Emberton says he was not fully aware of Chief's former views but when told, engaged to speak to Chief.

I venture to think that the objections to my going to London to a Board are as strong as they were before on the score of waste of time and public money, and I have agreed to various P.C.C., G.E.P.C. and other more or less important engagements that I should be unwilling to abandon, together with the urgent work arising out of our Conference with Chief yesterday. In spite of the information in M.40, I still think that it would be premature for me to discuss in London before our draft law is settled here, and the other Military Governors decisions made.

Would you very kindly obtain Chief's orders? My submission is that both reasons for the journey should be over-ruled.

R.H. Parker

10/12/47

RHP/IC

RC(E)

Director,
Property Control Branch.

42

I agree. Would Mr. Foster
~~Sir John~~ please speak to
London if necessary.

43.

[Signature]
10.12.

ADSSS.

PC still with Mr Parker's personal file

15. 19.12.47

M. 44

Director,
Property Control Branch.

I have gone into the matters referred to in Minute 41 and have informed Mr. Hampshire that Mr. Parker cannot get to London until early in January when he will be there for the purpose of attending a Board about his Extension of Service. I have gone into the question of this Board being held in London and the authorities concerned are adamant that it must be held in London. A.D.S. & S. is arranging for Mr. Parker to be informed of the date of the Board.

15

12 December 1947.Deputy Chief (Exec)Copy to: Mr. Parker's personal file.

45.

Sir John Shesby:

At 66 A is President Govt. S/Commissioner's
reply to 65A.

It is not a torpedo as I was led to
suppose it would be unless para 1
conceals it.

But I am afraid we shall have to reply
to it which makes a further delay
on top of the delay from 24th xi - 10. xii
which Steele has already created.

The answers are that London is very
well aware that all hope is abandoned
& French and Americans have already
legislated separably. (Para 1)

(Para 2) we obviously shall not adopt all
the provisions of American draft law
when we agree them because as
our principles in part differ, part of
the American will be irrelevant. Part
was always - from ideas - redundant.

Para: (3) The answer is "Yes".

Para: (4) ~~he has said exactly what~~
~~she says.~~ ~~He has not understood text.~~

We say that the plea that good consideration
was paid will not be a defence after 1938.
It is a defence before.

in transactions after 1938, I doubt if good consideration was ever paid, or if certainly was never paid in foreign assets. I should not mind dropping the clause, & leaving the law for the Courts to make retaining the part which bars a claim before 1938 if good consideration was paid & there was no other duress.

To save time, (if you agree) do you think that Chief could obtain President's consent on the 'phone?' O'Brien

I am afraid that we shall not get this to Legal Division till after Xmas.

R. H. Parker.
13. 12.

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

MINUTE SHEET

I.O.M. 46

TO: Sir John Sheehy

I do not like the idea of encouraging foreign organisations to come to Germany for the purpose of prosecuting claims against Germans. I like still less the idea of giving such an organisation any semi-official position, or of implying that we have any responsibility for it. A foreign organisation is bound to meet with special opposition, and is certain to claim our special assistance. This will place us in an inconvenient situation especially as some of their claims will be false or ambiguous or opinionated.

Ordinarily speaking I should like to see the whole business left to the normal course of things when a man employs a lawyer or other agent to prosecute recovery of some due owing to him.

In that view, it might be left to any community or section of the public to set up an agency if it thought its interests would be best served in that way: and that agency can be incorporated under German Law in Germany. Or if there is really an opening, private enterprize will certainly fill it.

I do recognize that there is a shortage of special kinds of advisor, for example there are very few Jewish lawyers. It would be reasonable if we were to permit them to work for a Jewish Agency in Germany and sponsor their residence here for that purpose. They ought to live on the German economy and at their own expense, and I do not think we should give an Agency of this sort any special financial privileges.

We ourselves would only be concerned with the claimant himself. We should not put the Agency in place of him: except in so far as one corresponds with a firm of lawyers on behalf of their client: we certainly should not acquiesce in any claim of an Agency to negotiate on behalf of the community which had promoted it. If it is incorporated in Germany I should not see any objection to an Agency managing recovered property. It would not be able to export any revenue. The function of an Agency cannot arise till we have the Ordinance for it is only then that people will know who can claim for what.

If you agree, I will reply to 67a(2) on the above lines.

I believe Chief expressed a wish to see the discussion of this point. He had in mind the possibility of deciding it by a reference to Military Governor. I do not know that the decision is as weighty as that if we stipulate for no official recognition and a German incorporation for which would give very limited facilities facilitating entry.

R. H. Parker.

RHP/IC

Director,
Property Control Branch.

15/12/47

Sir John Streeby.

47

I enclose a letter to Streeby as by A in
reply to 66A after discussion
with you.

