



Surrender, Occupation, and Private Property in International Law (1) : An Evaluation of Some United States Practices during the Occupation of Surrendered Japan

Ando, Nisuke

(Citation)

Kobe University law review, 20:1-60

(Issue Date)

1986

(Resource Type)

departmental bulletin paper

(Version)

Version of Record

(JaLCD0I)

<https://doi.org/10.24546/00166915>

(URL)

<https://hdl.handle.net/20.500.14094/00166915>



SURRENDER, OCCUPATION, AND PRIVATE PROPERTY IN INTERNATIONAL LAW (1)*

— An Evaluation of Some United States Practices
during the Occupation of Surrendered Japan —

Nisuke ANDŌ*

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※ Professor of International Law, Faculty of Law, Kobe University, Japan; Member, Human Rights Committee (*International Covenant on Civil and Political Rights*), 1987~1990.

* This thesis was originally submitted to the Fletcher School of Law and Diplomacy (Medford, Massachusetts, U. S. A.) in partial fulfilment of the requirements for the Degree of Doctor of Philosophy. Since its submission some time has passed and the author tried to update materials where available and necessary. The author would like to express his hearty gratitude to Professor Leo Gross of the Fletcher School and the late Professor Richard R. Baxter of the Harvard Law School for their generous counsel in the preparation of the thesis.

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CHAPTER 1

INTRODUCTION

The theme of the present thesis is an evaluation, from the standpoint of international law, of some of the Allied, particularly United States, treatment of Japanese private property during the occupation of Japan subsequent to the cessation of hostilities of the Second World War. The expression "the United States treatment" is preferred, because the Allied occupation of Japan was, in substance, an American undertaking. During the nearly seven years of occupation, the United States, as the occupant, took various occupation measures, mainly for the purpose of demilitarizing and democratizing the political, economic, and social system of the defeated state; and some of these measures caused extensive damage to private property of a number of Japanese. To what extent a military occupant of enemy territory may interfere with private property of the enemy civilians therein is a longstanding problem in international law. The present thesis will add to the study of this general problem.

The present thesis, however, is designed to be not so much a comprehensive as a specific study of the subject. It does not cover all but only a few particular U. S. occupation measures. The main concern of the present thesis is to evaluate the international legality of those occupation measures which the occupant adopted to demilitarize and democratize the Japanese society and which, in the course of their implementation, greatly affected the private property of some Japanese people. These measures differed from the ordinary or classic case of an occupant's interference with private enemy property—the requisitioning or seizure of such property for the use of occupying forces—in that the property involved was not used by the occupant but was merely transferred from one group of Japanese to another. Whether and to what extent these particular occupation measures should be justified in international law is the main theme of the present thesis. The legality of the ordinary U. S. occupation measures will be dealt with only to the extent that their study will help the understanding of the main theme.

Nevertheless, in evaluating the international legality of any of the U. S. treatment of Japanese private property, two specific factors must be taken into consideration; that is, the legal nature of the U. S. occupation of Japan and the provisions of Section III of the Hague Regulations of 1907.

First, the U. S. occupation of Japan was certainly an occupation of enemy territory by armed forces. It took place when the formal state of war was still continuing between the two states. But the hostilities of the Second World War had been terminated by the Japanese surrender before the U. S. forces proceeded to occupy the main islands of Japan, and in this sense, the U. S. occupation of Japan was different from so-called "belligerent occupation" of enemy territory which occurs during hostilities when one belligerent invades and occupies part or whole of the territory of the other.

Furthermore, it must not be overlooked that the Japanese surrender was termed unconditional surrender. The U. S. occupation of Japan was, therefore, a post-hostilities occupation of enemy territory by military forces, resulting from an unconditional surrender. Whether and how the fact that the occupation had taken place after the cessation of hostilities and had resulted from an unconditional surrender affected the occupant's treatment of private enemy property must be thoroughly studied.

Second, Section III of the Hague Regulations of 1907 consists of fifteen articles, which deal with military occupation of enemy territory. The Regulations form an integral part of the Hague Convention respecting the Laws and Usages of War on Land, and their provisions are regarded as declaratory of rules of customary or general international law on the subject. On the one hand, it is admitted that, so far as a military occupant's treatment of private enemy property is concerned, there has come into existence in international law no set of rules other than those contained in the Hague Regulations. On the other hand, the type of occupation envisaged by the draftsmen of the Regulations is belligerent occupation. Thus, whether and to what extent the provisions of the Hague Regulations concerning an occupant's treatment of private enemy property are applicable to or relevant to an occupant's treatment of private enemy property under other type of occupation requires careful examination.

These considerations lead to the central problems which the present thesis must resolve: Do the provisions of the Hague Regulations apply to and have any relevance to a post-hostilities occupation of enemy territory resulting from an unconditional surrender, in general, and the U. S. occupation of Japan, in particular? In order to solve these problems, the following topics will be dealt with in the present thesis.

At the outset, in Chapter 2, facts bearing on the Japanese surrender, some of the U. S. occupation measures, and their impact on Japanese private property will be studied as the basic material on which the present thesis is to develop its analysis. Besides some of the ordinary U. S. occupation measures, which are to be reviewed summarily, the purge of militarists and ultranationalists, the *Zaibatsu* dissolution, and the land reform, representing the demilitarization and democratization measures adopted by the occupant, will be studied in detail. Next in Chapter 3, the legal basis of these occupation measures will be examined. What was the U. S. or occupant's view of this matter? Was there any contending view on the part of the Japanese? An appraisal of these views will require a clarification of general rules of international law concerning a surrender, an occupation, and an occupant's treatment of private enemy property. Therefore, in Chapter 4, the central problem of the present thesis will be analyzed — Whether and how an unconditional surrender affects an occupant's rights and duties with respect to private enemy property. Past practice, judicial precedents, and legal theories must be scrutinized. Then, in the light of the analysis of this general problem, the U. S. occupation measures in question will be evaluated in Chapter 5. Were they legally justifiable or not? The

bearing of the Treaty of Peace with Japan in this connection will also be examined. Finally in the Concluding Chapter, on the basis of the analysis in the preceding Chapters, general observations will be made on some of the problems relating to a surrender, an occupation, and an occupant's treatment of private enemy property in international law.

The surrender of Japan and Germany and their occupation by the Allied Powers following the cessation of hostilities of the Second World War raised a variety of new problems in international law. But, while legal questions arising from the surrender and occupation of Germany have been extensively studied and a large amount of work has been published, not much has been done on the similar questions with regard to Japan. The present thesis is but a modest attempt to analyze some aspects of the international legal problems arising from the surrender and occupation of Japan. It is hoped that this thesis will help draw attention of other international lawyers to those problems relating to Japan, and that further and more comprehensive studies will be made on the subject.

CHAPTER 2

THE JAPANESE SURRENDER, THE U. S. OCCUPATION MEASURES, AND THEIR IMPACT ON JAPANESE PRIVATE PROPERTY

Section 1: The Japanese Surrender: The Potsdam Declaration and the Instrument of Surrender

After the complete defeat and collapse of Germany in May 1945, the three Allied heads of governments agreed to hold a conference for the purpose of settling the question of Europe in general and that of Germany in particular. Accordingly, President Truman, Prime Minister Churchill, and Generalissimo Stalin met for a conference at Potsdam from July 16 to August 2.¹ Before his departure for the meeting, the U. S. President decided to issue from the conference table an Allied proclamation to Japan, offering the latter an opportunity for surrender. An earlier issuance of such a proclamation had been recommended to the President with a draft by Joseph Grew, the Acting Secretary of State and former Ambassador to Japan. However, Truman had instructed Grew to transfer the draft for consideration by the Joint Chiefs of Staff and the State-War-Navy Coordinating Committee, the then customary channel for U. S. policy planning concerning Japan.² By the time the Potsdam Conference started, the U. S. delegation had prepared a draft proposal of what would later become known as the Potsdam Declaration toward Japan.³

The U. S. motive for issuing the Declaration was to secure the earliest possible surrender of Japan with minimum cost in American lives. The U. S. final plan for the military invasion of the main Japanese islands was ready in June 1945, and it was estimated that the carrying out of the plan would cost from one half to a million U. S. casualties and take more than a year to be

1. For the Potsdam Conference, see U. S., Department of State, *Foreign Relations of the United States* (hereafter cited as U. S., *Foreign Relations*), Conference of Berlin 1945, 2 vols.

2. U. S., Department of State, Record Service Division, Memorandum for the President from Acting Secretary of State with Enclosure: Draft of a Proposed Statement, June 13, 1945 (File No. 740.00119 PW/6-1345). But, according to U. S., *Foreign Relations*, Conference of Berlin 1945, Vol. 1 footnote 1 at p. 897, the original draft is located at U. S., Department of State, Record Service Division, Unconditional Surrender of Japan: Proposed Statement of United Nations War Aims (File No. 740.0011 EW/5-3145). See also Joseph C. Grew, *Turbulent Era* (2 vols., Boston: Houghton Mifflin, 1952), Vol. 2, pp. 1428-1434 and 1437; Harry S. Truman, *Memoirs* (2 vols., New York: Doubleday, 1955), Vol. 1, pp. 416-417. For the State-War-Navy Coordinating Committee, see U. S., *Department of State Bulletin*, Vol. 13, pp. 745-747.

3. Judging from its nature, the Potsdam Declaration should be termed the Potsdam Proclamation. However, in the Instrument of Japanese Surrender and other official correspondence between the Allied Powers and Japan it was always termed as the Potsdam Declaration. In the present thesis this usage is followed.

completed.⁴ Truman was keenly concerned about the burden of this possible sacrifice, and when consulted on the proclamation at Potsdam, Churchill shared his concern.⁵ Indeed, Henry Stimson, the U. S. Secretary of War, who with the help of Grew and others submitted the original draft proclamation to Truman, later explained that his memorandum had been prompted by the American desire to achieve a Japanese surrender without invading the homeland.⁶ After taking some British suggestions and obtaining China's approval by cable, the U. S. draft was released to the public on July 26, 1945.⁷

The Potsdam Declaration is roughly divided into three parts. In the first part,⁸ it contained the Allied demonstration of the will to prosecute the war until Japan ceased to resist; in addition, a warning was included on the dreadful damage which such a course of action would inflict on Japan and the Japanese people. Then, in the second part, it enumerated the Allied terms, under which Japan was given an opportunity to end the war.⁹ The terms, from which there was to be no deviation, were (1) the permanent elimination of the authority and influence of those who had misled the Japanese to the war of world conquest, (2) the occupation of Japan by the Allied forces to ensure the complete destruction of Japanese war-making power, (3) the execution of the provisions of the Cairo Declaration, limiting Japanese sovereignty to the four main and adjacent small islands,¹⁰ (4) the repatriation of the Japanese military forces to lead peaceful lives at home, (5) the stern punishment of war criminals, (6) the revival as well as strengthening by the Japanese Government of democratic tendencies and fundamental human rights among its people, (7) permission for Japan to maintain such industries as would allow the exaction of reparation but would not allow rearmament, (8) permission for Japan to have access to raw materials for its industries and to participate in world trade eventually, (9) the withdrawal of the occupation forces at the accomplishment of these objectives and after the establishment of a peacefully inclined, responsible government of Japan. Lastly, in the third part,¹¹ the Declaration concluded with the statement that:

We call upon the Government of Japan to proclaim now the unconditional surrender of all the Japanese armed forces, and to

4. Henry L. Stimson and McGeorge Bundy, *On Active Service in Peace and War* (New York: Harper, 1947), p. 619. For a different estimation, see U. S., *Foreign Relations*, Conference of Berlin 1945, Vol. 1, pp. 905-909.

