Krzysztof Skubiszewski

Responsibility for Currency in an Occupied Territory[1]

Terminological Explanation

Responsibility for a currency in an occupied territory is to be understood as the obligation to pay the equivalent of coins and notes withdrawn from circulation, which had a fixed rate of exchange during the occupation. If during an occupation, the occupying power withdraws one currency and replaces it with another, it by itself sets the terms of the exchange of one currency for another. If the exchange is so designed that it breaches the provisions discussed in the previous chapters, a space opens up to enforce the occupying power's liability for the dereliction of its duty. This chapter shall clarify the situation when an occupation ends. An occupying power always leaves behind some currency: local, its own, or that of the occupation. The sovereign of a territory sometimes sets about a currency reform and withdraws from circulation legal tender, which had a fixed rate of exchange during the occupation. Thus, the question arises: who is to bear the cost of this operation?

1 Translated from: K. Skubiszewski, *Odpowiedzialność za pieniądz na terytorium okupowanym* [w:] *Pieniądz na terytorium okupowanym. Studium prawnomiędzynarodowe ze szczególnym uwzględnieniem praktyki niemieckiej*, Poznań 1960, pp. 327–349 by Tomasz Żebrowski and proofread by Stephen Dersley and Ryszard Reisner. The translation and proofreading were financed by the Ministry of Science and Higher Education under 848/2/P-DUN/2018.

Responsibility for Local Currency

An occupying power will never bear responsibility for a local currency. The question of responsibility for a local currency belongs to internal law. As a rule, the responsibility will be borne by the local central bank. It may happen that the occupying power has caused such rampant inflation of the local currency that once the occupation is over, the sovereign must replace it. If the replacement entails losses to the state treasury, central bank or holders of the legal tender being replaced, then there will be grounds for making an international claim for damages against the occupying power. However, it will not be a claim based on the responsibility for the local currency at the time of occupation. In this case, the occupying power will answer for the neglect of some of its duties with respect to the local currency system. If the inflation and necessity of a currency reform can be tied to the monetary policy followed by the occupying power, there will be grounds for bringing action for damages against it. Whether the country that has suffered damage succeeds in recovering any damages is another question.

Responsibility for One's Own Currency

An occupying power is responsible for its own currency left in the occupied territory after the occupation is over.[2] The former occupying power is obliged—on the demand of the former occupied country—to apply

2 F.A. Mann, *Money in Public International Law*, "British Yearbook of International Law" vol. 26, 1949, p. 275. Cf. E. H. Feilchenfeld, *The International Economic Law of Belligerent Occupation*, Washington 1942, p. 78; F.A. Southard, *The Finances of European Liberation with Special Reference to Italy*, New York 1946, p. 23. K. Neumayer, *Internationales Verwaltungsrecht*, München–Berlin–Lepzig 1930, vol. 3, part 2, p. 256 is of a different opinion and believes that an occupying power is not responsible for its own currency brought into circulation in the occupied territory. Neumayer distinguishes between the responsibility of a state for its notes in the occupied territory and the responsibility of a state for its notes in third countries. This distinction appears to be wrong even if we note that Neumayer made it to deal with the case when a former occupying power withdraws its notes from circulation at home.

the same rate of exchange as was used during the occupation.[3] The circumstance that the occupying power had introduced its currency into the occupied territory to supplement the local circulation and thereby made the currency a component of the local monetary system does not affect the responsibility of the occupying power for its own currency.

Law Versus Practice. Responsibility for an Occupation Currency

The question of responsibility for an occupation currency is, in practical terms, the most important. In the case of a local currency or the occupying power's own currency, we deal with funds that are not a war phenomenon. The issuer of such notes and coins does not close down its agencies as an occupying power retreating before a sovereign does. The uncertainty surrounding responsibility for an occupation currency largely stems from the fact that an organ or a bank that has issued occupation notes and coins ceases to exist or operate when the occupation is over.

The question arises of whether there is a connection between the rights and duties of an occupying power in the money sphere and its responsibility for an occupation currency. The situation in which an occupying power acts within its rights and duties is meant here. It is assumed that an occupying power issues an occupation currency in accordance with The Hague Regulations. Since an occupying power complies with the law, the question arises of whether its responsibility for an occupation currency is an issue at all. It could be claimed that in such a situation a change in the monetary system of the occupied country took place according to international law. The maintaining or removing of the effects of change is already a matter that does not concern the former occupying power once the occupation is over. Ditto the other way around:

3 This position was taken by Belgium towards the Reich with regard to marks withdrawn by the Belgian government after the end of occupation in 1918. F. van Langenhove, *L'action du gouvernement belge en mati*ère économique *pendant la guerre*, Paris–New Haven 1927, p. 184.

if it has breached international law with its monetary policy, then its responsibility arises in the same manner as in the case of the breach of any other provision of law.

The practice of countries, however, consistently departs from the above rules. Thus, it can hardly be claimed that these rules reflect the actual legal framework, although in theory they follow from the law on international responsibility, in particular from Article 3 of The Hague Convention IV.

