

Occupation:
Military Currency

EMBASSY OF THE UNITED STATES OF AMERICA

MISSION FOR ECONOMIC AFFAIRS

1, Grosvenor Square,

London, W. 1.

AIR POUCH

May 22nd, 1944

No. 4

Mr. Harry D. White
Assistant to the Secretary of the Treasury,
Treasury Department,
Washington, D. C.

Dear Mr. White,

As of interest to the division I am enclosing an article by Thomas Balogh on "Invasion Exchange Rates" together with comment from the Economist of May 13th, 1944.

The economic journals of this land are filled with articles by various people dealing with the question of exchange rates and exchange valuations. Most of these have little interest other than academic. This is not true of the publications of Dr. Balogh. He was associated before the war with O.T. Falk, as economist to that brokerage firm, and was one of a group which, during the 1930's, met frequently to discuss economic questions. Keynes often attended these discussions. On the outbreak of war, Balogh, who had a very extensive knowledge of the German economy and finance - and realized what Total War meant, was very influential with certain M.P.'s who were trying to prod the Chamberlain Government into a more effective war effort on the economic side. His usefulness as adviser somewhat lessened in 1940. Today, however, he is said to be the moving spirit behind a group of M.P.'s who have formed themselves in the "Parliamentary Economic Policy Committee". He evidently inspired much of the opposition to the Monetary Fund. This is more than obvious from, e.g. the speeches of Shinwell (Labor) and Boothby (Conservative) in the debate in the Commons on May 10th.

Balogh, who like others not British born, could get no war job with the Government, nor with the Nuffield Survey headed by G.D.H. Cole. The Oxford Institute of Statistics was established chiefly to give an opportunity to Balogh and certain refugee economists to work and write on current economic problems.

Balogh's ideas are considered sufficiently important that Keynes took the trouble to write a letter to "The Times", a copy of which is enclosed, refuting some of Balogh's ideas in respect to the fund.

Sincerely yours,

cc: Glasser, Luxford, Aarons, Tomlinson, Gold
Hoffman, Taylor (files)

s/s W. H. Taylor

THE MONETARY PLAN

Convertibility of Sterling

Times, May 20, 1944

A REPLY FROM LORD KEYNES

TO THE EDITOR OF THE TIMES

Sir, --Since the monetary proposals are concerned only with currency, they involve no commitments about commercial arrangements. But Dr Balogh is, of course, under a strange misapprehension if he believes that they do not even involve commitments about currency. For this would be contrary to the plain meaning and purpose of the plan.

During the transitional period the war-time restrictions can be maintained and adapted, as will be unfortunately inevitable. But after the transitional period, with a saving clause for the abnormal war balances, the members of the fund undertake to maintain inter-convertibility of their currencies. In particular they agree to refrain from bilateral agreements which would have the effect of restricting the availability of foreign-owned funds arising out of current transactions. In other words, we shall all be free, having sold our exports in one country, to spend the proceeds in any other country.

Indeed, this is one of the main objects and merits of the plan. No country has more to gain from it than ourselves. For it is a characteristic of our trade that our important sources of supply are not always our best customers. Moreover, if our permanent policy involves us in having many different kinds of sterling, each subject to different conditions of use, farewell to London as an international centre. Farewell, also, to the sterling area and all that it stands for. Our traditional arrangements were based on the general convertibility of sterling; for who, except in conditions of war and out of a readiness to help us finance it, would bank in London if the funds deposited there were not freely available? To adapt a famous phrase, Schachtian minds ill consort with great Empires. Since we are not (so far as I am aware), except perhaps Dr. Balogh, disciples of Dr. ~~Kaung~~ Schacht, it is greatly to our interest that others should agree to refrain from such disastrous practices.

As to capital movements, whether within or outside the sterling area, members of the fund agree not to make "a large or continuing use" of the resources of the fund to invest abroad. They are free to do what they like out of their own resources. Thus no capital transaction, which would be within our capacity in the absence of the fund, is put beyond it by the existence of the fund. In any case, some control of oversea capital issues will be required to prevent loans on a scale beyond our capacity.

All this is set forth in the plan in the plain English for which Dr. Balogh asks, but which apparently he cannot understand.

Yours, & c.,

KEYNES

May 18

Although it may be assumed that all decisions about the exchange rates, to be applied in liberated European territories have now been taken, the public debate on the subject has been far from stilled. The latest contribution to it is by Dr. Thomas Balogh and appears in the current bulletin of the Institute of Statistics, Oxford. Dr. Balogh is no new-comer to this discussion and his views are by now familiar. They are based on the desire to save the liberated territories from denudation of goods and services and other kinds of exploitation at the hands of the liberating armies. Dr. Balogh argues that

the sole justifiable criterion for fixing rates of exchange between the free and the liberated territories is to establish socially sound relations between the armies of liberation and their civilian allies.

The calculation of parities should, therefore, take no account of price movements, monetary inflation, and other comparable data. They should be based solely on the prevailing level of wages in the liberated regions, and the exchange rates chosen should give the average wage a value comparing not unfavourably with the pay of the most highly paid liberating troops. Dr. Balogh is prepared to admit that the curtailment of Allied troops' expenditure in liberated territories might be achieved by more direct means than through the appropriate fixing of rates of exchange, namely by blocking part of their pay, but he does so with obvious reluctance. What is new in the argument is Dr. Balogh's candid exposition of the reasons for refusing to consider the criteria which have in the past determined the exchange value of currencies, namely, those factors that make up the domestic purchasing power of each currency. These considerations for *laissez-faire* economic systems, writes Dr. Balogh, are not relevant under the conditions that are likely to obtain in Western Europe. He argues that

all internal and international economic relations of the liberated territories will remain under strict control for an indefinite period. Internal production and consumption and a fortiori exports and imports will be determined not by the free interaction of demand and supply in the free markets and the resultant prices and income distribution, but by deliberate decisions.

An "indefinite period" is a very long time to assign to the completely centralised control of the economic system which countries such as France, Holland, Belgium and Norway will tolerate after the war. Perhaps Dr. Balogh has unconsciously distorted the sequence of his argument. By arguing in favour of rates of exchange which are "socially desirable" but at variance with every economic criterion, does he hope to maintain the chaos and confusion in which the continuance of wholly centralised controls is the only method of making the machine work?

FIXING EXCHANGE RATES IN WAR

The prolonged controversy about the rate of exchange fixed by the U. S. and U. K. Governments for the French Empire Franc and the Empire and Metropolitan Lire raises interesting and important theoretical issues. It appears likely from the levels at which these currencies were fixed that the two Treasuries (and War Departments) concerned must have been influenced in their decision by purchasing power parities reckoned on the basis of pre-war parities and the subsequent price-movement, and by the relative size and rate of increase of the National Debts and banknote circulation in the Allied and liberated (or conquered) territories respectively. It does not seem possible that in acting on the basis of these considerations the Allied Governments were wishing to aggravate the position in the territories they desire to free from the Nazi yoke. There can be little doubt, however, that the rates fixed were both in the Italian and, until subsequently corrected, in the French territories less favourable to those territories than the rates fixed by the Nazis for the mark, having due regard to the respective movements of wages and prices in Germany and in the Western Democracies. ^{1/} This does not necessarily mean that the position of those territories worsened as a result of the Allied occupation. The rate of exchange is only one of the determinants of the degree of exploitation of a territory. The amount of marks, dollars and pounds spent there by the Nazis and Allies respectively co-determines with the rate of exchange the quantum of goods and services absorbed, by troops in occupation and their Governments. The amount of supplies sent in (and taken out or destroyed without payment) is a further factor. The rate of exchange however, as we shall see, mainly determines the relations between the soldiers and the civilians.

The apparent contradiction between the intentions of the Allies and the results of their exchange policy can be sufficiently explained by the curious prestige exchange depreciation has acquired as a means of 'readjustment' in the minds of a number of eminent experts. From the difficulties caused to Britain by the over-valuation of sterling in 1925 it seems now to be argued that an under-valuation of the currency would speed 'readjustment.'

Whatever the merits of such considerations for laissez-faire economic systems in peace-time -- and there seem good reasons to doubt their general validity -- it is obvious that they are not relevant under conditions which have obtained in Africa and the Mediterranean and are likely to obtain in Western Europe. All internal and international economic relations of the liberated (conquered) territories will remain under strict direct control for an indefinite period. Internal production and consumption and a fortiori exports and imports will be determined not by the free interaction of demand and supply in free markets and the resultant prices and income distribution, but by deliberate decisions.

^{1/} Cf. Appendix, Table 1.

The sole 'free' or 'free-ish' point of contact between these territories and the Allies will be the expenditure of the Allied Armies in them. This expenditure consists of two parts: the purchases by the Armies of goods and services, and the private consumption out of pay of the Allied personnel. In the case of Allied territories these expenditures result either in foreign exchange income to the liberated territory which it can use for the purpose of acquiring foreign supplies (as transport permits) or a credit on the Mutual Aid account. In the case of enemy or ex-enemy territories these payments will, presumably, represent an offset against occupation cost or reparation liabilities of the enemy Government.

Now most of these expenditures financed by payments in 'home' currency will be used for services or products in which labour costs are heavy. For other supplies will be short and will have to be brought from abroad. The rate of exchange therefore fixes primarily the value of Allied (or enemy) labour in terms of the currencies of the Western Democracies. A low exchange therefore represents an undervaluation of these services in terms of U.S. or U.K. labour and the price of the products of that labour. It means that we force the liberated territories to pay extremely heavily for U.S. and U.K. products, in terms of their labour, and place at the disposal of the troops disproportionate amounts of services. Only in conditions of less than full employment and given a complete inability to increase real income by home measures can an undervaluation be considered as conceivably favourable to the country indulging in it. The dominance of the economics of under-employment is such that this does not seem to be realised.

1/ The dollar/pound rate should be at least \$6 to the £ if not \$8 to the £ to give any justifiable relative values for U.K. in terms of U.S. labour.

2/ Apart from the immediate evils discussed, the present method of fixing exchange rates (if those exchange rates become quasi-permanent and serve as the basis of post-war currency schemes) has longer run drawbacks. It disregards the fact that the economic system of these countries has been forced to work for the Nazi war machine. When prisoners and forced labour return to these territories, unless further terrible damage is done to plant, their supply and demand position will completely alter, for they will be able to increase output greatly. Their internal and international competitive position will change radically and a grave risk arises that their currency, fixed on ephemeral considerations of war-time misfortune, will be out of alignment with the Allied countries. How little the facts of the situation are realised is shown by an article in the Manchester Guardian, April 11th, 1944, which argues that though a 'dear' franc would be favourable to France during, it might be deleterious after the war. Many remaining disequilibria can be dealt with after the first shock of hostilities is over, and, reconstruction having begun, some idea can be formed of the eventual relative international position of these countries and the economic systems they wish to establish. It has been argued by some that a provisional fixing of the exchange rates would be detrimental to the interests of these countries as it would give rise to lack of confidence and speculative activities. As matters stand, speculative activities are wholly impossible if for no other reason than because complete exchange control has been established in Britain and in America. No doubt some part of the population may indulge in buying sterling or dollar notes in the Black Market. This, however, has

The possibilities of providing fresh supplies to the civilian in these territories, who have suffered grievously by the combined effect of Nazi looting and Allied bombing-cum-blockade, will depend on military exigencies. 3/ But it is important that the Allied troops and authorities should not deplete further the scant supplies in these areas, that they established during Nazi occupation. All violent military disturbance would, necessarily, result in hardship and profiteering until the new ~~territorial~~ relations determined by the presence of the Allied Armies in the liberated territories have worked themselves out throughout the system (and even then recipients of fixed contractual payments will remain in a permanently weakened position). It is neither humane nor politic — apart from all economic considerations — to fix exchange rates at levels at which the current incomes of workers in the liberated territories represent a different order of magnitude than the pocket money which certain Allied troops can spend in the territory. The payment of the troops in part inconvertibly in their home currency would provide some mitigation of the immediate supply position. 4/ But it is not an adequate substitute for a correct fixing of exchanges in view of the intergovernmental payments which will otherwise bedevil the post-war period. Under conditions of war the sole justifiable criterion for fixing the rates of exchange between the free and the liberated territories is to establish socially sound relations between the armies of liberation and their civilian allies. The attitude adopted with respect to this problem is the more curious as the British Government in home economic affairs pursued exactly the opposite policy.

T. BALOOH.

2/ (cont'd.)

has no economic significance as long as exchange control is enforced and there can be no doubt that exchange control can and will be enforced. In many cases some of the readjustment could be made with great advantage to the liberated countries by measures other than depreciation (cf. my article BULLETIN Vol. 6, No. 3). It would be reckless to depreciate the exchange in order to inflate the price level so as to lighten the real burden of the National Debt or the real value of the existing cash (bank notes plus bank deposits). As long as direct controls are maintained such considerations have no meaning.

3/ Though there would seem to be some possibility of providing supplies by cuts in the British standard of life which still permits a considerable elasticity. Accumulated stocks could to some extent be prudently used as the total shipping tonnage at the disposal of the Allies mounts. A greater discipline on the part of the U.S. consumer is, unfortunately, not to be expected.

4/ This has been suggested by the present author in a letter to the Economist (June 1942) for U.S. troops in the U.K. The adoption of that proposal would have eased the social and economic problem in this country created by the presence of U.S. troops.

(INSTITUTE OF STATISTICS, OXFORD, Bulletin Vol. 6, April 8, 1944, No. 5, pp.73-75)
Enclosure from W.H. Taylor

100 Cent.

LETTER TO BE SENT BY M. MENDES-FRANCE TO THE SECRETARY OF THE TREASURY

Dear Mr. Secretary:

Reference is made to my letter to you dated May 15, 1944, relative to the printing of franc notes to be used in France by the French civilian authorities upon liberation, and to subsequent conversations I have had with representatives of your Department.

I am setting forth below my understanding of the terms and conditions upon which the franc notes referred to above will be printed:

(1) There will be printed 305 million individual franc notes of a total value of 300 billion francs as follows:

<u>Number</u>	<u>Denomination</u>	<u>Franc Value</u>
50 million	500 franc	25 billion
250 million	1000 franc	250 billion
5 billion	5000 franc	25 billion

(2) The franc notes will be exactly the same in design as those notes which are currently being printed for the Supreme Commander, Allied Expeditionary Forces, except that the word "FRANCE" will be substituted for the phrase "UNIS EN FRANCE" in two places on the face of the notes and for the flag on the back of the notes.

(3) Printing of the notes will begin as soon as possible after June 15, 1944, when the printing of notes for the Supreme Commander, Allied Expeditionary Forces, is scheduled to be completed, and will be completed as soon thereafter as available facilities will permit.

(4) The notes will not be released to French control until such time as the decision to release them can appropriately be made by the Government of the United States.

(5) The French Committee of National Liberation will pay in dollars the full cost of manufacturing, shipping, and storing the notes, at such times and in such amounts as the Secretary of the Treasury shall request. Payment may be called for as often as may be necessary to keep the United States currently reimbursed for such costs. *In no event shall payment be conditional upon release of the notes to French civilian authorities.*

It is also my understanding that you will explore the possibility of complying with my request that the notes be stored one-half in Great Britain and one-half in North Africa under the control of the Supreme Commander until such time as their release to French civilian authorities may be authorized; and that you will investigate the availability of additional printing facilities which would expedite the completing of the notes, particularly if this initial order should be increased.

If you agree that my understanding of the terms and conditions upon which the franc notes will be printed is correct, will you please sign this letter and one copy in the space provided below and return the copy so signed to me.

Very truly yours,

Approved:

Secretary of the Treasury

May 24, 1944.

MEMORANDUM FOR THE FILES:

Baron de Gruben conferred with Mr. White and Mr. Aercus this morning on the subject of the proposed agreement between the United States and Belgium governing the supplying of our armed forces with Belgian francs during liberating operations. Baron de Gruben stated that the Belgian Minister of Finance now entertains the thought that there may be some doubt in the minds of the U. S. Treasury as to who shall ultimately bear the costs of the occupation. He indicated that this thought was an abhorrent one to the Belgians as well as being an entirely new one. He said that he had assumed all the time that under our proposed agreement we were merely postponing the time of discussions but that we never had any question in our mind that the Belgians would be paid for the francs we used to support our Army in Belgium. He asked for confirmation, in effect, that we were thinking in terms only of when we would pay and not in terms of whether we would pay.

Mr. White stated that the very heart of our proposal was its purpose of avoiding present discussions as to the ultimate incidence of costs. He added that while he had stated his opinion on a number of occasions, that the United States would in all likelihood bear the costs of its troops in Belgium, he was not qualified to make a decision on this point, and that such a decision would have to be made by higher authority. He emphasized that this position of the Treasury Department had been reiterated many times ever since the inception of the discussions and said that it was not easy to understand how the Belgians could now regard it as something new. Baron de Gruben referred to the article in the New York Times of May 14 and indicated that what Mr. White had just said confirmed the fear of the Belgians that there was a basic difference in assumptions between the Belgians and ourselves on these discussions. Mr. White stated that the matter was not closed and that it would be raised again with the State Department and the President. Baron de Gruben said that a number of other financial matters tied in with this one such as the financing of exports from Belgium and payment for civilian relief supplies brought into Belgium by the invading armies. He said that he had no information at all regarding any discussions on these latter points. Mr. White said to him that he could feel free to approach us again at an early date, and we would be glad to have discussions on any points which he cared to raise. Mr. White cautioned, however, that there did not appear to him to be any great hurry about reaching an agreement on the question of payment of dollars for francs used for troop pay since the Army now had the francs and was going to keep full records. Any agreement would be retroactive and the absence of an agreement can have no effect upon military operations.

(Initialed) L.C.A.

CC: Messrs. White, Luxford, Tomlinson, Hoffman, Brenner.

CURRENCY TALKS GO ON

**Considerable Progress Made —
Some Dangers Forecast**

North American Newspaper Alliance.

Important financial and monetary discussions between the United States Government and representatives of the French Committee of National Liberation are now being concluded. Thus, if no political arrangement with the committee has been arrived at when the Allies land in France, problems related to the new French currency, to the rate of exchange, to the volume of purchasing power available to American troops, etc., will nevertheless have been partly disposed of.

From beginning to end, compromise has been the rule. What is probably the major point at issue, the fixation of the dollar-franc rate of exchange, is likely to be left to the committee to decide. Obviously, Washington does not want to impose the view held by its experts, from which the experts in Algiers perhaps dissent.

The responsibility of starting a monetary policy whose consequences on French national economy are unpredictable had better not be taken away from them. But the new currency to be issued for use in French metropolitan territory will bear to Frenchmen all the appearance of being of American make. On the obverse side of the coin the words "Liberté, Egalité, Fraternité" are to appear. But on the reverse side there will be a single word, "France." The banknote conforms to that pattern, except that the word "France" has been expanded to "Emis en France" [issued in France].

Under any French authority, the designation "République Française" would have been stamped on coins and banknotes alike. It was objected to in Washington on the ground that it might involve, in the judgment of many, an unlimited recognition of the Committee. The trouble is that the currency risks being dubbed "foreign money" if it depreciates even as the result of errors committed by Frenchmen.

Whatever French Governmental

authority asserts itself afterward will find it possible to decline responsibility for every disappointment experienced in the difficult business of setting French economy on its feet again—and, on the best assumption, disappointments are bound to be experienced. It will be so easy to argue that defective measures were enforced by the Allies' commander in chief as regards public finance and currency and that the mischief later on could not be undone.

What has happened in North Africa and Italy points to the deadly impact of unregulated American and British purchasing power on badly depleted local markets. Whatever popular discontent exists in those areas can be mainly ascribed to the scarcity of goods caused by the inrush of thousands of buyers with whom the population, for the most part, cannot compete. Palliatives are believed to have been considered by the American and French negotiators. For instance, the Allies' soldiers would be forbidden to buy foodstuffs and rationed products. However, those palliatives fall short of the drastic steps that the Committee favors.

Occ. Currency

Draft of a Press Release

Joint Statement by the Treasury Department and the War Department:

Allied expeditionary forces landing in France have brought with them a special issue of supplementary franc currency for their own use and the use of the French people. The currency is being issued by the Allied Military Authorities in order to meet the requirements of military operations. It is not intended nor desired to replace the local currency with the special issue unless absolutely necessary from a military standpoint, but rather to use the special currency to supplement the supply of local currency.

The special franc currency was printed in the United States under the supervision of the Bureau of Engraving and Printing. United States and British military and Treasury authorities worked out this method to meet the currency problems incident to the invasion and the French Committee of National Liberation was consulted with respect to the various aspects of the program.

The special currency bears the legend "Emission en France" (issued in France) on the front and the back shows the tricolor and the famous French slogan "Liberté, égalité, fraternité". It is in eight denominations from two to 5,000 francs. The larger denominations are the size of United States currency, and the smaller denominations half the size.

The rates of exchange which have been established for continental France are francs to one dollar and francs to one British pound.

The procedures followed by the United States Army are similar to those adopted in Sicily and Italy in connection with the use of Allied Military Lira. When the Army obtains these special francs for expenditures in France for pay of troops, supplies and other expenditures that would normally be charged to its appropriation, it will charge the relevant War Department appropriation for the dollar equivalent of such expenditure. Thus Congress retains its jurisdiction over such army expenditures. British military forces are following a parallel procedure. In all cases complete records are being kept and a detailed accounting procedure has been set up in connection with the issuance and use of this special franc currency. These complete records will also facilitate the adjustment of financial matters growing out of military operations in France.

The special franc currency has been made legal tender in France and is interchangeable at par with pre-invasion franc currency. It will be in every respect as acceptable a medium of exchange as the pre-invasion franc currency, both to the men of our fighting forces and to the French people. Insofar as our troops are concerned, arrangements have been made so that they may remit all or any portion of their pay which they receive in francs to the United States against instant payment here in dollars. United States soldiers leaving France may exchange franc currency held by them for dollar currency.

For obvious reasons, War Department appropriations will not be charged when the military situation necessitates expenditures by the army for local government operations, whether such expenditures are financed from local taxes or revenue or through the use of special franc currency. Thus, for example, army appropriations will not be charged if it is necessary

for the Allied Military Authorities to expend funds for the maintenance of public schools, water systems, salaries of local officials and the like.

In addition to the special issue of franc currency printed in this country, allied expeditionary forces took with them to France a new series of two franc coins. The coins were manufactured by the United States Mint and are the same size as those formerly circulating in France. Although made of copper and zinc the manufacture of the coins did not involve the use of any strategic materials. They have been made from expended shell casings which are composed 70% of copper and 30% of zinc but which are difficult to reclaim for further use in the production of armaments. The obverse of the coin has the slogan "Liberté, égalité, fraternité" in a half-circle at the top, the denomination in the center and the date at the bottom. The reverse contains the word "France" surrounded by a floral wreath.

Allied military forces are also supplied with a special supplementary issue of franc postage stamps. The stamps are in denominations of 5, 10, 25 and 50 centimes and 1, 1 1/2, 2 1/2, 4, 5 and 10 francs. They are all of the same design, distinguished by colors of the usual United States postage series. The background is the Arc de Triomphe, the word "France" appears at the top, the denomination in the center, and "Liberté, égalité, fraternité" at the bottom.

Draft of a Press Release

Joint Statement by the Treasury Department and the War
Department:

Allied expeditionary forces invading Germany have brought with them an "Allied Military Mark" currency for their own use and the use of the German people. The same currency is being issued by the military authorities in command of British and American troops invading from the west and the authorities in command of Russian troops invading from the east.

Far in advance of the actual invasion, United States, British and Soviet military and Treasury authorities agreed upon this currency as the most practical method of meeting currency problems incident to the invasion. Designs and procedures were worked out jointly by the three governments. The currency used by British and American troops was printed in the United States under the supervision of the Bureau of Engraving and Printing. "Allied Military Mark" currency is being issued in order to meet the requirements of military operations. It is not intended nor desired to replace the local currency with "Allied Military Marks" unless absolutely necessary from a military standpoint, but rather to use the military currency to supplement the supply of local currency.

The entire legend on the bills is in German. On the face of all the bills and on the reverse of the larger denominations are the words "Alliierte Militarbehörde". The face of all the bills contains the words "In Umlauf Gesetzt in Deutschland". It is in eight denominations from one-half mark to 1,000 marks. The larger denominations are the size of United States currency, the smaller denominations half the size, and the ten mark bill an intermediate size. The rates of exchange which have been established

for Germany are marks to one dollar marks to one British pound and marks to one Russian ruble.

The procedures followed by the United States Army are similar to those adopted in Sicily and Italy in connection with the use of Allied Military Lira. When the army obtains military marks for expenditure in Germany for pay of troops, supplies and other expenditures that would normally be charged to its appropriations it will charge the relevant War Department appropriation for the dollar equivalent of such expenditure. Thus Congress retains its jurisdiction over such army expenditures. In all cases complete records are being kept by United States, British and Soviet military authorities and a detailed accounting procedure has been set up in connection with the issuance and use of "Allied Military Mark" currency. These complete records will also facilitate the adjustment of financial matters growing out of military operations in Germany.

The "Allied Military Mark" has been made legal tender in Germany and is interchangeable at par with pre-invasion mark currency. It will be in every respect as acceptable a medium of exchange as the pre-invasion mark currency, both to the men of our fighting forces and to the German people. Insofar as our troops are concerned, arrangements have been made so that they may remit all or any portion of the pay which they receive in marks to the United States against instant payment here in dollars. United States soldiers leaving Germany may exchange mark currency held by them for dollar currency.

For obvious reasons, War Department appropriations will not be charged when expenditures are made by the army for local government operations, whether such expenditures are financed from local taxes or revenue

or through the use of "Allied Military Mark" currency. Thus, for example, army appropriations will not be charged in connection with the maintenance of public schools, water systems, salaries of local officials and the like.

[Paragraph on postage stamps to be added]

Draft of a Press Release

Joint Statement by the Treasury Department and the War
Department:

The Belgian Government at London made available to allied expeditionary forces, in advance of their invasion of Belgian territory, Belgian franc currency for use in financing the military operations necessary to liberate Belgium. Some of the currency was taken to London from Belgium in 1940 and some of it was printed recently in London. It consists of notes of the Banque Nationale de Belgique and, in addition to being acceptable to allied troops, it is recognized and accepted by the Belgian people.

Arrangements were made by the Belgian Government with British and United States military and Treasury officials for the provision of this currency to meet allied needs in Belgium. The plan adopted is designed to serve the requirements of the expeditionary forces while causing a minimum disturbance of the Belgian economy. The currency is legal tender in Belgium and arrangements have been made for our troops to remit all or any portion of their pay which they receive in francs to the United States against instant payment here in dollars. United States soldiers leaving Belgium may exchange franc currency held by them for dollar currency.

The rates of exchange which have been established for Belgium are Belgian francs to one dollar and Belgian francs to one British pound.

The currency was delivered in London to the Allied Military Authorities prior to the invasion. However, the allocation of the costs of military operations to be borne by the governments involved has been left for determination at such time as may be mutually satisfactory to such governments.

It is believed that the determination of portions of the expense of liberating Belgium to be borne by the governments concerned can be made more equitably at some future time than would be possible in the midst of military operations when primary consideration must be given to defeating the Axis and actually liberating Belgian territory.

In order that adjustment of financial matters growing out of the liberation of Belgium may be facilitated, complete records are being kept in all cases and a detailed accounting procedure has been set up in connection with the use of this Belgian currency. In addition, the army has adopted the same policy prevailing in other areas where it expends currency obtained by means other than an exchange for dollars. When the army expends Belgian francs in Belgium for pay of troops, supplies and other expenditures that would normally be charged to its appropriation, it will charge the relevant War Department appropriation for the dollar equivalent of such expenditures. Thus Congress retains its jurisdiction over such army expenditures. There is however an exception to this general principle. In an exchange of letters dated January 30, 1943, between the Secretary of State and the Belgian Ambassador, the Government of Belgium agreed to furnish certain assistance to the United States as reciprocal lend-lease aid. In the main this assistance will take the form of supplies furnished through official Belgian channels and when such supplies are furnished the lend-lease account of the Belgian Government with the United States will be credited for the dollar equivalent of the value of such goods. In such cases no deduction will be made from War Department appropriations. Similarly, War Department appropriations will not be charged when the military situation necessitates expenditures by the army for local government operations and such expenditures

are financed by the use of this Belgian currency. Thus, for example, army appropriations will not be charged if it is necessary for the Allied Military Authorities to expend funds for the maintenance of public schools, water systems, salaries of local officials and the like.

In addition to Belgian franc currency, allied expeditionary forces took with them to Belgium a new series of two franc coins. The coins were manufactured for the Belgian Government by the United States Mint. They are made of zinc-coated steel--the same material that was used in the United States one-cent piece in 1943 when copper was not available--and are the same size as our one-cent coin. The obverse side has a star at the top, the word Belgium in both the French and Flemish languages in the center, and two laurel branches at the bottom. The reverse contains the denomination, the date, and two laurel branches.

Agreement between the Secretary of the Treasury
and the Minister of Finance of the
Government of Belgium in Exile

AGREEMENT made the _____ day of _____, 1944, at the City of Washington, District of Columbia, between the Secretary of the Treasury of the United States of America (hereinafter called the Secretary), and the Minister of Finance of the Kingdom of Belgium for and on behalf of the Kingdom of Belgium (hereinafter called Belgium).

WHEREAS, it is anticipated that Allied armed forces will participate in future military operations in Belgium; and

WHEREAS, Belgium desires that in the event of any such operations, the Belgian franc be used to the maximum extent feasible to fulfill the currency needs of the Allied armed forces;

NOW, THEREFORE, in order to further such objectives and in consideration of the promises and the mutual covenants herein contained, it is agreed as follows:

1. Belgium has made and will make available to the Supreme Commander, Allied Expeditionary Forces, upon his request, Belgian franc notes or Belgian franc credits in such amounts, of such type, at such times and at such places as may be necessary for use of Allied forces in Belgium and Belgian territorial waters. Belgium will act promptly upon any such request and will reserve any question concerning settlement of costs with the Government of the United States of America for determination or negotiation as provided in paragraph (2) hereof. Belgium hereby undertakes to have on hand at all times sufficient Belgian franc notes to meet any requests for such notes.
2. Any determination or negotiation concerning settlement with the Government of the United States of America of all or any part of the costs arising out of operations or activities in Belgium involving participation by American forces, including adjustments, if any, between the American and Belgian Governments, will be deferred to a time or times mutually satisfactory to such governments. In view of the provisional character of the initial United States dollar-Belgian franc rate of exchange, any such settlement with the Government of the United States of America shall be equitably adjusted in the light of the permanent rate of exchange established after the liberation of Belgium.
3. Records and accounts will be carefully maintained which will reflect all transactions effected hereunder and all uses which are made of the franc notes and credits furnished hereunder. Such records and accounts shall be made available for inspection at reasonable times, to such liaison officer or officers as may be mutually agreed upon by Belgium, on the one hand, and the Secretary and the Supreme Commander, Allied Expeditionary Forces, on the other hand.

4. Belgian franc notes and credits furnished hereunder will be used to the maximum extent feasible for carrying out the objectives of this Agreement. If, however, the Secretary should deem that circumstances or conditions so require, he may cause currency or credits of a different nature to be used to the extent so deemed necessary. Settlement for such different currency or credits will also be deferred as provided in paragraph (2) hereof.

5. The provisions of this Agreement shall not apply to Belgian franc notes and credits which may be used to finance the exportation of goods and materials from Belgium, except such exportations as are directly incident to military operations.

6. The Secretary and the Minister of Finance of the Kingdom of Belgium agree that they or their representatives shall consult with each other from time to time concerning problems of mutual interest which may arise in connection with this Agreement.

7. This Agreement shall come into operation and effect as between the parties hereto immediately upon the signature hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate.