5. H. S. Truman, (n. 2 *supra*), Vol. 1, pp. 314-315 and 416; Winston S. Churchill, *Triumph and Tragedy* (Boston: Houghton Mifflin, 1953), pp. 641-642.

6. H. L. Stimson and M. Bundy (n. 4 *supra*), p. 620.

7. U. S., *Foreign Relations*, Conference of Berlin 1945, Vol. 2, pp. 1275-1284; James M. Byrnes, *Speaking Frankly* (New York: Harper, 1947), pp. 206-207.

8. Paragraphs 1-4. For the text, see Appendix I *infra*.

9. Paragraphs 5-12. For the text, see Appendix I *infra*.

10. For the Cairo Declaration, see U. S., *Department of State Bulletin*, Vol. 9, p. 393.

11. Paragraph 13. For the text, see Appendix I *infra*.

provide proper and adequate assurances of their good faith in such action. The alternative for Japan is prompt and utter destruction.

The immediate Japanese reaction to the Declaration was, at least on the surface, rather discouraging to U. S. hopes. On July 28 the Japanese Prime Minister Kantaro Suzuki issued a statement that the Declaration was unworthy of notice,¹² and though various discussions about the acceptance of the Declaration were actually under way in government circles, there was no official reaction toward the Allied proposal. This course of events left no alternative for the United States but to continue its war against Japan. On August 6, 1945, the first atomic bomb in the history of mankind was dropped on Hiroshima, causing a hundred thousand deaths and immeasurable aftereffects to the inhabitants of the area. Three days later the second one was exploded in Nagasaki. Early on the same day the U. S. S. R. declared war against Japan, unilaterally renouncing its neutrality pact with Japan, and stated that it would adhere to the Potsdam Declaration. A special Imperial Conference was summoned in Japan with the presence of the Emperor, and after much deliberation, the Japanese Government on August 10 dispatched a note to the Allies, in which it announced its readiness to accept the Potsdam Declaration with the understanding, however, that the Declaration did not prejudice the prerogatives of the Emperor as a sovereign ruler.¹³

The Japanese move, to some extent, revived the difference of opinion among the U. S. officials who had been participating in the policy-making regarding the treatment of post-hostilities Japan. Some had been for the retention of the Emperor and the existing government machinery to secure an early surrender and smooth functioning of the ensuing occupation, while others had advocated the complete elimination of the old ruling clique.¹⁴ But, when President Truman called a conference to discuss the handling of the Japanese offer, all present definitely felt that the most should be made of this opportunity to terminate the hostilities. In the end, Secretary of State Byrnes drafted a reply, which met with the President's approval. It was then sent to the other three Allies sponsoring the Potsdam Declaration. The reply stated that, with regard to the Japanese note, the Allied position was as follows:

From the moment of surrender the authority of the Emperor and the Japanese Government to rule the state shall be subject to the Supreme Commander of the Allied powers who will take such steps as he deems proper to effectuate the surrender terms.

The Emperor will be required to authorize and ensure the

12. Japanese Government, Foreign Office (Gaimu-sho), *Shusen Shi-Roku* (Historic Documents relating to the Surrender of Japan. Hereafter cited as Gaimu-sho, *Shi-Roku*. 2 vols., Tokyo: Shimbun Gekkan-sha, 1952), Vol. 2, pp. 502-503.

13. *Ibid.*, pp. 586-609, especially p. 605.

14. Robert J. C. Butow, *Japan's Decision to Surrender* (Stanford, California: Stanford University Press, 1954), pp. 189-190.

signature by the Government of Japan and the Japanese Imperial General Headquarters of the surrender terms necessary to carry out the provisions of the Potsdam Declaration ... and to issue such other orders as the Supreme Commander may require to give effect to the surrender terms....

The ultimate form of government of Japan shall, in accordance with the Potsdam declaration, be established by the freely expressed will of the Japanese people.¹⁵

Since this reply left the problem raised by Japan unanswered, the Japanese military was again bitterly opposed to an acceptance of the Potsdam Declaration. However, the majority in the Government was for an acceptance, arguing that the reply did not mean a transfer of Japanese sovereignty nor exclude the retention of the Emperor system.¹⁶ Finally on August 14, 1945, the Japanese Government notified the Allied Governments of its acceptance of the Potsdam Declaration. The notification stated that:

With reference to the Japanese Government's note of August 10 ... and the reply ... sent by American Secretary of State Byrnes ... of August 11, the Japanese Government [have] the honor to communicate to the Governments of the four powers as follows:

1. His Majesty the Emperor has issued an Imperial rescript regarding Japan's acceptance of the provisions of the Potsdam declaration.
2. His Majesty the Emperor is prepared to authorize and ensure the signature by his Government and the Imperial General Headquarters of the necessary terms for carrying out the provisions of the Potsdam declaration. His Majesty is also prepared to issue his commands to all the military, naval, and air authorities of Japan and all the forces under their control wherever located to cease active operations, to surrender arms and to issue such other orders as may be required by the Supreme Commander of the Allied Forces for the execution of the above-mentioned terms.¹⁷

On the same day, after consulting the other Allies, President Truman sent a message to the Japanese Government with the directions that the Japanese forces cease hostilities at once and that the Government contact the Supreme Commander for the Allied Powers.¹⁸ At the same time the President secured the consent of the Governments of Great Britain, China, and the U. S. S. R. to designate U. S. General of the Army Douglas MacArthur as the Supreme Commander for the Allied Powers and

15. U. S., *Foreign Relations*, 1945 Vol. 6, pp. 631-632. See also U. S., *Department of State Bulletin*, Vol. 13, pp. 205-206.

16. Gaimu-sho, *Shi-Roku* (n. 12 *supra*), Vol. 2, pp. 696-709.

17. U. S., *Foreign Relations*, 1945 Vol. 6, pp. 662-663.

18. *Ibid.*, p. 663.

authorized him to receive from the Japanese Government the signed instrument of surrender.¹⁹ The surrender of Japanese military, naval, and air forces was set about in all the war fronts. In the meantime the State-War Navy Coordinating Committee had been drafting the instrument of Japanese surrender.²⁰

On September 2, 1945, the formal Instrument of Surrender, as presented by the Supreme Commander for the Allied Powers, was signed by the representatives of the Japanese Government on board the U. S. battleship Missouri in Tokyo Bay.²¹ In the Instrument of Surrender it was stated that the Japanese representatives accepted the Potsdam Declaration in behalf of the Emperor, the Japanese Government, and the Japanese Imperial General Headquarters; that the representatives proclaimed the unconditional surrender of all Japanese armed forces, and all armed forces under Japanese control; that they commanded those forces to cease hostilities and surrender unconditionally; and that they commanded all civil and military officials to obey and enforce orders issued by the Supreme Commander for the Allied Powers for effectuating the surrender. The Japanese representatives also undertook "for the Emperor, the Japanese Government and their successors to carry out the provisions of the Potsdam Declaration in good faith, and to issue whatever orders and take whatever action may be required by the Supreme Commander ... for the purpose of giving effect to that Declaration." The document ends with a sentence similar to the main part of the Byrnes reply: "The authority of the Emperor and the Japanese Government to rule the state shall be subject to the Supreme Commander for the Allied Powers who will take such steps as he deems proper to effectuate these terms of surrender. " The signed Instrument of Surrender was accepted by the United States, Great Britain, China, the Soviet Union, Australia, Canada, France, the Netherlands, and New Zealand in the interests of all the United Nations at war with Japan, and General MacArthur as the Supreme Commander for the Allied Powers signed the document together with the representatives of these nine Governments.

Section 2: The Initial Objectives and Implementation of the U. S. Occupation Measures

The Allied occupation of Japan after the latter's surrender was, in essence, an American undertaking. All the occupation forces were composed of American personnel except for partial participation by some British

19. U. S., *Foreign Relations*, 1945 Vol. 6, pp. 647-648.

20. See, for example, *ibid.*, pp. 644-645.

21. For the text, see Appendix II *infra*.

Commonwealth forces,²² and they were under the command of the Supreme Commander for the Allied Powers (hereafter cited as SCAP), U. S. General of the Army Douglas MacArthur, who at the same time was acting as the Commander-in-Chief of the U. S. Armed Forces, Pacific, under instructions of the American Government.²³ Thus, formulation and implementation of the occupation policy regarding Japan were primarily in the hands of the United States. The Potsdam Declaration itself was based on the American proposal at the three power conference in Berlin. It is true that in December 1945 the U. S. Government agreed at the Foreign Ministers' Conference in Moscow to the creation of the Far Eastern Commission and the Allied Council for Japan, the inter-Allied machinery for policymaking and consultative purposes with regard to the occupation of Japan, but the United States had a veto in the machinery, and SCAP, which was charged by the agreement to implement policy decisions of the machinery, kept ignoring them much to the dissatisfaction of the other Allies. In fact, in most of its action SCAP followed the chain of command from the U. S. Government.²⁴

The early American objectives in the occupation of Japan are best expressed in the document entitled "The U. S. Initial Post-Surrender Policy for Japan."²⁵ This document was a product of laborious wartime cooperation among several U. S. government agencies in preparation for the

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22. For the inter-Allied negotiations on the composition of the occupation forces, see U. S., *Foreign Relations*, 1945 Vol. 6, pp. 603-609, 744-747, 762-763, 763-765, 824, 832-834, 848-849, 853-854, 860-861, 863, 869, 879-880, 889-890, 897. See also Rajendra Singh, *Post-War Occupation Forces: Japan and Southeast Asia* (Orient Longmans, 1958).
 23. U. S., National Archives (Most of the SCAP records cited in the present thesis are located at the Washington National Record Center in Suitland, Maryland.), Supreme Commander for the Allied Powers, General Headquarters, *History of the Non-Military Activities of the Occupation of Japan* (hereafter cited as SCAP, *History*. 55 vols. on different topics), Monograph No. 2 Administration of Occupation, p. 2. MacArthur himself was well aware of this dual position. See Douglas MacArthur, *Reminiscences* (New York: McGraw Hill, 1964), pp. 318-319. After MacArthur was relieved of this command by President Truman over the Korean question, General Matthew Ridgway succeeded in the dual position on April 11, 1951. Attention should be paid to the fact that the term "SCAP" has been used, both officially and privately, to designate not only the person of MacArthur in that position but also the organization of the occupation authorities under his command. The present thesis follows this general usage.
 24. The minutes as well as verbatim transcripts of the Far Eastern Commission are accessible at the U. S. National Archives (Record Group 43 Far Eastern Commission), and the verbatim records of the Allied Council for Japan are available in microfilm at the same Archives. See also, for the activities of the Far Eastern Commission, U. S., Department of State, *Activities of the Far Eastern Commission* Report by the Secretary General; *Far Eastern Commission* Second Report by the Secretary General; *ibid.* Third Report by the Secretary General (Washington: Government Printing Office, 1947, 1949, and 1950 respectively); and U. S., Department of State (Written by George H. Blakeslee), *The Far Eastern Commission* (Washington: Government Printing Office, 1953). For MacArthur's own view of the inter-Allied machinery, see his *Reminiscences* (n. 23 *supra*), pp. 292-293.
 25. U. S., *Department of State Bulletin*, Vol. 13, p. 423ff. For the drafting of this document, check the State-War-Navy Coordinating Committee's work in U. S., *Foreign Relations*, 1944 Vol. 5, pp. 1186-1289; *ibid.*, 1945 Vol. 6, pp. 497-621.

post-war policy,²⁶ and on August 29, 1945, it was transmitted to SCAP by the U. S. Government as the statement of the American occupation policy. It clearly stated that the initial occupation policy had to conform to the ultimate objectives of the United States with regard to Japan, which were:

- (a) To insure that Japan will not again become a menace to the United States or to the peace and security of the world.
- (b) To bring about the eventual establishment of a peaceful and responsible government [in Japan] which ... will support the objectives of the United States as reflected in the ideals and principles of the Charter of the United Nations. The United States desires that this government should conform ... to principles of democratic self-government....²⁷

And, in line with the provisions of the Potsdam Declaration, the document specified that these objectives would be accomplished by complete disarmament and demilitarization of Japan, elimination of the influence of militarists and ultranationalists, encouragement among the Japanese people of the ideas of individual freedom and democratic government, and granting of an opportunity for the development of the Japanese economy on a peaceful basis.²⁸ In other words, the basic U. S. aim at the initial stage of the occupation of Japan was "security" for the rest of the world, and the means to attain security were demilitarization and democratization of the defeated country.