In fact, the practice of countries in relation to the issue at hand is best studied by scrutinising agreements concerning reparations for war damage. Peace treaties often pass over the question of the responsibility of an occupying power in the money sphere. If an occupying power has lost the war and pays damages under a treaty, there are grounds for speculating as to whether the overall amount of the damages covers compensation for the issue of an occupation currency. There are, however, peace treaties or other agreements or documents that explicitly deal with responsibility for an occupation currency. In them, the following rule is recurrent: responsibility for an occupation currency is borne by the defeated country that on one occasion is the occupying power and the occupied country on another. Hence, this regulation provides no guidance as to what the law on responsibility is because in one case it could be claimed that the issue of a currency by the occupying power was legal, while in another it raised doubts. Meanwhile, there is only one answer: the defeated country has to pay.[4] This regulation reflects the domination of the victor at the moment when signatures are affixed to a treaty. It follows that responsibility for an occupation currency is regulated on a case-by-case basis, according to the wishes of the winner, and not whether The Hague rules have been breached while issuing an occupation currency.[5] The fact that the "will" of the winner finds its expres-

4 Cf. F.A. Mann, op.cit., p. 275.

5 "From the question of the legality of the currency system adopted by the occupant for the occupied territory, it is necessary to distinguish clearly the problem of responsibility." Ibidem, p. 275. Whereas, G.G. Fitzmaurice, joins both problems to a degree. Specifically,

sion in an international treaty is of no significance for the legal aspect of the matter under discussion. Recently, while repairing certain types of WWII damage, the winners have felt so free to dictate their "will" to the defeated countries that they have availed themselves of a unilateral act. This conduct—despite its crudeness—could be reconciled with the law under the special conditions prevailing in Europe and Asia in 1945 when the hostilities ended. However, the fact that the binding force of various documents related to the end of the war is not questioned does not mean that such documents are a source of universally binding law on responsibility for a currency in an occupied territory.

The legal aspects of responsibility for an occupation currency were discussed by Germany and Belgium, as well as Germany and Romania, after the First World War. Agreements concluded by these countries settled Belgian and Romanian claims,[6] which arose out of German monetary regulations enforced in those countries during their occupation. Each party viewed the question of responsibility differently. In both cases, each party kept to its legal point view, which is made explicit in the preambles to the agreements.[7] For this reason, these agreements—similarly to peace treaties sanctioning the domination of a winner—do not allow us to learn what the law is in the matter under discussion.[8]

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he makes the legality of an occupation currency dependent on guaranteeing its possible exchange. G.G. Fitzmaurice, *The Juridical Clauses of the Peace Treaties, Académie de Droit International. Recueil des Cours*, vol. 73, 1948, pp. 342–343.

6 German-Romanian Convention of 10 November 1928, G. F. de Martens, *Nouveau recueil général de traités, 3e série*, vol. 21, 1929, p. 484; German-Belgian Agreement of 13 July 1929, League of Nations Treaty Series, vol. 104, 1930, p. 201.

7 The Belgian-German Agreement: "Le Gouvernement belge et le Gouvernement allemand… tout en maintenant chacun leur point de vue juridique…"; "Die Belgische Regierung und die Deutsche Regierung…unabhängig von dem beiderseitigen Rechtsstandpunk…".

8 This aspect is rightly considered by the memorandum of the U.S. Department of Treasury of 24 September 1943. Hearings before the Committees on Appropriations, Armed Services, and Banking and Currency, United States Senate, Eightieth Congress, First Session on Occupation Currency Transactions, Washington 1947, p. 80. A different view is represented—wrongly as it seems—by B. Nolde; B. Nolde *La monnaie en droit intenational public*, "Académie de Droit International. Recueil des Cours" 1929, vol. 27, p. 311.

As far as The Hague Regulations are concerned, responsibility for breaching them is provided for by Article 3 of The Hague Convention IV:

> A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

This provision was absent from the 1899 text; it was included in the Convention only during the Second Hague Conference. It was then that the German delegation submitted a draft annex to the Regulations concerning responsibility. The annex consisted of two articles. The first laid down the rule that if the aggrieved person was a national of a neutral country, the duty to pay damages was to burden the belligerent party that perpetrated the damage. As regards damage inflicted on persons being the nationals of the hostile party (*personnes de la Partie adverse*), the German draft in its Article 2 said only that "damages will be settled during peace negotiations".[9] The German stance was thus close—as regards responsibility for an occupation currency—to the practice of the countries summarised above: responsibility is allocated on a case-by-case basis and shifted to the defeated country since a peace conference is the best opportunity to do it. The German draft was approved by the Conference as a step towards an explicit regulation of the question of responsibility.[10]

At the same time, however, doubts were raised as to the merits of the draft. The French delegation had twofold objections. First, they believed that the German draft limited responsibility to the cases provided for in the Regulations, therefore, any breach of other duties would not incur the obligation to redress damage. Second, they criticised the draft

9 *Deuxième Conférence Internationale de la Paix, La Haye, 15 juin – 18 octobre 1907*, "Actes et Documents", 1907, vol. 3, p. 247.

10 Ibidem, p. 144. A statement by the chairman of a subcommittee, Beernaert.

for distinguishing between nationals of neutral and hostile countries, claiming that both categories should be accorded the same protection. The British delegate, in turn, observed that under the German draft any award of damages to hostile nationals would depend on the terms of a peace treaty while the terms would be a result of negotiations between the parties.[11] Although the text that was finally adopted—quoted above—does not make responsibility for any breaches dependent on the result of peace negotiations, the practice in the area in question has evolved in the opposite direction. So far, Article 3 of the IV Convention has not been relied upon by countries in determining responsibility for an occupation currency.[12]

The Responsibility of the Occupying Power for an Occupation Currency

The academic literature has expressed the view that an occupying power bears the responsibility for an occupation currency by the operation of law.[13] It appears, however, that neither from the Hague Regulations nor the practice of states can such a rule be deduced.