SECRETARY OF THE TREASURY OF THE UNITED STATES

KINGDOM OF BELGIUM

BY _____

MINISTER OF FINANCE

MAY 8 1944

Invasion Franc Rate Stirs Debate

Fixing of Price May Be
Left to French, Lon-
don View

By FRANK PLACHY
Special Correspondent

LONDON, May 7.—The debate which has been going on about the exchange rate between the franc and the dollar and sterling when invasion of the Continent gets under way grows steadily more acrimonious. The question, which clearly should be decided on economic grounds so far as such grounds can be determined at this time, is now becoming more and more political, and hence takes on all the ambiguities and inner conflicts which harass French politics.

According to the "Economist," the American, British and Canadian forces will take with them not dollar and sterling military notes, but franc currency issued under the authority of the Committee of National Liberation. It says: "It is mainly for the committee and its experts to decide the rate at which this currency will be made available against sterling or dollars. That decision has not yet been made and is still the subject of keenest debate in French circles."

After describing the arguments of those who would put the rate at anything from 200 to 600 francs to the pound, the economist continues:

"That is a debate which had best be left to the French. But to which Frenchmen? Will the United States accept the rate fixed by the Committee of National Liberation, or will General Eisenhower be free to make his terms with some other authority in metropolitan France? A clear-cut decision on this political aspect of the problem would go some way toward a satisfactory solution."

Some way, perhaps, will be found, but the probabilities of such a decision at an early date do not seem very promising. Secretary Hull's plain speaking about the committee, in his speech of April 9, and the still later quarrel between General De Gaulle and General Giraud, make that all too clear. Everyone in London, however, agrees that this question is an unfair one to be added to the already heavily-burdened shoulders of the Commander-in-Chief.

May 2, 1944

MEMORANDUM FOR THE FILES:

Mr. Alk referred to me an inquiry concerning the reproduction of a foreign currency for newspaper use in the United States. The inquiry was made by Harding Cowan of the New York Federal.

I telephoned Mr. Cowan and was informed that a Connecticut newspaper possessed a one shilling note made by the Japanese Government, with the letters "O.C." printed on its face to indicate that it was occupation currency. Apparently, this currency was either used in an area such as Shanghai or was contemplated to be used in the invasion of such areas as Australia or New Zealand. I asked for further information with respect to how this note was obtained and through what channels it came into the United States. I requested also that Mr. Cowan obtain the note for the purpose of photostating it and sending the photostat here.

In reply to his question as to whether a New York printer could make plates for the reproduction of such note on behalf of the Connecticut newspaper, I informed him that such reproduction would violate section 275 of title 18 unless it were authorized by the Secretary of the Treasury and that it was not the policy of the Treasury at this time to make such authorizations.

He promised to attempt to get the information I requested as well as a copy of the currency and stated that he would suggest that the printer return the note to the Connecticut newspaper unless we had other plans for it.

It occurs to me, on second thought, that when Mr. Cowan photographs the Japanese shilling note, he will be doing so in violation of section 275 which includes printing and photographing.

Incidentally, in the recent past Treasury has gone in opposite directions on the question of printing and photographing German and Japanese currencies. In August of 1943, in a letter signed by Mr. Thompson, permission was granted to reprint a Japanese guilder note on condition that it was done in a certain size, in black and white, etc. In October of 1943, in another letter signed by Mr. Thompson, it was stated that the reprinting of Japanese and German currency violated section 275, unless authorized by the Treasury and that it was not the policy of the Treasury at this time to make such authorizations.

Personally, I would have inclined toward the former view and permitted the reprinting to take place. I see no reason for frustrating the desires of Americans needlessly and on matters which do not involve

our national security. However, since the most recent precedent was negative and since the matter, at this point, does not seem sufficiently important to raise the question of a change in policy, I followed the easier course and limited my advice to a citation of the relevant statutory provision.

Dear Mr. Goat:

This is in reply to your letters of February 15, 1944, to Major J. E. Allen, Room 901, 90 Church Street, New York, New York, which were referred by the War Department to this Department for reply.

There are enclosed copies of Joint Statements released by the Treasury and War Departments to the Press on August 2, 1943, and August 17, 1943, and a copy of a Joint Statement released by the Treasury, War and Navy Departments to the Press on February 9, 1944. These statements will furnish you with the information you desire as to the nature and character of the Allied Military Lira currency, the "Yellow Seal" dollar, and the "Hawaiian" dollar. These are the only special currencies utilized by the United States armed forces in military operations. The Allied Military Lira currency is employed by the Allied armed forces as an "occupation" currency in the Italian operations. The "Yellow Seal" dollar was used as a "spearhead" currency by the United States armed forces in the North African and Italian operations; the British armed forces used the British Military Authority currency for this purpose in these operations. The "Hawaiian" dollar is being used in the Central Pacific operations.

The only special currency for military operations included in the photostats forwarded with your letter is the 100 lira note of the Allied Military currency. The 5 franc note of the Banque de l'Afrique Occidentale was manufactured by the E. A. Wright Banknote Company, Philadelphia, Pennsylvania, at the order of the Banque de l'Afrique Occidentale and was issued by that bank in its capacity as the bank of issue in French West Africa. Similarly, the 100 franc note of the Banque d'Etat du Maroc was manufactured by the E. A. Wright Banknote Company at

the order of the Banque d'Etat du Maroc and was issued by the Banque d'Etat du Maroc as the bank of issue in French Marroco. The 50 franc note of the Banque de l'Algerie was manufactured under the auspices of the Banque de l'Algerie and was issued by the Banque de l'Algerie as the bank of issue for Algeria and Tunisia.

Although it is not necessary that you be granted permission to display pieces of special currencies for military operations which may be in your possession, your attention is directed to section 275 of title 18, United States Code. That statute prohibits, unless specially authorized, the printing, photographing, etc., of Allied military currency and the French African notes referred to in your letter. Accordingly, the photostats forwarded with your letter are not being returned.

Very truly yours,

W. H. Taylor
Assistant Director of Monetary Research.

Mr. Edwin W. Goat
Assistant to Vice-President
The Bowery Savings Bank
110 East 42nd Street
New York, New York

Enclosures

Mr. Luxford

January 7, 1944.

Mr. Brenner

I have examined the attached draft of an article for the National Geographic Magazine, and have found a number of points which you may wish to consider.

1. On page 14 it is stated:

"Uncle Sam, when his army landed in North Africa in 1942, wanted gold coins to spend for various purposes on landing. But we had destroyed all our gold coins! So, to meet this emergency, we bought some from Canada!"

I believe this is substantially similar to the Secretary's oral statement to the press.

2. Also on page 14, the following statement is made:

"By law, now, our money is debased since we raised the gold price from \$20.69 to \$35 an ounce. The state gains, when rulers debase the people's money. The Treasury gained some 2,000 millions, when the buying power of our dollar was cut from 100 to 59.06 cents."

Mr. Coffelt has added the following notation in the margin:

"Not true. There was no noticeable effect on the domestic buying power of the dollar."

I think that in addition to this criticism it might be indicated to the writer that the term "devaluation" is more suitable than "debasement."

3. On page 15 the writer discusses the gold held at Fort Knox. He says that there are 22 billion, or about 75% of the whole world's total gold stock. Mr. Coffelt has noted that he does not think it is that large a percentage even of the monetary gold. I have checked the most recent estimate and find that this is only about 65% of the monetary gold stock. Perhaps these figures should be made available to the writer. He should also be informed that not all of the gold stock is held at Fort Knox.

4. In discussing the types of currency now being printed, the writer states with respect to silver certificates:

"That is the only paper money we now circulate which is guaranteed by a precious metal reserve."

I think this statement is inaccurate since a gold reserve is maintained against the Federal Reserve notes.

5. On page 28, there are listed the Federal Reserve banks and the list omits banks at Chicago, St. Louis, and Minneapolis.
6. In discussing invasion currency, the writer states that

"To save local people trouble, in regions where their own money is still in use, a fixed exchange rate between it and our invasion currency is established."

The same type of statement appears in the second paragraph on page 32. It might be well to add to this statement that Italian lira currency and Allied Military currency circulate at par.

7. On page 33, the Treasury is quoted as having said:

"In effect, the issuance of the military currency, as in Italy, enables the country to pay as she goes so far as costs of occupation are concerned, because it is likely that the United States will insist upon any Italian Government making good for all of this currency which has been distributed to the Italian people.

"When the war in Italy ends, the Allies will have a large bill to present to the country. Most of it will be for the items which are being paid for with the military currency. A question is whether the Italians would be more likely to back up the military currency or to pay in dollars, pounds, or gold the occupational bill of indemnity that the Army will present to them when the fighting is all over."

This statement is certainly questionable and probably should not be passed on by the Treasury without clearance from the Army.

Jan. 6-1944

My dear Senator:

Reference is made to your letter of December 14, 1943, with which you enclosed a copy of an article entitled "Invasion Currency" by Mr. Herbert Bratter which appeared in the November issue of "Banking."

For purposes of clarity, the questions you have asked are repeated below, together with the answers thereto.

1. Why was it decided to employ silver certificates rather than Federal Reserve Notes or Federal Reserve Bank Notes as the form of "spearhead" currency for use abroad?
 - A. One of the principal uses of "spearhead" currency has been the payment of United States troops. The only United States currency presently issued in the \$1 denomination is the silver certificate and, accordingly, it was felt desirable to use this type of currency. The \$5 and \$10 denomination currency is also in the form of silver certificates for purposes of consistency and administrative convenience.
2. Is this "spearhead" currency redeemable in silver as are our silver certificates which circulate domestically?
 - A. The distinguishing mark of a yellow seal was used on "spearhead" currency partly for security reasons to permit the isolation of the currency if it fell into enemy hands, partly to prevent the influx into the area of dollar currency already in the hands of the enemy, and partly to facilitate its entry into the United States by freeing it from present restrictions on ordinary United States currency. The only way it differs from the usual silver certificate is in the color of the seal. Yellow seal certificates are redeemable in silver in the same manner as the silver certificates bearing a blue seal.

3. If "spearhead" silver certificates are redeemable in silver will silver be exported for such redemption purposes?
 - A. "Spearhead" silver certificates, like all other types of United States money, are redeemable only upon presentation in the United States. Accordingly, no silver will be exported for the purpose of redeeming them.

4. For every silver certificate issued abroad is it your policy to withdraw a silver certificate from domestic circulation?
 - A. Yellow seal silver certificates are not issued abroad but are issued in the United States and subsequently exported by the Army. They consist, primarily, of new currency issued to replace worn certificates bearing blue seals. The normal procedure of reissuing worn silver certificates is altered only slightly. When the Army indicates a need for a certain amount of "spearhead" currency, the Treasury replaces that many worn blue seal certificates with new ones printed with yellow seals. Instead of issuing them through the Federal Reserve banks, the Treasurer issues them directly by delivering them to the Army in return for checks drawn against appropriations made by Congress. The Army then transports them to areas where they are needed.

5. In what denominations is the "spearhead" currency issued?
 - A. Silver certificates bearing the yellow seal have been issued in the denominations of \$1, \$5, and \$10.

6. Do you plan to follow this same line of procedure when our Armies invade other countries of Europe, Asia, and South Pacific countries and Island possessions under the domination of Japan?
 - A. "Spearhead" currency has proved satisfactory in the areas in which it has been used. However, each area to be invaded presents its own problems and final arrangements for any particular area can be made only after due consideration has been given to the problems presented in that area.

- 7., 8. How much "spearhead" currency has already been issued? How much of this currency do you anticipate will be ultimately required?

- A. For reasons of military security no statement can be made as to the amount of yellow seal certificates which have been issued. It may be noted, however, that the yellow seal certificates are used as a "spearhead" currency to meet the currency requirements of the early stages of military operations. For obvious reasons it is desirable that such dollar currency be withdrawn from circulation as quickly as the military situation will allow. In view of the limited purpose for which this type of currency has been used it is clear that the quantity which will ultimately be required will not be very large and further the currency will be withdrawn from the area within a short period of time. The yellow seal certificates are to be replaced by blue seal certificates for domestic circulation. The yellow seal dollars used during the early stages of the North African operation were withdrawn from circulation as adequate stocks of local currency have become available. Nearly all the yellow seal dollars used in that area are now in the hands of the United States Army authorities. The distinctive yellow seal on the currency was designed to facilitate this operation.
9. Rather than withdraw silver certificates from circulation domestically in order to provide for the "spearhead" currency needs abroad, if that is the present procedure, why would it not be better to utilize some of our "free" silver as backing for the "spearhead" currency? (Apparently our war industrial needs will be very small.)
- A. In view of the fact that the use of yellow seal silver certificates in occupied areas reduces the amount of silver certificates in circulation in the United States only for a short period of time, and the further fact that the total amount necessary will probably not be large, it is the view of this Department that there is no need for the issuance of further silver certificates against "free" silver held in the General Fund of the Treasury.
10. What is the legal authority for the issuance of silver certificates for circulation abroad?
- A. Yellow seal silver certificates are not issued abroad, but are issued in the United States as provided by law. After they are issued the Army obtains them and exports them to the areas where they are needed. You, of course,

appreciate that the Army in conducting its military operations must have adequate stocks of currency that are readily acceptable to the local population. A regular currency of the United States Government which is recognized in all countries as the strongest currency in the world is particularly suited for this purpose.

11. Have you found any instance since Pearl Harbor wherein a preference has been expressed for either gold or silver money or for paper money backed by either of these metals?
 - A. The only instances of consequence in this regard which the Treasury has noticed involve the well-known native preference among the inhabitants of certain less advanced areas for precious metals, either in the form of coin or bullion.

Very truly yours,

(Signed) W. Bell

Under Secretary of the Treasury.

Honorable Pat McCarran,
United States Senate,
Washington, D. C.

RB

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let

December 23, 1943

Secretary Morgenthau

Mr. Paul

Re: Authority to establish military government in "Allied" territory recaptured from the enemy, to issue military currency and to place on such territory the costs of occupation.

In connection with the Allied invasion of Sicily and Italy, consideration was given to a number of problems relating to the legal aspects of certain financial, economic and fiscal activities of the Allied Military Command. The memoranda exploring these subjects dealt with the authority, under established principles of international law, of occupying armies to assume powers of government over enemy territory.

It was shown that the text writers, the courts and the usage of nations, recognized that the military occupant of enemy territory possessed all the powers of a de facto government and that the commander, not only had the right and power to perform all the acts necessary to govern the area, but also the duty and responsibility of exercising those powers to assure the normal functioning of the area to the extent consistent with his own military requirements. 1/ Also, it was shown at length that the issuance of military currency is an appropriate and accepted device to be utilized by the occupant in support of military operations and as a means of maintaining the economy of the area. 2/

The problem to be discussed in this memorandum is twofold:
1) to what extent, if any, is the right to set up a military government and to issue military currency restricted or modified by the fact that the area over which control has been obtained by force of arms is not an enemy area in the conventional sense, but is an area such as France or the Netherlands which constitutes enemy territory only because it

1/ 2 Oppenheim, International Law (6th Lauterpacht ed. 1940) 336-50; 2 Hyde, International Law (1922), 361-86; 1 Moore, International Law Digest, (1906) 45-51; 7 Id. 257-315; Hall, International Law (8th Higgins ed. 1924) 553-76; Lawrence, The Principles of International Law (7th Winfield ed. 1923) 408-30; Birkhimer, Military Government and Martial Law (3rd ed. 1914) 21-369; Spaight, War Rights on Land (1911), 320-418; Colby, Occupation under the Laws of War (1926) 26 Col. L. Rev. 146.

2/ Memorandum of Sept. 24, 1943, re "Opinion on the Legality of the Issuance of AMG Currency in Sicily".

has been conquered and is occupied by a common enemy; and
2) may the costs of occupation be placed upon such occupied territory. 3/

The discussion here has been couched in terms of the ultimate incidents of the burden of occupation costs rather than in terms of the redemption of the particular currency issued. This was done because the question of occupation costs is the broader one and encompasses, among other things, the redemption of the particular currency used during the occupation. In the final analysis the ultimate burden of the occupation does not depend on the nature of the currency employed or upon who redeems such currency, but depends rather on other broad policy determinations. In view of the fact that ultimate costs can be controlled in other ways, it is more helpful to speak in terms of the obligation to pay occupation costs than in terms of the redemption of the occupation currency issued which is merely a mechanism or vehicle for shifting temporarily a portion of such costs.

On the basis of the analysis of the applicable principles of international law as found in texts, cases and in past dealings between nations it is submitted that the questions posed above may be answered as follows:

- 1) The right to establish a military government possessing the power to issue military currency in Axis occupied "Allied" territory is as broad and plenary as the right to set up such a government in the territory of the enemy proper; and
- 2) Where there is a right to occupy there is the right to assess the costs upon the territory occupied irrespective of whether the particular territory is owned or merely controlled by the enemy.

The foregoing answers are premised on the basic assumption that under international law the Allied Military authorities have the "right" to invade and occupy Axis held "Allied" territory. The soundness of this assumption may not be seriously questioned. It is fundamental that a belligerent in wartime may seek out the enemy and occupy territory controlled by the enemy, irrespective of whether such territory was owned or merely controlled by the enemy and regardless of whether such territory was the enemy's homeland or merely former territory of the belligerent or its allies which had been seized by the enemy during

3/ Although technically a distinction may be made between an area whose government-in-exile is fully recognized by the United States and Great Britain, such as the Netherlands, and an area whose government is only partially recognized by the United States and Great Britain, such as Metropolitan France, this distinction has no effect on the rationale or conclusions reached in this memorandum.

the course of the war. 4/

The theoretical explanation of this universally accepted doctrine revolves about the concept of "region of war", which region is said to be "that part of the surface of the earth in which the belligerents may prepare and execute hostilities against each other". 5/ Discussing the extent of the region of war, Oppenheim states:

"The region of war depends upon the belligerents. For this reason, every war has its particular region, so far, at any rate, as the territorial region is concerned. For besides the open sea, and all such territories as are yet not occupied by any State (which are always within the region of war), the particular region of every war is the whole of the territories and territorial waters of the belligerents. * * *" (Underscoring supplied.) 6/

It will be noted that under the foregoing concept practically all of Europe would be part of the "region of war" and thus subject to belligerent occupation.

Moreover, neutral countries whose territory is violated become at once a part of the region of war. 7/ Rodick in his treatise entitled

4/ 2 Hyde, op. cit., supra, footnote 1, sec. 598, p. 191. 2 Oppenheim, op. cit., supra, footnote 1, sec. 71, pp. 188-91.

5/ Oppenheim, op. cit., supra, footnote 1, sec. 70, p. 187.

6/ Id., sec. 71, p. 188.

7/ As rationalized by Hyde:

"If a neutral possesses neither the power nor disposition to check warlike activities within its own domain, the belligerent that in consequence is injured or threatened with immediate injury would appear to be free from the normal obligation to refrain from the commission of hostile acts therein. * * *

"The obligation towards the neutral not to undertake such a movement would, for the time being, be inapplicable, by reason of its own weakness or indifference."

2 Hyde, op. cit., supra, footnote 1; sec. 887, pp. 788-789. See also Edmunds, The Lawless Law of Nations, (1925) pp. 400-401.

The Doctrine of Necessity in International Law states the proposition quite forcefully. He declares:

"Thus, for example, if a belligerent violated the territory of a neutral, and if the neutral were unable to prevent the violation, or expel the belligerent, the other belligerent might enter the territory and take steps to prevent the violation from operating to his military disadvantage." 8/

Assuming the right to occupy, the points below discuss and develop the principles and precedents underlying the above stated conclusions.

I. The Right to Establish a Military Government Possessing the Power to Issue Military Currency in Axis Occupied "Allied" territory is as Broad and Plenary as the Right to set up such a Government in the Territory of the Enemy Proper.

From a realistic and practical viewpoint, it would seem clear that the allied commander, as a matter of military necessity, must subject a reoccupied region to military law. Communications and lines of supply must be secured. Railways, highways, telegraph and telephone systems and public utilities must be made subject to military control. Lodging may have to be supplied for the troops. If supplies run short, food and equipment must be obtained.

The allied commander's decisions, economic as well as military, must not be questioned during the initial stages of the invasion and conquest of enemy-occupied territory. Complete military control will be as essential in the conquest of enemy-occupied territory as it is in enemy territory proper. 9/ In both cases, economic decisions are

8/ Rodick, The Doctrine of Necessity in International Law (1928), p. 109.

9/ The concept of "enemy" and "enemy territory", as developed in the economic field by Congress and administrative agencies, includes, within the meaning of these terms, areas occupied by the enemy and persons residing in such areas. See sec. 2 of the Trading with the enemy Act, as amended, U.S.C. title 50, app., sec. 2; par. 2 of General Ruling No. 11 issued by the Secretary of the Treasury, to whom the President's authority under secs. 3(a) and 5(b) of the Trading with the enemy Act, as amended, was delegated by Ex. Orders No. 8389, as amended, and No. 9193. See also: Paragraph 3 of Communications Ruling No. 1, issued by the Director of Censorship, to whom certain of the President's powers under sec. 303, title III of the Act of December 18, 1941, U.S.C., title 50, app., sec. 618, was delegated by Ex. Order No. 8985.

closely related with the military progress of the invasion and conquest.

International law, in accepting the doctrine of military necessity, draws no distinction between the invasion of enemy territory proper, such as Italy, and "Allied" territory occupied by the enemy. It recognizes that limitations on the authority of the military commander might equally endanger military success in both situations. "Allied" enemy-occupied territory may be as well or better mobilized to resist invasion than enemy territory proper.

The fundamental reasons advanced by the international law writers as bases for the establishment of a military government of belligerent occupation apply as cogently to the instant case as to one of occupation of enemy territory proper. The first of these is succinctly phrased by Hall, who writes:

"* * * the rights of occupation may be placed upon the broad foundation of simple military necessity." 10/

The Supreme Court states similarly:

"Martial law is the law of military necessity in the actual presence of war." 11/

If military necessity demands, many of the attributes of a belligerent military government may be exercised in other than enemy territory. Thus, for instance, the international law writers state that military necessity may authorize the exercise of such rights in neutral countries in those situations in which the belligerent has a right to occupy the neutral country. 12/

In neutral Korea during the Russo-Japanese War of 1904-1905, the Japanese seized control of the telegraph system and Russian State-owned property and suppressed anti-Japanese espionage activity. During the same war, the Japanese exercised the right of requisition in neutral

10/ Hall, op. cit., supra, footnote 1, p. 559.

11/ United States v. Diekelman (1875) 92 U. S. 520, 526.

12/ 2 Oppenheim, op. cit., supra, footnote 1, sec. 71, p. 191. See also: 2 Fauchille, Droit International Public (Paris 1921) par. 1207, p. 281; Spaight, op. cit., supra, footnote 1, p. 343; Ariga, La Guerre Russo-Japonaise, (Paris 1908), pp. 55-56

Manchuria. 13/

The second reason advanced by the international law writers as a basis for the establishment of a military government of belligerent occupation is phrased by Oppenheim as follows:

"* * * [The occupant] has the duty of administering the country according to the existing laws and existing rules of administration; he must insure public order and safety, * * *." 14/

Spaight confirms this dual justification for a military government of belligerent occupation:

"The occupant's rights are double-based, resting on necessity for providing some established government in a country which is shut off from its ordinary fount of justice and spring of administration and secondly on the military interests of the occupying belligerent himself. He assumes the reins of government because, otherwise, government there would be none, and such a condition of things would be an evil both for himself and for the population." 15/

The same reasoning that supports the establishment of a military government of belligerent occupation in enemy territory proper also supports its establishment in "Allied" territory from which the enemy

13/ Takahashi, International Law Applied to the Russo-Japanese War (1908), pp. 260-261; Ariga, op. cit., supra, footnote 12, p. 397; Lawrence, op. cit., supra, footnote 1, pp. 424-428; 2 Fauchille, op. cit., supra, footnote 12, par. 1174, p. 241. 2 Oppenheim, op. cit., supra, footnote 1, p. 547, footnote 4. For discussion of allied occupation of neutral Greece in World War No. I see Villari, The Macedonian Campaign (London 1922), pp. 25, 32, and 36; Rodick, op. cit., supra, footnote 8, pp. 113-115; 2 Garner, International Law and the World War (1920), pp. 241-255; for discussion of United States occupation of neutral Luxembourg in World War I, see 2 Hyde, op. cit., supra, footnote 1, sec. 887, pp. 790, 791; and for discussion of United States occupation of eastern Siberia from 1918 to 1920, see Gabriel, American Experience with Military Government (1943) 37 Amer. Political Science Review 417, 421 et seq.

14/ 2 Oppenheim, op. cit., supra, footnote 1, p. 342.

15/ Spaight, op. cit., supra, footnote 1, p. 322. See also 2 Oppenheim op. cit., supra, footnote 1, sec. 166, p. 339.

has been ejected by force of arms. The security of the invading troops is endangered as much on the invasion and reoccupation of "Allied" territory under the control of the enemy, as it is during the invasion and occupation of enemy territory proper. Therefore military necessity requires that the commanding general act energetically to protect his troops. Furthermore, the duty of the commanding general to insure public order and safety is certainly as great in friendly territory rescued by force of arms from the enemy, as it is in enemy territory proper. The lack of realism in any other conclusion is clearly recognized by Ariga, whom Spaight quotes as authority for the following statement:

"The right of an army * * * to promulgate martial law and to establish military tribunals applies not only to an army operating in a hostile country, but also to one operating in a neutral or an allied country which circumstances have made the theater of war; for two reasons. First, an army must be in a position to safeguard itself by having suitable laws for that end in force; secondly, even if the existing laws are sufficient, the local tribunals may not wish, or may be unable, to apply them for the protection of the occupying troops. It was for this reason that Japan established and enforced martial law in Manchuria (a province of a neutral country, China), and in Korea (an allied country.)" (Underscoring supplied.) 16/

The military occupation of the South by the Union troops during the Civil War raised many legal problems closely related to the ones being considered in this memorandum. The objective of the Federal Government in the Civil War, as stated by the Supreme Court is similar to that of the United Nations on the eve of the invasion of Nazi-occupied "Allied" territory.

"The object of the National government, indeed, was neither conquest nor subjugation, but the overthrow of the insurgent organization, the suppression of insurrection, and the re-establishment of legitimate authority. But in the attainment of these ends, through military force, it became the duty of the National government, wherever the insurgent power was overthrown, and the territory which had been dominated by it was occupied by the National forces, to provide as far as possible, so long as the war continued, for the security of persons and property, and for the administration of justice.

"The duty of the National government, in this respect, was no other than that which devolves upon the government

16/ Spaight, op. cit., supra, footnote 1, p. 343.

of a regular belligerent occupying, during war, the territory of another belligerent. It was a military duty, to be performed by the President as commander-in-chief, and intrusted as such with the direction of the military force by which the occupation was held." 17/

The Supreme Court has frequently sustained the legality of the Union military occupation of the South. In so doing, it recognized the principle that in time of war a military commander in national territory occupied by insurrectionists has powers similar to those of a military commander invading or occupying territory of a foreign enemy.

In New Orleans v. Steamship Company, the Court, in sustaining the validity of a lease of New Orleans property executed during the period of military occupation by an official appointed by the Military Governor of the area, stated:

"Although the city of New Orleans was conquered and taken possession of in a civil war waged on the part of the United States to put down an insurrection and restore the supremacy of the National government in the Confederate States, that government had the same power and rights in territory held by conquest as if the territory had belonged to a foreign country and had been subjugated in a foreign war. In such cases the conquering power has a right to displace the pre-existing authority, and to assume to such extent as it may deem proper the exercise by itself of all the powers and functions of government." 18/

In the Civil War cases the Supreme Court upheld the establishment of a military government of belligerent occupation in the South on the same two international law principles justifying its establishment in a foreign enemy's territory, namely military necessity and the duty of insuring public order and safety in the reoccupied area. 19/ The

17/ The Grapeshot (1869) 9 Wall. 129, 132.

18/ (1874) 20 Wall. 387, 393-394. See also Dow v. Johnson (1879) 100 U.S. 158; Coleman v. Tennessee (1878) 97 U.S. 509, 517.

19/ The degree of hostility of the local population to the occupying forces is only one factor to be considered by a commanding general in determining whether military necessity requires a military government. Thus, irrespective of the temper of the residents of the occupied territory, military government may be necessary because of the proximity of the actual combat area. Similarly, small organized hostile elements in an otherwise friendly population may also make military government a necessity. It is notorious that Norway has its Quislings, France its Laval and Doriot, Belgium its Degrelles.

essential circumstances being present, the same result attaches. The identical principles justify the establishment of a military government of belligerent occupation in "Allied" areas recovered in battle from the enemy.

Once a military government has been established in reoccupied "Allied" territory, the question arises as to the legal authority for the continued existence of such a military government. Such a government may continue until the circumstances justifying its establishment cease to exist. Both the international law writers 20/ and the Supreme Court 21/ agree on this principle.

As stated by Birkhimer:

"The experience of the United States Government, therefore, but adds to the evidence derivable almost universally from the history of other nations, that military government ceases at the pleasure of him who instituted it upon such conditions as he elects to impose, and that its termination is not in point of time coincident, either necessarily or generally with the cessation of hostilities between the contending belligerents." 22/

As it is the responsibility of the Allied commander to determine whether circumstances require the establishment of a military government, so is it his responsibility to determine whether these circumstances continue to exist. Moreover, his decision cannot be questioned by the courts. 23/ This is only natural; as he is responsible for the ultimate success of the military operation, which may be endangered by a breakdown in the civilian economy behind the combat zone. Any other rule might have disastrous consequences. Therefore it is for the Allied commander to determine whether the moment for the termination of the military government in a particular area has arrived.

20/ Spaight, *op. cit.*, *supra*, footnote 1, p. 321; Magoon, The Law of Civil Government in Territory Subject to Military Occupation by the Military Forces of the United States. (2d ed. 1902) p. 13; Birkhimer, *op. cit.*, *supra*, at footnote 1, p. 368.

21/ See Cross v. Harrison (1853) 16 How. 164, 184-185. In New Orleans v. Steamship Company (see *supra* p. 8) the lease whose validity was sustained by the Court was executed more than three years after military government had been instituted in the area in which the property was located.

22/ *Op. cit.*, *supra*, footnote 1, p. 368.

23/ See Neely v. Henkel (No. 1) (1900) 180 U.S. 109, 124.

From the foregoing discussion it is quite evident that a military government may be established in "Allied" territory recovered by force of arms from the enemy as well as in enemy territory proper. Manifestly, all the rights, prerogatives, duties and responsibilities which are inherent in the very nature of a "government" apply to the de facto government set up by the military high command. As an incident to the exercise of its governmental powers such a government may issue military currency when such action is deemed necessary for the support of military operations and the maintenance of public order and safety in the area. 24/

II. Where There is a Right to Occupy There is the Right to Assess the Costs 25/ upon the Territory Occupied Irrespective of Whether the Particular Territory is Owned or merely Controlled by the Enemy.

The statements of international law writers and jurists and the practice of nations demonstrate clearly that throughout the history of international relations, the costs of an occupation, which is itself justified, may be assessed against the occupied territory. Although this basic principle is practised universally and is deeply rooted in historical precedent, it is less a rule set down as a guide for the conduct of international relations than it is a description of the actual conduct of nations which has been approved by the jurists and writers and sanctioned by time honored practice.

24/ See memorandum of Sept. 24, 1943, re "Opinion on the Legality of the Issuance of AMG Currency in Sicily".

25/ Article 49 of the Hague Convention of 1907 provides:

"If, in addition to the taxes mentioned in the above Article the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army, or of the administration of the territory in question." (Underscoring supplied) (2 Malloy, Treaties (1910) 2269, 2289).