This, I think, is explanatory. Perhaps,
however, the Chief would sign if you
agree, as we are taking Streeby's
consent for granted.

65A (I) would have the passages in
[A] brackets omitted for drafting the
Ordinance.

R.H. Parker.

48

17. xii.

Chief

I have suggested amendments with the draft as I
think we might go the whole way with Mrs.
Gov. Sir. Commissioner.

Streeby
D(R)

18.12.47 This reached me
today.

[Signature]
1/2/48

50

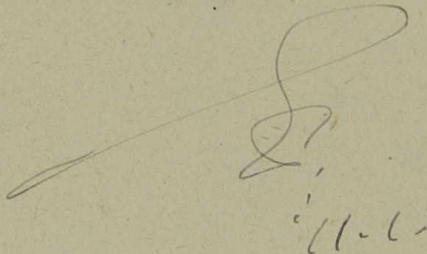
Mr. Crampton.

would you let me know urgently
what were the Chief's orders
in regard to M 46. and 47.
(68 A. & 69 A. refer.) ?

R. H. Parker.
11. 1. 48.

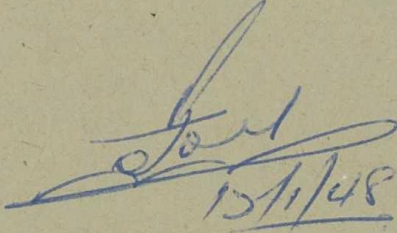
51

Shaw has the
been since 18.12?



Chief
Mr. Crampton. 52

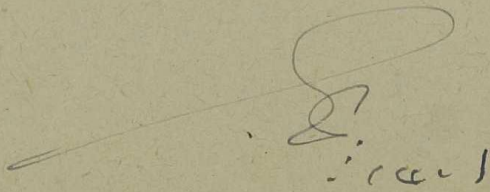
This file was intercepted by
Mr. Mansel (PC) and passed to
Mr. Buxton who left it in his
desk when he proceeded to
Pulbucke. It has not passed
through the transit section since
that date


15/1/48

53

D/O.C.

look into the with Mr. Brierley



FIN DIV

MINUTES

1754

Mr. Emberton:

I saw Chief this afternoon. I confess to have felt extremely angry (and ashamed) on account of the facts in M. 52

This has caused another delay of almost a month, and I find Sir Victor's action in intercepting a file between D.C. D.P.C. & Chief, and then doing nothing, and leaving it indefinitely in a cupboard quite fantastically inexplicable. I shall be in London next week, so will you ask Mr. Brink for an explanation please?

(6)

I related to Chief what happened in CORE

Yesterday - viz: that Victor's was removed from agenda - so there is no impediment to proceeding, & we can send 65 A (read with 70 A.) to legal for drafting. By the way,

"persons" in 65 A. I. 2nd para: means juristic as well as natural persons: &

we want power to make Bad. Verordnung a restitution authority for non-monetary gold.

Would you please proceed as far as possible.

R.H.P.

16. 1.

FIN DIV

MINUTES

M, 55

To: D.C. (E)

*undemonstrated
for claims* →

You will recall that Chief sent me to London to attend on Tuesday 20th January, a meeting between Foreign Office (Mr. Hampshire), Board of Trade (Mr. Branch), and numerous representatives of Jewish organisations. This took place and we shall get the Minutes in due course. It principally concerned itself with the formation of an undermentioned "self-help" agency in London, and discussion of the problems and modus operandi of the same. Arising from a preliminary discussion (Hampshire, Branch, myself) we kept the draft Ordinance off the agenda, though many of the representatives tried to import it especially on the subject of heirless property. It is quite clear to me that Norfolk House will have violent battles on that, in which the other side will be supported by Sir A. Brown (Legal Adviser). No reference was made to our scheme for interim profits, which therefore can probably not have reached them yet. I overheard Sir A. Brown deprecating if true to Hampshire the rumour that we favour the French Law as against the American. Sir A. Brown was a partner of a firm of Jewish Solicitors, has a number of Jewish lawyers on his research staff, and married into that community. My part consisted of explaining General Order No. 10 and giving its statistics, explaining the administrative layout of Bad Nenndorf and the historical procession of the draft-Ordinance. Asked whether they would be consulted on the law before it was issued, it was explained that that decision would fall to Norfolk and not to York House. The Chancellor has, however, undertaken to show the draft to the Central Committee for Jewish Refugees.

In the preliminary discussion with Hampshire, I found that Norfolk House wishes to maintain the clauses omitted ~~and~~ in consequence of Steel's views in 65A at A, and to put the date in 1933 and not in 1939. All that we can do is to touch on that point when we forward the draft. Our position is that we would have agreed to any date if the others had agreed to one, and we agreed with Steel (as a compromise,) to leave out any. If London really feels very strongly about it, they must over-rule Steel.