In certain cases, an occupying power did bear responsibility for the new currency it issued in the occupied territory. However, in the majority of these cases, there are circumstances that prevent the formulation of the general rule about the responsibility of an occupying power.

11 Ibidem, pp. 146–148.

12 For responsibility for an occupation currency viewed mainly from an economic point of view v. F.A. Southard, op.cit., pp. 49–55.

13 B. Nolde, op.cit., p. 311; W. J. Ronan, *The Money Power of States in International Law*, New York 1947, p. 16. The latter author draws a false conclusion about the existence of such a rule from the practice of states. Out of the three examples he gives, two are imprecise—Belgium and Romania during WWI—while the third example—the Japanese occupation of Korea and Manchuria during the war with Russia—concerns not as much an occupation currency as requisition pay vouchers. Cf. K. Neumayer, *Internationales Verwaltungsrecht*, München, Berlin–Leipzig 1930, vol. 3, part 2, p. 252: "Die besetzende Macht haftet für eine Ausserkurssetzung nach Ablauf ihrer Herrschaft nur, wenn sie dies besonders übernommen hat".

During the occupation of Korea and Manchuria in 1904–1907, the First Bank of Japan exchanged military pay vouchers issued by the Japanese authorities for cash (p. 57). It must be remembered, however, that the pay vouchers were substituted for cash at requisitions and purchases made by the Japanese army. They were not contemplated as legal tender *sensu stricto*, albeit in practice they did play this role.

Issuing mark notes in the Warszawa General Governorate, pursuant to the Regulation of 9 December 1916, the German occupation authorities pledged that:

> The German Reich vouches that the banknotes of the Polish National Loan Association at their withdrawal (§ 16) will be paid for with Reichsmarks at face value. (§ 5 of the Regulation, p. 47). The notes of the Association bore the following inscription:
> The German Government accepts responsibility for the redemption of the notes of the Polish National Loan Association in German marks at face value.

Warszawa General Governorate Board followed by three signatures. Between the Regulation and the inscription on notes, there were major differences. The Regulation made any payment in *Reichsmarks* dependent on the withdrawal of the notes, which in turn could take place only in the event of the Association being disbanded, pursuant to § 16 of the Regulation. It read:

> The Polish National Loan Association shall be disbanded on the orders of the Chancellor of the German Reich two years after the foundation of the formal Kingdom of Poland at the latest.

As it turned out, the rebirth of an independent Polish state prevented the application of § 16.[14] To estimate the duties of the occupying pow-

14 The difference between § 5 of the Regulation and the inscription on banknotes is noted by Zygmunt Karpiński, *Gospodarcze i prawne podstawy pierwszej emisji marek polskich*

er, § 5 of the Regulation could be relied on more than the inscription on banknotes. Nevertheless, the *Reichsbank*, on the orders of the German government, exchanged the occupation issue notes of the Loan Association for *Reichsmarks* during a few months in 1919.[15] However, the exchange was put on hold in 1919, and in 1921 the Reich's legislation and court decisions argued against the duty to exchange. A provision to this effect was included in the so-called *Verdrängungsschädengesetz*.[16] As regards court decisions, the Reich's Treasury won an action brought against it by a holder of Association banknotes for their exchange into German marks. The Reich's Supreme Court in the judgement of 28 November 1921[17] held *inter alia* that an owner of notes issued by the Association could not make a claim to have them exchanged until the notes were in circulation. The guarantee given by the Reich in respect of the note issue by the Association meant only that the Reich would redeem the notes that would not be covered by the Association's assets at its disbanding. On 18 December 1922, Poland and Germany signed a treaty settling the matter of Kries notes.[18] In Article 1 of the treaty, the parties agreed that:

> Poland and the Polish National Loan Association, on the one part, and the German Reich, on the other part, shall not make any claims against each other by reason of the guarantees for Kries notes taken over by the German Reich.

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tzw. "not Kriesa", "Ruch Prawniczy i Ekonomiczny" 1923, vol. 3, p. 412.

15 Ibidem, p. 415. It follows from Art. 3 of the treaty between Poland and Germany of 18 December 1922 that 110,000,000 Polish marks—about 1/8 of the issue—were exchanged.

16 Ibidem, pp. 417 and 418.

17 S.W.J. w den deutschen Reichsfiskus, VI 282/21, Entscheidungen des Reichsgerichtes in Zivilsachen, vol. 103, p. 231. The decision is discussed in Z. Karpiński, op.cit., p. 415–416.

18 League of Nations Treaty Series, vol. 34, 1925, p. 283. The term "Kries notes" referred to the occupation issue of banknotes by the Polish National Loan Association. The term derived from the name of the head of the Civil Authorities in the Warszawa General Governorate whose signature appeared first on the Association"s notes.