Although the language of the Convention is not clear on what constitutes the needs of the Army, some light is thrown upon the subject by the Versailles Treaty which indicates at least what the Allied nations interpreted as being properly included in occupation costs. The relevant provision of the treaty states:

"There shall be paid by the German Government the total cost of all armies of the Allied and Associated Governments in occupied German territory from the date of the signature of the Armistice of November 11, 1918, including the keep of men and beasts; lodging and billoting, pay and allowances; salary and wages, bedding, heating, lighting, clothing, equipment, harness and saddlery,

In studying the various types of occupation it will be noted that whatever rationale the courts or writers employed to justify the imposition of costs upon the occupied territory, the results form one harmonious pattern based on the concept that if there is a right of occupation, there is a right to occupation costs.

A. Belligerent Occupation of Enemy Territory.

The largest group of cases which fall within the pattern are those involving belligerent occupations of enemy territory in war time. For the purpose of this memorandum it is unnecessary to dwell upon the different bases upon which various writers support the right to assess occupation costs in such cases. What is significant is the universal acknowledgement of the fact that the belligerent enemy has the right to both occupy and impose occupation costs upon territory subjected to his control.

25/ continued:

armament and rolling stock, air services, treatment of sick and wounded, veterinary and remount services, transport service of all sorts (such as by rail, sea or river, motor lorries), communications and correspondence, and in general the costs of all administrative or technical services, the working of which is necessary for the training of troops and for keeping their numbers up to strength and preserving their military efficiency." (Art. 249 of the Versailles Treaty, 3 Malloy Treaties (1923) 3329, 3439.)

Further light is cast on the proper scope of occupation costs in the commentaries of certain international law writers. Westlake (International Law, Part II, 101) indicates that occupation costs should include only the expenses incurred in the occupied area and should not permit levies for the purpose of acquiring commodities in the invader's own country. Provisions for the Army made at home should be borne by the occupant out of his own general resources. Hyde (op. cit., supra, footnote 1, p. 371) expresses a similar thought when he declares that the occupant ought not to be permitted to make levies for the purpose of minimizing the financial burden of the occupying country or to meet the expense of operations undertaken outside of the occupied district. The only official or rather semi-official comment on what constitutes the needs of the Army within the meaning of the Hague Convention is found in the Report to the Convention from the Second Commission on the Laws and Customs of War on Land, wherein it is stated that it was forbidden to levy contributions for the purpose of "enriching oneself".

From the foregoing it may safely be assumed that at the minimum occupation costs include all the expenses of the Army incurred in the occupied area during the period of occupation.

In cases of belligerent occupation the right to shift the burden of occupation costs to the territory occupied is well settled law which has been expressly recognized in the United States. In a special message to Congress on February 10, 1848, dealing with the Mexican War, President Polk said:

"No principle is better established than that a nation at war has the right of shifting the burden off itself and impose it on the enemy by exacting military contributions." 26/

Further, the right of an occupying force to collect taxes and duties from the occupied country has been supported by the Supreme Court in Dooley v. United States, in which the Court held:

"Upon the occupation of the country (Porto Rico) by the military forces of the United States; the authority of the Spanish government was superseded, but the necessity for a revenue did not cease. The government must be carried on, and there was no one left to administer its functions but the military forces of the United States. Money is requisite for that purpose, and money could only be raised by order of the military commander. The most natural method was by the continuation of existing duties. In adopting this method, General Miles was fully justified by the law of war." 27/

Finally, the established right of a belligerent occupant to levy occupation costs was codified in the Hague Convention Respecting the Laws and Customs of War on Land, 1907. 28/

Article LIII of this Convention authorizes an occupant to take possession of state funds, cash and realizable securities in enemy territory and also of state stores, supplies, and movable property which may be used for military operations. Article XLIX authorizes the levying of money contributions in occupied territory for the needs of the occupying army and the administration of the occupied territory.

26/ 7 Moore, op. cit., supra, footnote 1, p. 285.

27/ (1900) 182 U.S. 222, 230.

28/ References in this opinion are to the Annex to Convention IV which was concluded October 18, 1907, ratified by the Senate March 10, 1908, ratified by the President February 23, 1909, and proclaimed February 28, 1910. 2 Malloy Treaties (1910), 2269, et seq.

B. Belligerent Reoccupation of Territory Recovered by Sovereign.

Another well-known application of the general rule that where there is a right to occupy there is a right to occupation costs may be found in the cases involving belligerent reoccupation by the sovereign of territory controlled by insurrectionists. Such cases occurred in connection with the recapturing of certain territory in the south during the Civil War. In the case of Dow v. Johnson, the Supreme Court stated in unequivocal terms that New Orleans (part of the United States) was to be considered occupied enemy territory. Speaking of the question of the proper law to apply during the period of such occupation, the Court declared:

"The question here is, What is the law which governs an army invading an enemy's country? It is not the civil law of the invaded country; it is not the civil law of the conquering country: it is military law, — the law of war * * *." (Underscoring supplied.) 29/

Although the question of occupation costs as such was not in issue in the Civil War cases, the Court nevertheless indicated its opinion that the general rule of occupation costs was applicable. In New Orleans v. Steamship Company, the Court stated:

"In such cases the conquering power has a right to displace the pre-existing authority, and to assume to such extent as it may deem proper the exercise by itself of all the powers and functions of government. It may appoint all the necessary officers and clothe them with designated powers, larger or smaller, according to its pleasure. It may prescribe the revenues to be paid and apply them to its own use or otherwise." (Underscoring supplied.) 30/

The above cases are significant in that they both are expressions of what the United States Supreme Court considered the applicable international law in connection with the status of reoccupied or recaptured territory. In the above cases, United States Courts held that United States territory occupied by the Union Armies could be treated in the same way as strictly enemy territory. It would seem that United States Courts would hold, a fortiori, that the same rule applies where the territory involved is that of a third country.

29/ (1879) 100 U.S. 158, 170.

30/ (1874) 20 Wall. 387, 394.

It is interesting to observe that although the situation described in this category of case is closely related to the reoccupation of Allied territory, the reasoning and language of the courts' are precisely that used in the strictly "enemy" cases. However, more important than the rationale, for the purpose of the thesis herein developed is the fact that in this type of case also, there is both the right to occupy and the right to occupation costs.

C. Belligerent Reoccupation of Territory Recovered by Ally of Sovereign.

It will be noted that the belligerent reoccupation of enemy occupied Allied territory is in the category under which would fall such cases as the liberation of France or the Netherlands from German control. This type of occupation is another illustration of the principle that where there is a right to occupy there is the right to occupation costs.

The obligation of the occupied area to bear the costs of the occupation where the occupant was a friendly or allied nation has been recognized from the very incipiencé of international law and from the earliest thinking on such problems. The rationale behind this allocation of financial responsibility appears to be based on the fact that the government of a country which liberates the territory of its ally from enemy occupation is entitled to occupation costs as a reimbursement for the expenses it has incurred quite apart from any right which may be derived as a result of its conquest of the area.

Grotius discovered in Genesis 31/ the earliest known precedent for the theory that an ally is entitled to reimbursement for his costs and expenses. He relates that when Abraham returned to Sodom as victor over the five kings he brought with him spoils captured from the enemy. Among these were goods and prisoners which had been seized by the enemy from the King of Sodom who was Abraham's ally. Citing the disposition of this matter as a precedent on the question of whether anything may be deducted from that which is restored to an ally after recapture from the enemy, Grotius states:

"Again we are not to attribute to any other cause the arrangement which the king of Sodom proposed to Abraham, that he should restore the prisoners but keep the other things for himself in return for his toil and danger. Abraham, however, being a man not only of pious but also of a lofty mind, wished to take nothing at all for himself; but from the things that were recovered * * * as though by his own right he gave a tenth to God, deducted

the necessary expenses, and desired that a share be assigned to his allies." (Underscoring supplied). 32/

The same reasoning was subsequently expanded by later text writers into the following general principle:

"When the restoration of the property or territory which has been in the captor's possession is accomplished by a party other than the owner, the service of restoration should receive proper acknowledgement as in other cases of services." 33/

Another case which is valuable as a historical precedent and particularly as an indication of the proper principle of international law applicable to situations such as that under discussion is found in the controversy between Portugal and the Netherlands which arose out of the war with Spain. During the war the Netherlands occupied certain former Portuguese colonies which had been seized by Spain. At the termination of the war the Netherlands refused to restore these colonies. Ultimately the matter was disposed of by an agreement which returned the colonies to Portugal and recompensed the Netherlands for its expenses.

Bynkershoek, whom Chief Justice Marshall described as "a jurist of great reputation", 34/ disapproved of the attitude which had been adopted by the Netherlands Government in the following language:

"* * * When Portugal was restored, her king was entitled to resume possession of places which her allies had taken from the enemy, saving the right of the States-General (the Netherlands) to place a claim for expenses incurred in the occupation * * *." (Underscoring supplied.) 35/

32/ Grotius, De Jure Belli ac Pacis (1646 ed.) Book III, Chapter XVI, sec. 3 (translation of Carnegie Foundation, No. 3 of the Classics of International Law.)

33/ Wilson and Tucker, International Law (9th ed. 1935) p. 290. Wilson and Tucker assume that where the liberator is an ally, the obligation of the liberated territory will probably be spelled out by the terms of the alliance.

34/ The Schooner Exchange v. McFadden (1812) 7 Cranch 116, 144.

35/ Bynkershoek, Questionum Juris Publici, Libri Duo (1737 ed.) chapter XVI (translation of the Carnegie Foundation, No. XIV of the Classics of International Law.)

Vattel is in complete accord with Bynkershoek. In considering whether a subjugated State may revolt against its conqueror and reassume its former governmental authority, he states:

"If the subjugated State has not yet accepted its new condition of subjection, if it has not voluntarily submitted, and has merely ceased to resist from lack of power, if its conqueror has not put aside his sword in exchange for the sceptre of a just and peaceful ruler, such a State is not really subdued; it is merely conquered and oppressed, and when delivered by the army of an ally, it unquestionably returns to its former condition. (sec. 207) Its ally does not become its conqueror; he is a liberator, whom the State is merely under the obligation of recompensing." (Underscoring supplied.) 36/

Wheaton in his History of the Law of Nations 37/ quotes this statement of Vattel with approval.

A more recent writer, Rivier, supporting the same doctrine, gives a sound if somewhat different theoretical explanation of the principle that the liberated country should bear the expenses of liberation in his Principes du Droit des Gens 38/. Referring to the liberation of an occupied State by a non-allied third power, Rivier writes:

"The liberating power has, moreover, a right to an indemnity; or at the very least to reimbursement for its expenses in accordance with the analogy of the administration of a business."

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"The right of a third power which has liberated a territory could be brought under the doctrine of quasi-contract." 39/

36/ Vattel, Le Droit des Gens, au Principes de la Loi Naturelle, Appliques a la Conduite et aux Affaires des Nations et des Souverains (1758) Book III, Chapt. XIV, Sec. 213 (Translation of the Carnegie Foundation, No. 4 of the Classics of International Law). See also: Ayala, De Jure et Officis Bellicis et Disciplina Militaria (1581 ed.) Libri III, Chapt. 5, par. 36.

37/ 1845 ed. p. 490.

38/ 2 Rivier, Principes du Droit des Gens (Paris 1896) pp. 346-347.

39/ Id. at pp. 40-41.

An excellent illustration of the fact that the various theories are freely used to support the right to occupation costs, is the case of the United States forces occupying Cuba. In that case the Cubans fought side by side with the United States troops; and both the President and the Congress of the United States made it perfectly clear that this country was not at war with the Cubans and that our forces were an army of liberation. 40/ Three days before the declaration of the existence of a state of war with Spain, a joint resolution passed by Congress and approved by the President declared the freedom and independence of the Cubans. 41/

Nevertheless, on the question of the right to occupation costs for United States troops in Cuba, President McKinley outlining the conduct which the military forces occupying Santiago de Cuba in the Spanish-American War were to observe, significantly applied to the friendly Cubans the rules applicable to occupied enemy areas.

"While it is held to be the right of the conqueror to levy contributions upon the enemy in their seaports, towns, or provinces which may be in his military possession by conquest, and to apply the proceeds to defray the expenses of the war, this right is to be exercised within such limitations that it may not savor of confiscation. As the result of military occupation the taxes and duties payable by the inhabitants to the former government became payable to the military occupant, unless he sees fit to substitute for them other rates or modes of contribution to the expenses of the government. The moneys so collected are to be used for the purpose of paying the expenses of government under the military occupation such as the salaries of the judges and the police, and for the payment of the expenses of the Army." (Underscoring supplied.) 42/

Moreover, the propriety of the President McKinley approach was considered and the foregoing statement was quoted with approval by the Supreme Court of the United States. 43/

Thus, it is quite evident that there is a respectable body of text writer authority and some case precedents for holding that non-enemy

40/ See Encyclopedia Britannica (14th ed.) p. 840; and Neely v. Henkel (No. 1) (1900) 180 U.S. 109, 115-116-125.

41/ 30 Stat. 738.

42/ 7 Moore op. cit., supra, footnote 1, p. 263.

43/ MacLeod v. U.S. (1912) 229 U.S. 416, 426.

territory recaptured from the enemy by a third party is liable for the occupation costs. What is more significant than the authorities cited is the fact that there is no international law authority in contravention of the views expressed. The factual situation is an unusual one and in the absence of precedents, cases or text writer authority to the contrary, reliance must be placed upon the experts in the field, both ancient and modern, who, having considered the question, reached the conclusion that under international law the occupied territory was liable for the occupation costs of an allied government which had driven the common enemy from the territory.

Not only is this result the only one that is consistent with the authorities on the subject but it bears out a principle to which no exception has been found: where there is a right to occupy, there is a right to occupation costs.

D. Non-Belligerent Military Occupation.

Non-belligerent military occupations are those which take place, often on a friendly basis, and always at a time when the occupant and the territory so occupied are, at least, technically at peace with one another. Such occupations may take place either at the express request of the occupied territory or without its consent as in the case where the occupation is for the purpose of enforcing provisions of a treaty or recovering a debt. This type of case which is distinguishable from the belligerent occupation, with which this memorandum is primarily concerned, is specially valuable in supporting the thesis that where there is a right to occupy there is a right to occupation costs.

There is hardly a more effective argument in support of the proposition that a lawful occupant is entitled to occupation costs than the argument that not only are the theoreticians in agreement but that during hundreds of years nations throughout the world have entered into covenants and treaties which expressly stipulated that the costs of occupation were to be borne by the occupied territory. This constitutes the recognition, in actual practice, that assessing costs against the occupied territory is the proper method of handling the question of occupation costs and that such allocation of financial responsibility is in conformity with the standards by which international relations are governed.

In his book entitled Des Occupations Militaires ^{44/} Robin makes an exhaustive study of non-belligerent military occupations. Under a chapter headed "Who is to Bear the Burden of Maintaining the Army of Occupation" he states:

^{44/} Robin, Des Occupations Militaires En Dehors des Occupations de Guerre. (1942 translation of the Carnegie Foundation.)

"* * * in the majority of the treaties * * * the cost of maintenance of the occupation forces is, in general, charged against the occupied country. And we find this rule sanctioned not only in the case of the most recent occupations, but also in those we have encountered in examining the ancient law on the subject." (Underscoring supplied.) 45/

He states further:

"Thus we see that it was only by exception and because of special circumstances that treaties placed the burden of maintenance of the occupation forces on the occupant. In principle (and we have explained why this is so) that maintenance falls upon the occupied state." (Underscoring supplied.) 46/

After reciting instances from antiquity, the middle ages and modern times, the author continues:

"* * * in the numerous occupations which followed each other in the course of the nineteenth century, with the exception of those which disguise cessions of sovereignty, it has been an almost uniform admitted principle that the maintenance of the army of occupation is incumbent upon the occupied country. We may cite particularly in this connection the treaties of May 16, 1795, and of February 21, March 26 and August 19, 1798, between France and the Batavian, Cisalpine, Roman and Helvetian Republics; the Treaty of March 26, 1801, between France and the Kingdom of the Two Sicilies; the Franco-Prussian convention of September 8, 1801, concerning the occupation of fortified towns along the Oder, the Treaty of November 20, 1815, between France and the Allied Powers; the conventions of February 2 and July 24, 1821, relative to the occupation of Naples and Piedmont by Austria; the Treaty of July 10, 1849, between Denmark and Prussia concerning the occupation of Schleswig by Swedish troops; the Convention of April 22, 1850, between Austria and Tuscany, for the purpose of regulating the terms of the occupation of the Tuscan Duchy by Austrian troops, following the restoration of the Grand Duke in 1849; the Convention of Miramar (April 10, 1864) between France and the Mexican Empire; the Preliminaries to the Peace of Versailles of February 26, 1871, between France and Germany (Art. 4); and the Russo-Turkish Treaty of San Stefano concluded

45/ Id. at 267.

46/ Id. at 266.

March 3, 1878 (Art. 8), which provided for the occupation of Bulgaria by the Russians." (Underscoring supplied). 47/

Certainly, the fact that the vast majority of treaties which dealt with the subject placed the costs of occupation upon the occupied territory is persuasive as indicating that type of term or condition in a treaty is accepted as the usual and customary way of dealing with the problem. If nations agreed to such terms it can hardly be argued that imposition of such terms by an occupant in the absence of an agreement is a violation of the standards and practices of international conduct. In fact, the consistent practice of nations indicates that such a provision is declaratory of the law of nations.

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In summary it may be noted that the rule of thumb that with the right to occupy goes the right to occupation costs is not limited to belligerent occupations in time of war, but is a standard of conduct which has been recognized and practiced in military occupations of all kinds, for many centuries.

/Signed/ Randolph Paul

47/ Id. at p. 261. It may be noted that the author concludes in the face of this wealth of precedent that in certain instances costs should be borne by the occupant in the absence of an agreement, because the occupant could, if it had desired, obtained such an agreement from the occupied country.

December 10, 1943.

MEMORANDUM FOR THE FILES:

Lt. Com. Knipe and two other officers of the Navy Department conferred with Messrs. Luxford and Aarons this morning relative to the potential use of Navy Department appropriated funds for civilian rehabilitation purposes in Central Pacific areas. The Navy Department foresees the necessity of procuring food, clothing, etc. for the civilian population of occupied areas in the Pacific. It also foresees the necessity of making advances of funds in the occupied areas in order to facilitate the re-orientation of local economy.

The representatives from the Navy Department regarded their problem as possibly being of greater difficulty than the problem of the Army in Sicily and Italy, inasmuch as the Navy is using actual U. S. currency, Hawaiian series, as distinguished from the A. M. currency in use by the Army.

In response to a request on the part of the Navy officers whether Treasury had prepared any opinions concerning Army's authority to finance civilian rehabilitation in the Italian area, Mr. Luxford replied that no such opinions had been prepared. However, he told the Navy officers that we would forward to them copies of our basic opinion on the use of A. M. currency and possibly other opinions which had been prepared on that subject. It was indicated to the Navy officers that the general theory underlying these opinions might be of assistance to them in considering the legal question with which they are confronted.

As the matter was left, the Navy officers will give further consideration to the matter and we also will give some study to the problem with a view to canvassing it further with the Navy representatives in the near future.

L. C. Aarons

CC * Messrs. Luxford, DuBois, Taylor, Pehle, Brenner.

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September 24, 1943

MEMORANDUM FOR THE FILES

Re: OPINION ON THE LEGALITY OF THE ISSUANCE
OF AMG CURRENCY IN SICILY.

The Allied Military Government (AMG) has issued special currency in Sicily for local use, called Allied Military Currency. It is denominated in lira, and has been made legal tender in Sicily, interchangeably with the Italian lira already in circulation. It is being issued to American, Canadian and British troops as pay, to the extent such troops desire and are permitted to draw pay in cash, at the proclaimed rate of 100 lira to the dollar, and 400 lira to the pound. The currency is also being used for the purchase of supplies for the armies, and for local governmental purposes, and may be made available for loans, either by advances to a central bank, or directly. To the extent that military lira are issued for regular Army purposes, such as the pay of troops and the purchase of supplies, charges are being made here against War Department appropriations, at the decreed rate of exchange.

This memorandum concludes that the issuance of AM currency, as described above, is entirely proper under the applicable law, from the viewpoint of participation therein by the U.S. Army. Probably the same legal considerations would support participation in the enterprise by the British and Canadian armies, but no effort has been made to cover that field.

I. The Allied armies properly assumed the administration of government in Sicily, applying Italian law, except as changed by military authority, rather than the domestic law of the Allied nations.

(a) By established principles of international law, occupying armies properly assume powers of government over occupied territory.

It is universally agreed among the authorities on international law that an army occupying enemy territory acquires a temporary right of government administration over the occupied territory. ^{1/} The exercise of this power of government is now subject to certain accepted rules which will be discussed later in this opinion where such rules are relevant to the currency question. But these limitations on the

^{1/} 2 Oppenheim, International Law (6th Lauterpacht Ed. 1940) 336-50; 2 Hyde, International Law (1922) 366-68; 1 Moore, International Law Digest (1906) 45-51; 7 Id. 257-315; Hall, International Law (8th Higgins Ed. 1924) 553-76; Lawrence, International Law (7th Winfield Ed. 1923) 408-30; Colby, Occupation under the Laws of War (1926) 26 Col. L. Rev. 146, 149.

exercise of governmental power by an occupying army are comparatively recent innovations.

As late as the first half of the 18th Century, international law acknowledged no limitations on the right of an occupying belligerent. He could devastate the country, appropriate all public and private property, and kill the inhabitants, enslave them, or impress them into his own army. ^{2/}

The limitations which have grown up on the powers of an occupying army are part of a humanizing trend in the accepted rules applicable to warfare which were codified to a considerable extent in the Hague Conventions adopted in 1907, to which the United States subscribed. ^{3/} The impact of the particular rules which may be considered relevant in dealing with the problem at hand will be considered in point II. of this opinion.

It is not necessary for the question at hand to consider the extent to which the Hague Conventions are considered binding, in view of the non-adherence thereto by certain belligerents, ^{4/} e.g. Italy, ^{5/} since it will be demonstrated that the issuance and use of currency in

^{2/} 2 Oppenheim, op. cit. supra note 1, at 337; Lawrence, op. cit. supra note 1, at 408-11. But see Baty, Relation of Invaders to Insurgents (1927) 36 Yale L. J. 966-77.

^{3/} Conventions Concluded at the Second International Peace Conference, held at the Hague, 1907. References in this opinion are to the Annex to Convention IV, entitled "Regulations Respecting the Laws and Customs of War on Land." This Convention was concluded October 18, 1907, ratified by the Senate March 10, 1908, ratified by the President February 23, 1909, and proclaimed February 28, 1910. 2 Malloy, Treaties (1910) 2269, et seq.

^{4/} Convention IV provides that, "The provisions contained in the Regulations . . . as well as in the present Convention, do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention." See 1 Garner, International Law and the World War (1920) 19 ff; 2 Oppenheim, op. cit. supra note 1, at 182, 185-86, where the point is made that since the Hague Convention was largely declaratory of the accepted law, the "general participation clause" does not really exempt nations from compliance.

^{5/} See 2 Oppenheim, op. cit. supra note 1, at 740.

Sicily is consistent with those conventions. In construing the limitations upon the exercise of governmental authority by an occupying army, consideration must be given to the totalitarian methods of warfare which have been adopted by all of the belligerent countries to a greater or less degree, and which involve economic warfare on a scale never contemplated in 1907. It is clear that international law limitations will not be construed to interfere with the kind of economic warfare which is being universally practiced today.^{6/} The humane limitations on warfare may be carried over into the economic field, but will not be held to interfere with important areas of economic warfare, any more than the other limitations of the Hague Conventions were intended to impose any serious limitations on the necessities of military operations proper.

(b) Our courts have accepted these principles of international law and have recognized the propriety of the exercise of governmental powers by military authorities in occupied areas.

The Supreme Court has consistently and uniformly accepted the principles of international law described above in all situations which have come before it. In the case of Dooley v. United States, 182 U.S. 222, 230-31 (1901), dealing with American occupation of Puerto Rico during the Spanish American War, the court quoted with approval the following passage from Halleck's International Law:

"The right of one belligerent to occupy and govern the territory of the enemy while in its military possession, is one of the incidents of war, and flows directly from the right to conquer. We, therefore, do not look to the Constitution or political institutions of the conqueror, for authority to establish a government for the territory of the enemy in his possession, during its military occupation, nor for the rules by which the powers of such government are regulated and limited. Such authority and such rules are derived directly from the laws of war, as established by the usage of the world, and confirmed by the writings of publicists and decisions of court--in fine from the law of nations."

^{6/} Nussbaum, Money in the Law (1939) 159.

Similarly, in a case involving the occupation of New Orleans by Union troops (which it held to be the same as military occupation of foreign territory), the Court said:

"In such cases the conquering power has a right to displace the pre-existing authority, and to assume to such extent as it may deem proper the exercise by itself of all the powers and functions of government. It may appoint all the necessary officers and clothe them with designated powers, larger or smaller, according to its pleasure. It may prescribe the revenues to be paid, and apply them to its own use or otherwise. It may do anything necessary to strengthen itself and weaken the enemy. There is no limit to the powers that may be exerted in such cases, save those which are found in the laws and usages of war. These principles have the sanction of all publicists who have considered the subject."
New Orleans v. Steamship Company, 20 Wall. (87 U.S.) 387, 394 (1874).

In other cases involving the Mexican War, the Civil War, and the Spanish American War, the Supreme Court clearly recognized that the powers of government over occupied territory which the United States has by international law are properly carried out by the military under the orders of the President as Commander-in-Chief:

"The person who acted in the character of collector in this instance, acted as such under the authority of the military commander, and in obedience to his orders; and the duties he exacted, and the regulations he adopted, were not those prescribed by law, but by the President in his character of commander-in-chief. The custom-house was established in an enemy's country, as one of the weapons of war. It was established, not for the purpose of giving to the people of Tamaulipas the benefits of commerce with the United States, or with other countries, but as a measure of hostility, and as a part of the military operations in Mexico; it was a mode of exacting contributions from the enemy to support our army, and intended also to cripple the resources of Mexico, and make it feel the evils and burdens of the war. The duties required to be paid were regulated with this view, and were nothing more than contributions levied upon the enemy, which the usages of war justify when an army is operating in the enemy's country."
Fleming v. Page, 9 How. (50 U.S.) 603, 616 (1850).

"Early in 1847 the President, as constitutional commander-in-chief of the army and navy, authorized the military and naval commander of our forces in California to exercise the belligerent rights of a conqueror, and to form a civil government for the conquered country, and to impose duties on imports and tonnage as military contributions for the support of the government, and of the army which had the conquest in possession . . . No one can doubt that these orders of the President, and the action of our army and navy commander in California, in conformity with them, was according to the law of arms and the right of conquest, or that they were operative until the ratification and exchange of a treaty of peace." Gross v. Harrison, 57 U.S. 164, 190 (1854).

". . . it became the duty of the National government, wherever the insurgent power was overthrown, and the territory which had been dominated by it was occupied by the National forces, to provide as far as possible, so long as the war continued, for the security of persons and property, and for the administration of justice.

"The duty of the National government, in this respect, was no other than that which devolves upon the government of a regular belligerent occupying, during war, the territory of another belligerent. It was a military duty, to be performed by the President as commander-in-chief, and intrusted as such with the direction of the military force by which the occupation was held." The Grapeshot, 9 Wall. (76 U.S.) 129, 132 (1869).

"There can be no doubt with respect to . . . the execution of duties under the war power . . . Upon the occupation of the country by the military forces of the United States, the authority of the Spanish Government was superseded, but the necessity for a revenue did not cease. The government must be carried on, and there was no one left to administer its functions but the military forces of the United States. Money is requisite for that purpose, and money could only be raised by order of the military commander. The most natural method was by the continuation of existing duties. In adopting this method, General Miles was fully justified by the laws of war." Dooley v. United States, 182 U.S. 222, 230 (1901).

In each of these cases, the Court recognized without question that American military authorities in the course of a war have the power to exercise governmental functions over occupied territory under the orders of the Commander-in-Chief, and that the exercise of such powers will be upheld in subsequent private litigation involving the validity of particular decrees issued by military commanders. Other cases to the same effect are Leitenstorfer v. Webb, 20 How. (61 U.S.) 176 (1857); Mechanics' Bank v. Union Bank, 22 Wall. (89 U.S.) 276 (1874); Butledge v. Fogg, 43 Fenn. 554 (1866). In only one case did the court decline to uphold the act of a military commander and that decision was on the ground that the commander disobeyed the orders given him by the President as Commander-in-Chief, Ochoa v. Hernandez, 230 U.S. 139, 154 (1913).

The Supreme Court has likewise recognized the validity of the exercise of powers of government by enemy armies occupying American territory. Thus, in the case of United States v. Rice, 4 Wheat. (16 U.S.) 246 (1819), involving the British occupation of the city of Castine, Maine, during the War of 1812, the case of Thorington v. Smith, 8 Wall (75 U.S.) 1 (1866), involving the Confederate Government and the case of MacLeod v. United States, 229 U.S. 416 (1913), involving native insurgent occupation of Cebu in the Philippine Islands, the court recognized the necessity of obedience by American citizens to the government actually exercising power.

- (c) The law applicable in Sicily is the Italian law, as modified by the Allied Military Authorities in charge, not the domestic law of the United States or of the other Allied occupying countries.

The Hague Convention clearly enunciated the principle that the laws applicable in an occupied country remain in effect during the occupation, subject to change by the military authorities within the limitations of the Convention. Article 43 provides:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

This declaration of the Hague Convention amounts only to a reaffirmation of the recognized international law prior to that time. ^{7/} In the case of Dooler v. United States the Supreme Court quoted with approval the following sentences from Halleck's International Law:

"The municipal laws of a conquered territory, or the laws which regulate private rights, continue in force during military occupation, except so far as they are suspended or changed by the acts of the conqueror. * * * He, nevertheless, has all the powers of a de facto government, and can at his pleasure either change the existing laws or make new ones." ^{8/}

In other articles of the Hague Convention, provisions are included delimiting the authority of the military government over a variety of subjects, and affirming its right to collect taxes, levy contributions, and requisition property for the needs of local government as well as military operations.

Thus, the entire structure of law recognized for occupied territories is the local law as it existed prior to the occupation, with any particular changes which may have been made by the military authorities. During the last war, German authorities recognized this principle in occupying Belgium and other territory, and, although they were condemned for having gone too far in particular modifications of local law made, there was never any attempt on their part to set aside the local law as a whole. ^{9/} Certainly there has been no suggestion that German law followed the German armies as they occupied territory. In certain areas of Poland where Germany decreed annexation in 1939, the German law was made applicable. ^{10/} Whatever may be the rights and wrongs of this policy is immaterial; we do not plan to annex Sicily.

^{7/} 2 Oppenheim, op.cit. supra note 1, at 342; Colby, supra note 1, at 151-52.

^{8/} 182 U.S. 222, 231 (1901).

^{9/} Colby, supra note 1, at 151-52; 2 Garner, op. cit. supra note 4, at 63 et seq.

^{10/} 2 Oppenheim, op. cit. supra note 1, at 343.

II. The military authorities occupying Sicily have the right to issue military currency in the exercise of their governmental powers.

(a) A great variety of currency devices have been used in support of military operations for many centuries.

Special currency devices of many kinds have been used in warfare. As early as the year 1122, during the siege of Tyre, Doge Micheli paid his troops in leather money, which he promised to redeem when the army returned to Venice. 11/ Frederick II, when he besieged Milan, also used leather money, but went a step further by issuing it as a measure of the division of the anticipated spoils as well as in payment of wages. 12/

Counterfeiting of the enemy's currency was resorted to by the British during the American Revolution, 13/ by Sherman in his March through Georgia, 14/ and by Napoleon in his Austrian and Russian campaigns. 15/ Frederick the Great captured the enemy's dies and issued degraded coins made from them. 16/ When the French occupied the Ruhr in 1923, they finished the printing of some Reichsbank notes in process and issued them. 17/

11/ Del Mar, Money and Civilization (1896) 29.