In the ensuing years, SCAP took a vast range of occupation measures purporting to transform Japan from a militant, despotic state to a peaceful, democratic one. These measures included, among others, demobilization of armed forces, trial and punishment of war criminals, revision of the old constitution, demilitarization of industry, dissolution of *Zaibatsu* (big economic combines), land reform, liberalization of political activities, emancipation of the labor movement, reform of the education system, and elimination of militarists and ultranationalists from influential social circles throughout Japan.²⁹ In implementing these measures, SCAP was instructed to exercise its authority through the machinery and agents of the Japanese Government, unless direct actions on its part were needed to effectuate them.³⁰ It was ordinarily the case that, in order to carry out a

26. For the U. S. preparation of the post-war foreign policy in general, see U. S., Department of State (Written by Harley Notter), *Post-War Foreign Policy Preparation 1939-1945* (Washington: Government Printing Office, 1949).

27. Part I. For the text, see n. 25 *supra*.

28. *Ibid.*

29. For a concise account of the U. S. initial occupation measures, see Edwin Martin, *The Allied Occupation of Japan* (New York: American Institute of Pacific Relations, 1948). See also U. S., Department of State, *Occupation of Japan—Policy and Progress* (Washington: Government Printing Office, 1946). SCAP's own records are accessible at the National Archives as SCAP, *History* (n. 23 *supra*) and as SCAP, *Summation of Non-Military Activities in Japan and Korea* (35 vols. covering the period of September 1945 through August 1948. Monthly reports).

30. U. S. Initial Post-Surrender Policy for Japan, Part III. For the text, see n. 25 *supra*.

specific measure, SCAP sent a directive to the Japanese Government, which then implemented it either through legislative procedure or through executive channels as it saw fit. With constant guidance and pressure from MacArthur and his headquarters in one form or another, most of the directives were implemented without any serious friction, and the occupation forces, whose function was to secure and supervise the compliance of Japanese agents with the directives, were seldom called for action throughout the nearly seven years period of occupation.³¹

Section 3: Some Measures Affecting Private Property of the Japanese

There is no denying the fact that the implementation of initial occupation measures exerted a great influence, directly or indirectly, on the private property of the Japanese people. At the time of the surrender the Japanese economy was in a state of total breakdown due to a combination of factors such as the effect of the war-oriented production system, destruction of key industries by the air-raids, sudden loss of all overseas territories, the speedy repatriation of three million demobilizees, and a pressing shortage of food.³² However, since Japan's plight was the outcome of its own behavior, the U. S. concern was not in the rehabilitation of the war-torn economy. Rather, the occupation was to deprive Japan of the economic basis of its military strength as well as to democratize its people and institutions by various means.

Since the present thesis is not intended to be a comprehensive study of the U. S. occupation measures in Japan, it will deal only with some representative ones, namely, the purge of militarists and ultranationalists, the dissolution of *Zaibatsu*, and the land reform. But, before going into the detail of these measures, a brief review of the ordinary U. S. occupation measures is in order.

Prior to the arrival in Japan of the first detachments of the U. S. occupation forces, a great concern of the Japanese Government was how to

31. For the direct SCAP intervention, see Japanese Government, Foreign Office, Division of Special Record (Gaimu-sho Tokubetsu Shiryo-bu), *Nihon Senryo oyobi Kanri Juyo Bunsho-shu* (Documents concerning the Allied Occupation and Control of Japan. Hereafter cited as Gaimu-sho, *Bunsho-shu*. 8 vols., Tokyo: Toyo Keizai Shimpō-sha, 1949), Vol. 2, pp. 240-241 and 112-117. See also University of Tokyo, Faculty of Law, Study Group on Japan Occupation Law (Kanri Horei Kenkyū-kai), *Nihon Kanri Horei Kenkyū* (Japan Occupation Law Review. Hereafter cited as University of Tokyo, *Kenkyū*. 35 vols., Kyoto: Taiga-do, 1946-1949; Tokyo: Yūhi-kaku, 1949-1953), Vol. 23, pp. 23-30; Vol. 17, p. 95; and Vol. 26, pp. 27-36.

32. As to the economic situation in Japan immediately after the war, see SCAP, *History* (n. 23 *supra*), Monograph No. 36 Agriculture, pp. 2-4; *ibid.*, Monograph No. 39 Money and Banking, pp. 65-67; *ibid.*, No. 41 The Petroleum Industry, pp. 1-3; *ibid.*, No. 42 Fisheries, pp. 1-6; *ibid.*, No. 43 Forestry, pp. 36-38; *ibid.*, No. 45 Coal, pp. 2-3; *ibid.*, No. 47 The Heavy Industries, pp. 1-2; *ibid.*, No. 48 Textile Industries, p. 1; *ibid.*, No. 49 The Light Industries, pp. 1-2; *ibid.*, No. 50 Foreign Trade, pp. 56-57. In general, see Jerome B. Cohen, *Japan's Economy in War and Reconstruction* (Minneapolis: University of Minnesota Press, 1949), pp. 417-418.

meet the costs of the coming occupation. When the representatives of the Japanese Government were summoned by SCAP to Manila in the latter part of August 1945 in order to prearrange the reception of the occupation forces, they found that SCAP was planning to issue military currency for the occupation of Japan.³³ Previously, the issuance of military currency by an occupant had often caused severe inflation in an occupied territory,³⁴ and the Japanese Government was eager to avoid any impact deteriorating the nearly broken Japanese economy. Therefore, upon the arrival of the first occupation forces, an arrangement was made between SCAP and the Japanese Government providing that the latter would supply Japanese currency as required by the former to satisfy the needs of the occupant.³⁵ Similarly, in the Occupation Directive Number 2 (SCAPIN 2) dated September 3, 1945, SCAP directed the Japanese Government to place at the disposal of the occupation forces local resources, including labor and housing, for their use.³⁶

As for the funds to be provided for the occupant, SCAP Memorandum Number 1 (SCAPIN 7) of September 4, 1945, directed the Japanese Government to set up a special credit in the Bank of Japan for that purpose and to pay in as demanded by the occupation authorities.³⁷ However, starting in the 1946 fiscal year, the costs of the occupation were included as an item in the national budget under the Termination of War Appropriation, which the Government submitted annually to the Diet for approval.³⁸ In the meantime the Japanese Government established the Special Board of Procurement, whose duty was to provide goods and services to meet the needs of the occupation forces. All the expenditures for such goods and

33. Suekichi Takaishi, *Oboyegaki Shusen Zaisei Ato-Shimatsu* (Memoranda on the Japanese Finance after the Defeat. Hereafter cited as Takaishi, *Oboyegaki*. 22 vols., Tokyo: Ministry of Finance, 1958-1970), Vol. 1, p. 71.

34. *Ibid.*, Vol. 1, p. 70.

35. *Ibid.*, Vol. 1, p. 70; Takeshi Watanabe, *Senryo-ka Nihon Zaisei Oboyegaki* (Memoranda on the Japanese Finances under the Occupation. Hereafter cited as Watanabe, *Oboyegaki*. Tokyo: Nihon Keizai-sha, 1966), pp. 11-12.

36. For the text of the Occupation Directive Number 2 (SCAPIN 2), see SCAP, Government Section, *Political Reorientation of Japan* (Hereafter cited as SCAP, *Political Reorientation*. 2 vols., Washington: Government Printing Office, 1949), Vol. 2, p. 445ff at p. 450; Gaimu-sho, *Bunsho-shu* (n. 31 *supra*), Vol. 1, p. 45ff at pp. 67-69; University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 1, p. 27ff at pp. 47-49. All the written SCAP directives or instructions to the Japanese Government are available at the National Archives in microfilm. They are numbered approximately in the order of issuance and termed SCAPINs. Many SCAPINs are reproduced in SCAP, *Political Reorientation*; Gaimusho, *Bunsho-shu*; and University of Tokyo, *Kenkyu*. It must be noted that the form and style of SCAPINs were far from uniform, and sometimes an oral directive was treated as effective. See, for example, Hugh Borton, in Royal Institute of International Affairs, *Survey of International Affairs* (hereafter cited as *Survey*) 1939-1946 The Far East 1942-1946 (London: Oxford University Press, 1955), p. 321; University of Tokyo *Kenkyu*, Vol. 27, p. 4. See also SCAP, Government Section, Legal Division, *Chronological File*, Memorandum for the Record on Paper Allocation: Binding Effect in Japanese Law of Oral Directive by SCAP official, May 20, 1949 (U. S., National Archives).

37. University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 12, p. 116.

38. Takaishi, *Oboyegaki* (n. 33 *supra*), Vol. 12, p. 116.

services were paid from the Termination of War Appropriation.³⁹ It is reported that, at the beginning of the occupation, the amount of the Appropriation reached one third of the total national expenditures.⁴⁰ What with the necessity to prevent aggravated inflation and with the difficulty to secure commodities for the occupant from the scanty domestic market, the Japanese Government was forced more than once to request a reduction of the procurement.⁴¹ A large amount of Japanese private property was thus procured for the use by the occupation forces, but compensation was made in one form or another.⁴²

The demilitarization measures included seizures and destructions of war materials as well as weapons belonging to individual Japanese. By the Occupation Directive Number 1 (SCAPIN 1) dated September 2, 1945, the Japanese Government was directed to prohibit the manufacture and distribution of all arms, ammunitions, and implements of war.⁴³ The same directive stated that the Japanese Government hold intact and in good condition pending further instructions from SCAP all factories, plants, shops, research institutions, laboratories, and testing stations connected with the production or use of any implements of war.⁴⁴ In this directive the Government was also directed to collect arms in the possession of Japanese civilian populations and to deliver them to the occupation authorities.⁴⁵ Subsequently, all the buildings and materials involved were ordered to be destroyed or made objects of reparation; or they were allowed to be converted by Japanese for the production of essential consumer goods.⁴⁶

(i) *The Purge of Militarists and Ultrationalists*

By December 1945, the disarmament and demobilization of Japan both on the main islands and abroad had largely been completed. Repatriation of overseas Japanese, military as well as civilian, was well under way.⁴⁷ Thus, SCAP was ready for the next step, the elimination of the undesirable elements from the public life of the Japanese people. On January 4, 1946,

39. For the detail of the use of the Appropriation, see Special Board of Procurement (Chotatsu-cho), *Senryo-Gun Chotatsu-shi* (History of the Procurement by the Occupation Forces. 4 vols., Tokyo: Chotatsu-cho, 1956-1959).