Under Article 3 of the treaty, the sum of 110,000,000 marks was debited against Association accounts in Berlin banks. The sum represented the value of Association notes exchanged by the Reich after the occupation ended. Hence, the operation of a partial exchange encumbered the Association or the institution that by virtue of the 1916 Regulation was not to bear any responsibility for the issue. With respect to the rest of the issue, the Association took a stance analogous to that adopted by the Reich Treasury and refused to exchange occupation notes for *Reichsmarks*. The stance of the Association was borne out by German judicial decisions.[19] However, the Association was ready to exchange occupation notes for its post-occupation notes, which it had already issued as an issuing institution operating in Poland.[20] With time, inflation in Poland and Germany deprived the whole issue of any practical significance.[21] Nevertheless, it must be said that in the case in question, the responsibility of an occupying power for an occupation currency was not enforced. In part, the responsibility was shouldered by the Polish National Loan Association, that is, an institution which after the occupation—despite the fact that it kept the same name as during the occupation—was not a foreign entity anymore but a Polish association and a legal person organised under Polish law.[22]

Banknotes issued by the British Army in Archangelsk during the intervention and civil war in Russia bore an inscription saying that they could be exchanged in London at a fixed rate. The limitation as to the place of exchange made it illusory for banknote holders residing in the occupied territory.

During World War II, the German occupying power did not assume any responsibility for occupation currency. On the other hand, the defeat of Germany facilitated or should have facilitated the enforcement of

19 Z. Karpiński, op.cit., pp. 420–421.

20 Ibidem, p. 420.

21 Ibidem, p. 423.

22 The occupation-time Association was, in contrast, a legal person governed by German law. V. the decision quoted in footnote 16.

German responsibility. The agreement on German reparations of 2 August 1945 reached by the United States, United Kingdom and USSR at the Potsdam Conference did not mention any claims arising from the issue of occupation currency.[23] However, the Agreement on Reparation from Germany opened for signature at Paris on January 14, 1946 contained a clause stipulating that the respective shares of reparation as determined by the Agreement covered all the claims, "including costs of German occupation, credits acquired during occupation on clearing accounts and claims against the *Reichskreditkassen*" (Part I, Art. 2, para. A).[24] Thus, reparation covered, in the Agreement at least, a significant portion of claims arising out of the exchange of occupation currencies. On the other hand, a later agreement, concluded already with the participation of the Federal Republic of Germany, leaves no doubt that a future peace treaty will revisit the question of reparations despite earlier agreements.[25] Hence, the question of German reparations also for the issue of an occupation currency may be still considered open. However, the quoted clause from the 1946 Agreement, as well as rules concerning reparations in treaties repairing damage caused by the war with Germany, do not contribute much to the question of German responsibility for occupation currency. For it is not known whether the overall sum covers claims arising out of the issue of currency or whether former occupied countries waived respective claims—in full or in part—in return for settling other claims against defeated Germany.

During the occupation of the Philippines, the Japanese government accepted "full responsibility" for military banknotes and declared that it "had a sufficient sum to cover them".[26] However, in the Treaty of Peace

23 Collection of documents edited by Julian Makowski, 1946, no. 1, p. 19.

24 United States Treaties and Other International Acts Series, No. 1655.

25 V. Chapter VI, Art. 1, para. 1, of the Convention on the Settlement of Matters Arising Out of the War and the Occupation signed at Bonn on 26 May 1952 and revised at Paris on 23 October 1954, ibid. no. 3425 and *American Journal of International Law*, vol. 49, 1955, Supplement, pp. 55 ff.

26 Proclamation of 3 January 1942 quoted in the judgement of the Philippines Supreme Court in re Haw Pia v. China Banking Corporation, *The Lawyers's Journal* vol. 13, 1948, p. 173;

with Japan of 8 September 1951[27], no provision enforced Japanese responsibility, unless this was done in separate agreements on war reparations announced in the Treaty, Article 14, para.(a), item 1.

During the occupation of Italy in 1943 and in the following years, the Allied Powers did not accept any responsibility for the occupation currency. Actually, this was the rule in the occupied Axis countries. However, in the case of Italy, the U.S. and British governments took steps which suggested that they were contemplating the exchange of the military lira, possibly carried out by themselves. Specifically, these governments paid sums in their currencies into special accounts. The sums corresponded to the occupation lira currency expended in the occupied territory.[28] The Peace Treaty of 10 February 1947 encumbered Italy with the exchange of this currency. However, in 1944 the U.S. government paid Italy a sum in dollars equal to the net amount of remuneration paid to military personnel in the occupation lira.[29] Hence, to a limited degree, the U.S. government did accept responsibility for an occupation currency.

The Cases of Romania and Belgium After WWI

The question of Romanian and Belgian claims against Germany arising out of the occupation currency issued during the First World War must be discussed separately, because the settlements reached then can hardly be considered an illustration of the responsibility of an occupying

the proclamation is quoted in the judgement on page 180.

27 *American Journal of International Law*, vol. 46, 1952, Supplement, p. 71.

28 V. the press reports in the *New York Times* of 11–12 October 1944 quoted by Donald L. Kemmerer, "Allied Military Currency in Constitutional and International Law" in collective work *Money and Law, Proceedings*, The Institute on Money and the Law, New York 1945, p. 91. V. also F.A. Southard, op.cit., p. 25 and F.A. Mann, op.cit., p. 273.