12/ Id. at 53.

13/ Russbaum, op. cit. supra note 6, at 158.

14/ Edmunds, The Lawless Law of Nations (1925) 312.

15/ Russbaum, op. cit. supra note 6, at 158.

16/ Ibid.

17/ Id. at 158-59.

Receipts for requisitioned goods were used commonly; for example, during the Seven Weeks War 18/ and by the Germans during the Franco-Prussian War. 19/ The British went a step further during the Boer War and made such receipts readily negotiable, 20/ an arrangement very similar to the issuance of currency.

Occupation currency, as such, has many precedents. During the American Revolution the Continental Congress issued currency even before the issuance of the Declaration of Independence, 21/ when the territory controlled by the Congress was held in military occupation against the then legitimate government. The Confederacy issued its own currency in Confederate territory 22/ and also in northern areas occupied from time to time during the war. 23/ The Japanese issued special occupation currency in Korea and Manchuria during the Russo-Japanese War of 1905. 24/ Germany and Austria issued occupation currency during the First

18/ Hozier, Seven Weeks War 80.

19/ Spaight, War Rights on Land 392.

20/ Id. at 396; Lawrence, op. cit. supra note 1, at 424.

21/ Dewey, Financial History of the United States 37-38; Morrison and Commager, Growth of the American Republic 207; Huesbaum, op. cit. supra note 6, at 172-73.

22/ Thorington v. Smith, 8 Wall. (75 U.S.) 1 (1868); Morrison and Commager, supra at 711.

23/ Spaight, op. cit. supra note 19, at 392.

24/ In the Russo-Japanese War, the Japanese forces in Korea and Manchuria paid for their requisitions with military checks or credit notes which were announced to be subject to exchange for silver coin on a certain day. It is stated that each army and division held bullion for such exchange in its Treasury chest. It would appear that such checks were not at first accepted readily, but that the Japanese prevailed upon the Chinese civil authority to make a similar announcement about their convertibility and also prevailed upon them to announce that the payment of Chinese taxes and contributions could be made in such military checks. The total amount put in circulation exceeded 14,000,000 sterling. No reference has been found to the amount of such checks which were actually exchanged for silver coin. However, it is stated that the Chinese soon asked for no silver coin in exchange and that the checks had an easy circulation as convertible paper. Takahashi, International Law Applied to the Russo-Japanese War (1903) 260-61; Spaight, op. cit. supra note 19, at 397; Lawrence, op. cit. supra note 1, at 424-25; Ariga, La Guerre Russo-Japonaise (1908) 450 et seq. Ariga also states that such a system of money was not absolutely new because it had been determined to issue 27,000,000 "taels d'assignats" in the war with China of 1894, but that peace was concluded before they were put into circulation.

World War. 25/ The British did the same in their occupation of Archangel during and after the World War. 26/ During the present war, the British have been using the "military pound" in the conquered Italian African colonies.

The Germans have been using a variety of occupation currencies in the present war on a large scale. The currency initially used in most occupied areas was the Reichskreditkasse mark, a paper currency printed in German and denominated in German monetary units, which circulated side by side with the local currency at decreed rates of exchange, both having the status of legal tender. 27/ These Reichskreditkasse marks were not legal tender in Germany proper. As soon as local conditions permitted, the Germans, as a rule, withdrew the Reichskreditkasse marks in favor of a currency more familiar to the local population. Sometimes this was genuine local currency issued by the pre-occupation government and re-issued by the Nazi-dominated government of the occupied territory. 28/ In other cases, it was a local currency identical with the old currency, but reproduced by a Quisling government, 29/ or a new local currency denominated in the old local units, 30/ or an entirely new local currency denominated in terms of a new unit. 31/ In occupied areas incorporated into the Reich, the currency which replaced both the Reichskreditkasse marks and the former local currency was the regular German Reichsmark. 32/

25/ See infra p. 14, and citations in note 42.

26/ These notes were stated on their face to be redeemable in sterling at London at a fixed rate of exchange. White, *Currency of the Great War (1921)* 66; League of Nations, *Currency After the War (1920)* 100. American troops stationed in Siberia first obtained local currency for dollars at local banks, and later issued dollars, which were freely accepted locally, according to oral information from an officer who participated in the expedition.

27/ In Poland the Germans first made payments in ordinary Reichsmark currency, as they had an insufficient supply of Polish currency and had not prepared in advance any special occupation currency. Subsequently, the Germans issued in Poland special notes designed originally for use in Germany as a substitute for silver coin which the Germans were intending at one time to withdraw from circulation. These notes were the forerunner of the Reichskreditkasse marks.

28/ This was done in Denmark and France.

29/ The Quisling-controlled Bank of Norway is issuing bank-notes manufactured with the pre-war plates, indistinguishable from the older currency.

30/ New zloty notes were issued in Poland, and dinar notes in Serbia.

31/ The "Karbovanetz" was introduced in the Ukraine, and the "Kuna" in Croatia.

32/ E.g., in the parts of Poland, France and Belgium incorporated into Germany.

Another currency technique was used to meet the problem of paying the large number of German troops stationed in Hungary, Roumania and Bulgaria, without causing price and monetary disturbances. Troops received part of their pay in local currency, and part in Kantingeld, and later Behelfsgeld der Wehrmacht. These special currencies are good for the full equivalent of the pay due only for purchases in Army canteens, or for remittances to Germany; for use in local purchases, they are only worth one-tenth as much.

This long history of special currency devices is an indication of the necessity from a military point of view of meeting special currency problems in the course of military operations. It is also an indication that such devices have become a regular part of the conduct of warfare practiced at some time or other by practically every important country.

- (b) International law interposes no objection to the issuance of military currency.

The international law authorities do not discuss the rights and wrongs of the issuance of currency, as such, by an occupying military authority. The Hague Convention contains a long series of provisions dealing with financial relations between the occupying military force and the inhabitants of the area. The occupant is authorized to collect taxes, dues, and tolls in accordance with the rules of assessment and incidence in force, and, if he does so, is required to finance the administration of the occupied territory. ^{33/} In addition to taxes, other money contributions may be levied for the needs of the army and the administration of the territory, and such contributions must be collected "as far as possible" in accordance with the regular rules of assessment and incidence. ^{34/} Contributions may be collected only on the written orders of the Commander-in-Chief, and receipts must be given. ^{35/} Similarly, requisitions in kind and services may be made for the needs of the army, also under written authority of the Commander. As in the case of contributions in kind, payment must be made in cash, or a receipt must be given, and the payment made as soon as possible thereafter. ^{36/} Cash, funds and realizable securities owned by the state occupied, as well as tangible state property, may be appropriated. ^{37/}

While many military operations have been carried out without the issuance of new currency, either by use of the currency of the occupying power, by collection of taxes and contributions prior to the making of disbursements for local government, or by liberal use of the requisitioning power and the issuance of receipts, ^{38/} it is clear from the historical references above that many other armies found these methods unsuitable, and resorted to various kinds of currency.

^{33/} Art. 48.

^{34/} Art. 49, 51.

^{35/} Art. 51.

^{36/} Art. 52.

^{37/} Art. 53.

^{38/} Requisitions and contributions against receipts were the common practice by the late 19th Century. ² Oppenheim, op. cit. supra note 1, at 316.

The Hague Convention makes no specific reference to the question of currency, but provides in its preamble that:

"Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience."

The practice of nations at war would seem to confirm the power to issue currency as an incident of the administration of local government.

A recent decision of the British Chancery Court, taken literally, would seem to cast serious doubt as to the applicability of the Hague Conventions. In the case of Bank of Ethiopia v. National Bank of Egypt, [1937] Ch. 513, the legitimate officers of the Bank of Ethiopia, then in London, sued the National Bank of Egypt for a settlement of accounts. The defendant admitted the existence of the accounts, but opposed the claim on the ground that the Italian Government had appointed a liquidator of the Bank of Ethiopia who was the proper recipient of any settlement. The Ethiopian directors claimed that the appointment of a liquidator involved a modification of Ethiopian law with respect to the status of corporations and that such a modification of the law was beyond the power of a military occupant under Article 43 of the Hague Convention. 39/ The court said that the plaintiff's contention had "...no relevance in principle to the case of a de facto government set up in an area from which the former government has departed, and in which there is no government authority except that of the de facto government; and that "...confusion (would ensue) if the only bank of issue in the country were allowed to continue its business under the control of persons who, until the last moment, seem to have been engaged in strenuous attempts to assist the displaced government to resist the attacks of those who have become the de facto government." Of course, in every case of belligerent occupation, the former government departs, if it can, and there is no government authority except that of the occupying power. Thus, taking the language literally, this decision would make the Hague rules governing military occupation practically a nullity, at least when the occupation of a country was complete, and the occupying power would be free to do as it chose, subject to no limitation. However, the court had presented to it a formal "de facto recognition" of the Italian conquest by the Foreign Office, a type of recognition not formalized under American practice. 40/ Evidently, the court accorded to such recognition at least part of the incidents of de jure recognition.

39/ Which provides that the occupant must respect "unless absolutely prevented, the laws in force in the country."

40/ See Note (1941) 41 Col.L.Rev. 1073, 1078-82. On the case generally, see Wright, The British Courts and Ethiopian Recognition (1937) 31 Am.J. Int. L. 683. See also Haile Selassie v. Cable and Wireless, Ltd., [1939] 1 Ch. 182.

The Supreme Court of the United States dealt with the question of Confederate currency in the case of Thorington v. Smith, 8 Wall. (75 U.S.) 1, 11-12 (1869), which was a suit on a contract executed in Confederate territory during the war and based upon payment in Confederate currency. The court upheld the issuance of the currency in finding the contract valid, saying that:

"As contracts in themselves, except in the contingency of successful revolution, these notes were nullities; for, except in that event, there could be no payer. They bore, indeed, this character upon their face, for they were made payable only 'after ratification of a treaty of peace between the Confederate States and the United States of America'. While the war lasted, however, they had a certain contingent value, and were used as money in nearly all the business transactions of many millions of people. They must be regarded, therefore, as a currency, imposed on the community by irresistible force.

"It seems to follow as a necessary consequence from this actual supremacy of the insurgent government, as a belligerent, within the territory where it circulated, and from the necessity of civil obedience on the part of all who remained in it, that this currency must be considered in courts of law in the same light as if it has been issued by a foreign government, temporarily occupying a part of the territory of the United States. Contracts stipulating for payment in this currency, cannot be regarded for that reason only, as made in aid of the foreign invasion in the one case, or of the domestic insurrection in the other. They have no necessary relations to the hostile government, whether invading or insurgent. They are transactions in the ordinary course of civil society, and, though they may indirectly or remotely promote the ends of the unlawful government, are without blame, except when proved to have been entered into with actual intent to further invasion or insurrection. We cannot doubt that such contracts should be enforced in the courts of the United States, after the restoration of peace, to the extent of their just obligation." 41/

In Mechanics' Bank v. Union Bank, 23 Wall. (69 U.S.) 295 (1874), the Court described the regulations of the commanding general who occupied Louisiana during the Civil War, first permitting and then forbidding the circulation of Confederate currency, without any suggestion that such regulations were beyond his powers. The case turned on the effect of these

41/ See Colby, supra note 1, at 160

currency regulations on the payment of private debts. In Keith v. Clark, 97 U.S. 454 (1878), the Court sustained the validity of state bank notes issued in Confederate territory.

After the World War, Belgium redeemed a large volume of German special occupation marks, and special francs backed by occupation marks, although the backing for the currency depreciated considerably. ^{42/} Germany finally agreed to reimburse Belgium, in 1929, ^{43/} when Belgium made it a condition of its acceptance of the Young Plan for refinancing reparations. ^{44/} However, the treaty provided that it was not to be construed as a concession by either party of the justice of the other's position. In any event, it is not clear whether Belgium challenged the power to issue currency, or based its claim on the depreciation of the security behind it. Thus, the 1929 treaty can hardly be considered a precedent on the power to issue occupation currency under international law. ^{45/}

From these cases we may conclude that the little precedent available seems to accept the issuance of currency as a normal incident of military government, and no authoritative condemnation of the practice has been found.

The broad authority of an American commanding general in the field can be seen from a recent opinion of the Attorney-General holding that the statutes governing procurement of Army supplies here are wholly inapplicable to purchases abroad in a theatre of operations. He said:

"It is unthinkable that the Congress attempted, by statutory restrictions, to abrogate this rule of military necessity, to handicap commanding generals waging war on foreign soil, to limit or encroach upon the power of the President as Commander in Chief to conduct, through his subordinates, military campaigns abroad." 40 Cps. Atty. Gen. No. 56 (Nov. 12, 1942).

^{42/} League of Nations, Currencies After the War (1920) 13; Feilchenfeld, International Economic and Financial Law of Belligerent Occupation, sec. 125-26; von Kohler, Administration of Occupied Territories: Belgium (Tr. C.E.I.P. mimeo. 1942) 139-42; Polonsky, German Administration in Belgium; Fauchille, Droit International Public; White, op.cit. supra note 26.

^{43/} Treaty of July 13, 1929, 104 League of Nations Treaty Series 202, 206.

Report of Committee of Experts on Reparations (Fed. Res. Bull. July 1929) 37, 31.

op. cit. supra note 6, at 159-61.

- (c) The issuance of currency in Sicily was a necessity for the maintenance of "public order and safety," as well as for the support of military operations.

The use of currency in some form and in adequate quantities is a necessity for the maintenance of modern every-day economic life. 46/

To use the domestic currencies of the occupying powers for circulation in occupied territory would entail many practical disadvantages which would make the promotion of normal economic life difficult. In the case of Sicily, the occupation was carried out by American, British, and Canadian troops, and the use of the currencies of the three countries alongside of the existing Italian lire would have created a very complicated economic situation which would make commerce and trade difficult to maintain.

The occupying power has a duty under the Hague Convention to maintain public order and safety, which, in a general way, means that it must maintain local government. 47/ It also has a right to exact a measure of tribute for the continued conduct of the war. 48/ The expenses of administration, as well as the expenses of the army, may be imposed upon the inhabitants

46/ Id. at 160.

47/ Here, again, the Hague Convention is only declaratory of the accepted law. 2 Hyde, *op. cit. supra* note 1, at 356; Colby, *supra* note 1, at 152 ff.

48/ President Polk, in a special message to Congress on February 10, 1848, dealing with the Mexican War, said:

"No principle is better established than that a nation at war has the right of shifting the burden off itself and imposing it on the enemy by exacting military contributions. The mode of making such exactions must be left to the discretion of the conqueror, but it should be exercised in a manner comfortable to the rules of civilized warfare.

"The right to levy these contributions is essential to the successful prosecution of war in an enemy's country, and the practice of nations has been in accordance with this principle. It is as clearly necessary as the right to fight battles, and its exercise is often essential to the subsistence of the army."

7 Moore, *op. cit. supra* note 1, at 285-86.

by the collection of normal taxes, and the collection of extraordinary taxes called contributions. ^{49/} Obviously, unless the occupying power is fortunate enough to seize the local government treasury, it must either advance money for the conduct of local government, or somehow induce the tax collectors to get to work immediately, while all governmental employees, including themselves, wait for their pay until enough taxes are collected to meet the daily expenses of local government. The Hague Convention expressly recognizes the right to requisition goods and services and to give a receipt, while postponing payment. ^{50/} Surely there would be no objection to giving a negotiable receipt for the services of these employees, and even less objection to going a step further and issuing currency, which is even more freely negotiable. The needs of military operations, involving such immediate matters as the purchase of supplies and the procurement of lodgings, as well as the longer-range objective of mobilizing the economy of the occupied territory in support of further military operations, ^{51/} on the one hand, and the duty of maintaining local government to insure "public order and safety", as required by the Hague Conventions, on the other hand, would permit the use of a currency medium which is at once simple, understandable, and immediately available to all concerned for the reestablishment of normal economic life.

It may be argued that the issuance of a new form of currency violates the provision of the Hague Conventions requiring that the occupying power respect "unless absolutely prevented, the laws in force in the country." It is perfectly clear that at some stage of an extended occupation the occupant would be "absolutely prevented" from respecting all of the Italian laws relating to currency. Surely the complicated restrictions on foreign exchange transactions provided by Italian law for many years would hardly permit free use of American or British currency. Moreover, the Italian currency available must be replaced in the normal course of affairs as it wears out. Some new currency must be provided. The responsibilities of the occupant would certainly permit his superseding Italian currency laws in order to carry out his paramount duty of maintaining public order and safety. ^{52/}

The currency policies deliberately followed by the Axis in retreat were designed to make the maintenance of "public order and safety" by the Allied powers as difficult as possible. The variety of forms of

^{49/} 2 Hyde, op. cit. supra note 1, at 368-73; Colby, supra note 1, at 162.

^{50/} This, too, was accepted as proper before the Hague Convention. 2 Hyde, op. cit. supra note 1, at 373-74, 382-84; Colby, supra note 1, at 163-64.

^{51/} Colby, supra note 1, at 164 ff.

^{52/} Nussbaum, supra note 6, at 160.

economic sabotage which the Germans might use is illustrated by the seemingly opposite practices followed in Tunisia and in Sicily. In Tunisia, the Germans distributed Bank of France notes on a grand scale, increasing wage rates to some classes of employees many fold, patronizing the black market freely, and paying collaborationists lavishly. It was necessary for the French African government which took over civilian affairs after the expulsion of the Germans to call in the Bank of France notes against a limited exchange for Bank of Algiers notes, and to use this demonetization of the Bank of France notes as an administrative mechanism for scrutinizing the profits of collaborators and for other economic measures designed to counteract the inflationary practices of the Germans. In Sicily, on the other hand, the Axis presented us with a different and equally disorganizing practice. For some months prior to our invasion, Italian currency had been becoming progressively more scarce, evidently because of a deliberate government policy to reduce the volume of currency even to the point where ordinary commercial activities became difficult. In Sicily, Mussolini went even further and ordered the banks to destroy stocks of currency by burning before the Allied troops arrived. Although the order was not carried out uniformly, currency stocks were found to be substantially depleted to the point where additional new currency was urgently needed for immediate use to permit the resumption of normal commercial activity. Thus, both the forms of currency sabotage used by the Axis as part of its program of economic warfare were successfully counteracted by the availability of Bank of Algiers notes in the case of Tunisia, and of Allied Military Currency in the case of Sicily. Certainly this kind of economic scorched earth policy would "absolutely prevent" our military authorities from attempting to rehabilitate economic life in terms of the pre-occupation laws of Sicily. Thus, the Axis practices made a ready supply of new currency even more essential than otherwise, and provide a complete justification for the use of such currency under the test of the Hague Convention.

- (d) The justice of the currency arrangements instituted by an occupying power must be judged by the substance and not the form of currency used.

The Germans were roundly criticized during the First World War, and again in this war, for introducing occupation marks and similar currency devices. To place our military currency in the same category is to look to the form and not the substance. Currency is a convenience and a mechanism for economic life. It must obviously be made available by an occupying power, whether in one form or another. The issuance of new currency, or the circulation of the domestic currency of the occupying power, or the seizure of the retreating government's plates and the continued printing of its currency, or the control of the management of the local banks of issue in such a way as to accomplish the aim sought in a more conventional form, are all the same in substance, and should not by themselves be judged just or unjust.

The vice of the German practice is not in the use of currency, but in the excessive issue of valueless currency as a device for stripping the occupied area of its goods and its labor for the benefit of Germany. ^{53/} We do not plan to follow any such practice in Sicily, or, indeed, in any other occupied country. We shall undoubtedly supply the inhabitants with more goods than we take from them, and our whole aim will be to improve economic conditions in occupied areas, rather than use those areas for our own benefit. Our announced program is one of relief and rehabilitation rather than one of exploitation.

As long as the wealth of the occupied territory is not impaired, and is, in fact, enhanced by our military occupation, through a net gain in useful goods, the currency is protected against the real inflation Germany is imposing by draining off economic wealth.

As long as we follow sound policies of taxation in the occupied territory, and protect the economic structure against price inflation, we will maintain the value of the currency against any depreciation due to internal causes. Thus, in carrying out a wise and beneficent occupation we go far beyond the requirements of international law.

III. The appropriation accounting procedure used by the Army in connection with the issuance of military currency is fully adequate to safeguard the control of Congress over the size of military appropriations.

Simultaneously with the issuance of AN currency in Sicily, the Army set up an appropriation accounting procedure to insure against the possibility that the issuance of such currency would have the effect of increasing the Army's appropriation beyond that provided by the Congress. The procedure used is to debit the Army's appropriation in an amount equivalent to all military disbursements made in AN currency, such as payment of wages to troops and purchases of supplies. No similar debit is made in the case of disbursements of AN lire for purely local government purposes, such as payment of local government employees and maintenance of hospitals, schools, etc. The amounts thus debited against the appropriation are set up in a special suspense account in the Treasury and will be available in connection with any final settlement of financial responsibility for the AN currency. It is understood that the British Army and Treasury are following a similar procedure.

Expenditures of the Army in Sicily accomplished with AN currency are of two distinct kinds, military expenditures proper, such as those which the Army would incur if the same troops were being maintained and supplied in the United States or in a friendly foreign country, and civilian expenses necessary to maintain local services for the Sicilian population

^{53/} Id. at 161 (as to the First World War practice).

until reasonably normal conditions can be restored there. The military expenses proper might, in turn, be differentiated as between the cost of maintaining the forces needed to maintain order and protect our occupation of Sicily, and the expenses involved in waging war from Sicilian soil on Germany proper or German-occupied territory.

All of these expenses could probably be charged to the local population under international law. The expenses of local government are, of course, paid for by the collection of local taxes, and doubtless as soon as order is fully restored and normal life reasonably re-established, such taxes will be collected and should be adequate to maintain governmental services without recourse to any further issue of military currency. International law also recognizes the right of an occupying power to levy contributions on the occupied territory for the support of the armies of occupation, and for further military offensives as well. ^{54/} Whether and to what extent we may, in the post-war settlement, demand occupation costs and financial contributions to other military expenditures is a question which the device of military currency conveniently leaves for future settlement. From an appropriation accounting point of view, the Army has followed the most conservative procedure, and is debiting its appropriation accounts in the full amount of all military expenditures, whether or not all or any part of such expenditures will later be charged to the Italian people. Thus, while the Army might have assumed, with ample justification in international law, its right to support itself off the occupied country, it chose to adjust its accounting in such a way as to reflect the highest possible degree of respect for the power of Congress to limit military appropriations.

It cannot be supposed that Congress intended that advances which might be necessary for local governmental expenses in the disorganized period immediately after occupation of hostile territory by our troops be met out of military appropriations. In previous wars, American military commanders in occupied territory promptly took charge of customs receipts and other tax revenues which they used to maintain local government. ^{55/} In the light of this universal practice, and in the light of our unquestioned right to continue it under the Hague Conventions, we must assume that Congressional appropriations were granted to the Army for military operations, and with the understanding that the maintenance of civilian government in occupied areas would not have to be paid for out of such appropriations. While it might be argued as strongly that a considerable part of military expenditures proper in Sicily could likewise be charged to the population there without any debit to the military appropriation, the Army has followed the most conservative possible accounting procedure and has debited its appropriation in the full amount of all military expenditures.

Therefore, it is my opinion that the appropriation accounting procedure instituted by the Army in connection with the issuance of AM currency clearly recognizes the right of Congress to limit military expenditures, and is well designed to keep such military expenditures within the appropriations voted.

^{54/} See discussion at 15-16, supra, and notes 47-51.

^{55/} See cases cited, supra at 3-6.

IV. The use of military currency is a convenient method of meeting immediate needs for a circulating medium while avoiding commitments which might prejudice ultimate settlement of financial accounts with our enemies and our Allies.

The Sicilian operation involved at least three Allied armies, the American, the British and the Canadian. The distribution of the costs incurred during the military operation as between the three governments, and the question of ultimate financial arrangements with Italy, present difficult problems which must finally be cleared up in a general over-all post-war settlement which will involve the participation, insofar as the United States is concerned, of the legislative and executive branches of the Government.

The Army, in the course of its military operations, must make decisions which, to greater or less extent, may commit us in our final post-war negotiations. In recognition of the subordination of the military to the civilian in our form of Government, the Army attempts to hold such commitments to the minimum so as to prejudice as little as possible the final settlements which our civilian authorities must make.

The use of military currency provided an excellent device for assuring the smooth operation of the financial measures necessary to our military occupation of Sicily, while at the same time leaving wholly open for future settlement by the legislative and executive civilian officers of the Government the ultimate financial responsibility of the several parties involved. Thus, economic life can go on in Sicily, using the military currency as a medium of exchange pending settlement by the Governments involved, which will necessarily include provision for the ultimate redemption of, or responsibility for, this currency.

Thus, insofar as our internal government relationships are concerned, the use of military currency provides the most feasible method for carrying out immediate military plans while leaving all the final financial settlements to the proper civilian authorities.

(COPY)

Mr. Bell

August 19, 1943

Mr. Paul

You have requested my opinion as to the legal authority of the United States Government to sell to numismatists and philatelic dealers pieces of the Allied Military Currency and the Allied Military Postage Stamps, which have been printed by the Bureau of Engraving and Printing for use in connection with our military operations. It is understood that such currency and stamps will be sold in the United States at the rate of exchange decreed in Sicily between the dollar and the lire; that the dollars would be placed in a special account presumably to be earmarked for the use of the Italian authorities at a future date; and that it would be announced that such lira currency is not redeemable in the United States. It is assumed that the permission of the War Department would be obtained and that the matter would be cleared with the Combined Chiefs of Staff.

It should be noted at the outset that the question which is now raised is of an entirely different nature from that discussed in these memoranda furnished to you, supporting the legal authority for the issuance of the Allied Military Currency and the Allied Military Postage Stamps within an area under military occupation. The arguments advanced in such memoranda are not applicable to the situation under discussion. There is an essential distinction between the issuance of special currencies and stamps by the military authorities within an area under military occupation such as Sicily and the sale of such currencies and stamps by the United States Government within the United States. In the case of Sicily, it is well established that neither the Constitution nor the statutes of the United States are the governing law in areas occupied by the military forces of the United States, but that the rules governing the conduct are those of the law of nations as established by international agreement and the usage of the world. As expressed by the United States Supreme Court in Dooley v. United States (1901) 182 U.S. 222:

"The right of one belligerent to occupy and govern the territory of the enemy while in its military possession, is one of the incidents of war, and flows directly from the right to conquer. We, therefore, do not look to the Constitution or political institutions of the conqueror, for authority to establish a government for the territory of the enemy in his possession, during its military occupation, nor for the rules by which the powers of such government are regulated and limited. Such authority and such rules are derived directly from the laws of war, as established by the usage of the world, and confirmed by the writings of publicists and decisions of courts--in fine from the law of nations".

We have already pointed out in our press release on Allied Military Currency that under international law, the Hague Conventions and the decisions of the Supreme Court of the United States, the military commander in the area occupied by the forces under his command has all the powers necessary for carrying out governmental functions; and that these powers include the right to provide for the currency needs of the area occupied. Great emphasis was placed in this release on the necessity for the use of this currency as a military measure.

These same arguments are obviously not available with respect to the sale of Allied Military Currency and the Allied Military Postage Stamps within the United States.

Although I believe that it would be possible to devise an ingenious argument supporting the legal authority to sell such currency and stamps within the United States, I am satisfied that such an argument would not be one that would convince in the slightest degree those groups in Congress and outside of Congress who would be apt to be critical of any such action by this Government.

Those critics who have questioned our authority to issue such currency and stamps in Sicily as a military measure, and who have charged that such currency is fiat money without any backing and that we are playing with our currency system without specific authority from Congress, will obviously be eager and ready to attack our authority to sell such currency and stamps within the United States. They will bolster their attack upon our legal authority with arguments to the effect that we are now trying to experiment further with our currency system; that the Government is now actually issuing the Military Lira Currency in the United States against dollars (raising all sorts of questions as to whether such action does not indicate that lira currency has a dollar value); and that such action has no connection with our military operations in Sicily. The charge will be made that it is improper and undignified for this Government to sell something to the public which was originally designed solely for military usage and which is now in demand because of that fact, but which is available in unlimited quantities to the Government for the mere cost of printing.

We will have no overwhelming policy considerations such as military necessity to bolster our legal position. Even assuming that it is felt that making such currency readily available to stamp and currency collectors for their collection is an important consideration, such currency and stamps are sure to be brought into the United States from the occupied area, and we can be certain that the collectors will be able to procure all that they desire.

Furthermore, I am concerned about the effect which the proposed action may have on the nature and extent of the attacks upon our legal authority to issue the Allied Military Currency and Allied Military Postage Stamps even in an area of military operations. The reliance upon a weak legal argument for the sale of such currency and stamps within the United States will give the critics further ammunition and encouragement for attacking our legal authority to issue this currency anywhere, whether within or without the United States.

(initialed) R.E.P.

JED:pcr
8/19/43

Reimer
Curren

August 10, 1943

INTRODUCTION

Up to a century ago, an invader plundered at will and supported his troops upon invaded land. Stimson, The Lawless Law of Nations (1925). The question of currency to be used by the invader in the invaded territory does not appear to have arisen before that time.

However, the use of a special form of money for payment of an invading army has historical precedents. Doge Micheli of Venice in the siege of Tyro, 1132 A.D. used leather money accompanied by a promise to redeem all at the full nominal value on return to Venice, to pay his troops. Del Mar, Money and Civilization, (1886) 29. In the siege of Milan by Frederick II, leather money was used in anticipation of the spoils to be divided among his soldiers upon the capture of Milan. As Milan was never captured, the leather money did not act as a measurement of the division of the spoils, but it did serve as payment of his troops. Upon the lifting of the siege, Milan issued paper notes until a supply of money was available through restoration of trade with Germany. Del Mar, supra, p. 53.

In the Revolutionary War, the Continental Congress issued Continental Currency which was intended to be retired by a levy of taxes by the individual states. The states enacted laws making such currency legal tender, but did not make provision for retiring it. Dowry, Financial History of the United States, 37, 38; Morrison and Commager, The Growth of the American Republic, 207. As the American Continental Congress was in effect an invader in British territory, the issuance of such currency is analogous to an issue of invasion currency.

American currency was counterfeited by the British in the Revolutionary War and sent to this country as a means of destroying American credit. Journal of Congress, December 19, 1777; Russeau, Money and the Law, p. 50.

In the American Civil War, as indicated by Thorington v. Smith, 8 Wall. 1, the Confederate Government was considered to be in effect an invader just as much as the British were in Castine, Maine, in the War of 1812, or the Americans were in Tempico, Mexico, in the Mexican War. The Confederate Government issued Confederate Currency, payable in gold upon "ratification of a treaty of peace between the Confederate States and the United States", Morrison and Commager, supra, p. 711. Such currency was almost the only currency in circulation in the Confederate States. See Thorington v. Smith supra.

The Confederate forces in their early invasion of northern territory paid for everything they required in cash or in Confederate notes. Spaight, War Rights on Land, p. 392. It also appears that Sherman had counterfeited about \$1,000,000 in Confederate bills which was used to support his troops in their march through Georgia. Stimson, The Lawless Law of Nations, p. 312.

Birkhimer, Military Government and Martial Law, p. 239, says in a discussion of Thorington v. Smith, "In this view, it was held that the Confederate Currency was just as legal as that imposed by the British on the people of Castine when that place was held by the enemy in 1814, or that imposed on the population of Tampico when held by the United States forces in 1846". This reference may be a misinterpretation of the language of Thorington v. Smith because no material has been found on currency used by the British in Castine and little material about United States money in Tampico.

In Justin Smith, War with Mexico, it is stated at page 266 "During the first nine months of 1847, it was figured that the United States exported more than \$2,000,000 in specie to Mexico. * * * payments were also made in the United States on the certificates of officers acting in the field". It is also stated that "One main purpose of our Government in laying an export duty on gold and silver was to facilitate the exchange of Treasury notes for specie with Mexican citizens".