40. Watanabe, *Oboyegaki* (n. 35 *supra*), p. 43.

41. *Ibid.*; Takaishi, *Oboyegaki* (n. 33 *supra*), Vol. 1, p. 145.

42. For examples, see University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 18, pp. 3-7.

43. For the text, see SCAP, *Political Reorientation* (n. 36 *supra*), Vol. 2, p. 442ff at p. 444; Gaimu-sho, *Bunsho-shu* (n. 31 *supra*), Vol. 1, p. 33ff at p. 41; University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 1, p. 17ff at pp. 23-25.

44. Paragraph 6-d. For the text, see n. 43 *supra*.

45. Paragraph 11. *Ibid.*,

46. University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 2, pp. 64-68 (Study Section).

47. SCAP, *Summation of Non-Military Activities in Japan and Korea* (n. 29 *supra*), No. 1 (September-October 1945), pp. 3, 13, 19, 21, 35-36, and 178; *ibid.*, No. 2 (November 1945), pp. 4 and 17; *ibid.*, No. 3 (December 1945), p. 153; *ibid.*, No. 4 (January 1946), p. 236.

two directives, SCAPIN 548 and SCAPIN 550, were issued to the Japanese Government, one ordering the abolition of militaristic and ultranationalistic organizations, the other demanding the expulsion of certain personnel from public service.⁴⁸ It had been stated in the Potsdam Declaration that: "There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest."⁴⁹ The U. S. Initial Post-Surrender Policy for Japan elaborated this by saying that: "[H]igh military and naval officials of the Japanese Government, leaders of ultra-nationalist and militarist organizations and other important exponents of militarism and aggression will be taken into custody.... Persons who have been active exponents of militarism and militant nationalism will be removed and excluded from public office and from any other position of public or substantial private responsibility."⁵⁰

SCAPIN 548 stated that formation of any political parties, associations, societies, or other organizations whose purpose was to encourage Japanese aggression and militarism must be prohibited. It listed 27 existing organizations to be abolished as such.⁵¹ Moreover, all organizations were to be abolished, if any of their members had belonged to any of the abolished organizations, or had been a commissioned officer of the Japanese army, navy, or volunteer reserve on active duty since 1930, or had served in or with the former military or naval police. It must be noted that SCAPIN 548 directed that all property owned or controlled, directly or indirectly, in whole or in part, by such organizations as were dissolved or to be dissolved must be seized and held in custody of the Japanese Government. Any of the seized property, it further provided, that was capable of use for the production of food, shelter or other necessities of life should as promptly as possible be exploited for these purposes. By the end of 1947, 120 organizations were named for dissolution and their property was seized.⁵² Finally by a SCAP directive of March 1, 1948, titles to all seized property were transferred to the Japanese Government, and subsequent directives authorized the Government to put the property in public use or to disperse it through sale to add to the Japanese national treasury.⁵³

SCAPIN 550 had literally sweeping effects on the Japanese political scene. Aiming at wiping out the influence of old exponents of Japanese military expansion, it specified seven categories of persons to be removed from public office and excluded from government service. These persons,

48. For the text of SCAPINs 548 and 550, see SCAP, *Political Reorientation* (n. 36 *supra*), Vol. 2, pp. 479-481 and 482-488; Gaimu-sho, *Bunsho-shu* (n. 31 *supra*), Vol. 2, pp. 94-98 and 262-275; University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 7, pp. 17-36 and 37-41.

49. Paragraph 6. For the text, see Appendix I *infra*.

50. Part III-1. For the text, see n. 25 *supra*.

51. This listing was not meant to be exhaustive, and there were many additions. For the text, see n. 48 *supra*.

52. SCAP, *History* (n. 23 *supra*), Monograph No. 7 The Purge, p. 125.

53. SCAPIN 1868. See University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 23, pp. 1-5. For the detail, see SCAP, *History* (n. 23 *supra*), Monograph No. 23 Japanese Property Administration, pp. 6-21.

ranging from wartime cabinet members to anyone who had denounced opponents of the then militaristic regime, were not only to be discharged from the public office which they were holding, but also to be disqualified from subsequently taking a position in government service. Moreover, SCAPIN 550 provided that removed or expelled persons would not be entitled to any public pensions or other emoluments or benefits without permission of SCAP. A literal application of the directive could have affected approximately 200,000 persons, including several prominent members of the cabinet in power as well as most of the parliamentarians. Although the task of screening purged persons was vested in the Japanese Government, SCAP's guiding hand was apparent. By early 1947, of 8,920 persons screened 1,067 were barred or removed with their pensions or emoluments denied.⁵⁴ Particularly sensational was the case of Ichiro Hatoyama, who was designated as a purgee when he was about to take the office of Prime Minister after winning the April 1946 election as the leader of the majority party.⁵⁵ During 1947 the purge program was extended to the local government level, affecting still more prefectural officials and legislature members.⁵⁶

Distinct from the purge in the political field, the U. S. Initial Post-Surrender Policy for Japan authorized SCAP to prohibit "the retention in or selection for places of importance in the economic field of individuals who do not direct future Japanese economic effort solely towards peaceful ends."⁵⁷ Though numbers of business leaders had been objects of the political purge, SCAP kept pushing the Japanese Government to remove and exclude undesirable persons from responsible positions in industry, commerce, and in finance. SCAPIN 550 had included among the seven categories of possible purgees "any person who...by ...action has shown himself to be an active exponent of militant nationalism and aggression," and as an interpretation of this phrase SCAP instructed the Japanese Government to issue an ordinance in January 1947, which provided for the purge of such key officials as those who had held positions of president, chairman, director, adviser, principal stockholder, or the like in any of the listed 246 companies between 1937 and 1945.⁵⁸ Thus, in consequence of this measure, altogether 1,989 business leaders became purged persons.⁵⁹ However, the measure met severe criticism even in the United States because it would needlessly disrupt recovery of the Japanese

54. SCAP, *History* (n. 23 *supra*), Monograph No. 7 The Purge, p. 9.

55. *Ibid.*, pp. 26-28. See also SCAP, *Political Reorientation* (n. 36 *supra*), Vol. 1, p. 26; Hans H. Baerwald, *The Purge of Japanese Leaders under the Occupation* (Berkeley, California: University of California Press, 1959), pp. 21-24.

56. SCAP, *History* (n. 23 *supra*), Monograph Mo. 7 The Purge, p. 35ff.

57. Part IV-2. For the text, see n. 25 *supra*.

58. See Japanese Government, Cabinet and Home Affairs Ministry, Ordinance No. 1, January 4, 1947, reproduced in SCAP, *Political Reorientation* (n. 36 *supra*), Vol 2, pp. 508-548.

59. SCAP, *History* (n. 23 *supra*), Monograph No. 7 The Purge, pp. 83-86.

economy.⁶⁰ The purged persons' rights to public and private pensions, annuities, or similar benefits were forfeited.

The purge programs were extended even among the educationalists of various levels. In Japan the modern education system had been highly centralized; most of the primary and secondary schools was run by the Government and teachers were government employees. To a large extent, this held true with colleges and universities. Therefore, SCAPIN 550 affected more than 400, 000 teachers and professors who were employees of the Government, and educationalists of a militaristic or ultranationalistic tint were removed from their positions with their pension rights deprived.⁶¹ In fact, as early as October 22, 1945, SCAP directed the Japanese Government to examine all teachers and educational officials in order to dismiss exponents of militarism and ultranationalism from among them.⁶² Further, by the directive of October 30 the same year, SCAP specified methods for the investigation, screening and certification of the teachers and officials.⁶³ The Japanese Ministry of Education, which was made responsible for the execution of this program, established screening committees for different ranks and localities.⁶⁴ A report of the Ministry recorded that, before the end of April 1949, 942,459 persons had passed through the screening process and 3, 151 of them had been declared unacceptable, namely, barred from occupying any positions in the education system of Japan.⁶⁵ Those who were declared unacceptable were deprived of their rights to public and private pensions and emoluments.⁶⁶

Apart from the political, economic, and educational purges, SCAP ordered the Japanese Government in November 1945 to terminate the payment of all military pensions without its specific authorization. This was said to affect 3, 000, 000 recipients and their 15, 000, 000 dependents.⁶⁷

(ii) *The Dissolution of Zaibatsu*

Zaibatsu literally means "financial clique" in Japanese. The word has been used to designate a small number of gigantic economic combines controlled by a few families, which throughout the modern history of Japan nearly monopolized the finance, industry, and commerce of the country and

60. *Newsweek*, January 27, 1947, p. 40 (Behind the Purge —American Military Rivalry).

61. SCAP, *History* (n. 23 *supra*), Monograph No. 31 Education, p. 62.

62. SCAPIN 178. See University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 4, pp. 43-47.

63. SCAPIN 212. See *ibid.*, pp. 63-65.

64. SCAP, *History* (n. 23 *supra*), Monograph No. 31 Education, p. 63.

65. *Ibid.*, p. 68.

66. See Japanese Cabinet Ordinance No. 62 (May 21, 1947), Art. 5 at Masakiyo Takahashi, *Tsuihoshu no Kodo no Genkai* (The Limitations Imposed on Conduct of Purged Persons. Tokyo: Minori Shobo, 1949), p. 288.

67. SCAPIN 338. See University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 5, pp. 45-49, and 61-62 (Study Section).

with their economic power have affected its national policies. During the Second World War the *Zaibatsu* was sometimes criticized by Americans as Japan's war-makers. "The men who control Japan's great financial and industrial monopolies," one of them said, "cannot lead Japan along the road to democracy and peace.... Their power derives from an economic system that keeps the great majority of the Japanese people impoverished [through cheap wages] and therefore unable to provide an adequate market for the products [of their own] modern, large-scale industries. *Zaibatsu* domination makes the emergence of an independent class of small capitalists virtually impossible.... Thus, a *Zaibatsu* controlled Japan would maintain, unchanged, the internal conditions that were basically responsible for launching Japan on her campaign of conquest." ⁶⁸ Such a view seems to have been taken into account by the U. S. Government in its formulation of the occupation policy. The U. S. Initial Post-Surrender Policy for Japan contained the sentence: "[I]t shall be the policy of the Supreme Commander... [t]o favor a program for the dissolution of the large industrial and banking combinations which have exercised control of a great part of Japan's trade and industry." ⁶⁹

In expectation of SCAP actions to effectuate this policy, several *Zaibatsu* groups submitted their voluntary plan of dissolution to the Japanese Government at the beginning of the occupation. The plan met SCAP approval in its directive of November 6, 1945.⁷⁰ This directive, however, ordered the Japanese Government not only to collect extensive data on the *Zaibatsu* dissolution but also to present its own plan for *Zaibatsu* dissolution, coupled with legislative and administrative means to prevent resurgence of similar private monopolies in the Japanese economy. In the meantime the U. S. Government sent a mission of experts to Japan, whose duty was to recommend specific measures for the *Zaibatsu* dissolution.⁷¹ The result was another SCAP directive dated July 23, 1946, which further instructed the Japanese Government to submit a proposal to eliminate the economic power of the listed *Zaibatsu* families, to limit intercorporate security holdings by them through holding companies, and to prohibit those companies from restricting free competition.⁷² The aim of this directive was

68. Andrew Roth, *Dilemma in Japan* (Boston: Little Brown, 1945), p. 97. See also William C. Johnstone, *The Future of Japan* (London: Oxford University Press, 1945), pp. 148-149; Laurence E. Salisbury, "The *Zaibatsu* as War-Makers," *Nation*, Vol. 161 No. 2 (July 14, 1945), pp. 30-32.