29 F.A. Southard, op.cit., p. 30. C.C. Hyde, *Concerning the Haw Pia Case*, "Philippine Law Journal"1949 vol. 24, p. 150 claims that the U.S. government contemplated the reimbursement of Italy in dollars for the expenses not only on personnel remunerations but also on provisions. Hyde believes that such a limited responsibility for occupation currency is consistent with The Hague Regulations.

power or an occupied country. These cases rather resemble the principle of occupying power responsibility. Finally, Germany did accept certain financial obligations that repaired at least in part, or were to repair, the damage Belgium and Romania sustained due to the issue of an occupation currency in their respective territories (pp. 31 & 54). On the other hand, Germany consistently took the view that it had no duty to former occupied countries and for this reason any concessions to the other party were an expression of good will on the part of Germany and followed from all new international relations concerning reparations, etc. As mentioned earlier (p. 331), the German-Romanian and German-Belgian agreements explicitly said that each party kept to its different legal point view. Thus, despite the financial obligations incurred by Germany, it can hardly be said that either of the agreements enforced an occupying power"s responsibility for an occupation currency as a rule following from the law.

The question of occupation currency in Romania was settled first by an additional legal and political treaty added to the peace treaty with Romania of 7 May 1918.[30] The peace treaty ended the war between Romania and the Central Powers, and reflected their domination over defeated and occupied Romania. In Article 3(2) of the additional treaty, Romania undertook to exchange the notes of the General Bank of Romania for the notes of the Bank of Romania or other legal tender within six months from the ratification of the peace treaty. The exchange was to take place at Romania"s expense. Romania undertook not to put into circulation the withdrawn notes. The cover for the occupation issue, deposited in the *Reichsbank*, was released (but of course remained at the occupying power"s disposal and was not applied towards the exchange).[31]

30 1063. der Beilagen zu den stenogr. Protokollen des Abgeordnetenhauses—XXII Session 1918, Regierungsvorlage betreffend die Friedensschlüsse mit Russland, Finnland und Rumänien, p. 149.

31 From the theoretical point of view, the following questions could be asked: Did Article 3(2) of the additional treaty apply the general principle of the responsibility of the occupied state? Was Article 3(2) an exception to the rule that currency is the responsibility of the occupying power? Was Article 3(2) a provision to plug a loophole in the law? There are no

The occupying power only undertook not to issue occupation banknotes after the ratification of the peace treaty. However, in the Armistice Convention of 11 November 1918, Germany considered the treaty in question to have lapsed (Article XV: "Renouncement of the treaties signed in Bucharest and Brest-Litovsk and additional treaties").[32] In actual fact, the exchange of occupation legal tender encumbered Romania. The Versailles Treaty did not provide for responsibility for occupation currencies. When Romania, already after the signing of the Treaty, filed claims against Germany, the government of the Reich replied that it did not have other duties apart from those stemming from the Versailles Treaty provisions on reparations. Ultimately, on 10 November 1928, after reaching a compromise, the parties signed a convention[33] that settled the dispute. The settlement was not based on legal provisions: each party maintained its point of view on the legal aspect of the dispute. The crucial point of the convention was Germany"s undertaking to help stabilise the Romanian currency.[34]

Once the occupation of Belgium was over in 1918, Germany paid Belgium 1,600,000,000 M deposited until then in a *Reichsbank* account and earmarked for covering the occupation issue of the General Society. Soon, however, the deposit in marks was devalued. Had it not been for this circumstance, Belgium would not have had any claims against Germany because of the occupation currency. Germany long opposed Belgian claims, using arguments similar to those it invoked in the Romanian case (there was an additional circumstance that Belgium accepted the deposit in marks, hence it could be claimed that the country had done so at its own risk). Finally, the two countries concluded an agreement on 13 July 1929 whereby Germany undertook to pay Belgium

doubts, however, that Article 3(2) was the codification of a practice independent of the law, namely, that responsibility was to be borne by the defeated state.

32 B. Winiarski, *Wybór źródeł do nauki prawa międzynarodowego*, Warszawa 1938, p. 144.

33 G.F. de Martens, Nouveau recueil général de traités, 3e série, vol. 21, 1929, p. 484.

34 By awarding Romania 75,500,000 RM. As regards German objections to Romanian claims prior to the convention v. G. Antipa, *L'occupation enemie de la Roumanie et ses conséquences économique et sociales*, Paris–New Haven 1929, pp. 163–164.

600,000,000 RM in many instalments.[35] The question of Belgian claims was discussed by experts during the negotiations over the Young Plan. Germany was told then that the new reparation plan would not come into force, unless Germany settled Belgian claims.[36] It is not surprising that the Reich"s government yielded to the demand in this case but at the same time made a reservation that it did not do it out of a legal duty.[37]

The Responsibility of the Occupied State for an Occupation Currency

The scholarly literature has advanced the view that an occupying power may decline any responsibility for an occupation currency.[38] The shifting of responsibility to the occupied state was considered "only natural and convenient" by one author.[39] Invoking the practice of states, some authors criticised the opinion that the law, supposedly, provided for the responsibility of an occupying power.[40]

In certain cases, the parties involved indeed adopted the rule that the occupied state was responsible for an occupation currency. However, in every such case, the occupied state was also the defeated state. Hence, it

35 League of Nations Treaty Series, vol. 104, 1930, p. 201.

36 Amtlicher deutscher Text des Schlussberichts der Pariser Sachverständigenkonferenz vom 7. Juni 1929 mit Allen Anlagen, Anlage VI, reprinted in F. Raab, *Young-Plan oder Dawes-Plan?*, Berlin 1929, p. A 101.