Receipts have frequently been given by an occupying force to the people of the invaded country for goods requisitioned from them. In Novier, Seven Weeks' War, at page 80, it is stated " * * * magazines were constantly replenished both by food and forage brought by railway from the interior of Prussia, or by requisitions levied by Saxony and Bohemia of food and forage, for which the Commissariat paid by cheques, which the fortunes of war afterwards allowed to be defrayed from the war contributions paid by the Austrian and Saxon Governments. Had the rate of arms been different, of course Saxony and Austria would have provided that these cheques should be honored by the Berlin exchequer".

In the Franco-Prussian War, enormous requisitions were levied by the Germans and receipts were given for such requisitions worded as follows: "Payable by the French Government, or by the German Government according as shall be agreed between the two Governments". These receipts were eventually paid by the French Government, but only as an act of grace without any admission of legal liability. Spaight, supra, p. 374.

In the Boer War, the English also gave receipts which were paid by the English after peace was declared. Lawrence, Principles of International Law, p. 424. It also appears that requisitions were paid for by army draft "readily negotiable in cash". Spaight, supra, p. 396. Such receipts are very similar to invasion currency except that they are not negotiable and are not used to pay the army. If in some instances they have been negotiable, the analogy is very close.

Frederick, the Great, used captured enemy dies to manufacture coins on a lower standard. Nussbaum, Money and the Law, (1939) p. 158. Napoleon I appears to have counterfeited Austrian and Russian banknotes on a large scale for use in financing his campaign and also brought pressure upon the enemy by the threat to issue such notes. Nussbaum, supra, p. 158; Rhodes, The Craft of Forgery, (1934) p. 161.

In several recent wars, it would appear that requisitions have been paid for in cash. In the Crimean War, Spaight, supra, states at page 396 that at first there were difficulties because the English officers who landed forgot that English coin would be looked at askance by the inhabitants, but as soon as a supply of Russian money was obtained there was no difficulty in obtaining supplies in plenty.

In the Russian War against Turkey in 1877-8, it is stated that the Russians paid for everything they required in hard cash or credit notes. Spaight, supra, p. 397. The same authority states that the Turks in Thessaly in 1897 paid for everything they needed in hard cash and that the German Attache was almost scandalized by the unorthodox honesty of the Turkish supply officers. However, Paul Fauchille in Droit International Public at page 267 states that the Turks established their money at a fixed value with the Greek money and then prohibited the use of Greek money. This was stated to have been done for the purpose of seizing private property which could not be done directly under international law.

In the Russo-Japanese War, the Japanese forces in Korea and Manchuria paid for their requisitions with military checks or credit notes which were announced to be subject to exchange for silver coin on a certain day. It is stated that each army and division held bullion for such exchange in its Treasury chest. It would appear that such checks were not at first accepted readily, but that the Japanese prevailed upon the Chinese civil authority to make a similar announcement about their convertibility and also prevailed upon them to announce that the payment of Chinese taxes and contributions could be made in such military checks. The total amount put in circulation exceeded 14,000,000 sterling. No reference has been found to the amount of such checks which were actually exchanged for silver coin. However, it is stated that the Chinese soon asked for no silver coin in exchange and that the checks had an easy circulation as convertible paper. Takahashi, International Law Applied to the Russo-Japanese War, p. 260; Spaight, supra, p. 397; Nagao Ariga, L'Esprit Russo-Japonais, p. 150 et seq. Nagao Ariga also states that such a system of money was not absolutely new because it had been determined to issue 27,000,000 "taels d'assignats" in the war with China of 1894, but that peace was concluded before they were put into circulation.

There are numerous examples of such currency issued by the central powers in the World War. The Germans issued such a special currency in Belgium which was made legal tender in Belgium at a fixed rate of exchange, but was not legal tender in Germany. Similar action was also taken in Poland. Feilchenfeld, International Economic War of Belligerent Occupation; von Schler, The Administration of the Occupied Territories, Belgium, p. 139; Polansky, German Administration in Belgium; Fauchille, Droit International Public; White, The Currency of the Great War. The Austrian and German forces in Rumania and Italy deposited their currency in special banks which issued currency in the monetary unit of the invaded country. Feilchenfeld, supra; White, supra.

Currency was issued in the invaded towns and territories of France in the first World War. Isaacs, Catalogue of War Money, lists about ten different kinds of such currency. White, supra, at page 28 concludes that this money was of German origin, although on its face it purports to be issued by the individual towns or districts.

White, supra, states at page 66 "A strictly limited quantity of rouble notes, placed upon a gold footing by arrangement with the British Government were issued in connection with the expeditionary forces at Archangel (1917). They are payable at Messrs. Barclays Bank at the rate of six pence a rouble". It also appears that the British used their notes surcharged with Arabic characters in occupied Turkish territory. White, supra, p. 99.

(Initialed) C.R.M.

Bremer Currency

Mr. Luxford

August 10, 1943

Mr. Bremer

In the memorandum of June 22, 1943, dealing with the legality of the issuance of Allied Military Currency, there was quoted on page 5 a statement by President Polk in his special message to Congress on February 10, 1848, in which he discussed the right of a nation at war to shift the burden to its enemy by exacting military contributions.

There have been other authoritative statements to the same effect. For example, during the Spanish-American War President McKinley sent an order to the Secretary of War dated July 18, 1898, in which he outlined the conduct which the military forces occupying Santiago de Cuba were to observe. The following statement is contained in his order:

"While it is held to be the right of the conqueror to levy contributions upon the enemy in their seaports, towns, or provinces which may be in his military possession by conquest, and to apply the proceeds to defray the expenses of the war, this right is to be exercised within such limitations that it may not savor of confiscation. As the result of military occupation the taxes and duties payable by the inhabitants to the former government become payable to the military occupant, unless he sees fit to substitute for them other rates or modes of contribution to the expenses of the government. The moneys so collected are to be used for the purpose of paying the expenses of government under the military occupation, such as the salaries of the judges and the police, and for the payment of the expenses of the Army.

"Private property taken for the use of the army is to be paid for, when possible, in cash at a fair valuation, and when payment in cash is not possible receipts are to be given."

The Supreme Court took the same position as President McKinley in connection with the occupation of Puerto Rico. In Dooley v. United States (1901), 182 U.S. 222, this statement appears:

"Upon the occupation of the country [Puerto Rico] by the military forces of the United States, the authority of the Spanish Government was superseded, but the necessity for a revenue did not cease. The government must be carried on, and there was no one left to administer its functions but the military forces of the United States. Money is requisite for that purpose, and money could only be raised by order of the military commander. The most natural method was by the continuation of existing duties. In adopting this method, General Miles was fully justified by the laws of war."

TREASURY DEPARTMENT
Washington

FOR RELEASE, MORNING NEWSPAPERS,
Tuesday, August 17, 1943.

Press Service
No. 38-10

The Treasury and War Departments today made public further details concerning the special currencies employed in the Sicilian operations:

Financial and military plans are so closely interrelated in modern warfare that it is necessary, for reasons of military security, to maintain secrecy regarding financial arrangements incident to military operations until the financial as well as strictly military aspects of the initial stages of the operation have unfolded. However, military secrecy ceases to exist regarding the financial measures effective for an operation when the relative decrees of the military commander are issued in the liberated area. Accordingly, the following information can now be released supplementing the story previously made public regarding the printing of Allied Military Currency by the Bureau of Engraving and Printing.

Measures to meet the currency problems incident to the Sicilian operation were taken jointly by the United States and British military authorities and insofar as American interests are concerned, under the guidance of and in consultation with the United States Treasury.

A distinction is to be drawn between the two kinds of currencies, namely, "spearhead" and "occupation," employed by the United States forces in these military operations. The "spearhead" currency was the "yellow seal" dollar which is a regular silver certificate of the United States Government, the yellow seal being used to distinguish it from ordinary United States currency. This distinctive

mark was adopted partly for security reasons to permit the isolation of the currency if it fell into enemy hands, partly to prevent the influx into the area of dollar currency already in the hands of the enemy, and partly to facilitate its entry into the United States by freeing it from present restrictions on ordinary U. S. currency. The yellow seal was first used by the United States military forces in North Africa and was again used as a spearhead currency in Sicily.

In connection with the use of yellow seal dollar by the United States forces, it is of interest to note that concurrently the British forces used the British Military Authority pound note. The B.M.A. note is a special currency and not the regular British pound note. The same exchange rate for conversion purposes was established in Sicily as in North Africa between the B.M.A. note and the yellow seal dollar - one B.M.A. pound equals four U. S. yellow seal dollars.

The occupation currency employed is the Allied Military Lira which was described in a previous joint press release by the Treasury and War Departments. This currency is being used jointly in the Sicilian operation by the Allied military forces to supplement supplies of local currency when and if necessary in order to meet the requirements of military operations. For obvious reasons it was desirable that the Allied forces should not continue to use pound and dollar currencies longer than was necessary and should move into currency denominated in terms of local units as quickly as the military situation would allow. It is not intended nor desired to replace the local currency with the Allied Military Lira Currency unless absolutely necessary from a military standpoint, but rather to use the Allied Military Lira to supplement the supply of local currency.

When the United States Army obtains Allied Military Lire for expenditures in Sicily for pay of troops, supplies and

other expenditures that would normally be charged to its appropriation, it will charge the relevant War Department appropriation for the dollar equivalent of such expenditure. The decreed rate of exchange is 100 lire to the dollar. This procedure, it was pointed out, marks no change in the customary control by the Congress over the size and nature of Army appropriations. Congress retains its jurisdiction over such army expenditures. The British military forces are following a parallel procedure with a decreed rate of 400 lire to the British pound. In all cases complete records are being kept and a detailed accounting procedure has been set up in connection with the issuance and use of this currency. These complete records will also facilitate the adjustment of financial matters growing out of the military operations of the Allied Forces in the occupied area.

The Allied Military Lira has been made legal tender in Sicily and is interchangeable at par with local lire currency. It will be in every respect as acceptable as a medium of exchange as the local lire currency, both to the men of our fighting forces and to the local population. Insofar as our troops are concerned, arrangements have already been made so that they may remit all or any portion of their pay which they receive in lire to the United States against instant payment here in dollars. United States soldiers leaving the area may exchange lire currency held by them for dollar currency at the decreed rate of exchange.

On the other hand, for obvious reasons, War Department appropriations will not be charged for expenditures in Sicily by the Allied Military Government for local governmental operations whether financed from local taxes or revenue or through the use of Allied Military currency. Thus, for example, the Allied Military Government will not charge Army appropriations in connection with the maintenance of public schools, water systems, salaries of local officials and the like.

Officials emphasized the essential distinction between the regular issuance of currency within the United States and the issuance of a special currency by the military authorities within an area under military occupation such as Sicily. While the former is governed by the Constitution and the statutes of the United States, the rules governing the latter are those of the law of nations as established by international agreement and the usage of the world. Under international law, the Hague Conventions and the decisions of the Supreme Court of the United States, the Military Commander in areas occupied by the Forces under his command has all the powers necessary for the carrying out of governmental functions.

These powers include the right to provide for the currency needs of the area occupied. In fact, it is a fundamental principle of international law that an occupying authority has in addition to its powers, certain obligations to the inhabitants of the territory under its control. It must take whatever steps are necessary to secure public order. The latter cannot be maintained unless the continued operation of local trade and commerce is protected. This protection includes the establishment and maintenance of an adequate and effective circulating medium.

The Allied forces must be in a position to meet a variety of conditions which they may find in areas occupied by them. The enemy might, for example, adopt a "scorched earth" policy which, on the monetary side, may evidence itself in the withdrawal or destruction of currency stocks and the resulting depletion of the circulating medium of exchange of the area. On the other hand, the enemy might in its efforts to cause maximum difficulties to the occupying forces, flood the area to be occupied with local currency to such a point that it becomes practically worthless as a satisfactory medium of exchange; and may even resort to the use of counterfeit local currency.

Financial problems will vary in different areas freed by the forces of the United Nations. Although the basic principles underlying the authority of the Military Commander remain unchanged, the details of procedure must be adapted to the circumstances found to exist in liberated areas.

It should be noted that in contrast with Axis procedure, which is governed by a policy of exploitation or of outright destruction of the existing economy of a conquered area, Allied Military policy and procedure is governed by a spirit of liberation and a policy of rehabilitation and fair dealing with the liberated peoples.

Mr. Luxford

Mr. Brenner

August 10, 1943

In the memorandum of June 22, 1943, dealing with the legality of the issuance of Allied Military Currency, there was quoted on page 5 a statement by President Polk in his special message to Congress on February 10, 1848, in which he discussed the right of a nation at war to shift the burden to its enemy by exacting military contributions.

There have been other authoritative statements to the same effect. For example, during the Spanish-American War President McKinley sent an order to the Secretary of War dated July 18, 1898, in which he outlined the conduct which the military forces occupying Santiago de Cuba were to observe. The following statement is contained in his order:

"While it is held to be the right of the conqueror to levy contributions upon the enemy in their seaports, towns, or provinces which may be in his military possession by conquest, and to apply the proceeds to defray the expenses of the war, this right is to be exercised within such limitations that it may not savor of confiscation. As the result of military occupation the taxes and duties payable by the inhabitants to the former government become payable to the military occupant, unless he sees fit to substitute for them other rates or modes of contribution to the expenses of the government. The moneys so collected are to be used for the purpose of paying the expenses of government under the military occupation, such as the salaries of the judges and the police, and for the payment of the expenses of the Army.

"Private property taken for the use of the army is to be paid for, when possible, in cash at a fair valuation, and when payment in cash is not possible receipts are to be given."

The Supreme Court took the same position as President McKinley in connection with the occupation of Puerto Rico. In Dooley v. United States (1901), 182 U.S. 222, this statement appears:

"Upon the occupation of the country (Porto Rico) by the military forces of the United States, the authority of the Spanish Government was superseded, but the necessity for a revenue did not cease. The government must be carried on, and there was no one left to administer its functions but the military forces of the United States. Money is requisite for that purpose, and money could only be raised by order of the military commander. The most natural method was by the continuation of existing duties. In adopting this method, General Miles was fully justified by the laws of war."

WASHINGTON POST
Thursday, August 5, 1943
WASHINGTON POST: 1

Invasion Cash Sparks Query By Economist

By the Associated Press

New York, Aug. 4.—Walter S. Spahr, professor of economics at New York University and secretary of the Economists' National Committee on Monetary Policy, today called upon the Treasury Department to explain the value of so-called "invasion money."

Spahr said the press and Congress should receive answers to questions concerning the various types of notes, such as the "money that is being printed and issued in Sicily in terms of lira." Information given out at the Treasury thus far, he added, "is significant chiefly because of what is not revealed as to the nature of this transaction."

Information Lacking

"The important things for the American people to know are not found in the story of the planning, printing and distribution of this new paper money as released by the Treasury Department, August 2," Spahr said in a prepared statement today.

"One thing that we in this country need to know is this: What is the nature of this money that is being printed and issued in Sicily in terms of lira? Is this paper United States notes? Is it silver certificates? Is it merely outright fiat money?"

"Some closely related questions: Who is liable for the redemption of this currency, what is the re-

serve against it, and how and when is it to be redeemed?"

"After the Treasury tells us the nature of the money being issued, we need to know the authority for such issuance. Has the Congress empowered our Treasury to issue this brand of currency? If not, under what authority does the Treasury undertake this transaction?"

Cites German Trick

"Nothing in the Treasury statement on this currency throws any light on these vital matters. These are questions that call for answers, and the press and Congress should get them.

"Germany devised the diabolical trick of going into a conquered country with fiat money—for example, German-printed inconvertible paper money francs in France—and buying up the goods of the conquered country, and flooding it, with such money.

"From all the Treasury has revealed, there is no way for the American people to know whether

our Government is using German tactics, or is issuing and using this money in a legitimate way. . . . On all the points raised the American people are entitled to a full explanation."

TREASURY DEPARTMENT
Washington

FOR IMMEDIATE RELEASE,
Monday, August 2, 1943.

Press Service
No. 37-85

Joint Statement by the Treasury Department and the War Department:

Allied expeditionary forces, seeking to establish orderly relationships with the people of liberated Sicily, are introducing into its occupied areas an "Allied Military Currency," speaking a "Lira" language that will be understood by every Sicilian trader and consumer.

It may now be revealed that a distinctive currency, determined upon by British and American officials was made in the Treasury's Bureau of Engraving and Printing. It was rushed to the scene of action by huge transport planes and is being used as the medium of exchange in that part of Italy that we now hold.

A part of its legend reads "Issued in Italy."

At the same time, it was revealed, a comparable series of postage stamps will be introduced into the areas under military administration.

This is the first truly Allied venture into the field of military monetary expedients and an undertaking without precedent so far as the United States is concerned. The distinctive lira currency will be used in the payment of troops of all the Allied nations on Italian soil, and in payment by the procurement services for local supplies.

Government officials said the undertaking is designed to give the occupied areas a currency in denominations and terms which they know.

It provides an adequate circulating medium in sections where there may be a shortage of local currency because of confiscation or destruction by retreating enemy forces, or from other causes.

It avoids complication of the monetary system which use of foreign currencies might cause.

Previously, the United States forces in North Africa had used a regular "back home" currency with a distinctive seal, while the British had used a "military pound." Now, authorities of the Allied Nations have worked out this cooperative use of a single medium of exchange.

The preparation of this military currency and postage in advance of the invasion of Italy is itself an amazing chapter in the story of the gigantic and minutely-detailed planning that preceded the expedition, a story that must, for the most part, remain untold until after the war. From the standpoint of the physical undertaking alone, there is no precedent for such a job. Presses of the Bureau of Engraving and Printing worked 24 hours a day, not even pausing for meal periods, for weeks, to have the stocks of notes and stamps ready for the final, revealing overprinting when the invasion actually began.

The planning of the job goes back some four months, when high officials of the Treasury, the War and Navy Departments, the Department of State, and officials of the British government laid the groundwork in a series of extraordinary conferences held in utmost secrecy.

No inkling of the project ever was put in writing, no word of it spoken over a telephone, and no discussions of it carried outside the conference rooms.

Designs for the notes and stamps had to be completed under similar conditions of secrecy, and stocks of distinctive paper and huge amounts of inks of various colors accumulated. In none of this preliminary work was the country for which the notes were intended ever identified.

On the basic designs under consideration, where now the words "Issued in Italy" appear, the words "United States" were placed fictitiously, and where the "lira" designation is printed were such unrevealing terms as "dollars" or "shillings."

Basic printing of the notes began early in June, with the name of the country and the currency designation still omitted. Huge stocks of the partially finished notes were accumulated against the day when the "go" signal should be given.

The invasion news was flashed to the world on the night of July 9. Key employees of the Bureau of Engraving and Printing stood by their telephones throughout Sunday, and continued

at their posts until the printing order was released by Army authorities actually on Tuesday, July 13. Huge presses immediately began to roll, overprinting the partially-completed notes with the identifying legends.

By Saturday, July 17, enough had been completed to load a huge transport plane, but transportation was not available until Monday, July 19, when two planes carrying seven tons of the distinctive money took off. Other shipments have followed, both of currency and stamps.

The currency introduced into Sicily is in eight denominations from one to 1,000 lira. The smaller denominations are half the size of United States currency, and the larger denominations the same size. It is made by a lithograph process, since the time element and the size of the undertaking did not permit steel engraving.

Except for the "lira" designation, all the legend on the bills is in English. The "Four Freedoms," Freedom of Speech, Freedom of Religion, Freedom from Want, and Freedom from Fear, appear prominently on the reverse sides of all the notes. Ornate designs in pantograph, of a neutral nature, are used in the series, so that it might be adapted to the needs of troops in further assaults upon Hitler's European Fortress merely by overprinting the proper currency designations and name of country on the basic stock.

Smaller notes, of one, two, five and ten lira bear a wheat field scene in brown on the face, with the denomination in the center. Blue, lavender, green and black borders also identify the respective denominations. The words "Allied Military Currency" appear on the upper margin of the face and in an ornate oval on the reverse side. The face also carries the legends, "Series 1943," "Issued in Italy," and a serial number. The Four Freedoms appear in the four corners of the note on the reverse side.

For notes of 50, 100, 500, and 1,000 lira, borders and ornate design of the front are in blue, lavender, green and black, respectively, with the background on all four notes a pale blue. The denomination appears in each of the four corners on the face, and in an ornate shield in the center. The words "Issued in Italy" appear in ovals at each end, and the words "Allied Military Currency" at the bottom of the note. The face also carries the designation "Series 1943," and serial numbers.

The reverse side of these larger notes is a subdued brown, with "Allied Military Currency" appearing in a center shield, and the Four Freedoms in ovals at either side.

The Allied Military Postage stamps are in denominations of 15, 25, 30, 50, and 60 centesimi, and in 1, 2, 5 and 10 lira. They are all of the same design, distinguished by colors of the usual United States postage series. They bear a pantograph background, with white lettering, and the denomination in the center of the stamp, are perforated, and on a gummed paper. Both the stamp design and the overprint are put on in one operation on a two-color press.

June 22, 1943

MEMORANDUM

This memorandum deals with a number of legal problems involved in the proposed issue of occupation or military currency. Such currency will be used in areas occupied and controlled by the United States in the course of military operations. It will bear the legend "United States Military Authority" plus the name of the area in which it will be circulated, and it will be expressed in terms of the pre-existing local monetary unit.

This discussion will be based on the following assumptions:

- (1) Occupation currency will have a fixed rate of exchange with respect to the dollar.
- (2) Occupation currency will not be freely exchangeable for dollars and will not be valid in other areas, but provision will be made for limited remittances and exchanges for the benefit of military and civilian personnel of the occupying powers.
- (3) No provision will be made at the time of issue with respect to the ultimate redemption of occupation currency or the governmental authority responsible for its redemption.
- (4) Occupation currency will be legal tender in the areas in which it is used.

I. General Observations on the Legality of the Use of Occupation Currency.

It is well established that (a) neither the Constitution nor the statutes of the United States are the governing law in areas occupied by the military forces of the United States, but that the rules governing the conqueror are those of the law of nations as established by international agreement and the usage of the world. (b) The military commander of the occupied territory has all the powers of a de facto government and can change the existing local laws or make new ones, subject, of course, to the direction of the President as Commander-in-Chief. Fleming v. Page (1850) 9 How. 603, Cross v. Harrison (1853) 16 How. 164, Thorington v. Smith (1868) 8 Wall. 1, The Grapeshot (1869) 9 Wall. 129, New Orleans v. Steamship Company (1874) 20 Wall. 387, Mechanics' Bank v. Union Bank (1874) 22 Wall. 295, Dooley v. United States (1901) 182 U.S. 222, MacLeod v. United States (1913) 229 U.S. 416, (1901) 23 Op. Atty. Gen. 425.

In the Dooley case the Supreme Court quoted 2 Halleck, International Law 444, as follows:

"The right of one belligerent to occupy and govern the territory of the enemy while in its military possession, is one of the incidents of war, and flows directly from the right to conquer. We, therefore, do not look to the Constitution or political institutions of the conqueror, for authority to establish a government for the territory of the enemy in his

possession, during its military occupation, nor for the rules by which the powers of such government are regulated and limited. Such authority and such rules are derived directly from the laws of war, as established by the usage of the world, and confirmed by the writings of publicists and decisions of courts--in fine from the law of nations. * * * The municipal laws of a conquered territory, or the laws which regulate private rights, continue in force during military occupation, except so far as they are suspended or changed by the acts of the conqueror. * * * He, nevertheless, has all the powers of a de facto government, and can at his pleasure either change the existing laws or make new ones."

A similar statement was made in New Orleans v. Steamship Company, supra, where, after deciding that the occupation of New Orleans by Union troops was the same in legal contemplation as the occupation of a foreign country, the Supreme Court said:

"In such cases the conquering power has a right to displace the pre-existing authority, and to assume to such extent as it may deem proper the exercise by itself of all the powers and functions of government. It may appoint all the necessary officers and clothe them with designated powers, larger or smaller, according to its pleasure. It may prescribe the revenues to be paid, and apply them to its own use or otherwise. It may do anything necessary to strengthen itself and weaken the enemy. There is no limit to the powers that may be exerted in such cases, save those which are found in the laws and usages of war. These principles have the sanction of all publicists who have considered the subject."

This power has been applied to the collection of revenues, the leasing of property of the displaced government and the establishment of a telegram line operated as a common carrier. The question has never arisen directly whether this power extends to the issuance of temporary occupation currency, but a strikingly similar situation was involved in Thorington v. Smith, supra. That case involved a suit brought after the termination of the Civil War on a contract executed in the South during the War and based on Confederate currency. The first problem facing the Court was a determination of the type of government then in effect in the Confederacy. It did not call it a government of military or belligerent occupancy but its description fits those terms. It said:

"But there is another description of government called also by publicists a government de facto, but which might, perhaps, be more aptly denominated a government of paramount forces. Its distinguishing characteristics are (1), that its existence is maintained by active military power, within the

territory and against the rightful authority of an established and lawful government; and (2), that while it exists, it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience, rendered in submission to such force, do not become responsible, as wrongdoers, for those acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions. They are usually administered directly by military authority, supported more or less by military force."

The Court then went into the question of the legal effect of currency issued by this type of government:

"As contracts in themselves, except in the contingency of successful revolution, these notes were nullities; for, except in that event, there could be no payer. They bore, indeed, this character upon their face, for they were made payable only 'after ratification of a treaty of peace between the Confederate States and the United States of America'. While the war lasted, however, they had a certain contingent value, and were used as money in nearly all the business transactions of many millions of people. They must be regarded, therefore, as a currency, imposed on the community by irresistible force.

"It seems to follow as a necessary consequence from this actual supremacy of the insurgent government, as a belligerent, within the territory where it circulated, and from the necessity of civil obedience on the part of all who remained in it, that this currency must be considered in courts of law in the same light as if it had been issued by a foreign government temporarily occupying a part of the territory of the United States. Contracts stipulating for payment in this currency, cannot be regarded for that reason only, as made in aid of the foreign invasion in the one case, or of the insurrection in the other. They have no necessary relations to the hostile government, whether invading or insurgent. They are transactions in the ordinary course of civil society, and, though they may indirectly or remotely promote the ends of the unlawful government, are without blame, except when proved to have been entered into with actual intent to further invasion or insurrection. We cannot doubt that such

contracts should be enforced in the courts of the United States, after restoration of peace, to the extent of their just obligation."

The decision states in definite terms that the occupying authorities have the power to issue currency expressed in terms of the pre-existing monetary unit, to make the redemption of such currency contingent upon military success, and to require the inhabitants of the occupied area to accept it and contract with this currency as a basis for settlement. Coupled with the decisions holding that United States military forces occupying territory of the enemy have the powers of a de facto government, it seems clear that the Court would find that United States military authorities also have this power with respect to areas occupied and controlled by them.

In view of the statements made by the Supreme Court that the powers of occupying military authorities are found in the laws of war as established by international agreement and the usage of the world, it is necessary to examine those sources.

There are a number of treatises, digests and text-books on international law which deal with the subject of military or belligerent occupation. They are in substantial agreement with respect to those aspects of occupation law discussed below, which are pertinent to the present inquiry. (See 2 Lauterpacht, Oppenheim's International Law, secs. 165-172; Moore, International Law Digest, vol. 1, sec. 21, vol. 7, secs. 1143-1155; Higgins, Hall's International Law, secs. 153-161; 2 Hyde, International Law, secs. 688-699; Lawrence, Principles of International Law, secs. 171-180; Wilson, International Law, secs. 128-132.)

Until comparatively modern times there were no restrictions on the scope of the activities of an occupying power. In fact, little or no distinction was made between military occupation (temporary control during time of war) and conquest (permanent acquisition of territory, generally a subject treated in post-war settlements). The so-called "humane rules of warfare" developed during the nineteenth century and out of them grew the concept of belligerent or military occupation as a separate part of international law governed by distinct rules. Whether this concept will be modified or discarded as a result of the "total war" theory which predominated in the present conflict and its accompanying activities, cannot be predicted with any semblance of accuracy. However, in view of the fact these rules have evolved from the practices of nations at war, it is safe to assume that whatever changes occur, except those resulting from future international agreements, will be in the direction of broadening the field of operations of the occupying forces. Accordingly, action permitted by the rules as set forth in treatises now in existence would appear to be conservative as well as proper.

The authorities state that the invader has the right to do whatever acts are necessary for the prosecution of the war and that the range of military necessity in particular cases can only be determined by the circumstances relative to each such case. The authority is absolute but its exercise is limited to those actions which are necessary for safety and military success. Local laws affecting private rights and personal relations, those regulating moral order, and those guaranteeing certain personal liberties are not to be suspended or altered, at least so far as they do not affect the success of the occupying power's military activities. However, all of these restrictions are subject to the necessity exception, and the action under consideration would not come within any of these restricted fields even if the doctrine of necessity were not available.

Since the act of occupation suspends the regular government, the invader owes certain duties to the inhabitants of the territory under his control. He is bound to take whatever steps are necessary to secure public order, and this necessarily includes making provision for the orderly conduct of business. It is manifest that public order cannot be secured if trade and commerce are not protected. Without trade, the inhabitants will be unable to feed and clothe themselves and riots and disorders will be the unavoidable result. The existence of a sufficient quantity of a legal tender medium of exchange is, therefore, essential to the conduct of trade and commerce, and it follows that the occupant not only may, but must provide for the issue of currency in amounts great enough to meet the needs of the community. The type of currency issued and the method used to circulate it would appear to be matters within the discretion of the military authorities. It seems clear that the issue of occupation currency will not only fulfill a military and economic need of the occupying forces, but will also discharge the obligation of the invader to the inhabitants of the subjugated territory.

The fact that no immediate provision is made for the redemption of occupation currency, or for the governmental authority ultimately responsible for its redemption, does not affect the legality of its use. Two generally recognized rights of the occupant are the right to collect taxes, and the right to levy contributions. By analogy, the use of unsecured military currency is supported by these other powers.

From the earliest times, the occupied territory has been made to support the occupant's war. The right to shift the burden to the territory over which control is exercised, is a right which has been recognized by the United States in the past. In a special message to Congress on February 10, 1848, dealing with various phases of the Mexican War, President Polk said:

"No principle is better established than that a nation at war has the right of shifting the burden off itself and imposing it on the enemy by exacting military contributions. The mode of making such exactions must be left to the discretion of the conqueror, but it should be exercised in a manner comfortable to the rules of civilized warfare.

"The right to levy these contributions is essential to the successful prosecution of war in an enemy's country, and the practice of nations has been in accordance with this principle. It is as clearly necessary as the right to fight battles, and its exercise is often essential to the subsistence of the army."

The trend of so-called "humanizing" development has been to place the burden of support not upon the individual inhabitants but rather upon the existing or future government of the area. The effort has been to distribute the burden equitably either directly, through equitable collections, or indirectly by furnishing the individual with evidence of his participation which his own government may later take into consideration.

This comparatively recent development is best illustrated by the provisions of the Second Hague Convention (Conventions Concluded at the Second International Peace Conference, Held at the Hague, 1907, No. IV, Section III, Articles 47, 48, 49, 51).^{*} In brief they provide that; (1) pillage is forbidden, (2) taxes shall be collected, as far as possible, pursuant to existing rules of assessment, and their collection binds the occupant to defray the costs of administration to the same extent that the predecessor government was bound, (3) money contributions may be levied only for the needs of the army or the administration of the territory, (4) contributions shall be collected, as far as possible, pursuant to the existing rules of tax assessment, and (5) receipts must be given for contributions.