69. Part IV-2. For the text, see n. 25 *supra*.

70. SCAPIN 244. See SCAP, *Political Reorientation* (n. 36 *supra*), Vol. 2, pp. 565-566; Gaimu-sho, *Bunsho-shu* (n. 31 *supra*), Vol. 3, pp. 164-165; University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 5, pp. 9-13. See also SCAP, *History* (n. 23 *supra*), Monograph No. 24 Elimination of *Zaibatsu* Control, p. 137ff.

71. See U. S., Department of State, *Report of the Mission on Japanese Combines* (Written by Corwin D. Edward. Washington: Government Printing Office, Undated).

72. SCAPIN 1079. See SCAP, *Political Reorientation* (n. 36 *supra*), Vol. 2, pp. 567-568; Gaimu-sho, *Bunsho-shu* (n. 31 *supra*), Vol. 3, p. 194-196; University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 13, pp. 49-51.

to liquidate the system of holding companies whose sole function was to hold the majority of securities of other financial, industrial, and commercial companies as an instrument of control. Liquidation of this kind of company would imply, therefore, a breaking of *Zaibatsu's* chain of economic control. Accordingly, with SCAP approval, the Japanese Government established the Holding Company Liquidation Commission, which was authorized to take into custody and sell in the market all the securities held by those holding companies that would be designated for liquidation. By the end of 1949, the Commission disposed of more than half the securities taken from about 80 designated companies. The Commission's expenses were to be met from the proceeds of the sale, but the remainder of the sale's proceeds was to be used for reimbursing the original owners of the securities in the form of ten-year non-negotiable bonds.⁷³

Nevertheless, the dissolution of the holding companies alone could not prevent the resurgence of new monopolies. Unless the wealth and competence of individual *Zaibatsu* family members could be carefully controlled, they might easily seek out other economic opportunities. Thus, in a SCAP directive of November 26, 1945, the Japanese Government was instructed to freeze the private property of certain *Zaibatsu* family members as well as to control their economic activities.⁷⁴ Altogether 56 such family members were named, whose securities and other private property were to be disposed of only through the Holding Company Liquidation Commission. Every economic transaction of these persons, including tax payment and daily maintenance expenditures, required previous sanction of the Commission. Some of them applied for permission to accept appointment in a company but not all these applications were permitted.⁷⁵ Coupled with the economic purge, these measures almost completely excluded former *Zaibatsu* members from engaging in any significant business throughout Japan.

Furthermore, in order to perpetuate such exclusion and to prevent any future monopolies, SCAP moved to pass far-reaching anti-trust laws through the Japanese Diet. In April 1947 the Diet enacted the Law relating to Prohibition of Private Monopoly and Methods of Preserving Fair Trade, modeled after the Clayton Anti-Trust Act of the United States. In December that year the Diet also passed the Elimination of Excessive Concentration of Economic Power Law and the Law for Termination of

73. For the implementation of the directive, see Holding Company Liquidation Commission (Mochikabu-Kaisha Seiri Inukai), *Nihon Zaibatsu to Sono Kaitai* (The Dissolution of Japan's Zaibatsu. Hereafter cited as Mochikabu-Kaisha Seiri Inukai, *Kaitai*. 2 vols., Tokyo: Mochikabu-Kaisha Seiri Inukai, 1951), especially Vol. 1, pp. 429-443; Kisaburo Yokata (Ed.), *Rengo-Koku no Nihon Kanri* (The Allied Control of Japan. Kyoto: Taiga-do, 1947), pp. 232-251.

74. SCAPIN 1363. See Gaimu-sho, *Bunsho-shu* (n. 31 *supra*), Vol. 3, pp. 209-210; University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 16, pp. 31-33.

75. Mochikabu-Kaisha Seiri Inukai, *Kaitai* (n. 73 *supra*), Vol. 1, pp. 304-306.

Zaibatsu Family Control.⁷⁶ The last-mentioned law provided in essence that any *Zaibatsu* family member holding any official position in any of the *Zaibatsu* companies or affiliates so designated by the law must retire within 30 days, and that such a family member must be excluded from those positions in the designated companies for 10 years. Thus, the *Zaibatsu* clique was first separated from ownership in the economic activities and then from management, while the occupation authorities endeavored to introduce in Japan a rule of fair competition based upon the American pattern.

(iii) *The Land Reform*

Compared with the purge and the dissolution of *Zaibatsu*, the land reform had not received much attention in the planning of the U. S. occupation policy toward Japan. The U. S. Initial Post-Surrender Policy for Japan stated that: "Encouragement shall be given and favor shown to the development of organizations in labor, industry, and *agriculture*, organized on a democratic basis. Policies shall be favored which permit a wide distribution of income and of *the ownership of the means of production and trade*," but it is doubtful if anything more than an adjustment of land tenure was envisaged by the American Government as late as mid-October 1945.⁷⁷ In this connection, it is of great interest to note that a learned scholar on the question of the land reform in Japan has the following to say: "In fact there was a division of opinion in Washington concerning the matter of agrarian reform.... [The majority of the old Japan hands of the Department of State was] sceptical both of the feasibility and of the desirability of a land reform." But in the latter half of October 1945 one officer in the minority group within the Department sent in a memorandum to SCAP recommending a sweeping measure, which "'caught the imagination' of General MacArthur, and there seems little doubt that the decision to press for a land reform was his own."⁷⁸

Thus, after a month of speculation, SCAP issued a directive on December 3 urging a radical agrarian reform in Japan. The directive pointed out that the wide-spread tenancy system, which had enslaved Japanese farmers to centuries of feudal oppression, should be removed as an economic obstacle to democratic tendencies. Therefore, it ordered the Japanese Government to submit a program of land reform the gist of which was the transfer of land

76. For an English translation of these laws, see Holding Company Liquidation Commission, *Laws, Rules and Regulations concerning the Reconstruction and Democratization of Japanese Economy* (Tokyo: Kaiguchi Publishing Co., 1949).

77. Part II -2. Emphasis supplied. For the text, see n. 25 *supra*. Also, see SCAP, *History* (n. 23 *supra*), Monograph No. 27 *The Rural Land Reform*, pp. 23-25; U. S., National Archives, Department of War, Civil Affairs Division, Economic Branch, Agricultural Section, *Plan for Administration and Control of Agricultural Affairs by Military Government in Japan*, August 14, 1945.

78. Ronald P. Dore, *Land Reform in Japan* (London: Oxford University Press, 1959), pp. 131-132.

ownership from landlords to land operators.⁷⁹ The spirit of the directive was in line with the well-known argument that the agrarian reform was the key to a Japanese democratization as well as to its demilitarization. The existence of too many peasants on too little land under the exacting tenure system imposed by feudalistic landlords was the cause of the cheap labor in Japanese industry, which in turn gave birth to a poor domestic market and militaristic expansion for overseas possessions. Furthermore, the peasantry provided the best source for conscription.⁸⁰ To the conservative politicians and landowners in Japan the directive was a great shock.

Apart from this directive, however, the Japanese Government had made an independent effort to solve the agrarian problem, and in December 1945 legislation was enacted by the Diet to amend the Agricultural Land Adjustment Law of 1938.⁸¹ The new legislation, known as "the first land reform," provided that non-operating landlords must sell to the Government any of their cultivated land in excess of five *cho*,⁸² which was then sold to tenants; that an elected agricultural land commission composed of tenants, owner-cultivators, and landlords should be set up to handle negotiations for land transfer; that the land price for sale should be fixed in proportion to past rentals; and that all rents had to be paid in cash. These measures met with SCAP approval, but SCAP insisted that the maximum allowance for land-holding be radically reduced because the new legislation would leave 49% of the existing rented area still in tenancy. The analysis of the Japanese Government was that too radical a reduction would raise the resistance of the majority of owner-cultivators whose average holding was comparatively small.⁸³ Nevertheless, SCAP was determined to take a more drastic measure and put pressure on the Japanese Government through propaganda to the general public as well as through recourse to the inter-Allied machinery.⁸⁴

Finally in October 1946 the Japanese Government submitted draft bills to the Diet, which after a heated discussion and an intervening SCAP message, passed.⁸⁵ The new measures forced the sale of all land belonging to absentee landlords and limited the maximum holding of each farm house to three *cho*. The price of land purchase was fixed on the basis of the existing price

79. SCAPIN 411. See SCAP, *Political Reorientation* (n. 36 *supra*), Vol. 2, pp. 575-576; Gaimu-sho, *Bunsho-shu* (n. 31 *supra*), Vol. 4, pp. 108-110; University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 6, pp. 11-13.

80. In general, see E. Herbert Norman, *Japan's Emergence as a Modern State* (New York: Institute of Pacific Relations, 1940) and his *Soldier and Peasantry in Japan* (New York: Institute of Pacific Relations, 1943).

81. Committee on Record of Agricultural Land Reform (Nochi Kaikaku Kiroku Iinkai), *Nochi Kaikaku Tenmatsushi Gaiyo* (The History of the Agricultural Land Reform. Hereafter cited as Nochi Kaikaku Kiroku Iinkai, *Gaiyo*. Tokyo: Nosei Chosa-kai, 1951), pp. 110-113.

82. *Cho* is a traditional Japanese unit for acreage. 1 *cho* corresponds to 2.45 acres.

83. SCAP, Economic and Scientific Section, Natural Resources Division, Report No. 127 *Japanese Land Reform Program*, p. 18.

84. *Ibid.*, pp. 19 and 22-24.

85. Nochi Kaikaku Kiroku Iinkai, *Gaiyo* (n. 81 *supra*), p. 130.

control regulations, which incidentally were a product of the wartime economy and had frozen all prices at the 1939 level. Landlords were to receive compensation in the form of government bonds to mature in 30 equal annual installments, while tenants were to pay the Government in 30 years for their newly acquired land. The problem was, however, that the land price thus calculated was so low that it nearly amounted to confiscation even without considering the aggravated inflation.⁸⁶

To this "second land reform" program landlords were bitterly opposed, and they resorted to every means of resistance, which included intimidation of tenants, sabotage at the agricultural land commissions, bribery of the commission members, legal petitions, and law suits. Their legal allegation was that the new measures were in violation of the revised Japanese constitution which provided for expropriation of private property only against fair compensation. But the strong SCAP support for the program together with successive court decisions unfavorable to their claim helped discourage the resistance of landlords.⁸⁷ By the end of 1949, 90% of Japanese farm land was owned by owner-cultivators. There was no immediate indication that the land reform had raised the productivity in Japanese agriculture, although it had perhaps increased the incentive of farmers to work harder.⁸⁸

Section 4: The Effects of These Measures and Subsequent Development

An immediate effect of these drastic measures was a deterioration of the post-war economic situation in Japan. Japan was small in size, and only 14% of the total land was arable.⁸⁹ Yet it was one of the most densely populated areas in the world. To feed this over-populated islands, it was essential to develop manufacturing industries, whose products could be sold for food products from abroad. But the Japanese islands were fatally lacking in natural resources. The importation of raw materials was the key to national existence. The defeat in the war, however, had deprived the country of its free access to the world market. At the same time the ensuing occupation was destroying every war potential in Japanese industry. Uncertainties as to the amount and methods of the reparation, which was to be imposed on what would survive the economic disarmament, further heightened the

86. One specialist figures that the price of a *tan* (0.1 *cho*) of good rice land in 1939 would have bought more than 3,040 packets of cigarettes or 31 tons of coal. In 1948 it would have bought 13 packets of cigarettes or 0.24 tons of coal. See Andrew J. Grad, *Land and Peasant in Japan* (New York: Institute of Pacific Relations, 1952), pp. 219-220.