37 A German expert attending the conference on the Young Plan, Hjalmar Schacht, in a letter to Owen D. Young of 3 June 1929, mentioned a German proposal to settle the dispute with Belgium. Having described the proposal, Schacht wrote: "Vorstehender Vorschlag ist von der Deutschen Regierung in Geiste des Entgegenkommens und aus dem ehrlichen Bemühen heraus gemacht worden, dieses Hindernis für die normale Entwicklung freundnachbarlicher Beziehungen zwischen den beiden beteiligten Ländern zu beseitigen" ibid. Anlage VI A, p. A 103. A mention on this matter included in the agreement itself was quoted already above, footnote 6.

38 R.A. Lester, *International Aspects of Wartime Monetary Experience*, Princeton 1944, p. 2.

39 G.G. Fitzmaurice, op.cit. p. 343, writing about the settling of the matter in the peace treaties of 10 February 1947. For the responsibility of the sovereign of the territory v. A. Nussbaum, *Money in the Law. National and International. A Comparative Study in the Borderline of Law and Economics*, Brooklyn 1950, pp. 497–498.

40 F.A. Mann, op.cit. p. 275 – criticism of Nolde's view quoted above, op.cit., p. 311.

was easy for the victorious powers to impose such a responsibility on it. The fact alone that a defeated state yielded to the "will" of a victorious power, does not justify the conclusion that the "will" reflected the law.

Above, mention was made of a clause in the additional treaty to the peace treaty with Romania of 7 May 1918, wherein responsibility for the exchange of an occupation currency was shifted to occupied Romania by the Central Powers. The defeat of Germany abrogated the clause.

During the Second World War, Germany left the care for the fate of occupation currencies to the former occupied states. The agreements on German reparations quoted above are not—at least from a theoretical point of view—the last word on the matter. The fact that Germany was defeated in the war and already has had to pay certain reparations prevented Germany, as it seems, from implementing its war-time demand that the issuance of occupational currencies would be borne in full by the occupied countries.[41]

The adversaries of the Reich—the Allied Powers—adopted the same policy in this respect as their German opponent. They did not shoulder responsibility for the occupation currency they issued. This is how it was decided the issue should be dealt with when the Allies only intended to use occupation currency in various territories.[42] There were subsequently only a few exceptions to this rule: the covering by the United States of a part of a lira issue by making a payment in dollars to the Italian government and the honouring of occupation currency transfers to the United States made by the U.S. military, where they were paid out in dollars.[43]

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41 The local authorities on the Isle of Jersey accepted responsibility for the exchange of German marks left in bank deposits after the end of German occupation, v. *Banking in Jersey under German Occupation*, "Journal of the Institute of Bankers" 1946, vol. 67, p. 209. It is not known if this was the end of the matter or if Germany had to cover the value of the exchanged currency pursuant to the Agreement of 14 January 1946.

42 Cf. e.g. the objections of the USSR to possible responsibility for occupation marks, Hearings […] on Occupation Currency Transactions, op.cit., p. 231.

43 The matter of transfers was a major issue in the cited hearings in the U.S. Senate, *Hearings (…) on Occupation Currency Transactions*, passim. Only for a short time was the amount of

Before reviewing the decisions of the Allied Powers concerning the responsibility of occupied countries for an occupation currency, the form in which the decisions were taken in two cases ought to be scrutinised. The form could be used as an argument in favour of the view that by operation of law, the occupying power, and not the occupied country, is responsible for occupation currency. Specifically, the following two cases are meant here: the Treaty of Peace with Italy and the State Treaty with Austria. The former, signed on 10 February 1947,[44] provides for the responsibility of Italy for the occupation lira currency in its Article 76(4). The Article is to be found in Part IV, Section III of the Treaty, entitled "Renunciation of Claims by Italy". In turn, the State Treaty for the Re-establishment of an Independent and Democratic Austria signed on 15 May 1995[45] provides for the responsibility of Austria for the occupation schilling currency in its Article 24(4). The Article is entitled: "Renunciation by Austria of Claims Against The Allies".

A question arises as to how significant is the fact that provisions about the responsibility of the occupied country are placed in the context of norms making the country renounce the claims it has. Does it mean that if Italy and Austria had not been explicitly made responsible for the occupation currency, the responsibility of the occupying powers would have arisen automatically? Do Italy and Austria renounce in the respective treaties claims having grounds in international law and assume obligations they would have never been burdened with, had it not been for the treaty provisions? Viewing these issues from the point of view of the Allies, one can ask the question: did the victorious powers believe that the silence of the Treaty on the problem of responsibility would mean that Italy and Austria could lodge a lawful claim and that the Allies, consequently, would have to bear responsibility for occupation currency? An answer in the affirmative to these questions will support the

transfers unlimited. As regards responsibility for occupation mark currency in this respect, v. ibidem, pp. 8, 95.

44 United Nations Treaty Series, vol. 49, 1950.

45 United Nations Treaty Series, vol. 217, 1955.

thesis that legally, responsibility for occupation currency is to be borne by an occupying power. However, this argument will not suffice to invalidate all that has been written in this chapter on the practice of states and their actual discretion in regulating the question of responsibility for an occupation currency on a case-by-case basis.