It is clear, therefore, that the occupant need not pay the expenses of occupation and it follows as a matter of course that, if it is felt desirable to do so, the assessment of costs can be suspended during the period of military operations. The rules of international law do not prohibit the use of occupation currency and the protective devices which have been imposed on the historical methods of financing military occupation would not be disregarded by such action. The inhabitants who receive payment in such currency for goods or services will have ample evidence of the fact that the goods were supplied or the services were rendered. If they keep the currency it can later be presented to the local government and, if the local government is ultimately made responsible for the costs, it will be redeemed. If it has been circulated, the holder will be entitled to redemption. Thus the task of the future local government in equalizing the burden will have been simplified, and this method will have the additional feature of providing a medium of exchange during the period of suspension. In the event that the United States decides to absorb the costs, it can redeem the currency and the holder will receive the actual value of his goods or services--a benefit to which he is not necessarily entitled under the rules of international law.

* Concluded October 18, 1907; ratified by the Senate March 10, 1908; ratified by the President February 23, 1909; proclaimed February 28, 1910.

Obviously these financing powers would not support the circulation of occupation currency in amounts greater than required by the military administration. However, the occupant is also permitted to do whatever is necessary for safety and military success. There are many currency problems that might arise which, if not handled properly, could endanger the entire undertakings. In particular cases such problems would justify the issuance of occupation currency in quantities sufficient to satisfy all demands, irrespective of the amount needed for the support of the occupant. Examples of such problems are:

(1) An area might be devoid of currency as a result of the "scorched earth" policy of the previous occupant.

(2) Existing currency might be insufficient and the issuing authority and equipment might be gone.

(3) The enemy may have looted large quantities of local currency which could be marketed if use of the same currency were continued.

In addition to the portions of the Second Hague Convention (No. IV) discussed above, Article XLIII must be considered in connection with the general rights of the military authorities in an occupied area. That Article provides:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

There is a clear recognition of the right of the military to control civil affairs as well as those which are strictly a part of the war. The military commander is the only effective administrator and all governmental functions necessarily devolve upon him.

Here too, the principle is recognized that the scope of his authority varies directly with the necessities of the situation. When circumstances require it, he is empowered to promulgate new laws, and the determination of whether such action is or is not required is, of course, to be made in the first instance by the military commander.

The applicability of the restrictions imposed by Article XLIII to activities in areas likely to be occupied by United States forces, would appear to be greatly reduced by virtue of the fact that most such areas were not originally part of the enemy's territory but have been occupied by him. Obviously, laws put into effect by the enemy as an occupant will, in many instances, be of the type which the new occupant will be "absolutely prevented" from respecting.

Although Article XLIII has not been the subject of interpretation by courts in the United States, it was considered by the British High Court of Justice several years ago. The case of Bank of Ethiopia v. National Bank of Egypt and Liguori (1937) 53 Times L.R. 75, arose from a demand by the Ethiopian bank for a settlement of its accounts with the Egyptian bank. The defendant admitted that the accounts existed and were unsettled but claimed that Liguori, the Italian liquidator of the Bank of Ethiopia, was the proper party with whom to make settlement. On the other hand, the plaintiff contended that Italy was nothing more than a military occupant and, under Article XLIII of the Second Hague Convention (No. IV), its authority was limited to those acts necessary to maintain the safety of the army of occupation, but did not extend to the modification of local laws with respect to the status of established Ethiopian corporations.

The High Court of Justice rejected the contention of the Bank of Ethiopia on the ground that by virtue of its political recognition by the British Government, Italy was the de facto government and had the power to liquidate the Ethiopian bank. The Court said that the plaintiff's contention had:

"* * * no relevance in principle to the case of a de facto government set up in an area from which the former Government has departed, and in which there is no Government authority except that of the de facto government."

However, as Wright points out in (1937) 31 American Journal of International Law 687, those conditions would necessarily exist in all cases of belligerent occupation. Thus, the case can be considered as authority for the proposition that Article XLIII does not prevent a military occupant from exercising the powers of a de facto sovereign.

The case, in addition to its implied holding that Article XLIII has little or no effect on the powers of an occupant, is of considerable importance in connection with the currency issuing power of such authorities. In arriving at the conclusion that the Ethiopian Bank could properly be liquidated, the Court said:

"* * * confusion (would ensue) if the only bank of issue in the country were allowed to continue its business under the control of persons who, until the last moment, seems to have been engaged in strenuous attempts to assist the displaced Government to resist the attacks of those who have since become the de facto Government."

Since the currency issuing agency can be liquidated, it necessarily follows, that the occupying authorities not only can, but must provide for the issuance of currency. This right (or duty) extends not only to currency required by the armed forces but also to currency which is needed by the inhabitants to conduct normal business activities. Whether the occupying force brings

currency with it issued by its own government, sets up a currency issuing agency in the area, or issues its own currency, is a matter which the military authorities must decide in accordance with the circumstances involved in each particular case.

Thus far, the question of the legality of occupation or military currency has been examined as if the governing law were minutely defined. This is not the case, however, and it should be noted that, although certain broad doctrines of the law of belligerent occupation have been worked out, the applicability of the existing principles to particular problems can seldom be determined accurately by referring only to the normal sources, such as judicial decisions, treaties and text-books. The field of occupation law has not been fully developed and, since its principles are derived in the main from the actions of countries at war, it is important to consider some of the precedents that have been established in prior wars and in the present conflict.

During the World War the German Government made extensive use of similar devices in areas in which it had the dominant control. In areas where Austria-Hungary and other Central Powers predominated, this policy was not followed. (See Feilchenfeld, Draft, the International Economic and Financial Law of Belligerent Occupation).

As early as 1914 a special currency was used by the Germans in Belgium. It was known as "Derlehenskassenscheine" and was a German note expressed in marks. Its acceptance was compulsory in Belgium but not in Germany, which makes it strikingly similar to the type now under consideration. After the Armistice, Belgium redeemed these notes in local currency and the Versailles Treaty provided that Germany should redeem them from the Belgian Government. Comparable action was taken in Poland.

In Italy, where the Germans and Austrians were joint occupants, a new organization was created which issued a special currency called "Buoni di Cassa". This currency was expressed in lire, the local monetary unit.**

** Lawrence, The Principles of International Law, p. 424, contains the following passage:

"In Manchuria during the war of 1904-1905 the Japanese applied a new method which reflects equal credit on their humanity (?) and their ingenuity. In return for materials and services they gave military cheques, which could be exchanged for silver coin at stated times and places. * * * The result was that after a time the people used the cheques as paper money, and asked for no coin in exchange for them. * * * The Japanese system * * * solves the difficulty caused by the occasional absence of ready money."

In the present war, the Germans have again made use of the device, and this time have worked out a very elaborate procedure. The following discussion of Nazi operations is based on a memorandum dated September 25, 1942, entitled "German Financial Methods in Connection with Occupation of Foreign Countries", prepared by the Board of Economic Warfare, Office of Economic Warfare Analysis, Blockade and Supply Branch.

Where feasible the German military authorities utilized the genuine local currency circulating at the time of occupation, but this method proved to be practical only in Denmark. In practically all the Western and Eastern European countries, genuine local currency was not available and a temporary occupation currency was used. This was issued by the Reichskreditkasse, an organization set up to perform all banking operations for the army. The currency was known as Reichskreditkasse notes and was expressed in terms of the Reichsmark. It was made legal tender in occupied areas but was not redeemable in Germany, and had a fixed rate of exchange with respect to the local currency.

In countries where the Central Bank or other issuing agency remained in existence, occupation notes were taken up after several months by forcing the issue of local currency with which to redeem it. This was done in Greece and most of Western Europe. In Poland and Serbia, where this situation did not exist, new central banks were created. The new banks issued notes expressed in terms of the pre-existing local monetary unit and the Reichskreditkasse notes were taken up.

In the Ukraine where the local currency was the same as that still circulating in the unoccupied portion of Russia, a new central bank was organized and a new currency unit was created. The new unit circulated at par with the former unit.

It may be concluded, therefore, that the use of occupation currency of the type described above is legally permissible under decisions of the Supreme Court of the United States, that it is not a violation of the law of belligerent occupation or of the Second Hague Convention, and that it is a method of military finance amply supported, both directly and indirectly, by precedents.

II. Legal Problems Incident to the Original Procurement of Occupation Currency.

A. Manufacture by the Bureau of Engraving and Printing.

Occupation currency will not be paper money of the United States of the same type as United States notes, Federal Reserve notes, etc. Accordingly, it is doubtful whether it would come within the scope of U.S.C. title 31, sec. 177 which deals with the printing of United States paper money. However, it would appear that the Bureau of Engraving and Printing could print these notes under a contract with the War Department.

Those services performed by the Bureau pursuant to the direction of Congress are paid for out of its appropriation. The balance of its work, which consists of miscellaneous printing and engraving jobs performed for the various branches of the Government, is paid for by reimbursement from the appropriations of the agencies for whom the services are performed. Provision for this latter practice is made in each of the annual Treasury appropriation acts. In fact, during the fiscal year 1941, more than one-third of the Bureau's expenses were incurred in the performance of such miscellaneous work.

It seems clear that the Bureau is in a position to print occupation currency for the War Department on a reimbursable basis. However, there is, in addition, ample statutory authority in section 7(a) of the Act of May 21, 1921, as amended by the Act of July 20, 1942 (Public Law 670 77th Congress.)

B. Payment of Printing Costs by the War Department.

Since printing of this nature done by the Bureau of Engraving and Printing must be paid for by a transfer of funds from the War Department, it is necessary to examine the appropriations provided by Congress for that Department.

Section 1 of the Act of July 2, 1942 (Public Law 649, 77th Congress), making appropriations for the Military Establishment for the fiscal year 1943, contains the following provision:

"For all emergencies and extraordinary expenses arising in the War Department or any of its subordinate bureaus or offices in the District of Columbia, or in the Army at large, but impossible to be anticipated or classified, including personal services, the purchase of law books, books of reference, subscriptions to newspapers and periodicals; the actual and necessary expenses or per diem in lieu thereof, as may be determined and approved by the Secretary of War, of military and civilian personnel in and under the Military Establishment on special duty in foreign countries; and for examination of estimates of appropriations and of military activities in the field, to be expended on the approval of the Secretary of War, and for such purposes as he may deem proper, and his determination thereon shall be final and conclusive upon the accounting officers of the Government, and payments from this appropriation may, in the discretion of the Secretary of War, be made on his certificate that the expenditures were necessary for confidential military purposes, \$11,346,600."

The expense here involved is one which could not have been anticipated; it is an emergency, and it is of a confidential nature.

Accordingly, the above-quoted provision appears to be broad enough in scope to cover a reimbursement of the Bureau's appropriation for the cost of printing occupation currency, provided that sufficient funds remain available out of the amount appropriated.

The same Act includes an appropriation for printing and binding which reads, in part, as follows:

"For printing and binding for the War Department, except such as may be otherwise provided for in accordance with existing law, §901, 598: * * *."

It should be noted, however, that both of the above provisions appropriate funds for the fiscal year ending June 30, 1943, and that expenses incurred after that date will have to be paid for in accordance with the appropriations for the fiscal year ending June 30, 1944. There has not yet been introduced a bill appropriating funds for the Military Establishment for the next fiscal year, and it might be advisable to call to the attention of the appropriate War Department officials the amount that may be needed for this purpose.

III. Internal Problems Arising in Connection with the Use of Occupation Currency.

A. Payment of Salaries and Allowances.

In the event that occupation currency is adopted as the medium of exchange in areas controlled by the military forces, it will probably be used to pay the salaries and allowances of officers and enlisted personnel of the Army, as well as for the acquisition of supplies and compensation for civilian services. There do not appear to be any legal difficulties which will be encountered if such action is taken, provided that the assumptions made at the beginning of this memorandum are correct.

The Army and the Treasury Department are presently operating an elaborate system for the payment of military expenses in foreign areas in the local media of exchange. The Army makes deposits in dollars in the United States to the credit of foreign banks. Each such foreign bank sets up a credit on its books, in dollars, in the name of the finance officer in charge of the particular area. The finance officer then converts into local currency any part of the dollar credit that he needs at the time and uses the local currency to make all expenditures in that country. These expenditures include pay and allowances of officers and enlisted men, purchases of supplies and payment for civilian services.

In addition to the normal allotment procedure, which makes possible the payment of a part of the salary of an officer or enlisted man to someone in the United States by direct payment from the War Department,

officers and enlisted men may send part of their pay back to the United States. Amounts sent back are, of course, paid in dollars but the remitter never obtains the dollars. The portion of his pay which he retains is paid to him in local currency and the payment to be remitted in dollars is made by the War Department.

In some of the areas where soldiers and officers are paid in local currency there are in force certain restrictions on exports of local currency and transactions in foreign exchange. For this reason, it seems clear that payment in occupation currency would not impose any new burdens on Army personnel.

B. Charges Against Army Appropriations for the Expending of Occupation Currency.

Congress annually appropriates funds for use by the Army in prosecuting the war. These appropriations are designed to cover all military expenses which can be foreseen. The possible increases due to successful occupation of foreign areas may well exceed the estimates on which the annual appropriations are based, so that these appropriations are not necessarily an indication that Congress intends the Army to carry out its functions only to the extent that it can do so with the funds available by way of appropriation.

The established principle that an army of occupation may place the burden of supporting the costs of administration upon the area occupied, must be considered in this connection. Granting this right, there can hardly be any question that there exists the lesser right to postpone, through the device of occupation currency, the determination of who shall be assessed, without affording complete protection by the creation of dollar reserves against occupation currency. In other words, there is authority to assess such costs immediately so that postponing allocation of them is a gratuity and need not necessarily be supported by any type of security or guarantee. Accordingly, there would not appear to be any requirement that Army appropriations be charged or set aside in amounts equivalent to the occupation currency expended.

In the event that the use of occupation currency is not accompanied by charges against Army appropriations, those appropriations will not be available for possible use in allocating a portion of the occupation costs to the United States after the occupied areas are liberated. For that reason it may be desirable to earmark such appropriations in a manner which would permit them to be so applied in the future. This might be accomplished, to the extent that occupation currency is actually expended by the Army, in the following manners:

- (1) As occupation currency is delivered to the Army, equivalent debits will be made against its appropriations on the basis of estimates as to the amount that will be used for particular purposes. Alternatively, debits could be made at the times when the currency is actually used, in which case the amounts used for particular purposes would be definitely ascertainable.
- (2) The funds taken from the Army appropriations will be deposited in a special account with the Treasurer subject to the order of the military official in charge of the particular area.
- (3) The special account might be available only upon certain conditions. For example, it might be made available for:
 - (a) dollar exchange to cover remittances from the occupied area;
 - (b) The provision of the share of the United States in the costs of occupation when a final allocation of these accounts is made; and
 - (c) The redemption or purchase of excess local currency of the area held by the Army or other government agency.

No legal difficulties are apparent in connection with this procedure. Since the occupying force has authority to issue the currency and the Army has funds to spend in carrying out its operations, it seems clear that the funds available can be used as a conditional reserve behind the currency. Such use is not an unauthorized disposition of the funds but rather a conditional disposition of them for the specified purposes. It is in many respects analogous to the common-law device of deposits in escrow.

The deposit of funds in a special account with the Treasurer is in accordance with existing Government practice. The Treasurer has held similar accounts in the past for foreign governments as, for example, deposits to be used in providing reciprocal lend-lease aid which are either used for that purpose or withdrawn. Similarly, the unused balance of the \$500,000,000 authorized to be loaned to China by the Act of February 12, 1942, 56 Stat. 89, was kept available by transfer from the appropriations to a special account with the Treasurer.

Although the above examples involve funds held for foreign governments, the holding of such an account subject to the order of the military official in charge of the particular area would appear to be an analogous situation. An occupied area does not become a part of the United States.

as a matter of domestic law even though foreign governments may treat it as such. The power to wage war does not include the power to acquire territory by conquest, and areas coming under the control of United States forces during military operations are governed by the military commander, subject to the direction of the President as Commander-in-Chief, but not by the Government of the United States in the same sense as the territory comprising the States, territories and possessions. For customs purposes such areas have been held to be foreign. See Fleming v. Page (1950) 9 How. 603, Cross v. Harrison (1853) 16 How. 164, Dooley v. United States (1901) 182 U.S. 222. Accordingly, it would appear to be proper to consider such areas as "foreign" for the purpose of setting up the necessary accounts with the Treasurer.

In the event that occupation currency is used as a general circulating medium to replace or supplement local issues, charges should probably not be made against Army appropriations to cover currency issued for any purpose other than actual expenditures of the occupying force. General issues which might later have reserves set up for their redemption are not expenses which could properly be apportioned between the United States and the government of the liberated country.

Since this procedure involves several unusual steps in connection with governmental accounting practices, it may be advisable to secure the approval of the Comptroller General of the United States before such action is taken.

IV. Original Distribution of Occupation Currency Through a Bank of Issue.

Although the mechanics of distributing occupation currency have not been worked out in detail at this time, it might prove advantageous to utilize an existing bank of issue or create a new one, and a bank of issue might be a desirable institution for the carrying out of other financial operations.

Since banks of issue customarily act in accordance with governmental directions or authorizations, it seems clear that the occupation authorities could assume control of an existing bank and determine the character of the currency it would issue. Such action would be entirely consistent with the powers and duties of an occupant as set forth above.

There also appears to be ample authority for the military authorities to create a new bank of issue if there is none in the area or if the existing bank cannot be operated properly. In addition to the fact that most of the authorities and reasons supporting the issuance of

occupation currency are applicable here, such action was clearly considered to be appropriate by the British High Court of Justice. In Bank of Ethiopia v. National Bank of Egypt and Liguori, *supra*, that Court not only held that the existing bank of issue could be liquidated but indicated that confusion would result if its existence was not terminated. Since the currency issuing agency can be dissolved, it follows as a necessary corollary that the occupying authorities may create a new agency to perform its functions.

(init.) R. B.

June 22, 1943

MEMORANDUM

This memorandum deals with a number of the legal problems involved in the proposed issue of occupation or military currency. Such currency will be used in areas occupied and controlled by the United States in the course of military operations. It will bear the legend "United States Military Authority" plus the name of the area in which it will be circulated, and it will be expressed in terms of the pre-existing local monetary unit.

This discussion will be based on the following assumptions:

- (1) Occupation currency will have a fixed rate of exchange with respect to the dollar.
- (2) Occupation currency will not be freely exchangeable for dollars and will not be valid in other areas, but provision will be made for limited remittances and exchanges for the benefit of military and civilian personnel of the occupying powers.
- (3) No provision will be made at the time of issue with respect to the ultimate redemption of occupation currency or the governmental authority responsible for its redemption.
- (4) Occupation currency will be legal tender in the areas in which it is used.

I. General Observations on the Legality of the Use of Occupation Currency.

It is well established that neither the Constitution nor the statutes of the United States are the governing law in areas occupied by the military forces of the United States, but that the rules governing the conqueror are those of the law of nations as established by international agreement and the usage of the world. The military commander of the occupied territory has all the powers of a de facto government and can change the existing local laws or make new ones, subject, of course, to the direction of the President as Commander-in-chief. Fleming v. Page (1850) 9 How. 603, Cross v. Harrison (1853) 16 How. 164, Thorington v. Smith (1868) 8 Wall. 1, The Grapeshot (1869) 9 Wall. 129, New Orleans v. Steamship Company (1874) 20 Wall. 387, Mechanics' Bank v. Union Bank (1874) 22 Wall. 295, Dooley v. United States (1901) 182 U.S. 222, MacLeod v. United States (1913) 229 U.S. 416, (1901) 23 Op. Atty. Gen. 425.

In the Dooley case the Supreme Court quoted 2 Halleck, International Law 444, as follows:

"The right of one belligerent to occupy and govern the territory of the enemy while in its military possession, is one of the incidents of war, and flows directly from the right to conquer. We, therefore, do not look to the Constitution or political institutions of the conqueror, for authority to establish a government for the territory of the enemy in his possession, during its military occupation, nor for the rules by

which the powers of such government are regulated and limited. Such authority and such rules are derived directly from the laws of war, as established by the usage of the world, and confirmed by the writings of publicists and decisions of courts--in fine from the law of nations. * * * The municipal laws of a conquered territory, or the laws which regulate private rights, continue in force during military occupation, except so far as they are suspended or changed by the acts of the conqueror. * * * He, nevertheless, has all the powers of a de facto government, and can at his pleasure either change the existing laws or make new ones."

A similar statement was made in New Orleans v. Steamship Company, supra, where, after deciding that the occupation of New Orleans by Union troops was the same in legal contemplation as the occupation of a foreign country, the Supreme Court said:

"In such cases the conquering power has a right to displace the pre-existing authority, and to assume to such extent as it may deem proper the exercise by itself of all the powers and functions of government. It may appoint all the necessary officers and clothe them with designated powers, larger or smaller, according to its pleasure. It may prescribe the revenues to be paid, and apply them to its own use or otherwise. It may do anything necessary to strengthen itself and weaken the enemy. There is no limit to the powers that may be exerted in such cases, save those which are found in the laws and usages of war. These principles have the sanction of all publicists who have considered the subject."

This power has been applied to the collection of revenues, the leasing of property of the displaced government and the establishment of a telegraph line operated as a common carrier. The question has never arisen directly whether this power extends to the issuance of temporary occupation currency, but a strikingly similar situation was involved in Thorington v. Smith, supra. That case involved a suit brought after the termination of the Civil War on a contract executed in the South during the War and based on Confederate currency. The first problem facing the Court was a determination of the type of government then in effect in the Confederacy. It did not call it a government of military or belligerent occupancy but its description fits those terms. It said:

"But there is another description of government called also by publicists a government de facto, but which might, perhaps, be more aptly denominated a government of paramount force. Its distinguishing characteristics are (1), that its existence is maintained by active military power, within the

territories and against the rightful authority of an established and lawful government; and (2), that while it exists, it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience, rendered in submission to such force, do not become responsible, as wrongdoers, for those acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions. They are usually administered directly by military authority, supported more or less by military force."

The Court then went into the question of the legal effect of currency issued by this type of government;

"As contracts in themselves, except in the contingency of successful revolution, these notes were nullities; for, except in that event, there could be no payer. They bore, indeed, this character upon their face, for they were made payable only 'after ratification of a treaty of peace between the Confederate States and the United States of America'. While the war lasted, however, they had a certain contingent value, and were used as money in nearly all the business transactions of many millions of people. They must be regarded, therefore, as a currency, imposed on the community by irresistible force.

"It seems to follow as a necessary consequence from this actual supremacy of the insurgent government, as a belligerent, within the territory where it circulated, and from the necessity of civil obedience on the part of all who remained in it, that this currency must be considered in courts of law in the same light as if it had been issued by a foreign government temporarily occupying a part of the territory of the United States. Contracts stipulating for payment in this currency, cannot be regarded for that reason only, as made in aid of the foreign invasion in the one case, or of the insurrection in the other. They have no necessary relations to the hostile government, whether invading or insurgent. They are transactions in the ordinary course of civil society, and, though they may indirectly and remotely promote the ends of the unlawful government, are without blame, except when proved to have been entered into with actual intent to further invasion or insurrection. We cannot doubt that such

contracts should be enforced in the courts of the United States, after the restoration of peace, to the extent of their just obligation."

The decision states in definite terms that the occupying authorities have the power to issue currency expressed in terms of the pre-existing monetary unit, to make the redemption of such currency contingent upon military success, and to require the inhabitants of the occupied area to accept it and contract with this currency as a basis for settlement. Coupled with the decisions holding that United States military forces occupying territory of the enemy have the powers of a de facto government, it seems clear that the Court would find that United States military authorities also have this power with respect to areas occupied and controlled by them.

In view of the statements made by the Supreme Court that the powers of occupying military authorities are found in the laws of war as established by international agreement and the usage of the world, it is necessary to examine those sources.

There are a number of treatises, digests and text-books on international law which deal with the subject of military or belligerent occupation. They are in substantial agreement with respect to those aspects of occupation law discussed below, which are pertinent to the present inquiry. (See 2 Lauterpacht, Oppenheim's International Law, secs. 165-172; Moore, International Law Digest, vol. 1, sec. 21, vol. 7, secs. 1143-1155; Higgins, Hall's International Law, secs. 153-161; 2 Hyde, International Law, secs. 688-699; Lawrence, Principles of International Law, secs. 171-180; Wilson, International Law, secs. 128-132.)

Until comparatively modern times there were no restrictions on the scope of the activities of an occupying power. In fact, little or no distinction was made between military occupation (temporary control during time of war) and conquest (permanent acquisition of territory, generally a subject treated in post-war settlements). The so-called "humane rules of warfare" developed during the nineteenth century and out of them grew the concept of belligerent or military occupation as a separate part of international law governed by distinct rules. Whether this concept will be modified or discarded as a result of the "total war" theory which predominated in the present conflict and its accompanying activities, cannot be predicted with any semblance of accuracy. However, in view of the fact these rules have evolved from the practices of nations at war, it is safe to assume that whatever changes occur, except those resulting from future international agreements, will be in the direction of broadening the field of operations of the occupying forces. Accordingly, action permitted by the rules as set forth in treatises now in existence would appear to be conservative as well as proper.

The authorities state that the invader has the right to do whatever acts are necessary for the prosecution of the war and that the range of military necessity in particular cases can only be determined by the circumstances relative to each such case. The authority is absolute but its exercise is limited to those actions which are necessary for safety and military success. Local laws affecting private rights and personal relations, those regulating moral order, and those guaranteeing certain personal liberties are not to be suspended or altered, at least so far as they do not affect the success of the occupying power's military activities. However, all of these restrictions are subject to the necessity exception, and the action under consideration would not come within any of these restricted fields even if the doctrine of necessity were not available.

Since the act of occupation suspends the regular government, the invader owes certain duties to the inhabitants of the territory under his control. He is bound to take whatever steps are necessary to secure public order, and this necessarily includes making provision for the orderly conduct of business. It is manifest that public order cannot be secured if trade and commerce are not protected. Without trade, the inhabitants will be unable to feed and clothe themselves and riots and disorders will be the unavoidable result. The existence of a sufficient quantity of a legal tender medium of exchange is, therefore, essential to the conduct of trade and commerce, and it follows that the occupant not only may, but must provide for the issue of currency in amounts great enough to meet the needs of the community. The type of currency issued and the method used to circulate it would appear to be matters within the discretion of the military authorities. It seems clear that the issue of occupation currency will not only fulfill a military and economic need of the occupying forces, but will also discharge the obligation of the invader to the inhabitants of the subjugated territory.

The fact that no immediate provision is made for the redemption of occupation currency, or for the governmental authority ultimately responsible for its redemption, does not affect the legality of its use. Two generally recognized rights of the occupant are the right to collect taxes, and the right to levy contributions. By analogy, the use of unsecured military currency is supported by these other powers.

From the earliest times, the occupied territory has been made to support the occupant's war. The right to shift the burden to the territory over which control is exercised, is a right which has been recognized by the United States in the past. In a special message to Congress on February 10, 1848, dealing with various phases of the Mexican War, President Polk said:

"No principle is better established than that a nation at war has the right of shifting the burden off itself and imposing it on the enemy by exacting military contributions. The mode of making such exactions must be left to the discretion of the conqueror, but it should be exercised in a manner conformable to the rules of civilized warfare.

"The right to levy these contributions is essential to the successful prosecution of war in an enemy's country, and the practice of nations has been in accordance with this principle. It is as clearly necessary as the right to fight battles, and its exercise is often essential to the subsistence of the army."

The trend of so-called "humanizing" development has been to place the burden of support not upon the individual inhabitants but rather upon the existing or future government of the area. The effort has been to distribute the burden equitably either directly, through equitable collections, or indirectly by furnishing the individual with evidence of his participation which his own government may later take into consideration.

This comparatively recent development is best illustrated by the provisions of the Second Hague Convention (Conventions Concluded at the Second International Peace Conference, Held at the Hague, 1907, No. IV, Section III, Articles 47, 48, 49, 51).^{*} In brief they provide that; (1) pillage is forbidden, (2) taxes shall be collected, as far as possible, pursuant to existing rules of assessment, and their collection binds the occupant to defray the costs of administration to the same extent that the predecessor government was bound, (3) money contributions may be levied only for the needs of the army or the administration of the territory, (4) contributions shall be collected, as far as possible, pursuant to the existing rules of tax assessment, and (5) receipts must be given for contributions.

It is clear, therefore, that the occupant need not pay the expenses of occupation and it follows as a matter of course that, if it is felt desirable to do so, the assessment of costs can be suspended during the period of military operations. The rules of international law do not prohibit the use of occupation currency and the protective devices which have been imposed on the historical methods of financing military occupation would not be disregarded by such action. The inhabitants who receive payment in such currency for goods or services will have ample evidence of the fact that the goods were supplied or the services were rendered. If they keep the currency it can later be presented to the local government and, if the local government is ultimately made responsible for the costs, it will be redeemed. If it has been circulated, the holder will be entitled to redemption. Thus the task of the future local government in equalizing the burden will have been simplified, and this method will have the additional feature of providing a medium of exchange during the period of suspension. In the event that the United States decides to absorb the costs, it can redeem the currency and the holder will receive the actual value of his goods or services--a benefit to which he is not necessarily entitled under the rules of international law.

^{*} Concluded October 18, 1907; ratified by the Senate March 10, 1908; ratified by the President February 23, 1909; proclaimed February 28, 1910.

Obviously these financing powers would not support the circulation of occupation currency in amounts greater than required by the military administration. However, the occupant is also permitted to do whatever is necessary for safety and military success. There are many currency problems that might arise which, if not handled properly, could endanger the entire undertaking. In particular cases such problems would justify the issuance of occupation currency in quantities sufficient to satisfy all demands, irrespective of the amount needed for the support of the occupant. Examples of such problems are:

- (1) An area might be devoid of currency as a result of the "scorched earth" policy of the previous occupant.
- (2) Existing currency might be insufficient and the issuing authority and equipment might be gone.
- (3) The enemy may have looted large quantities of local currency which could be marketed if use of the same currency were continued.

In addition to the portions of the Second Hague Convention (No. IV) discussed above, Article XLVIII must be considered in connection with the general rights of the military authorities in an occupied area. That Article provides:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

This is a clear recognition of the right of the military to control civil affairs as well as those which are strictly a part of the war. The military commander is the only effective administrator and all governmental functions necessarily devolve upon him.

Here too, the principle is recognized that the scope of his authority varies directly with the necessities of the situation. When circumstances require it, he is empowered to promulgate new laws, and the determination of whether such action is or is not required is, of course, to be made in the first instance by the military commander.

The applicability of the restrictions imposed by Article XLVIII to activities in areas likely to be occupied by United States forces, would appear to be greatly reduced by virtue of the fact that most such areas were not originally part of the enemy's territory but have been occupied by him. Obviously, laws put into effect by the enemy as an occupant will, in many instances, be of the type which the new occupant will be "absolutely prevented" from respecting.

Although Article XLIII has not been the subject of interpretation by courts in the United States, it was considered by the British High Court of Justice several years ago. The case of Bank of Ethiopia v. National Bank of Egypt and Liguori (1937) 53 Times L.R. 75, arose from a demand by the Ethiopian bank for a settlement of its accounts with the Egyptian bank. The defendant admitted that the accounts existed and were unsettled but claimed that Liguori, the Italian liquidator of the Bank of Ethiopia, was the proper party with whom to make settlement. On the other hand, the plaintiff contended that Italy was nothing more than a military occupant and, under Article XLIII of the Second Hague Convention (No. IV), its authority was limited to those acts necessary to maintain the safety of the army of occupation, but did not extend to the modification of local laws with respect to the status of established Ethiopian corporations.

The High Court of Justice rejected the contention of the Bank of Ethiopia on the ground that by virtue of its political recognition by the British Government, Italy was the de facto government and had the power to liquidate the Ethiopian bank. The Court said that the plaintiff's contention had:

"*** no relevance in principle to the case of a de facto government set up in an area from which the former Government has departed, and in which there is no Government authority except that of the de facto Government."