87. SCAP, *History* (n. 23 *supra*), Monograph No. 27 The Rural Land Reform, p. 80ff.

88. For example, see University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 30, pp. 28-30 (Study Section). Regarding the later development of agricultural productivity, see R. P. Dore, *Land Reform in Japan* (n. 78 *supra*), pp. 216-218.

89. *Encyclopedia Americana* (New York: Americana Corp., 1969 Ed.), Vol. 15, p. 742; *Sekai Hyakka Dai-Jiten* (Encyclopedia of the World. Tokyo: Heibon-sha, 1967), Vol. 17, p. 225.

insecurity and confusion among Japanese industrialists.⁹⁰ Indeed, in the first U. S. plan on Japanese reparations, it was asserted that: "[The United States] should take no action to assist Japan in maintaining a standard of living higher than that of neighboring Asian countries injured by Japanese aggression, insofar as such assistance will divert food or other material aid from these other countries, or will require the retention in Japan of industrial capacity, the removal of which is required on grounds of security.... This aim can be served by considered allocation, to different countries, of industrial equipment exacted from Japan as reparations. " ⁹¹

Thus, the shortage of food coupled with aggravated inflation became a daily concern to most Japanese. A general strike in support of an urgent wage increase was scheduled to start on February 1, 1947. The strike was by the Japan Union of All Government Workers, which comprised 2, 000, 000 or 30% of the organized labor unionists throughout Japan, and SCAP found no alternative but to intervene directly to stop the strike so that it would not result in irrevocable damage to the objectives of the occupation.⁹² Nevertheless, any solution to the pressing needs of the Japanese economy would have been impossible unless their inherent causes had been removed. By late 1947 this fact seemed to have received a genuine recognition by the occupation authorities. Simultaneously there spread in the United States the argument that any policy which hindered Japan from becoming economically self-supporting would result in more of a burden to the American taxpayers.⁹³

These technical considerations aside, however, the change of international circumstances since the end of hostilities of the Second World War had required the United States to remold its overall foreign policy and world strategy. In Europe and the Middle East, the U. S. S. R. had indicated its irreconcilable antagonism toward the Western nations. German problems had shown no sign of progress. In France and Italy, communists were gaining power. The political situation in Greece and Turkey was in turmoil and confusion. And in the Far East, the open civil war between Nationalist and Communist Chinese continued, while communist influence was penetrating the nationalist movements in Southeast Asia. Finally, the Truman Doctrine published in March 1947 and the announcement of Marshall Plan in July the same year marked a turning point in the post-World War II U. S. policy in global perspective, from cooperating with to standing against the communist bloc, militarily as well as economically.

This great shift could not have failed to affect the U. S. occupation policy

90. SCAP, *History* (n. 23 *supra*), Monograph No. 22 Reparations, p. 12ff.

91. U. S., Department of State, *Report on Japanese Reparations to the President of the United States* November 1945 to April 1946 (Written by Edwin W. Pauley. Washington: Government Printing Office, 1948), pp. 6-7.

92. Gaimu-sho, *Bunsho-shu* (n. 31 *supra*), Vol. 2, pp. 240-241; University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 17, p. 95 (Study Section).

93. J. B. Cohen, *Japan's Economy in War and Reconstruction* (n. 32 *supra*), p. 422.

toward Japan. As early as July 1946 MacArthur had told James Forrestal, the U. S. Secretary of Navy who was then visiting Tokyo and was soon to be appointed the first U. S. Secretary of Defense, that Japan must be regarded as the western outpost of the U. S. defenses.⁹⁴ Forrestal himself later admitted that the restoration of a balance of power in Asia would require the review of the levels of industry in Japan.⁹⁵ Likewise, in May 1947, Under Secretary of State Dean Acheson publicized the U. S. intention to reconstruct Germany and Japan as the "workshop of Europe and Asia."⁹⁶

Thus, in January 1948, the U. S. representative to the Far Eastern Commission announced that, in order to achieve the fundamental objectives of the occupation, greater efforts should be made to bring about the early revival of the Japanese economy on a peaceful but self-supporting basis.⁹⁷ Two months later the original U. S. plan on the reparations from Japan was withdrawn.⁹⁸ At that time two different sets of reports were published in the United States, one by the Army, the other by a group of businessmen, both stressing the need for an economically stable Japan to maintain peace and prosperity in the Far East.⁹⁹ One of them, the Report of the Johnston Committee, frankly stated that: "[The Committee] agrees with General MacArthur and the Department of the Army that industrial recovery of Japan on a peaceful basis is necessary to bring about a self-supporting economy; that this program has now properly become a primary objective of the occupation; and that the American Government in the national interest should support a reasonable recovery program."¹⁰⁰ Starting in early 1948, the oppressive control of the Japanese industry by the occupant was gradually relaxed with more and more encouragement for the production of export commodities. The relaxation included the rehabilitation of textile and rayon manufacturing industries, the transfer of Japanese frozen precious metals to the foreign exchange account, an increase in the importation and distribution of oil for industrial use, an increase in the

94. James Forrestal (Edited by Walter Millis), *The Forrestal Diaries* (New York: Viking, 1951), p. 177.

95. *Ibid.*, p. 341.

96. Dean Acheson, *Present at the Creation* (New York: Norton, 1969), p. 229. For a general account of the U. S. policy shift and its effects on the U. S. occupation policy in Japan, see Evert J. Leve van Aduard, *Japan from Surrender to Peace* (The Hague: Martinus Nijhoff, 1953), pp. 80-101.

97. U. S., National Archives, Record Group 43 Far Eastern Commission, *Minutes of Meetings*, 88th meeting (21 January 1948), pp. 14-15; U. S., Department of State (Written by G. H. Blakeslee), *The Far Eastern Commission* (n. 24 *supra*), pp. 154-155.

98. U. S., Department of State (Written by G. H. Blakeslee), *The Far Eastern Commission* (n. 24 *supra*), p. 158.

99. They are *Report on Industrial Reparations Survey of Japan to the United States of America* by the Overseas Consultants, Inc. (New York, 1948), and *Report on the Economic Position and Prospects of Japan and Korea and the Measures Required to Improve Them* (Washington; April 26, 1948) by the Johnston Committee.

100. Johnston Committee's *Report* cited in n. 99 *supra*, pp. 4-5. For a critical view of this report, see Eleanor M. Hadley, "Japan: Competition or Private Collectivism," *Far Eastern Survey*, Vol. 18 No. 25 (December 14, 1949), pp. 289-294.

permissible total shipbuilding tonnage, the encouragement of fishing and whaling industries, and the step-by-step recovery of the iron and steel industry.¹⁰¹

The effects of this change of policy were most directly observable in the case of the *Zaibatsu* dissolution and the supplementary measures connected with it. As has been pointed out, the initial occupation policy concerning the big combines was a complete removal of *Zaibatsu* influence from the Japanese economy. The means to achieve this end were the designation of holding companies for liquidation, the removal of *Zaibatsu* personnel from designated company positions, and the prevention of resurgence of similar private monopolies. In long term perspective and for a democratization of the Japanese economy, the most representative of these means was the enactment of the Elimination of Excessive Concentration of Economic Power Law in December 1947.¹⁰² The Law authorized the Holding Company Liquidation Commission to designate any private enterprise or combination of enterprises whose economic power might restrict free competition or impair an opportunity for others to engage in business independently in any segment of the Japanese economy. Upon such a designation, the Commission was to take whatever actions necessary to eliminate the excessive concentration of economic power. However, the enforcement of the deconcentration law was doomed to be weakened immediately after it was enacted.

As a matter of fact, in February 1948, the Commission designated 257 industrial and 68 distributive and service companies as excessive concentrations according to the law, and the designations were soon to be extended to other fields in the economy, such as banking and finance. This covered most of the *Zaibatsu*-controlled companies, including holding companies which had been designated for liquidation. But in April 1948 SCAP announced that it had been in consultation with the Commission in view of the fact that the prevailing U. S. policy had made the list of 325 companies too large and that the deconcentration measures should not hamper the economic recovery of Japan.¹⁰³ In the following month 144 companies, and by July 81 additional companies were removed from the designation as not amounting to the prohibited concentration. Furthermore, in response to a SCAP proposal, the U. S. Government dispatched a Deconcentration Review Board composed of five specialists, whose duty was to review the plans of action that the Holding Company Liquidation Commission would make in implementation of the deconcentration law with

101. On the measures of relaxation in general, see Gaimu-sho, *Bunsho-shu* (n. 31 *supra*), Vol. 3, pp. 1-17; *ibid.*, Vol. 4, pp. 1-55.

102. See n. 76 *supra*. For the development of the occupation measures concerning the *Zaibatsu* dissolution and the present-day significance of those measures, see Eleanor M. Hadley, *Anti-Trust in Japan* (Princeton, N. J. : Princeton University Press, 1970).

103. SCAP, *History* (n. 23 *supra*), Monograph No. 25 Deconcentration of Economic Power, pp. 25-28.

respect to the remaining 100 companies. In the final analysis, only 18 companies were ordered to go through reorganization, while the rest was let free in one way or another. The reorganization meant, in most cases, a mere division of the existing company into two or more concerns. Finally, no measures were taken with respect to banks and insurance companies.¹⁰⁴ In the opinion of the Board, any such reorganization of a private enterprise should not involve an arbitrary violation of its fundamental rights of property or its freedom of action.¹⁰⁵

The effect of this process on the *Zaibatsu* can be summarized as follows: To the extent that the Holding Company Liquidation Commission had liquidated the holding companies and had disposed of the securities and other property belonging to the companies or to the individual *Zaibatsu* family members, the *Zaibatsu* had been deprived of its economic power. Also, as long as the designated *Zaibatsu* family members were barred from engaging in business activities, they could not influence the course of the Japanese economy. But it is obvious that the occupation intentionally failed to eliminate *Zaibatsu* control in those industrial, commercial, and most importantly, financial companies which had escaped the deconcentration measures. A closer look at development of the purge program will be needed, in so far as the question of keeping the managerial skill of the *Zaibatsu* family members and officials is concerned.

The shift of the occupation policy also affected the purge measures. Even in the early stage of the purge program, purged persons were sometimes allowed to retain their positions when their services were essential to the functioning of the government. Also, in March 1947, a special board was established by the Japanese Government to accept appeals from purged persons for the purpose of reviewing and deciding whether their removal had been well grounded or not. Around mid-1948, however, demand developed among Japanese that reinstatement of men of competence be urgently carried out in the interest of the political as well as economic rehabilitation of Japan.¹⁰⁶ In February 1949, with SCAP approval, the Japanese Government issued an ordinance by which the Prime Minister was authorized to rescind the purge designation of any individual upon appeal and reexamination, and by the fall of 1950 the designation had been removed from 13, 340 persons, reducing the number of purged persons to 193, 602. Significantly enough, of 13, 340 depurgees 4, 626 were in the economic categories.¹⁰⁷ In the field of education, too, almost all the designations of the purges were removed during 1950 and early 1951.

This general trend notwithstanding, the original purge directives were of

104. For the detail of the reorganization, see Mochikabu Kaisha Seiri Iinkai, *Kaitai* (n. 73 *supra*), Vol. 1, pp. 315-428.