The following international documents concern the responsibility of the occupied Axis Powers for the currency issued by the Allies:

The Instrument of Surrender of Italy of 29 September 1943[46] provided in Article 23 that Italy would withdraw occupation currency from its territory issued by the Allied Powers and pay its equivalent in the Italian currency. The Allies were to give time limits for, and the terms of, the exchange. Whereas in the Treaty of Peace, Italy assumed "full responsibility" for all Allied military currency issued in Italy by the Allied military authorities (Article 76(4)). Between these two instruments, there is a difference: the Instrument of Surrender speaks of the holdings of occupation currency held in Italy (which means that it could be other occupation currency than the lira), whereas the Treaty of Peace mentions the currency issued in Italy (hence, irrespective of the fact of whether it currently was held within the Italian borders or not). The difference was of little practical significance in the sense that at the moment the Treaty was signed, there were no other occupation currency notes in Italy apart from lira ones. However, there could have been sums of the occupation lira abroad and Italy was responsible to the parties to the Treaty for the exchange of such sums as well.[47]

46 "American Journal of International Law" 1946, vol. 40, Supplement, p. 2.

47 In the British-Italian Agreement expressed in the notes of 20 and 21 March 1950 Italy undertook to exchange all East-African currency in circulation in former Italian Somaliland. Italy lost sovereignty over Somaliland after WWII. It concluded the Agreement in a new capacity, namely as a United Nations Trustee. British Armed Forces occupied Italian Somaliland during WWII. The Agreement, however, is not representative of the relation under discussion between the sovereign and occupying power in matters of the responsibility for an occupation currency. Nonetheless, the Agreement illustrates a tendency to shift responsibility for military currency to that party which stays in and administers the territory in which the currency circulated. Great Britain Treaty Series, 1952, No. 14.

In the peace treaties of 10 February 1947, Romania[48] (Article 30(4)) and Hungary[49] (Article 32(4)) assumed responsibility for the respective occupation currencies issued in their territories.

The Allies shifted responsibility for occupation mark currency to Germany. A duty to this effect was imposed on Germany in the Allied Control Council Proclamation No. 2 of 20 September 1945 (Section VI, Article 20).[50] In 1948, three western occupation zones witnessed a currency reform (in the eastern zone it took place later). It involved the exchange of occupation marks. The legal provisions introducing the reform considerably limited the amount of old currency that could be exchanged for a new one.[51] Thus, it was not the German treasury, but rather the inhabitants of the German territory that directly bore the financial burden of the occupation issue.[52] The currency reforms in Germany caused the occupation mark to disappear from circulation. Hence, responsibility for an occupation currency is not covered by agreements providing for the duties of both German states in their changed—with respect to the period of occupation—legal situation. The question of responsibility for Allied marks must be considered closed.

In Austria, the occupation schilling currency was withdrawn from circulation as early as in 1945. The so-called schilling law of 30 November 1945[53] provided for the exchange of occupation notes and coins for a new currency. The exchange covered only a part of the cash, the rest was deposited in accounts which were completely or partially blocked.

48 United Nations Treaty Series, vol. 42, p. 3.

49 Ibidem, vol. 41, p. 135.

50 "American Journal of International Law" 1946, vol. 40, Supplement, p. 21.

51 Excerpts from the British military law no. 60 on currency reform were reprinted in *Documents on Germany under Occupation 1945–1954*, ed. B.R. von Oppen, London 1955, p. 292. Cf. the case of Eisner v. United States, U.S. Court of Claims, Federal Supplement, vol. 117, 1954, p. 197.

52 Above, it was mentioned that the United States had exchanged a certain sum in occupation marks for dollars in connection with money transfers from Germany to the United States. The sum, however, was so small that it can be ignored altogether while studying the economic aspects of the exchange of occupation marks.

53 *Staatsgesetzblatt für die Republik Österreich*, 1945, p. 419.

In the already quoted State Treaty of 15 May 1955, the Austrian government assumed:

> […] full responsibility for Allied military currency of denominations of five schillings and under […]. Notes issued by the Allied Military Authorities of denominations higher than five schillings shall be destroyed and no claims may be made in this connection against any of the Allied or Associated Powers (Art 24(4)).

In the Treaty of Peace with Japan, signed on 8 September 1951[54], there are no provisions on an occupation currency.[55] No Allied Power, in particular the United States, took responsibility for the occupation yen currency vis-à-vis the Japanese state or yen note holders.

The fact that the occupied country, even when the occupation is over, keeps an occupation currency in circulation for some time does not mean that it assumes responsibility for it and that the former occupying power does not have any duties in this respect.[56] Everywhere where an occupation currency has supplanted the local currency, continuing the former in circulation after the occupation ends is an economic necessity. Such a situation could be witnessed for instance in Poland[57] and Lithuania in 1918[58], or in Poland in 1944 and in early 1945.[59] In 1918 and 1919 in Poland, the Polish government continued to print mark banknotes using

54 "American Journal of International Law" vol. 46, 1952, Supplement, p. 71.

55 Article 14(b) invalidated any claims for direct military costs of occupation. In Article 19 (a) Japan waived all claims arising from the presence, operations or actions of forces or authorities of any of the Allied Powers in Japanese territory.