However, as Wright points out in (1937) 31 American Journal of International Law 687, these conditions would necessarily exist in all cases of belligerent occupation. Thus, the case can be considered as authority for the proposition that Article XLIII does not prevent a military occupant from exercising the powers of a de facto sovereign.

The case, in addition to its implied holding that Article XLIII has little or no effect on the powers of an occupant, is of considerable importance in connection with the currency issuing power of such authorities. In arriving at the conclusion that the Ethiopian bank could properly be liquidated, the Court said:

"*** confusion (would ensue) if the only bank of issue in the country were allowed to continue its business under the control of persons who, until the last moment, seem to have been engaged in strenuous attempts to assist the displaced Government to resist the attacks of those who have since become the de facto Government."

Since the currency issuing agency can be liquidated, it necessarily follows, that the occupying authorities not only can, but must provide for the issuance of currency. This right (or duty) extends not only to currency required by the armed forces but also to currency which is needed by the inhabitants to conduct normal business activities. Whether the occupying force brings

currency with it issued by its own government, sets up a currency issuing agency in the area, or issues its own currency, is a matter which the military authorities must decide in accordance with the circumstances involved in each particular case.

Thus far, the question of the legality of occupation or military currency has been examined as if the governing law were minutely defined. This is not the case, however, and it should be noted that, although certain broad doctrines of the law of belligerent occupation have been worked out, the applicability of the existing principles to particular problems can seldom be determined accurately by referring only to the normal sources, such as judicial decisions, treaties and text-books. The field of occupation law has not been fully developed and, since its principles are derived in the main from the actions of countries at war, it is important to consider some of the precedents that have been established in prior wars and in the present conflict.

During the World War the German Government made extensive use of similar devices in areas in which it had the dominant control. In areas where Austria-Hungary and other Central Powers predominated, this policy was not followed. (See Feilchenfeld, Draft, The International Economic and Financial Law of Belligerent Occupation).

As early as 1914 a special currency was used by the Germans in Belgium. It was known as "Darlehenskassenscheine" and was a German note expressed in marks. Its acceptance was compulsory in Belgium but not in Germany, which makes it strikingly similar to the type now under consideration. After the Armistice, Belgium redeemed these notes in local currency and the Versailles Treaty provided that Germany should redeem them from the Belgian Government. Comparable action was taken in Poland.

In Italy, where the Germans and Austrians were joint occupants, a new organization was created which issued a special currency called "Buoni di Cassa." This currency was expressed in lire, the local monetary unit.**

** Lawrence, The Principles of International Law, p. 424, contains the following passage:

"In Manchuria during the war of 1904-1905 the Japanese applied a new method which reflects equal credit on their humanity (?) and their ingenuity. In return for materials and services they gave military cheques, which could be exchanged for silver coin at stated times and places. * * * The result was that after a time the people used the cheques as paper money, and asked for no coin in exchange for them. * * * The Japanese system * * * solves the difficulty caused by the occasional absence of ready money."

In the present war, the Germans have again made use of this device, and this time have worked out a very elaborate procedure. The following discussion of Nazi operations is based on a memorandum dated September 25, 1942, entitled "German Financial Methods in Connection with Occupation of Foreign Countries," prepared by the Board of Economic Warfare, Office of Economic Warfare Analysis, Blockade and Supply Branch.

Where feasible the German military authorities utilized the genuine local currency circulating at the time of occupation, but this method proved to be practical only in Denmark. In practically all the Western and Eastern European countries, genuine local currency was not available and a temporary occupation currency was used. This was issued by the Reichskreditkasse, an organization set up to perform all banking operations for the army. The currency was known as Reichskreditkasse notes and was expressed in terms of the Reichsmark. It was made legal tender in occupied areas but was not redeemable in Germany, and had a fixed rate of exchange with respect to the local currency.

In countries where the Central Bank or other issuing agency remained in existence, occupation notes were taken up after several months by forcing the issue of local currency with which to redeem it. This was done in Greece and most of Western Europe. In Poland and Serbia, where this situation did not exist, new central banks were created. The new banks issued notes expressed in terms of the pre-existing local monetary unit and the Reichskreditkasse notes were taken up.

In the Ukraine where the local currency was the same as that still circulating in the unoccupied portion of Russia, a new central bank was organized and new currency unit was created. The new unit circulated at par with the former unit.

It may be concluded, therefore, that the use of occupation currency of the type described above is legally permissible under decisions of the Supreme Court of the United States, that it is not a violation of the law of belligerent occupation or of the Second Hague Convention, and that it is a method of military finance amply supported, both directly and indirectly, by precedents.

II. Legal Problems Incident to the Original Procurement of Occupation Currency.

A. Manufacture by the Bureau of Engraving and Printing.

Occupation currency will not be paper money of the United States of the same type as United States notes, Federal Reserve notes, etc. Accordingly, it is doubtful whether it would come within the scope of U.S.C. title 31, sec. 177 which deals with the printing of United States paper money. However, it would appear that the Bureau of Engraving and Printing could print these notes under a contract with the War Department.

These services performed by the Bureau pursuant to the direction of Congress are paid for out of its appropriation. The balance of its work, which consists of miscellaneous printing and engraving jobs performed for the various branches of the Government, is paid for by reimbursement from the appropriations of the agencies for whom the services are performed. Provision for this latter practice is made in each of the annual Treasury appropriation acts. In fact, during the fiscal year 1941, more than one-third of the Bureau's expenses were incurred in the performance of such miscellaneous work.

It seems clear that the Bureau is in a position to print occupation currency for the War Department on a reimbursable basis. However, there is, in addition, ample statutory authority in section 7(a) of the Act of May 21, 1921, as amended by the Act of July 20, 1942 (Public Law 670 77th Congress.)

B. Payment of Printing Costs by the War Department.

Since printing of this nature done by the Bureau of Engraving and Printing must be paid for by a transfer of funds from the War Department, it is necessary to examine the appropriations provided by Congress for that Department.

Section 1 of the Act of July 2, 1942 (Public Law 649, 77th Congress), making appropriations for the Military Establishment for the fiscal year 1943, contains the following provision:

"For all emergencies and extraordinary expenses arising in the War Department or any of its subordinate bureaus or offices in the District of Columbia, or in the Army at large, but impossible to be anticipated or classified, including personal services, the purchase of law books, books of reference, subscriptions to newspapers and periodicals; the actual and necessary expenses or per diem in lieu thereof, as may be determined and approved by the Secretary of War, of military and civilian personnel in and under the Military Establishment on special duty in foreign countries; and for examination of estimates of appropriations and of military activities in the field, to be expended on the approval of the Secretary of War, and for such purposes as he may deem proper, and his determination thereon shall be final and conclusive upon the accounting officers of the Government, and payments from this appropriation may, in the discretion of the Secretary of War, be made on his certificate that the expenditures were necessary for confidential military purposes, \$11,346,600."

The expense here involved is one which could not have been anticipated; it is an emergency expenditure, and it is of a confidential nature.

Accordingly, the above-quoted provision appears to be broad enough in scope to cover a reimbursement of the Bureau's appropriation for the cost of printing occupation currency, provided that sufficient funds remain available out of the amount appropriated.

The same Act includes an appropriation for printing and binding which reads, in part, as follows:

"For printing and binding for the War Department, except such as may be otherwise provided for in accordance with existing law, \$901,598: * * *."

It should be noted, however, that both of the above provisions appropriate funds for the fiscal year ending June 30, 1943, and that expenses incurred after that date will have to be paid for in accordance with the appropriations for the fiscal year ending June 30, 1944. There has not yet been introduced a bill appropriating funds for the Military Establishment for the next fiscal year, and it might be advisable to call to the attention of the appropriate War Department officials the amount that may be needed for this purpose.

III. Internal Problems Arising in Connection with the Use of Occupation Currency.

A. Payment of Salaries and Allowances.

In the event that occupation currency is adopted as the medium of exchange in areas controlled by the military forces, it will probably be used to pay the salaries and allowances of officers and enlisted personnel of the Army, as well as for the acquisition of supplies and compensation for civilian services. There do not appear to be any legal difficulties which will be encountered if such action is taken, provided that the assumptions made at the beginning of this memorandum are correct.

The Army and the Treasury Department are presently operating an elaborate system for the payment of military expenses in foreign areas in the local media of exchange. The Army makes deposits in dollars in the United States to the credit of foreign banks. Each such foreign bank sets up a credit on its books, in dollars, in the name of the finance officer in charge of the particular area. The finance officer then converts into local currency any part of the dollar credit that he needs at the time and uses the local currency to make all expenditures in that country. These expenditures include pay and allowances of officers and enlisted men, purchases of supplies and payment for civilian services.

In addition to the normal allotment procedure, which makes possible the payment of a part of the salary of an officer or enlisted man to someone in the United States by direct payment from the War Department, officers

and enlisted men may send part of their pay back to the United States. Amounts sent back are, of course, paid in dollars but the remitter never obtains the dollars. The portion of his pay which he retains is paid to him in local currency and the payment to be remitted in dollars is made by the War Department.

In some of the areas where soldiers and officers are paid in local currency there are in force certain restrictions on exports of local currency and transactions in foreign exchange. For this reason, it seems clear that payment in occupation currency would not impose any new burdens on Army personnel.

B. Charges Against Army Appropriations for the Expending of Occupation Currency.

Congress annually appropriates funds for use by the Army in prosecuting the war. These appropriations are designed to cover all military expenses which can be foreseen. The possible increases due to successful occupation of foreign areas may well exceed the estimates on which the annual appropriations are based, so that these appropriations are not necessarily an indication that Congress intends the Army to carry out its functions only to the extent that it can do so with the funds available by way of appropriation.

The established principle that an army of occupation may place the burden of supporting the costs of administration upon the area occupied, must be considered in this connection. Granting this right, there can hardly be any question that there exists the lesser right to postpone, through the device of occupation currency, the determination of who shall be assessed, without affording complete protection by the creation of dollar reserves against occupation currency. In other words, there is authority to assess such costs immediately so that postponing allocation of them is a gratuity and need not necessarily be supported by any type of security or guarantee. Accordingly, there would not appear to be any requirement that Army appropriations be charged or set aside in amounts equivalent to the occupation currency expended.

In the event that the use of occupation currency is not accompanied by charges against Army appropriations, these appropriations will not be available for possible use in allocating a portion of the occupation costs to the United States after the occupied areas are liberated. For that reason it may be desirable to earmark such appropriations in a manner which would permit them to be so applied in the future. This might be accomplished, to the extent that occupation currency is actually expended by the Army, in the following manner:

c) the redemption or purchase ^{every} of local currency of the area
~~from~~ held by the army or other govt agency.

- (1) As occupation currency is delivered to the Army, equivalent debits will be made against its appropriations on the basis of estimates as to the amount that will be used for particular purposes. Alternatively, debits could be made at the times when the currency is actually used, in which case the amounts used for particular purposes would be definitely ascertainable.
- (2) The funds taken from the Army appropriations will be deposited in a special account with the Treasurer subject to the order of the military official in charge of the particular area.
- (3) The special account might be available only upon certain conditions. For example, it might be made available for:
 - (a) dollar exchange to cover remittances from the occupied area, and
 - (b) the provision of the share of the United States in the costs of occupation when a final allocation of these accounts is made.

No legal difficulties are apparent in connection with this procedure. Since the occupying force has authority to issue the currency and the Army has funds to spend in carrying out its operations, it seems clear that the funds available can be used as a conditional reserve behind the currency. Such use is not an unauthorized disposition of the funds but rather a conditional disposition of them for the specified purposes. It is in many respects analogous to the common-law device of deposits in escrow.

The deposit of funds in a special account with the Treasurer is in accordance with existing Government practice. The Treasurer has held similar accounts in the past for foreign governments as, for example, deposits to be used in providing reciprocal lend-lease aid which are either used for that purpose or withdrawn. Similarly, the unused balance of the \$500,000,000 authorized to be loaned to China by the Act of Feb. 12, 1942, 56 Stat. 89, was kept available by transfer from the appropriations to a special account with the Treasurer.

Although the above examples involve funds held for foreign governments, the holding of such an account subject to the order of the military official in charge of the particular area would appear to be an analogous situation. An occupied area does not become a part of the United States

as a matter of domestic law even though foreign governments may treat it as such. The power to wage war does not include the power to acquire territory by conquest, and areas coming under the control of United States forces during military operations are governed by the military commander, subject to the direction of the President as Commander-in-Chief, but not by the Government of the United States in the same sense as the territory comprising the States, territories and possessions. For customs purposes such areas have been held to be foreign. See Fleming v. Page (1850) 9 How. 603, Cross v. Harrison (1853) 16 How. 164, Dooley v. United States (1901) 182 U.S. 222. Accordingly, it would appear to be proper to consider such areas as "foreign" for the purpose of setting up the necessary accounts with the Treasurer.

In the event that occupation currency is used as a general circulating medium to replace or supplement local issues, charges should probably not be made against Army appropriations to cover currency issued for any purpose other than actual expenditures of the occupying force. General issues which might later have reserves set up for their redemption are not expenses which could properly be apportioned between the United States and the government of the liberated country.

Since this procedure involves several unusual steps in connection with governmental accounting practices, it may be advisable to secure the approval of the Comptroller General of the United States before such action is taken.

IV. Original Distribution of Occupation Currency Through a Bank of Issue.

Although the mechanics of distributing occupation currency have not been worked out in detail at this time, it might prove advantageous to utilize an existing bank of issue or create a new one, and a bank of issue might be a desirable institution for the carrying out of other financial operations.

Since banks of issue customarily act in accordance with governmental directions or authorizations, it seems clear that the occupation authorities could assume control of an existing bank and determine the character of the currency it would issue. Such action would be entirely consistent with the powers and duties of an occupant as set forth above.

There also appears to be ample authority for the military authorities to create a new bank of issue if there is none in the area or if the existing bank cannot be operated properly. In addition to the fact that most of the authorities and reasons supporting the issuance of

occupation currency are applicable here, such action was clearly considered to be appropriate by the British High Court of Justice. In Bank of Ethiopia v. National Bank of Egypt and Liguori, supra, that Court not only held that the existing bank of issue could be liquidated but indicated that confusion would result if its existence was not terminated. Since the currency issuing agency can be dissolved, it follows as a necessary corollary that the occupying authorities may create a new agency to perform its functions.

April 7, 1943.

MEMORANDUM

Re: Occupation Currency,
Printing and Use.

I. Manufacture by the Bureau of Engraving & Printing under contract with the War Department.

Part of the Bureau's work is the printing of particular types of documents for the Government pursuant to the direction of Congress and paid for out of the Bureau's appropriation. (For example, bonds, notes and checks are provided for by Section 1 of the Act of August 24, 1912, as amended (U.S.C. title 31, sec. 177)). The balance of its work consists of miscellaneous printing and engraving jobs performed for the various departments, agencies and bureaus of the Government at their expense. During the fiscal year 1941, more than one-third of its expenses were incurred in the performance of such miscellaneous work. The agencies and bureaus for which the work is done reimburse the Bureau's appropriation pursuant to provisions contained in the annual Treasury appropriation Acts. Thus, it is clear that the Bureau is in a position to print occupation currency for the War Department on a reimbursable basis. (Moreover, there is ample statutory authority in Section 7(a) of the Act of May 21, 1920, as amended by the Act of July 20, 1942 (Public Law 670, 77th Congress)).

If the normal practice of a Government agency is to advertise for bids and include the Bureau among the bidders, such practice could be modified in this case, since Section 201 of the First War Powers Act, 1941 (Public Law 354, 77th Congress) authorizes the making of contracts connected with the war effort without compliance with the formalities required by other statutes.

II. Payment of the printing costs by the War Department.

Section 1 of the Act of July 2, 1942 (Public Law 649-77th Congress), making appropriations for the Military Establishment for the fiscal year 1943, provides as follows:

"For all emergencies and extraordinary expenses arising in the War Department or any of its subordinate bureaus or offices in the District of Columbia, or in the Army at large, but impossible to be anticipated or classified, including personal services, the purchase of lawbooks, books of reference, subscriptions to newspapers and periodicals; the actual and necessary expenses or per diem in lieu thereof, as may be determined and approved by the Secretary of War, of military and civilian personnel in and under the Military Establishment on special duty in foreign countries; and for examination of estimates of appropriations and of military activities in the field, to be expended on the approval or authority of the Secretary of War, and for such purposes as he may deem proper, and his determination

thereon shall be final and conclusive upon the accounting officers of the Government, and payments from this appropriation may, in the discretion of the Secretary of War, be made on his certificate that the expenditures were necessary for confidential military purposes, \$11,346,600."

It is possible that sufficient funds are available under this appropriation to cover the cost of producing such notes. Since the expense involved is one which could not reasonably have been anticipated, it clearly comes within the scope of this provision.

There is also an appropriation in the same Act for printing and binding, which reads, in part:

"For printing and binding for the War Department, except such as may be otherwise provided for in accordance with existing law, \$901,598: ***".

However, it should be noted that both of these appropriations expire on June 30, 1943 and that payments after that date will have to be made in accordance with the 1944 appropriation. If this has not already been enacted, provision might be made in it for the expenses involved in printing occupation currency in more definite terms. X

III. Use of occupation currency.

There are discussed below, the legal aspects of several of the many possible methods of issuing occupation currency after the military forces have obtained control over a particular area. In each example it is assumed that the principal object which the use of this currency is designed to attain is the financing of occupation costs without straining the currency of the United States, and doing so in a manner which will not amount to requisitioning of the property in the occupied area but will leave for future determination the questions of placing the burden of (1) paying the costs, and (2) financing the replacement of occupation currency with local currency. 7/14/42 not parallel

Accordingly, it is necessary to examine the possible domestic ramifications of the use of irredeemable currency in occupied areas. Obviously, it will be necessary to make arrangements for remittances to the United States (and elsewhere) by military and civilian personnel of the United States and any other nations participating in the operation. Such persons will be paid in occupation currency which will not be of any value if exported. Remittances would have to be made through the purchase of foreign exchange and this can only be accomplished if there is in the United States a dollar balance available for the payment of persons in this country in return for the

deposit of occupation currency in the foreign territory. Such an account could be established by the deposit of a portion of an Army appropriation in a special account in the Treasury or a Federal Reserve or commercial bank. To the extent that deposits are made in such account, the United States will be paying the costs of occupation, since it will be, in effect, redeeming the occupation currency accepted for the purpose of making remittances.

The same problem will arise, on a far less extensive scale, in connection with occupation currency carried by persons returning to the United States or moving on to areas where it is of no value. Moreover, when conditions become more settled, it is possible that foreign trade will begin. If exports and imports are fairly even, no problem will be created since the purchase of occupation exchange in the United States will equal the purchase of dollar exchange in the foreign territory. However, it is more than likely that the flow of goods to the occupied area will tend to be greater than the flow of goods from it, in which case it may be necessary to increase the available dollar balance in the United States.

Since there will not be any "free market" in which this currency will be bought and sold but it will be necessary to convert it into dollars in the United States, there should be a fixed rate of exchange with the dollar if the currency is issued in terms of the pre-existing local monetary unit.

- (1) Use in an area where all pre-existing currency has been withdrawn.

It is possible that the armed forces may assume control over an area from which the previous authorities have removed all circulating currency as part of a "scorched earth" policy. In such a situation the occupation currency could be issued as the only circulating medium of exchange, or it could be issued for use only in paying occupation costs if arrangements are made for the issuance of local currency to serve the business needs of the civilian population.

- (a) Occupation currency as the only medium of exchange.

In the event that no other currency is in circulation and no other will be circulated, it is manifest that some provision must be made for the issue of occupation notes at a more rapid rate than would be possible if they were issued solely for the purpose of paying military expenses.

*confused bank
of issue support
arrangement
of bank of issue
no fixed deposit*

*Army to pay all costs
of paper in
circulation*

This might be accomplished by having the Army purchase the notes as a commodity from the Bureau of Engraving & Printing.* They could turn them over to a bank of issue in the occupied territory. Such bank might be the one already in existence or one set up by the military authorities. (See the discussion of Bank of Ethiopia v. National Bank of Egypt & Liguori in the memorandum of March 27, 1943). The military authorities could inform the bank of issue that it would call upon the bank for payments against the deposit of such currency only up to a stated amount and that the remainder could be circulated freely. For example, \$1,000,000,000 could be turned over to the bank on the understanding that only \$100,000,000 would be used by the Army and \$900,000,000 would be available for ordinary circulation.

Although the \$900,000,000 could be circulated in any one of a number of ways, one method which would have many practical benefits would be to distribute it at a fixed rate (or if the former currency and the new currency are based on the same monetary measure, then unit for unit) to the persons who hold receipts for currency destroyed by the previous occupant. If the amount circulated is the same as the amount destroyed, all such receipts can be taken up. If the amount circulated is less, then the new currency can be distributed on a pro rata basis. Since the Army will not only have authority to handle monetary problems, but will owe a duty to the people in the conquered territory to see that the ordinary business life of the community functions properly, there can be little doubt that it has the power to require the acceptance of military currency in place of receipts for local currency which has been destroyed.

It has been suggested that the Army set aside out of its appropriations a fund equivalent to the military currency it acquires, this fund to be available for the redemption of such currency if it is ultimately decided that the United States should bear the costs of occupation. There would not appear to be any legal requirement for such a reserve. The memorandum of March 27, 1943 points out that the military occupant has the power to collect revenues and put them to its own use, and it also discusses the use of Confederate money which had no backing of any kind but was regarded as currency for the purpose of ~~determining~~ private contractual rights and obligations. Since an occupying power can require the area controlled to pay the costs of administration either by taxation or requisitioning of supplies, it would appear

determining

* It may be desirable to establish a system for safeguarding the use of such currency to prevent its misapplication and to put the Army in a position to account for it in full to the fiscal authorities of the United States and the future authorities in liberated areas. If so, the Army should give receipts for the currency to the proper bureau in the Treasury, which bureau should also be responsible for all currency printed but not called for by the Army. The Army would then have to account for the currency for which it gave receipts.

to be proper to make it bear such costs through the use of unbacked currency. Granting the right to make it bear the expense, there can hardly be any question that there exists the lesser authority to postpone the determination of who shall be assessed, without fully protecting the conquered territory by the creation of dollar reserves against military currency. In other words, there is authority to assess the costs immediately so that postponing allocation of them is a bounty and need not include any protective devices

However, should it be felt to be desirable, even though unnecessary, to set aside part of the Army's appropriations, this could probably be done without paying the money out of the Treasury (a practice that would require paying interest on funds borrowed to meet current expenses). The reserve should only cover the currency used to meet Army expenditures and not that used to replace pre-existing currency by payment for receipts, since the latter is not a proper expense for the Government to bear. One way that the reserve might be set up is to establish a credit with the Treasurer in favor of the bank of issue. This follows the procedure used with respect to the balance of the \$500,000,000 loan to China after the expiration of the appropriation. The credit could be made conditional upon the approval of a stated official prior to any withdrawal.

An alternative possibility is the creation of a trust fund under Section 20 of the Act of June 26, 1934, 49 stat. 1233 (U.S.C. title 31, sec. 725 (s)), which provides in part:

" *** Hereafter moneys received by the Government as trustee analogous to the funds named in subsections (b) and (c) of this section, not otherwise herein provided for *** shall likewise be deposited into the Treasury as trust funds with appropriate title, and all amounts credited to such trust-fund accounts are hereby appropriated and shall be disbursed in compliance with the terms of the trust: ***."

One of the funds named is "(25) Pay of Army, deposit fund (8 t 183)" and an analagous trust fund might be set up out of the Army appropriations.

(b) Occupation and local currencies both in circulation.

Under some circumstances it may be found that the economy of the conquered area is better suited to the use of local currency as replacement for destroyed currency and occupation currency only for the purpose of meeting Army expenses. In that case, the military authorities can authorize the former or a new bank of issue to circulate local currency by redeeming receipts for currency destroyed. (See the discussion of Bank of Ethiopia v. National Bank of Egypt & Liguori in the memorandum of March 27, 1943).

The occupation currency could be issued by the Army in payment for supplies and services, or it could be issued by establishing an overdraft privilege with the bank of issue (or any local bank) payable in occupation notes. If used by Army finance officers directly they should keep careful records of the payments made, the payees and the reason for each payment, in the same manner as records are now kept. If used through a bank, the finance officers could accept receipts from such bank so that it could properly account for the notes received, or the bank could be given an offsetting credit in the United States in occupation currency.

Irrespective of the method of issue, the establishment of a credit or trust fund out of Army appropriations could be handled as outlined in (a) above.

(2) Use in an area where local currency is already in circulation.

If the area taken over is sufficiently supplied with local currency, the problems may be reduced by the continued use of such currency. It may be necessary to strengthen the local system or it may be felt desirable to call in all local notes in exchange for the military medium. There appears to be ample authority for taking either type of action. The Army will be charged with civil administration of the area which includes control of the currency issuing authorities. They can be permitted to operate under appropriate supervision or replaced, whichever is deemed reasonable by the Army.

The same alternative methods of issuing the new currency will be open to the military authorities as would be available if there were no local notes in circulation. However, it will be necessary to fix a rate of exchange between the two currencies and to take steps to prevent the depreciation of the value of one with respect to the other. Moreover, the problems of isolating the currency in the event of re-occupation by the enemy and of preventing the marketing of looted local currency will be more difficult if the local notes remain in circulation.

If neither currency has any real foreign exchange value, the remittance privileges might be designed to accommodate holders of either type on the basis of the fixed rate. This would involve Army purchases of local currency but the notes purchased could be used for military expenditures and the expense would be no greater than that involved in remittances against occupation currency.

The accounting features are similar to those discussed above. Careful records should be kept by Army finance officers and any banks through which the operations are effected. Both the Army and the banks should be able to account to the United States and the liberated area's future government for all such currency. This will enable a fairly simple settlement of accounts when the allocation of costs is made.

SECRET

Treasury Department
March 30, 1943

MEMORANDUM REGARDING INVASION AND OCCUPATION CURRENCIES

There is submitted for consideration the following Treasury recommendations and summary of the more important considerations governing these recommendations on some of the problems of invasion and occupation currencies.

1. In the invasion stage the United States armies should use regular United States currency with a yellow seal and some other minor distinguishing mark.
 - (a) No other type of currency can be expected to be as eagerly accepted by the local population.
 - (b) The additional expense of using regular dollar currency instead of special dollar currency would not necessarily be great. Part or most of the costs of occupation can in any case be shifted to the local population later if desired.
 - (c) A distinctive mark could permit the isolation of the currency should it fall into enemy hands and also prevent influx into the area of looted dollar currency already in the hands of the enemy.
 - (d) Were the United States to use a special currency with the word "dollar" on it which it did not intend to redeem eventually at par, it might seem to some people to be resorting to unethical and dishonorable practices unworthy of a great republic.
2. The best currency for the occupation stage is a currency designated in local units and as quickly as possible the shift should be made from regular United States dollar currency to local currency.
 - (a) Great inconvenience and probable increased economic disorder will result to the local populace and economy from having in use a local currency as well as currencies designated in dollars and sterling.
 - (b) The continued use of regular United States currency alongside local currency would result in black markets in which the market rates of exchange are likely to be more favorable than the decreed rate. Unless the exchange rate was repeatedly changed, the discrepancy between the decreed rate and the black market rate would confuse and irritate the soldiers and Army finance officers.
 - (c) The sooner the local currency is introduced, the less dollars will have to be spent by the invading armies and the subsequent problem of adjustment of costs made easier.

3. Steps should be taken immediately to provide adequate supplies of currencies designated in terms of local units to be available when needed.
 - (a) The Treasury should immediately prepare substantial stocks of specially prepared blank currency with the legend and denomination to be filled in immediately after the invasion has begun (for security reasons).
 - (b) Such currency should not resemble outstanding local currency and should bear the following legend "United States Military Authority". The same basic design should be used for all countries with variations confined to color, denomination, etc.
 - (c) By means of the photo-offset process such blank currencies could be produced by the Treasury in sufficient quantities within a month or so after the Bureau is given the green light. The blank currency can then be completed and deliveries begun within a few days after the invasion has started.
4. The British should be urged to pursue the same procedure as the United States does, except that
 - (a) The British will use British Military Authority Sterling notes (B.M.A. notes) instead of U.S. yellow seal currency as their "spearhead" currency. B.M.A. notes will be tied to the dollar at the rate of 4 to 1 and made interchangeable with the dollar just as was the case in North Africa.
 - (b) A supply of local currency bearing the legend "British Military Authority" will be prepared for the British on the same basis as that described in paragraph (3) above.
5. No discussions should be held with the Allied governments preparatory to invasion dealing with either the supply of currency or rates of exchange, but each one of the Allied nations should be asked to submit a memorandum to the U.S. and British governments setting forth their views of an appropriate exchange rate to be adopted at the time of invasion of their respective countries.

British Views

The British strongly desire that we use a special military note instead of the yellow seal currency during the initial period of invasion and that local currencies of invaded areas already available in London, or in the process of being made available, should be used during the initial period of invasion wherever possible.

Mar. 30, 1943.

Problems re Issuance of Occupation Currency.

- I. Can the Army pay the cost of manufacturing such notes?
- II. Can the Army and the Bureau of Engraving and Printing contract or arrange for the procurement of the necessary supplies and the printing of the notes?
- III. What methods are available for the circulation of such currency?
 - A. on the basis of the Army bearing the costs of occupation.
 - B. on the basis of the occupied area bearing part or all of the costs of occupation.

March 30, 1943.

Problems re Issuance of Occupation Currency.

I. Can the Army pay the cost of manufacturing occupation currency?

A Section 1 of the Act of July 2, 1942 (Public Law 649-77th Congress), making appropriations for the Military Establishment for the fiscal year 1943, provides as follows:

"For all emergencies and extraordinary expenses arising in the War Department or any of its subordinate bureaus or offices in the District of Columbia, or in the Army at large, but impossible to be anticipated or classified, including personal services, the purchase of lawbooks, books of reference, subscriptions to newspapers and periodicals; the actual and necessary expenses or per diem in lieu thereof, as may be determined and approved by the Secretary of War, of military and civilian personnel in and under the Military Establishment on special duty in foreign countries; and for examination of estimates of appropriations and of military activities in the field, to be expended on the approval or authority of the Secretary of War, and for such purposes as he may deem proper, and his determination thereon shall be final and conclusive upon the accounting officers of the Government, and payments from this appropriation may, in the discretion of the Secretary of War, be made on his certificate that the expenditures were necessary for confidential military purposes, \$11,316,600."

It is possible that sufficient funds are available under this appropriation to cover the cost of producing such notes. Since the expense involved is one which could not reasonably have been anticipated, it clearly comes within the scope of this provision.

There is also an appropriation in the same Act for printing and binding, which reads, in part:

"For printing and binding for the War Department, except such as may be otherwise provided for in accordance with existing law, \$901,598: ***"

However, it should be noted that both of these appropriations expire on June 30, 1943 and that payments after that date will have to be made in accordance with the 1944 appropriation. If this has not already been enacted, provision might be made in it for the expenses involved in printing occupation currency in more definite terms.

II. Can the Army and the Bureau of Engraving and Printing contract or arrange for the procurement of the necessary supplies and the printing of the currency?

There has not been sufficient time to examine this question thoroughly, but it would appear that the Bureau of Engraving and Printing has been permitted in the past to submit bids for work to be performed on behalf of other departments of the Government. (1898) 22 Op. Atty. Gen. 49. Presumably this is still true and, if so, a contract could be entered into by the War Department and the Bureau for the printing of this currency. Pursuant to sec. 201 of the First War Powers Act, 1941 (Public Law 354, 77th Congress) this could be done without advertising submission of bids, etc. The contract could include the purchase of supplies as well as the printing of the currency.