Hampshire's other point was that they do not like heirless property reverting ultimately to the Lander. I suggested either (a) that we should so word the terms of reference of the trust and its period so as virtually to exclude the possibility of a residuum or (b) that we should make the reversion usable for purely charitable purposes with a first claim being reserved for "founders kin".

We agreed that we did not see any objection to (in the precedent of Directive 50,) granting heirship of property to an approved successor organisation incorporated in Germany. By this we mean that if, according to Talmudic rules, a new Cologne Synagogue were canonically set up, it could inherit the property of the suppressed synagogue, which was founded under Claudius Caesar.

I pointed out that the more people tried to improve the Ordinance, the longer it would be before anyone got any restitution, but I think we may be compelled to compromise on the lines I have suggested on heirless property, and I think that there will be really great trouble over mesne profits!

R. H. Parker

28/1/48

Director,
Property Control Branch.

RHP/IC

PC.

2579

Control Commission for Germany (British Element)

**Outgoing Secret Cipher Message
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File

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TO: FOREIGN OFFICE.

OYB 00681

TEL NO. 0245 BASIC

ORIGINATED 1245 16 JANUARY 48

16 JANUARY 48

RECD AT 1255 16 JANUARY 48

CYPHER.

IMMEDIATE.

FINANCE DIVISION REGISTRY
17 JAN. 1948
ENTRY TO FILE 20648/16

Attention Mr. Hampshire.

Subject is victims of Nazi persecution.

1. At CORC yesterday CORC P. 47 253 was discussed. This is DFIN/MEMO/47/149 putting the four points of main disagreement up for reconciliation.

2. British representative put first point to the Committee observing that our view was that people should qualify on account of their victimisation notwithstanding new nationality, or German residence. Soviet maintained its disagreement, after some complaint against American and French unilateral action, and after saying that Soviet would not recognize their laws. The other three points were not discussed, and the subject was ordered to be removed from the Agenda for good.

3. Americans have put a duplicate of their Zonal Law into Commandatura in an unthought out attempt to get unity in Berlin. It will obviously founder on the four points in Kommandatura as well when it will vanish from their Agenda or return to CORC.

4. The effect of the greed of the interested parties in compelling Americans to refuse compromise is to deprive all victims of a common remedy and many victims of their equitable rights, and, until some solution is found, all victims from all restitution in greater Berlin.

5. The most we can hope for is that some time in the future Kommandatura will agree to apply Zonal Laws in respective sectors. It is possible that Soviet statement on non-recognition of American and French Laws may prevent even this unison.

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PC.

*Mr. Hadley**This letter should
be on our Draft Ordinance
file.**(44/57)*

File: FIN/20648/2/PG

13th January, 1948

My Dear Hampshire,

Many thanks for the transmission of the Legal Research Unit's opinions on the American and French Laws which I received this morning and hasten to put down preliminary thoughts on in view of the Conference on Tuesday next week.

For your information Reinsel tells me that he will have a Restitution Authority and Court "at work" in the American Zone in about a fortnight. This will be pure "window dressing" for they have as yet no ordered machinery for the processing of claims but it will satisfy the Americans as long as it actually exists!

With great respect, the L.R.U. has not taken sufficiently into account the different legislative technique of different countries. The French Legislator states in a law the principles which it makes binding. The implementation of those principles is left to the Courts (both of first instance and of cessation) and (as you know), the French pay little respect to the creation of case law - though that respect is beginning somewhat to increase.

The principle on which both we and the French parted company with the Americans is that there is no case for putting the Jewish victim in a superior position, either as to proving his claim, or as to what he recovers to any other victim. Our second principle is that we wish neither to create a perpetual trust in favour of victims, nor to devise some administrative scheme whereby any residue of the trust funds should be dispersed in decimal fractions among the observable surviving victims or their heirs. In leaving (to avoid both of these) a final reversion to the Lander, we might very well, I think, prescribe that its use would be limited to charitable purposes, with a preference to be shown to "founders kin". The principle of reversion to Lander was approved by General Robertson, and is, or will be, applied in the Russian and the French Zones.

We are all agreed, (except the Russians) that a person who was a victim and entitled to restitution remains so, even though he is no longer a German but has become an Englishman, an American, or a Spaniard (like Mr. Mendelssohn!).

I am not very easy about this Conference (first) because things are such that I can only be non-committal and take note: and (secondly) as we are all aware, we do not intend to go much nearer to the Americans than the French have done. As you know, our draft Ordinance will have to go either to Z.A.C. or the Standing Conference of Minister Präsidenten: that would not only preclude any law similar to the American Law, (General Clay was forced to over-ride the Lander in his own Zone and make an OMGUS law when he wanted a Lander-law) but will also enable you to ride away, I hope, from the natural disappointment which the British Jewish Organisations are bound to encounter.