56 A similar situation holds when a formerly occupied country exchanges occupation notes and coins. An exchange is an act of domestic law and does not prejudice its right of recourse in the international forum.

57 Z. Karpiński, op.cit., pp. 413–414.

58 O. Lehnich, *Währung und Wirtschaft in Polen, Litauen, Lettland und Estland*, Berlin 1923, p. 168.

59 V. Art. 4 of the Decree of the Polish Committee of National Liberation of 24 August 1944 on the issue of bank notes, keeping in circulation the notes of the Issuing Bank in Poland, Journal of Laws, 1944, no. 3, item 11. The provision was abrogated as of 10 January 1945 pursuant to Art. 1 of the Decree of 6 January 1945, ibid., 1945, no. 1, item 2.

occupation plates, because at first the printing of new-design banknotes was not possible for technical reasons. Of course, any issue after 11 November 1918, similarly to any further issue in Lithuania after its occupation ended, encumbered solely the sovereign of the respective territory.

The last comments bring us to a more general observation. Regardless of how the question of responsibility for an occupation currency is settled on the international arena, the sovereign of the occupied territory is competent to regulate currency matters freely once the occupation is over. Admittedly, the view has been advanced in the literature that the sovereign is obliged to recognise those currency changes (made by the occupying power) that stayed within the limits set by Article 43 of The Hague Regulations.[60] By no means can this view mean that the sovereign must uphold in force the regulations and enactments of the occupying power in currency matters.[61] Hence, depending on its policy and the facts in a given case, the occupied state lets occupation currency notes continue in circulation (the above-quoted example of Poland and Lithuania) or exchanges occupation currency notes for its own notes at par value (Belgium in 1918) or exchanges occupation currency notes for its own or new currency at a rate set by itself or carries out a currency reform, exchanging only a certain amount of the occupation currency (this last situation took place after World War II).[62]

The citizens of the occupied state who sustained property losses cannot defend themselves—under the international law as it stands now[63]—

60 K. Neumayer, *Internationales Verwaltungsrecht*, München–Berlin–Leipzig 1930, vol. 3, part 2, p. 252.

61 This is how Neumayer understands his position himself, loc.cit., p. 254.

62 Cf. C. A. Fraleigh, *The Validity of Acts of Enemy Occupation Authorities Affecting Property Rights*, "Cornell Law Quarterly" 1949–1950, vol. 35, p. 108.

63 A protocol to the European Convention on Human Rights signed in Paris on 20 March 1952, in its Article 1 provides for the protection of ownership. The text of the Protocol can be found in *Annuaire Européen*, vol. 1, 1955, p. 341. Thus, the mechanism created by the Council of Europe for the protection of human rights safeguards also ownership and may be used—on the terms laid down in the Convention—in a relation between a state and its own citizen. As of now, this system encompasses a very small number of states and only begins to function. Hence, it has little practical significance as yet.

against the monetary policy of their own state. As regards foreigners, they may of course always avail themselves of the diplomatic protection of their state if the measures taken by the sovereign of a territory can be held to be a denial of justice or to constitute expropriation.[64] The chances that the interests of foreigners will be protected are meagre or almost non-existent in the situation in question. As a rule, the sovereign of the occupied territory repudiates the occupation currency in the interest of sound economy. For any occupation currency is a manipulated currency and the occupying powers have almost always used it as an instrument of exploitation of the occupied country. In particular, this policy was pursued by Germany as an occupying power. Economists are right to observe that currency circulation during an occupation is characterised by the existence of speculation centres among the population having access to large banknote and coin reserves. Occupying powers always left behind a monetary system in shambles. This system needs to be eliminated before the former occupied state begins to build a new one. Since from the point of view of the occupied state the occupation currency is bad currency, the occupied state starts a post-occupation reconstruction with a sharp deflation measure. In this way, the state does away with speculative currency reserves and clears the way for a new issue, and a new financial system in general.

The sovereign of a territory is competent to take currency measures having legal effect in the territory upon the recovery of real power in it. This means that any acts concerning currency matters issued by a government having power only over a part of the territory of a state during

64 Cf. the decision of the U.S. Court of Claims in Eisner v. United States. The plaintiff claimed that her property was unlawfully taken away through the conversion of her bank deposit in Berlin at a conversion rate of 1 = 20 –currency reform in Germany. The Court held that the currency reform involving such a conversion rate was "a sovereign act, reasonably calculated to accomplish a beneficial purpose, and if it did have any adverse effect upon the plaintiff, she cannot, under well-settled principles, shift that effect to the public treasury". Federal Supplement, vol. 117, 1954, p. 199. Although the plaintiff was an American citizen, the U.S. government collaborated in carrying out the currency reform in Germany as a co-holder of the supreme authority in that country and not as the subject of authority in an American territory.

a war or by a government in exile become effective in the territory occupied by the enemy only when the occupation comes to an end.[65]

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65 A. Emmendörfer, *Geld und Kreditaufsicht in den von Deutschland während des 2. Weltkrieges besetzten Gebieten*, Tübingen 1957, pp. 56–57 (an unpublished dissertation of submitted to *Institut für Besatzungsfragen*) writes about an attempt to invalidate—by virtue of the decree of the King of Norway—all notes and coins circulating in that part of Norway that had already been occupied by German forces. Such a decree would not have been effective in the occupied territory as long as the occupation continued.

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