Moreover, under section 7(a) of the Act of May 21, 1920, as amended by the Act of July 23, 1942 (Public Law 870, 77th Cong.), one agency, department, or Bureau of the Government may requisition the services or supplies of any other agency, department or bureau. It was amended so as to refer specifically to the War Department by the addition of the following proviso:

"Provided, That the War Department *** may place orders, as provided herein, for materials, supplies, equipment, work, or services, or any kind that any requisitioned Federal agency may be in a position to supply, or to render or to obtain by contract ***."

Work and supplies requisitioned under this Act are obtained on the basis that the requisitioned agency will be reimbursed for all or part of the estimated or actual cost.

III. What methods are available for the circulation of such currency?

A. Assuming that the Army will bear the costs of occupation.

1. Issuance through the medium of a bank of issue.

After the initial period of occupation, during which United States yellow seal currency will be in circulation, it will be possible to determine whether currency problems can be handled adequately by the existing banking structure or whether the former bank of issue should be liquidated and a new one created and organized by the military authorities. That the latter action is

justifiable is implicit in Bank of Ethiopia v. National Bank of Egypt & Liguori (1937, High Court of Justice) 53 Times L. R. 75. Whichever procedure is determined upon, the ultimate bank of issue can be utilized as the medium for the issuance of occupation currency.

The printed currency can be sold to the bank of issue at cost, or at a price approximating its cost. (Unless the Army has some provision for reimbursement of its appropriations, the proceeds will have to be paid into the Treasury as miscellaneous receipts. For authority to use such funds see U.S.C. title 31, sec. 493a). The bank of issue can then circulate the currency through normal channels. As a substitute for the usual method of putting currency into circulation, i.e., meeting the expenses of the government, there will be substituted the financing of expenditures by the occupying forces. This will be accomplished by having the Army finance officers purchase the occupation currency from the bank of issue with dollar credits made available out of their appropriations.

The dollar funds thus made available to the bank of issue could be held as a reserve for the redemption of the currency and, if held in the United States, could be used as the foreign exchange medium for remittances from the occupied area. If the dollar balance is diminished by remittances, the currency deposited in the bank of issue should be held for future purchase by the military authorities.

B. Assuming that the occupied area will bear part or all of the costs of occupation.

1. If the currency is issued through existing or newly created banking facilities, the Army would not purchase the notes from the bank of issue with dollars out of their appropriations, but would issue a military decree along the following lines:

- (1) The currency would be made legal tender in the occupied area.
- (2) It would be pegged to the dollar at a fixed rate.
- (3) It would not be convertible into dollar currency.
- (4) No dollar currency would be permitted to circulate.

(5) The exportation of occupation currency would be prohibited.

(6) Facilities would be made available for remittances of dollars to the United States in limited amounts, at least for the benefit of Army personnel.

The currency would be used as needed to meet the expenses of the occupying forces. The ultimate determination of how the currency should be redeemed or co-ordinated with other circulating media, could be left for future determination. For example, it might be possible to work out a plan whereby the currency would be issued as an advance expenditure of taxes, the taxes to be collected subsequently and to be payable in occupation currency or other lawful media. Occupation currency received in payment of taxes could be retired and the other media could be held as a fund for the redemption of outstanding occupation currency.

2. If the currency is paid out directly by the finance officers, the same procedure could be followed. However, it would be necessary for the Army to set up a means by which remittances could be made to the United States. To the extent that this had to be done, the Army appropriations could be earmarked for some of the expenditures and the earmarked funds could be used to pay designated payees in the United States.

SECRET.

March 27, 1943.

MEMORANDUM

The question has been raised whether there is legal authority for the issuance by the military authorities of the United States, for use in territory occupied and controlled as a result of military operations, of temporary occupation currency expressed in terms of the pre-existing monetary unit of the area in which it is to be circulated. It has also been proposed that the temporary occupation currency be expressed in terms of the dollar, although it is not intended to be currency of the United States, and the same question has been raised with respect to the issuance of that type of currency.

AE It is well established that neither the Constitution nor the statutes of the United States are the governing law in areas occupied by the military forces of the United States, but that the rules governing the conqueror are those of the law of nations as established by international agreement and the usage of the world. The military commander of the occupied territory has all the powers of a de facto government and can change the existing local laws or make new ones, subject, of course, to the direction of the President as Commander-in-chief. Fleming v. Page (1859) 9 How. 603, Cross v. Harrison (1853) 16 How. 164, Thorington v. Smith (1868) 8 Wall. 1, The Grapeshot (1869) 9 Wall. 129, New Orleans v. Steamship Company (1874) 20 Wall. 387, Mechanics' Bank v. Union Bank (1874) 22 Wall. 295, Dooley v. United States (1901) 182 U.S. 222, MacLeod v. United States (1913) 229 U.S. 416, (1901) 23 Op. Atty. Gen. 425.

In the Dooley case the Supreme Court quoted 2 Halleck, International Law 44, as follows:

"The right of one belligerent to occupy and govern the territory of the enemy while in its military possession, is one of the incidents of war, and flows directly from the right to conquer. He, therefore, do not look to the Constitution or political institutions of the conqueror, for authority to establish a government for the territory of the enemy in his possession, during its military occupation, nor for the rules by which the powers of such government are regulated and limited. Such authority and such rules are derived directly from the laws of war, as established by the usage of the world, and confirmed by the writings of publicists and decisions of courts--in fine from the law of nations. *** The municipal laws of a conquered territory, or the laws which regulate private rights, continue in force during military occupation, except so far as they are suspended or changed by the acts of the conqueror. *** He, nevertheless, has all the powers of a de facto government, and can at his pleasure either change the existing laws or make new ones."

A similar statement was made in New Orleans v. Steamship Company, supra, where, after deciding that the occupation of New Orleans by Union troops was the same in legal contemplation as the occupation of a foreign country, the Supreme Court said:

copy A
"In such cases the conquering power has a right to displace the pre-existing authority, and to assume to such extent as it may deem proper the exercise by itself of all the powers and functions of government. It may appoint all the necessary officers and clothe them with designated powers, larger or smaller, according to its pleasure. It may prescribe the revenues to be paid, and apply them to its own use or otherwise. It may do anything necessary to strengthen itself and weaken the enemy. There is no limit to the powers that may be exerted in such cases, save those which are found in the laws and usages of war. These principles have the sanction of all publicists who have considered the subject."

This power has been applied to the collection of revenues, the leasing of property of the displaced government and the establishment of a telegraph line operated as a common carrier. The question has never arisen directly whether this power extends to the issuance of temporary occupation currency, but a strikingly similar situation was involved in Thorington v. Smith, supra. That case involved a suit brought after the termination of the Civil War on a contract executed in the South during the War and based on Confederate currency. The first problem facing the Court was a determination of the type of government then in effect in the Confederacy. It did not call it a government of military or belligerent occupancy but its description fits those terms. It said:

"But there is another description of government called also by publicists a government de facto, but which might, perhaps, be more aptly denominated a government of paramount force. Its distinguishing characteristics are (1), that its existence is maintained by active military power, within the territories and against the rightful authority of an established and lawful government; and (2), that while it exists, it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience, rendered in submission to such force, do not become responsible, as wrongdoers, for those acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions. They are usually administered directly by military authority, supported more or less by military force."

The Court then went into the question of the legal effect of currency issued by this type of government:

"As contracts in themselves, except in the contingency of successful revolution, these notes were nullities; for, except in that event, there could be no payer. They bore, indeed, this character upon their face, for they were made payable only 'after ratification of a treaty of peace between the Confederate States and the United States of America'. While the war lasted, however, they had a certain contingent value, and were used as money in nearly all the business transactions of many millions of people. They must be regarded, therefore, as a currency, imposed on the community by irresistible force.

"It seems to follow as a necessary consequence from this actual supremacy of the insurgent government, as a belligerent, within the territory where it circulated, and from the necessity of civil obedience on the part of all who remained in it, that this currency must be considered in courts of law in the same light as if it had been issued by a foreign government temporarily occupying a part of the territory of the United States. Contracts stipulating for payment in this currency, cannot be regarded for that reason only, as made in aid of the foreign invasion in the one case, or of the insurrection in the other. They have no necessary relations to the hostile government, whether invading or insurgent. They are transactions in the ordinary course of civil society, and, though they may indirectly and remotely promote the ends of the unlawful government, are without blame, except when proved to have been entered into with actual intent to further invasion or insurrection. We cannot doubt that such contracts should be enforced in the courts of the United States, after the restoration of peace, to the extent of their just obligation."

The decision states in definite terms that the occupying authorities have the power to issue currency expressed in terms of the pre-existing monetary unit, to make the redemption of such currency contingent upon military success, and to require the inhabitants of the occupied area to accept it and contract with this currency as a basis for settlement. Coupled with the decisions holding that United States military forces occupying territory of the enemy have the powers of a de facto government, it seems clear that the Court would find that United States military authorities also have this power with respect to areas occupied

and controlled by them. Once the power has been established, the question of whether the currency should be expressed in terms of the pre-existing monetary unit or in terms of the dollar, is a matter within the discretion of the military authorities.

Since the Supreme Court has stated that the powers of occupying military authorities are limited by the laws of war as established by international agreement and the usage of the world, it is necessary to examine those authorities as well. That the "usage of the world" permits such action is clear. New currencies were issued during the World War in Rumania, the occupied portion of Italy and in Austria-Hungary, and there have been numerous examples of such issues in the present war.

The only international agreement affecting this problem is the Second Hague Convention (Conventions Concluded at the Second International Peace Conference, Held at the Hague, 1907, No. IV, Section. III, Article XLIII)* which provides:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

As a necessary corollary, the right to make new laws is implied when the necessities of the situation demand, and the military authorities must, in the first instance, decide whether such action is or is not required.

This provision was involved in a fairly recent English case--Bank of Ethiopia v. National Bank of Egypt and Liguori (1937, High Court of Justice) 53 Times L.R. 75. That case grew out of a demand by the Bank of Ethiopia for a settlement of its accounts with the Bank of Egypt. The defendant admitted the existence of the unsettled accounts but claimed that Liguori, the Italian liquidator of the Bank of Ethiopia, was the proper party with whom to settle. The plaintiff contended that Italy was only a military occupant and under the above-quoted article of the Second Hague Convention its authority was limited to what was necessary to maintain the safety of the army of occupation, and did not extend to modifying local law in respect to the status of established Ethiopian governments. The British court rejected this contention and held that by virtue of its political recognition by the British Government, Italy was the de facto government and had the power to liquidate the bank. It said that the plaintiff's contention had:

*/ Concluded October 18, 1907; ratified by the Senate March 10, 1908; ratified by the President February 23, 1909; proclaimed February 28, 1910.

" *** no relevance in principle to the case of a de facto government set up in an area from which the former Government has departed, and in which there is no Government authority except that of the de facto Government."

But as Wright points out in (1937) 31 American Journal of International Law 687, these conditions would necessarily exist in all cases of military occupation.

In addition to this indirect ruling that the above-quoted provision of the Second Hague Convention has little or no effect on the activities of a military occupant, the case is important in connection with the currency issuing power of such authorities. In reaching the conclusion that the bank could properly be liquidated, the court said:

" *** confusion would ensue if the only bank of issue in the country were allowed to continue its business under the control of persons who, until the last moment, seem to have been engaged in strenuous attempts to assist the displaced Government to resist the attacks of those who have become the de facto Government" (Underscoring supplied).

If the currency issuing agency can be liquidated, it necessarily follows that the occupying authorities can and must issue their own currency. Whether or not it takes the form of temporary occupation currency expressed in terms of the pre-existing monetary unit or in terms of the monetary unit of the occupying power, is a question to be decided by the military officials in accordance with the necessities of the situation.

It has been assumed in this discussion that any currency expressed in terms of the dollar would indicate that it is occupation currency issued by the military authorities and not money of the United States secured by the monetary metal stocks or the credit of the Government.

Spright, War Rights on Land (1911) 320-418

Pulshiner, Military Government and Martial Law (3d ed, 1914) 21-369

Mayson, The Law of Civil Government in Territory Susceptible to Occupation
by the Military Forces of the United States (2d ed., 1962) not cited for
general proposition)

Meley v Henkel (K. 1) (1900) 180 U.S. 109

March 25, 1943.

Summary of Unwritten Memorandum

The question has been raised whether there is legal authority for the issuance by the military authorities, for use in areas occupied and controlled by them, of temporary occupation currency expressed in terms of the pre-existing monetary unit of the area in which it is to be circulated. It has also been proposed that the temporary occupation currency be expressed in terms of the dollar without being currency of the United States, and the same question has been raised with respect to the issuance of that type of currency.

The rule is well established (primarily by decisions of the Supreme Court) that neither the Constitution or laws of the United States are the governing law in areas occupied by the military forces of the United States. The rules governing the conqueror are those of the law of nations as established by international agreement and the usage of the world. The military commander, under the direction of the President as Commander-in-chief, has all the powers of a de facto government and can change the existing laws or make new ones at his pleasure.

The Second Hague Convention, part IV, Article XLIII imposes a limitation upon this authority, i.e. the laws in force in the occupied area are to be respected, as far as possible, and public order and safety are to be restored under those laws, unless this is absolutely prevented. As a necessary corollary, the right to make new laws is implied when the necessities of the situation call for such action, and the military authorities must make the decision that such action is or is not required.

The logical application of these rules is that temporary occupation currency may be issued whenever the military commander in control of the occupied area deems such action necessary, and that such currency may be expressed in terms of the pre-existing monetary unit of the area or in terms of the dollar. If expressed in terms of the dollar, however, it should clearly indicate that it is occupation currency issued by the military authorities and not money of the United States secured by either the monetary metal stocks of the United States or the credit of the Government.

Mr. White

March 19, 1943

E. M. Bernstein .

Subject: The Use of Military Currency by the Army

1. The primary consideration in the choice of a currency for use by the Army in the invasion of an area is the effect of the currency on military operations. The Army must have a currency that can be used without difficulty and that will be accepted without hesitation by the people in the invaded area. If the currency used by the Army has the added effect of inducing a feeling of economic well-being, it may create an attitude of welcome toward the invading forces. The invasion currency may thus be a potent weapon of propaganda facilitating our military operations and undermining the position of the enemy.

There can be no doubt that the United States dollar is ideally suited for use by an invading army. Throughout the world the dollar is the symbol of financial strength and of the unlimited economic resources of the United States. Despite the known restrictions on the import of United States currency, dollar currency is still eagerly sought by people throughout the world. Even in enemy countries the demand for dollar currency on the black market is so great that the dollar commands a very substantial premium.

These considerations led authorities of this Government to decide on the use of United States currency in the invasion of North Africa. There can be no doubt that the financial and economic problems of the invasion were minimized by the use of a currency the same in every respect as that in actual use in the United States. The fact that the currency used by our Army was convertible into dollar credits in this country gave it a characteristic highly prized by people accustomed to the severely restricted currencies of Europe--a recognized foreign exchange value.

The fact that the dollar currency used in the invasion carried a distinctive mark (the yellow seal on silver certificates) should not obscure the fundamental fact that the currency was in every respect the usual dollar currency. The distinctive mark was adopted solely for security reasons--to permit the isolation of the currency if it should fall into enemy hands and to prevent the influx into the area of dollar currency already in the hands of the enemy.

So great are the advantages of the use of such dollar currency that the Army would not wish to forego its aid in the early stages of an invasion. The fact that the British Army used a so-called British Military Authority note in the invasion of North Africa should not be regarded as modifying what

has already been said. The British Military Authority note was in every respect the same as our regular currency. It was tied to the dollar and ultimately the British gave dollars or sterling credits (i.e., foreign exchange) for the notes. Even so, it appears in the invasion of North Africa yellow seal dollar currency was more readily accepted than the British Military Authority notes although the reason may have been entirely related to popular confidence in the United States and in the dollar.

2. In view of these advantages of the use of dollar currency by the Army during the invasion stage of military operations, it may be asked whether similar advantages cannot be secured from the use of dollar currency during the occupation stage. In general, there are similar advantages to be derived from the use of dollar currency in enemy areas which our forces have conquered and occupied and in which they have established order. But the pressing military considerations are not so great and the disadvantages in the use of a currency with a foreign exchange value become more significant. If the pattern followed in North Africa were to be continued in enemy areas that are occupied, there would be certain disadvantages of greater or less significance:

- (a) It would be necessary to give foreign exchange credits for the currency used by our forces;
- (b) The cost of occupying enemy areas would be borne by the allied countries rather than the enemy;
- (c) Possibly some of the currency would fall into enemy hands and be used for enemy purposes.

These disadvantages may or may not be significant. Even without use of regular currency, it should be possible ultimately to get back from the enemy the currency used by the allied armies or the equivalent in dollars or sterling credits. Much of the currency would be returned to the banks in the occupied area and what is not returned could be made good by enemy governments after the war. Similarly, the costs of the occupation can be placed on the enemy before retiring from the occupied area just as easily as during the occupation. The use of some distinctive mark upon the currency can be fully effective in preventing the enemy from making use of any regular seized currency by disposing of it in neutral countries.

Obviously, the significance of these considerations is not the same to the United States and to the United Kingdom. The possible cost in foreign exchange of using dollar currency may not be important to this country with its enormous foreign exchange resources. To the United Kingdom it is probably of great importance to avoid the use of currency which carries any foreign exchange to be bought by Britain or which may be used for purchases in Britain.

While this Government might well consider the advantages to be gained from the use of regular dollar currency for occupation as well as the cost, the Government of the United Kingdom apparently does not feel free to undertake the extra cost. Nor is it desirable to have allies engaged in a joint occupation use currencies with marked differences in acceptability to the local population. There can be no doubt that if our forces were to use regular dollar currency while British forces were to use military notes (not convertible into dollars or sterling credits) the British occupying forces would be seriously handicapped.

3. These considerations have led to the suggestion that while dollar currency and British notes tied to the dollar and convertible into dollar credits should be retained as the spearhead currency of the invading allies, these regular currencies should be replaced with military authority notes during the period of occupation. In this way, the advantages of a readily acceptable currency would be enjoyed by the invading armies during the critical period of military operations while the cost of using such notes would be avoided during the more extended period of occupation. In fact, it might be possible to secure on a voluntary basis the return of spearhead currency by the public in exchange for military authority notes. To the extent that spearhead currency is not returned, it might still be possible (if deemed desirable) to charge this part of the cost in foreign exchange to the reconstituted authorities of the enemy country after the war.

The currency used would be military notes in fact. The notes would be issued by authority of the occupying forces. They would be used to the extent needed for part of the Army pay and for local purchases of the Army. The notes would be legal tender for all purposes in the occupied area. Ultimately, the notes would be taken up at their nominal value by the reconstituted authorities of the enemy country.

It may be assumed that in addition to issuing military authority notes, the Army would have the right to insist on the granting of credits by banks in the occupied area. Such credits would be payable in military notes, and they might for convenience be evidenced either by receipts given by Army finance officers or by offsetting credits (in military authority notes) at the Federal Reserve Bank of New York. Such a procedure for military authority credits is an essential device to minimize the issue of currency that will not be required for local circulation.

In general, the purpose of the military authority notes is to meet the costs of occupation in enemy countries. In conformity with this principle, military authority notes should not be issued to pay for imports from the occupied area to allied countries. Whatever military authority notes are required for such purposes should be acquired in exchange for credits in

dollars or sterling, which credits should be available to pay for exports to occupied countries. The issuing of military authority notes should not become a medium for extracting real values from an occupied country for the benefit of the occupying powers.

4. The production of these military notes can be undertaken by the Treasury Department for the account of the Army. In order to assure adequate records of the notes produced by the Treasury, delivered to the Army, put into circulation by finance officers, and returned for cancellation, it is suggested that the Treasury maintain records of currency production and circulation.

While in the first instance the cost of military notes to this country is only the expense of producing them (less than one-fourth of one cent a note) it is nevertheless important that adequate safeguards be taken to assure the proper use of all military notes. Such notes will represent purchasing power in the areas in which they circulate. The economic well-being of these areas is of military importance, and the functioning of the economy should not be threatened by the misuse of currency issued for military purposes. On the termination of military operations, it may be desirable to present a full accounting to the fiscal authorities of this Government and to the reconstituted authorities of the occupied areas. The military notes will be the money of the people and of the Army in the area of occupation, and the issue and circulation of such notes should be safeguarded in the usual manner of currencies, subject to the limitations imposed by military necessity.

Notes would be delivered by the Treasury to the Army in return for Army receipts. The Treasury would be expected to account for all notes printed either with Army receipts or notes on hand. While the Army itself would receive real value for the notes it uses, it is not believed necessary or desirable to require the deposit of dollar funds to the value of the delivered notes. Whether the value of such notes used by the Army should be charged against appropriations is a matter that should be considered and decided by Treasury, Army, and the Comptroller General of the United States. If no legal requirement for a charge against the appropriations is found, the usual accounting procedures should be an adequate safeguard of the proper use of military notes.

The fiscal division of the Army would distribute the currency for use by finance officers in the field of operations. The same types of records kept by the fiscal division of the Army on the payment of United States currency to finance officers should be kept on the payment of military currency.

Finance officers in turn should keep records on the use of military currency for Army pay, for Army purchases, etc., in much the same manner as records are now kept.

While in the early stages of military occupation finance officers will necessarily operate without banking facilities, it will be possible to make use of local banks when order has been established and the reliability of the banks has been assured. Army finance officers could be given over-draft facilities (in banks in the occupied area) which could be used to pay for Army purchases and to withdraw notes for Army pay. Such notes might be evidenced by receipts given by Army finance officers or by offsetting credits in military currency at the Federal Reserve Bank of New York. If a shortage of notes develops in an area, Army finance officers could deposit the necessary amount to their accounts with local banks. If notes are retired because they become unfit for use, they should be returned for cancellation by Treasury representatives.

5. There may be a third stage of development in the use of currency in enemy countries. When a sufficiently large area of a country is occupied, it may be possible to resume the issue of local currency by the local authorities. At such a stage, the local authorities may prefer to retire outstanding military notes and replace them with the local currency either of the de facto authorities or of a de facto or a de jure central bank.

When this occurs the issue of military authority notes can be terminated. The outstanding notes will be retired, and the accounts on the issue of the military authority notes can be closed by the Treasury.

MEMORANDUM (*)Re: Occupation currency - manufacturing facilities -
time and cost of production.

It has been proposed that within a short time after our troops occupy an area paper seal or other currency linked to the dollar or the pound be supplanted by a temporary occupation currency which is not tied in any way to the dollar or the pound but is expressed solely in terms of the existing monetary unit of the area. It is contemplated that such temporary occupation currency will circulate only until it is possible to procure adequate stocks of the regular local currency of the area. It has been suggested that such temporary occupation currency might be basically the same in design for all areas occupied, except that the monetary unit, the name of the country and any other necessary distinguishing characteristics would vary in accordance with the particular area involved. As an alternative, it has been suggested that a number of different basic designs be prepared in order that such currency would be basically different in the different areas involved.

This memorandum deals with the fundamental physical aspects of the manufacture of such temporary occupation currency. Because of the delicacy involved in approaching outside sources and because it is believed that the basic decisions can be made without consulting outsiders, only the Bureau of Engraving and Printing (hereinafter referred to as the Bureau) was consulted.

The Offset Process of Printing.

Since this memorandum recommends the use of the offset process of printing it may be well to describe that process in very brief terms. The offset process of printing is the process whereby a photographic image is produced on a zinc plate; this zinc plate when applied to an offset press is inked and the image is transferred to a rubber blanket; the rubber blanket in turn transfers this image to the paper to be printed. The offset process is similarly known as lithographic or planographic printing. The offset printing process is employed because of the ease of plate manufacture and the greater potential production in actual printing operation. Such greater production is possible because of the size of the press and the lack of necessity for elaborate make-ready. In other words in ordinary printing with raised type, the height of the type varies, causing the higher faced type to push through the paper. To eliminate this difficulty, time-consuming adjustments have to be made by packing, etc.

(*) Note: Mr. Alvin Hall, Director of the Bureau of Engraving and Printing, has authorized writer to state that he agrees fully with this memorandum.

Facilities for Offset Printing.

The Bureau has one offset press which is capable of printing more than one color at a time. This press can print two colors at a time. The Bureau has over 20 single color offset presses, 11 of which are modern precision presses which can be run 24 hours per day. The Bureau's two-color press is now working 24 hours per day on bond work. However, the Bureau advises that if it is given this job it will make available its two-color press on a 24 hour per day basis and will shift the bond work to single color presses, where such work will be run twice.

Although multicolor presses capable of printing four or five or more colors simultaneously are available in commercial lithographic concerns, the Bureau advises that no such commercial concerns could meet the rate of production of the Bureau on this kind of job. This is true notwithstanding the fact that on a five-color offset banknote the Bureau would have to run each note twice through its two-color offset press. (The fifth color would be applied by a single color offset press after the name of a country is known.)

Reproduction of Suggested Occupation Currency and its Production.

Since both the Bureau representatives and the writer believe that it is unquestionably more desirable to have such currency prepared in the Bureau than by outsiders, particularly since the Bureau can excel the rate of production of any outside concern if the currency meets certain specifications, it is believed that attention should be concentrated upon the type of currency which the Bureau advises it can produce.

- (a) Size of note. The banknote to be produced by the Bureau must be precisely the same size as the current dollar bill in order to utilize the facilities of the Bureau.
- (b) Coloring of note. The Bureau representatives feel that a five-color offset note should be used. They advise that a two-color note offers no protection against counterfeiting. All the counterfeiter would need would be a camera and a printing press. A seven-color offset job, i.e., four colors including black on the face of the notes and three colors on the back would offer very satisfactory protection against counterfeiting. However, taking into consideration the temporary character of this currency, Bureau representatives feel that adequate protection against counterfeiting is offered by five colors. It is noted that the use of five

colors involves no more time than would the use of three or four colors since in either event the notes would have to be run twice through the Bureau's two-color effect press and would have to be run a third time for the overprinting when the name of the area becomes known.

(c) Numbering of notes. It is proposed that it will be specified that the notes be numbered. Obviously, if they are not numbered a shipment which is lost in transit or notes which it is otherwise desired to be traced, can in no way be identified. In the absence of numbering, the only accountability would be fulfilled by a manual count of the notes prepared for shipment. The Bureau has 15 specially designed numbering machines that number, slit, and deliver in packages all in one operation. No commercial company has numbering facilities of this nature. This is the principal reason why no commercial company could meet the rate of production of the Bureau.

(d) Steps in production.

(1) Procurement of paper. It is the view of the Bureau representatives that any paper less than 100 percent rag content would not possess enough tensile strength for currency even of this temporary character. Paper of 100 percent rag content (without watermark) can be produced in large quantities on a few days' notice. However, the Bureau recommends strongly that the paper be 75 percent cotton and 25 percent linen with an overall watermark or containing planchettes (small colored disks) or with both watermark and planchettes. In the basis of the paper ordered for Algeria, such paper would cost from 36-1/2 cents to 38 cents per pound FOB location of manufacturer. Watermarks and planchettes do not materially affect the cost or the time of production. If it is decided to use 75 percent cotton and 25 percent linen paper (with or without watermarks or planchettes) or 100 percent rag paper with watermarks, an order should be placed immediately after it is agreed that this project is to be undertaken by the Bureau, inasmuch as delivery of such paper may take from a month to six weeks.

(2) Models. Specifications for the insignia should be agreed upon and a model should be produced. The Bureau advised that it can produce a model in about two weeks after Agreement upon the specifications. If instead of using one design for all areas, eight different designs were to be used, the Bureau could make models for the eight designs in approximately a month.

(3) Plates. After a model is approved, it will take the Bureau about two days to make the necessary plates for one design. The Bureau advises that it would take approximately a month to make the necessary plates for eight different designs.

(4) Printing. The Bureau advises that immediately after the plates are completed (it being assumed that the paper has been delivered) it can produce 2,000,000 banknotes per day. These notes would be blank stock, 1.00, they would have two colors on the face and two colors on the back, but would not be numbered and would not identify the area nor would they contain the denomination or monetary unit. It is noted that inasmuch as the facilities for numbering (of which the Bureau has available the best in the country) constitute the limiting factor in the rate of production, if numbering were eliminated (which is not recommended) the rate of production could be stepped up to around 5,000,000 notes per day.

The blank stock of notes would be accumulated until a particular area is identified. Four days after the identification of the area the Bureau could be producing 2,000,000 completed notes per day. The name of the area, the denomination and the monetary unit would be printed in black upon the blank stock on an offset press, and the numbering, slitting, and packaging would be done on the Bureau's numbering machines. The notes would automatically be bound into packages of 1,000 notes each. Five hundred such packages would be turned out per day. The total day's production would weigh 1,000 pounds.

If it should be decided to use more than one basic design, substantial delays would be involved. The Bureau advises that it could probably run two basic designs at one time. This, of course, would involve the necessity of multiple runs since the Bureau has only one two-color offset press. It would also involve the delays necessitated by a change of presses after a substantial stock of such two designs is accumulated in order that the printing of a third and fourth design can be commenced.

- (e) Cost. The Bureau advises that the overall cost of such notes would be around \$2,000 per million notes. (This must not be construed as in any way constituting a commitment on the part of the Bureau.) If numbering were eliminated cost would be reduced roughly by 50 percent.

Certain Comparisons Between Bureau and Commercial Rate of Production and Costs.

The Wright Banknote Company agreed to complete delivery of 37,000,000 four-color lithographed banknotes for West Africa in a little more than four months after approval of models. This is a rate of production of only slightly in excess of 300,000 notes per day whereas the Bureau can produce 2,000,000 notes per day without difficulty. The Wright Company quoted \$15,930 for 37,000,000 West African lithographed notes, or an average of around \$3,100 per million notes. Wright's quotations on smaller quantities of Moroccan notes were as follows: 10,000,000 10 franc notes for \$12,550 and 5,000,000 100 franc notes for \$14,700, or an average of around \$5,600 per million notes. The Bureau's rough estimate was around \$2,000 per million notes.

Steel Plate Engraving.

Bureau representatives advise that steel plate engraving should not be considered unless an unlimited amount of time is to be allowed for the production of the notes. It is true that engraving offers the maximum protection against counterfeiting, but the character of the proposed notes does not appear to call for this degree of protection. It is estimated that deliveries of engraved notes could not commence until from three to six months after approval of models. (American Banknote Company quoted three months on the West African 1000 franc note; Wright Company quoted about five months; the Bureau representatives think six months is a safe guess.) As to costs, the Bureau estimates that engraved notes would cost around \$6,720 per million notes. The American Banknote Company quoted \$23,625 for a million and a half engraved notes for West Africa. (The latter quotation would, of course, have been less on a per million basis if the order had been larger.)

Bureau representatives feel that they could not use, for a job of this nature, any of the engraved plates which they have in stock and they are of the opinion that if they had to do this job on a steel plate engraving basis they would have to start from scratch. They point out that their facilities are now very much overloaded and that they can give no reliable indication as to the time which would be involved. They state that the only other logical producer of engraved banknotes is the American Banknote Company. They do not know what, if any, available facilities the American Banknote Company has at this time. They believe, however, that most of the orders which have recently come into this country for Latin American and Chinese banknotes are principally engraving jobs and not offset jobs.

Value of Notes to be Produced.

All of the foregoing must, of course, be considered in the light of the volume of notes desired in a given length of time. Assume, for example, our occupation forces require \$100,000,000 worth of notes. At the above-indicated rate of production of the Bureau for offset color notes, it would take around 200 days to produce \$100,000,000 worth of notes which average \$1.00 per note in value; it would take around 50 days to produce the same quantity of notes if they were unnumbered. However, whether the above-indicated rate of production would be adequate to satisfy our military needs as they may arise, whether it would produce as many notes as could safely be carried by available transportation facilities, etc., are matters upon which the writer is not in a position to express an opinion.

L. C. Aaron.