105. SCAP, *History* (n. 23 *supra*), Monograph No. 25 Deconcentration of Economic Power, p. 40.

106. SCAP, *History* (n. 23 *supra*), Monograph No. 7 The Purge, p. 112.

107. *Ibid.*, pp. 114-115.

material advantage to the occupation authorities. As the communist movement inside Japan became active in the course of 1948 and even violent in 1949, SCAP and the Japanese Government resorted to these directives to remove communist influence from the Japanese political scene. During 1949 and 1950, 61 executive committee members and editorial officers of the Japan Communist Party, including 13 Diet members, were designated purged persons, while more than 10,000 communists or sympathizers were removed from various government posts.¹⁰⁸ Several leftist organizations were ordered to liquidate and their property was seized.

In contrast to the *Zaibatsu* dissolution and the purge program, the land reform survived the change of the occupation policy intact. Despite repeated efforts by the former landlords to obtain more equitable compensation for their forcibly purchased land, the Japanese Government continued to refuse such demands.¹⁰⁹ In November 1951 SCAP directed that the land owned by Allied or neutral nationals in Japan, which had been made immune from the reform program, be treated under the reform program in the same way as the land owned by the Japanese.¹¹⁰

The outbreak of war in Korea in 1950 not only worked to consolidate this general tendency of the occupation, but also motivated the United States to conclude a treaty of peace with Japan as quickly as possible. As early as 1947, SCAP had recommended the termination of the occupation and the making of peace with Japan and the U. S. Government had been prepared to take that action, but the deterioration of East-West relations precluded that possibility.¹¹¹ In 1951, however, the occupation had long outlived its purpose, and the United States decided to transfer its control over Japan rapidly and smoothly to the Japanese Government. In May 1951 General Matthew Ridgway, the successor to MacArthur as SCAP, considering Japan's peaceful reconstruction in line with the occupation objectives, directed the Japanese Government to be authorized to review all occupation directives and corresponding Japanese measures for any modification which might be necessary under the existing circumstances.¹¹² Thus, before the end of the occupation in April 1952 the number of remaining purged persons was reduced to 8,932, and the designation of holding companies as well as of 56 *Zaibatsu* family members was annulled.¹¹³ It might be added that the military pensions were restored, and even the production of weapons and

108. SCAP, *History* (n. 23 *supra*), Monograph No. 7 The Purge, pp. 64-66.

109. See, for example, R. P. Dore, *Land Reform in Japan* (n. 78 *supra*), pp. 441-442. However, in 1965, the Diet enacted a law, by which the old landlords were entitled, upon report and examination, to obtain some additional compensation for their lands affected by the reform.

110. SCAPIN 2184. See University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 35, pp. 104-106.

111. For the early U. S. efforts to make peace with Japan, see H. Borton in *Survey* (n. 36 *supra*) 1939-1946, The Far East 1942-1946, pp. 418-426.

112. See General Ridgway's statement on the fourth anniversary of the revised constitution of Japan of May 3, 1951, in SCAP, *History* (n. 23 *supra*), Monograph No. 7 The Purge, Appendix 22.

113. H. H. Baerwald, *The Purge of Japanese Leaders under the Occupation* (n. 55 *supra*), p. 79

aircraft was permitted under special SCAP authorizations. In fact, MacArthur instructed the Japanese Government in July 1950 to establish the Special Police Reserve, which was generally regarded as the first step toward Japanese rearmament.¹¹⁴

114. See University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 34, p. 41 (Study Section). See also Frank Kowalski, Jr., *The Rearmament of Japan* (Not published in the United States yet, but its translation by Kinjiro Katsuyama was published in Japan as *Nihon Sai-Gunbi* from Tokyo: Simul Press, 1969).

CHAPTER 3

THE LEGAL BASIS OF THE MEASURES IN QUESTION

The study in Chapter 2 indicated that SCAP directives were ordinarily formulated on the basis of instructions received from the U. S. Government. The U. S. Initial Post-Surrender Policy for Japan is the most representative and comprehensive of all such instructions. However, these instructions are of purely American origin, and while they are certainly necessary for the understanding of the U. S. occupation policy, the policy itself is not necessarily the legal basis for the measures deriving from it. Occupation measures were addressed to the Japanese Government and, through the Government, to the Japanese people. The relations between an occupant and an occupied territory and the inhabitants therein are regulated by international law, and U. S. occupation measures must be based on that law in so far as they claim to be lawful on the international plane.

Viewed against this background, what was the U. S. position concerning the legal basis of the measures that affected the private property of the Japanese? Not all the SCAP directives bearing on the purge program, the *Zaibatsu* dissolution, or the land reform contain a clear statement as to their legal ground. However, SCAPIN 550, in which the Japanese Government was instructed to remove undesirable personnel from public service, is very explicit in this respect. The directive quotes Paragraph 6 of the Potsdam Declaration that: "There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest." ¹¹⁵ Then it goes on to stipulate that: "In order to carry out this provision of the Potsdam Declaration, the Imperial Japanese Government is hereby ordered to remove from public office and exclude from government service" such and such persons.¹¹⁶ Obviously, the directive is based on a specific provision of the Potsdam Declaration.

To a lesser extent this holds true of SCAPIN 411, by which the land reform was initiated. Its opening sentence runs: "In order that the Imperial Japanese Government shall remove economic obstacles to the revival and strengthening of democratic tendencies...the Japanese Imperial Government is directed to take measures...." ¹¹⁷ An official report of SCAP reiterates this as follows:

The Potsdam Declaration...stated: "The Japanese Government shall removed all obstacles to the revival and strengthening of

115. For the text of the Potsdam Declaration, see Appendix I *infra*.

116. Article 2. For the reproduction of SCAPIN 550, see SCAP, *Political Reorientation* (n. 36 *supra*), Vol. 2, pp. 482-488; Gaimu-sho, *Bunsho-shu* (n. 31 *supra*), Vol. 2, pp. 262-275; University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 7, pp. 17-35.

117. SCAP, *Political Reorientation* (n. 36 *supra*), Vol. 2, p. 575; Gaimu-sho, *Bunsho-shu* (n. 31 *supra*), Vol. 4, p. 108; University of Tokyo, *Kenkyu* (n. 31 *supra*), Vol. 6, p. 12.

democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for fundamental human rights shall be established." Any appraisal of the land tenure system inevitably indicated its conflict with this objective. The Japanese had promised to correct such situations; the Instrument of Surrender pledged the Japanese Government to take whatever action might be required by the Allied Powers for the purpose of giving effect to the Potsdam Declaration.¹¹⁸

A SCAP report on the abolition of the militaristic and ultranationalistic organizations and a similar report on the *Zaibatsu* dissolution follow suit.¹¹⁹ In other words, the United States appears to have relied on the Potsdam Declaration, coupled with the Instrument of Surrender, as the legal basis for these occupation measures.

However, in a recent law suit in Japan, the international legality of some of these occupation measures was questioned from an entirely different angle. The suit involved a claim to the ownership of immovable private property, which used to belong to one of the abolished "militarist organizations," but which, after its abolition, had been transferred to the Japanese Government by virtue of SCAPIN 548.¹²⁰ The plaintiff of the case, who was one of the original owners of the property, asserted that the Hague Regulations of 1907, annexed to the Fourth Hague Convention concerning the Laws and Customs of War on Land, applied to the U. S. occupation of Japan; that Article 46 of the Regulations required an occupant to respect and not to confiscate private property belonging to the inhabitants of an occupied area; that SCAPIN 548 had violated the provision of Article 46 because the transfer of his property to the Japanese Government without compensation had constituted confiscation prohibited thereunder; and that, such transfer having been null and void, the property in question should be restored to him.¹²¹

This case raises the question of the applicability of the Hague Regulations to all U. S. occupation measures. As noted in the Introductory Chapter, the provisions of the Hague Regulations are regarded as declaratory of general rules of international law, and Section III of the Regulations contains a group of rules relating to a military occupant's rights and duties with respect to the persons and property of enemy civilians in an occupied territory. In fact, the U. S. Army Field Manual on the Rules of Land Warfare, in force during the occupation of Japan, had incorporated the

118 SCAP, Economic and Scientific Section, Natural Resources Division, Report No. 127 *Japanese Land Reform Program*, pp. 13-14.

119. SCAP, *History* (n. 23 *supra*), Monograph No. 24 Elimination of *Zaibatsu* Control, pp. 1-2; *ibid.*, Monograph No. 7 The Purge, pp. 1-5.

120. For SCAPIN 548, see n. 48 *supra*.

121. *Kakyo Saibansho Minji Saiban-Rei-Shu* (Report of Lower Courts' Judgments Civil Cases), Vol. 17 Nos. 1-2, pp. 113-114. For an English translation of the text of this judgment, see *Japanese Annual of International Law*, Vol. 10 (1966), p. 197ff.

Hague Regulations into it.¹²² Furthermore, in the general instruction to its command dated December 19, 1945, concerning the purposes of the occupation and implementation thereof, SCAP stated that: "The civilian population will be kept free from all unwarranted interference with their individual liberty and property rights.... The occupation forces will observe the obligations imposed upon them by international law and the rules of land warfare." ¹²³

Thus, assuming that the Hague Regulations were pertinent to the U. S. occupation of Japan, could they be applied if contrary to the provisions of the Potsdam Declaration and the Instrument of Surrender? A U. S. answer to this question seems to have been provided by the Presidential message to SCAP, dated September 6, 1945. In the message President Truman attempted to clarify the authority of SCAP vis-à-vis the Japanese Government, saying that:

The authority of the Emperor and the Japanese Government to rule the State is subordinate to you as the Supreme Commander for the Allied Powers. You will exercise your authority as you deem proper to carry out your mission. Our relations with Japan do not rest on a contractual basis, but on an *unconditional surrender*. Since your authority is supreme, you will not entertain any question on the part of the Japanese as to its scope.¹²⁴

That is to say, the Potsdam Declaration and the Instrument of Surrender had brought about an unconditional surrender, by virtue of which Japan was not entitled to question nor to protest whatever instructions might be given by SCAP, even if they contradicted the Hague Regulations.

This point was reiterated in further detail by the U. S. document entitled "Basic Initial Post-Surrender Directive to the Supreme Commander for the Allied Powers for the Occupation and Control of Japan," which was sent to SCAP by the U. S. Government as an elaboration of, as well as a complement to, the U. S. Initial Post-Surrender Policy for Japan.¹²⁵ According to the document, the legal basis of the authority of SCAP over Japan was the Instrument of Surrender incorporating the Potsdam Declaration. "Pursuant to these documents your authority over Japan, as the Supreme Commander for the Allied Powers, is supreme for the purpose of carrying out the surrender. In addition to the conventional powers of a military occupant of enemy territory, you have the power to take any steps deemed...proper by you to effectuate the surrender and the provisions of

122. See U. S., War Department, *Rules of Land Warfare* (Washington: Government Printing Office, 1940).

123. Gaimu-sho, *Bunsho-shu* (n. 31 *supra*), Vol. 1, p. 169; SCAP, General Headquarters, Public Relations Office, *Press Release*, December 19, 1945.

124. U. S., Department of State, *Occupation of Japan - Policy and Progress*, p. 88. See also U. S., Department of State, *Foreign Relations 1945* Vol. 6, pp. 711-712. Emphasis supplied.