Yours very sincerely,

G.P. Hampshire, Esq.,
Foreign Office (German Section),
Norfolk House,
LONDON.

C.C. (Admin.) 2

Central Claims Regis
Property Control
186, HQ. C.C.G. (BE)
B.A.O.R. 5

23rd January, 1948

To:

J.J. Emberton, Esq.
Property Control Branch,
HQ. Finance Division,
C.C.G. (BE)
Berlin / B.A.O.R.
York-House.

20648/6

Copy handed to Mr. Kelly 5/2/48
DB

Dear Emberton,

I am glad to be able to inform you that I am commencing to receive some official communications. The one I am most interested in, viz. your Statement of Principles on which our Law is to be based, just happens to be indecipherable. Could I trouble you to have a legible copy sent?

Two points I should like to mention arising out of the portion that I could decipher:

- (1) In clause 1 you refer to tangible and identifiable property. Are you deliberately excluding intangible property (the American Law Article I retains both tangibles and intangibles)?
- (2) Your definition of identifiability as meaning either at the date of dispossession or now is going to lead to a whole host of difficulties. Out of what fund are you going to pay for the property which was identifiable at date of dispossession, but which no longer exists or which cannot be traced?

None

The French Law, Article 4, restricts identifiability to the date when the claim is made. From the practical angle this is the only feasible proposition.

Yours sincerely,

Margaret J. Kelly

MJPK/T

P.S. I have received a communication from Lubbecke informing me that I was posted on 10th inst to Investigations Branch. Fin. Div. Is this a distinction without any practical meaning?

Yes.

ZIV/20648/5(FO)III

Property Control Branch,
Finance Division,
H.Q. C.C.G. (BE),
Berlin, BAOR.

72A

January, 1948.

19 January, 1948.

To: Legal Division,
Lancaster House,
Berlin. (Via Mr. Rosenkrantz)

Draft law on restitution to victims of Nazi
persecution.

1. I append a statement of the principles of an Ordinance to be promulgated in the British Zone enabling certain classes of victims of Nazi persecution to recover their tangible and identifiable property and should be obliged if the drafting of such an Ordinance embodying these principles could be undertaken at your earliest convenience. These principles have received the concurrence of the Governmental Sub-Commission.

2. While we are anxious that there should not be any more divergence between the French and American legislation on this subject than is necessary, the difference in principle will render a good deal of the American text irrelevant.

3. It should be noted that "persons" in Part I of the statement of principles includes juristic as well as natural persons and I should be obliged if the clause providing for the setting up of Restitution Agencies could be drafted in such a manner that it would be possible for the Zone Commander to appoint the German Central Filing Agency for Claims at Reichsgericht to be a Restitution Agency.

Statement of Principles

Part I

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

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

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

I

The form of tyranny which it is now intended to redress is the wrongful dispossession of their tangible and identifiable property of persons when that wrongful (or tyrannous) dispossession or dispossession by duress was by reason of the race, creed, nationality or political opinion of the person who was dispossessed. It is however intended that when good consideration was paid as between the possessor and the dispossessor ~~the~~ the

former/.....

former possessor shall not be entitled to restitution unless he can prove duress in another way. By "identifiable" is meant identifiable either at the date of dispossession or now. By "wrongful dispossession" is meant dispossession as a result of tyranny or duress. By "person" is meant any person victimized on account of his race, nationality, creed or political opinion wherever resident and of whatever present nationality and includes his lawful heir and successor (but not his assigns).

Where a victim was not allowed to enjoy the proceeds of a sale that law should provide for its restoration. For example some proceeds were paid in to blocked accounts which are still identifiable. Where the original wrongful possessor withheld payment it might be either an additional claim against him, or perhaps it can be covered by a reference to German law. Where it was withheld by third or subsequent or other parties it might be a charge against the First of the trusts mentioned below - perhaps after the claimant has pursued the with-holders unsuccessfully. The intention is that in circumstances should there be a liability against Budgetary Funds. In other cases, it is intended that restitution should involve repayment of the original consideration paid to claimant.

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

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

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

So much for the position as between the possessor and the original wrongful dispossessor subject to what is said later on some profits. The victim will receive back his property such as it is and such as it lies. The remedy of the victim against persons who acquired title from the wrongful dispossessor is the remedy given in wrongful possession by the ordinary German Civil Code (vide 617-624, 1909 etc.)

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

II

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

It is not intended that the victim should be able to claim against the wrongful

possessor/.....