125. U. S., Department of State, *Documents and State Papers*, Vol. 1 No. 1 (April 1948), p. 32ff; U. S., Congress, Senate, Committee on Foreign Relations, *A Decade of American Foreign Policy Basic Documents 1941-1949* (Washington: Government Printing Office, 1950), 633ff.

the Potsdam Declaration."¹²⁶

The purpose of the present thesis is to evaluate, from the standpoint of international law, those U. S. dealings with Japanese private property which were studied in the preceding Chapter. Considering the U. S. understanding on the legal basis of its treatment of Japanese private property and the Japanese contention, as introduced above, that the legality of the occupation measures should be tested on the basis of the Hague Regulations, the present thesis must find an answer to the following problems:

First, do the Hague Regulations apply at all to the U. S. occupation of Japan? The U. S. occupation of Japan started after the general termination of hostilities of the Second World War, but the Hague Regulations are ordinarily regarded as applicable to a belligerent's conduct during hostilities. This raises the question as to the applicability of the Hague Regulations to a post-hostilities occupation in general and to the U. S. occupation of Japan in particular.

Second, does the unconditional surrender affect the applicability of the Hague Regulations to the U. S. occupation of Japan? It was the view of the United States that the unconditional surrender, resulting from the Potsdam Declaration and the Instrument of Surrender, authorized the occupant to exercise rights more extensive than those recognized under the Hague Regulations. Therefore, an inquiry has to be made into the question whether and to what extent the Japanese surrender limited the application of the Hague Regulations to the post-surrender occupation. This question presupposes the more general question whether and to what extent an unconditional surrender limits the application of the Hague Regulations to a post-surrender occupation.

Third, in the light of the examination of the two problems, as stated above, it must finally be analyzed whether or not the U. S. occupation measures in question were forbidden by international law, that is to say, by the Hague Regulations and/or by international agreements — the Potsdam Declaration and the Instrument of Surrender. In making this analysis, attention must be paid to the fact that those measures were directed by SCAP but were actually taken by Japan. Does this fact affect the responsibility of the United States as the occupant, and was there any remedy made available for the damages to Japanese private property which were caused by the occupation measures?

An attempt will be made in ensuing Chapters to find answers to these problems. The general questions whether the Hague Regulations apply to a post-hostilities occupation and whether and to what extent an unconditional surrender limits the application of the Hague Regulations to a post-surrender occupation will be dealt with first. Then the result of these inquiries will be applied to the U. S. occupation of Japan in order to evaluate the legality in international law of the U. S. treatment of Japanese private

126. Part I -2. For the text, see n. 125 *supra*.

property in question. Although the main theme of the present thesis is an international legal appraisal of those particular occupation measures which aimed at demilitarizing and democratizing the Japanese society—the purge of militarists and ultranationalists, the dissolution of *Zaibatsu*, and the land reform—, the legality of the ordinary U. S. occupation measures—the requisitioning and seizure of Japanese property for the use by the occupation forces—will also be studied in so far as it helps the analysis of the main subject.

CHAPTER 4

THE APPLICABILITY OF THE HAGUE REGULATIONS TO A POST-SURRENDER OCCUPATION

Section 1: The Hague Regulations and Their Applicability to a Post-Hostilities Occupation

(i) *The Provisions of the Hague Regulations concerning Private Enemy Property*

Before proceeding to examine the applicability of the Hague Regulations to a post-hostilities occupation of enemy territory, a brief look into the provisions of Section III of the Regulations, particularly those concerning an occupant's treatment of private enemy property is in order.

The Hague Regulations form an integral part of the Convention with Respect to the Laws and Customs of War on Land, which was first adopted at the International Peace Conference of 1899 and slightly revised at the Second International Peace Conference of 1907.¹²⁷ Section III of the Regulations contain fifteen articles (Articles 42-56) that deal with the occupation of enemy territory in time of war. The most basic is Article 43, which provides that an occupant shall "take all measures in his power to restore, and insure, as far as possible, public order and safety" of an occupied area. In executing this obligation, an occupant must respect the laws in force in an occupied state, unless absolutely prevented from so doing.

As for enemy property, the Hague Regulations distinguish public and private property. Regarding the former, Article 55 permits an occupant to utilize immovable public property as administrator and usufructuary, while Article 53, Paragraph 2, entitles him to take possession of public cash, funds, realizable securities and all other movable public property which may be used for the conduct of war. In contrast to this, the Regulations impose strict limitations on an occupant's treatment of private enemy property. In general, Article 46 obligates an occupant to respect private enemy property. His interferences with it, such as contributions, requisitions, or seizures, are permissible only when carried out in accordance with the procedure prescribed in Articles 48, 49, 51-54, and 56.¹²⁸ In all cases, however, confiscation of private enemy property is prohibited by Article 46, Paragraph 2. Similarly, Article 47 outlaws pillage. Outside of Section III,

127. For the records of the two Hague Conferences, see James B. Scott, *The Proceedings of the Hague Conferences* (5 vols. including Index Volume. New York: Oxford University Press, 1920).

128. For the detail of each Article, see Chapter 5, Section 3, (i) *infra*.

Article 28 specifically prohibits the pillage of a town or place, even when taken by assault. Destruction or seizure of enemy property, public or private, is generally forbidden by Article 23 (g), unless demanded by the necessities of war.

The provisions of Section III of the Hague Regulations are said to be a product of the nineteenth century idea on war and economy. In the nineteenth century the Rousseau-Portales Doctrine was widely recognized. According to this Doctrine, wars were directed against sovereigns and armies, not against subjects and civilians.¹²⁹ In the nineteenth century the economy was based on the principle of *laissez-faire* and the inviolability of private property. States were not to initiate but to prevent public interferences in the lives and property of individual citizens. Hence, in the Hague Regulations, there is a clear-cut division between public and private property. Extensive protection of private property rights is also provided.

Furthermore, during the nineteenth century, the distinction between belligerent occupation of enemy territory and conquest became established in the theory and practice of international law.¹³⁰ Formerly an invasion or military occupation of enemy territory was considered a conquest, by which an occupant acquired the right to treat the territory and the inhabitants therein as his own territory and subjects.¹³¹ But, while a conquest implied a permanent transfer of sovereignty over conquered territory, belligerent occupation was a yet undecided phase of a war, and occupied territory might at any moment be restored to the original sovereign. Because of this temporary and essentially precarious character of belligerent occupation, as opposed to the permanency of a conquest, a belligerent occupant was not entitled to full sovereignty over occupied territory and had to abstain from changing fundamental institutions. Hence, in the Hague Regulations an occupant is obliged to respect the laws in force of the occupied state.

Thus, the traditional powers possessed by an occupant were limited by the provisions of Section III of the Hague Regulations, which reflected the emergence of the two principles that developed and consolidated themselves in the nineteenth century. The first principle, under the influence of liberal ideas, purported to protect the interests of enemy inhabitants, by militating against an occupant's undue interference with persons and property. This principle is regarded as an expression of humanitarian consideration which constitutes an indispensable element of the law of war in general, and might be termed the principle of humanity.¹³² The second principle purported to

129. Ernst H. Feilchenfeld, *The International Economic Law of Belligerent Occupation* (Hereafter cited as Feilchenfeld, *Economic Law*. Washington: Carnegie Endowment for International Peace, 1942), p. 12.

130. See Ernest Nys, *Le droit international* (3 vols., nouvelle éd. Bruxelles: M. Weissenbruch, 1912), Tome 3, pp. 223-243. See, for the general trend, also Doris A. Graber, *The Development of the Law of Belligerent Occupation 1863-1914* (New York: Columbia University Press, 1949), especially Chapter 2.

131. E. Nys, *Le droit international* (n. 130 *supra*), Tome 3, p. 242.

132. See, for example, Quincy Wright in *World Polity*, Vol. 1, pp. 200-201.

protect the interests of legitimate sovereign, by preventing a temporary occupant from meddling in the fundamental institutions of occupied territory. This principle might be termed the principle of precariousness.¹³³ Therefore, the provisions of Section III of the Hague Regulations can be said to have been built around these two principles. The provisions relating to the occupant's treatment of private enemy property are regarded as stemming from the principle of humanity.

Before 1914 the validity of the provisions of the Hague Regulations concerning an occupant's dealing with enemy property was questioned little. But many of the practices of occupants during the First World War testified to the inadequacies and shortcomings of those provisions. In matters of the protection of the economic interests of a whole region or territory under belligerent occupation, the Hague Regulations concerned not so much the economic needs of the entire population as those of individual inhabitants.¹³⁴ Moreover, the post-World War I world witnessed new developments in the concept of war and economy. On the one hand, wars of the twentieth century came to be waged with the total participation of nationals and their wealth. Civilians could no longer stay out of a war as in the nineteenth century. On the other hand, with the advent of the socialist regime in the Soviet Russia, a clear-cut distinction between public and private sectors of an economy became hardly sustainable. The twentieth century idea of welfare states placed the public needs above the private ones. The domestic laws of most states came to authorize expropriation of private property for public use. In socialist states private ownership was extensively restricted. States were to intervene in almost every aspect of individuals' lives, including their economic activities. The basic principles or assumptions on which Section III of the Hague Regulation are built must be reexamined.¹³⁵

Nevertheless, in the Second as well as in the First World War, the provisions of Section III of the Hague Regulations, in particular those relating to private enemy property, were applied as they stand. In the First World War the German Government never attempted to deny the force of Section III.¹³⁶ During and after that war, German practices in the occupied territories were evaluated on the basis of the Hague Regulations.¹³⁷ Even after the Second World War the International Military Tribunal at Nuremberg rejected the German contention that the Hague Regulations were outmoded by the totality of modern wars, and the tribunal condemned the Nazi concept of total warfare as the very cause of German war

133. E. H. Feilchenfeld, *Economic Law* (n. 129 *supra*), pp. 11-12. See also Raymond Robin, *Des occupations militaires en dehors des occupations de guerre* (Paris: Sirey, 1913), p. 611ff.

134. E. H. Feilchenfeld, *Economic Law* (n. 129 *supra*), pp. 12-13.

135. See, for example, J. Stone, *Legal Controls of International Conflict* (New York: Reinhart, 1954), pp. 727-732.

136. E. H. Feilchenfeld, *Economic Law* (n. 129 *supra*), p. 22.

137. In general, see James W. Garner, *International Law and World War* (2 vols., New York: Longmans, 1920).

crimes.¹³⁸ In the same vein, the U. S. Military Tribunal at Nuremberg stated in its judgment of July 29, 1948, that technical advancement in weapons and tactics might have made obsolete some of the provisions of the Hague Regulations concerning the actual conduct of hostilities, but those relating to the conduct of a military occupant toward inhabitants of occupied territory remained valid and effective.¹³⁹ It might be added that, in the words of both the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East, "[B]y 1939 these rules laid down in [the Hague Regulations]...were recognized by all civilized nations, and were recognized as being declaratory of the laws and customs of war...." ¹⁴⁰

After the Second World War the effort of the community of nations to reinforce and supplement the Hague Regulations produced the four Geneva Conventions for the Protection of War Victims of 1949.¹⁴¹ Above all, the Geneva Convention relative to the Protection of Civilian Persons in Time of War has greatly increased both the quality and the quantity of the protection to be accorded to civilian populations under military occupation of enemy forces. But, while this Convention elaborated the protection of the personal rights of the civilians, the protection of their property rights was left in much the same form as under the Hague Regulations of 1907.¹⁴² Thus, notwithstanding their inadequacies and shortcomings, as mentioned earlier, the provisions of Section III of the Hague Regulations still remain as the rules of general international law concerning an occupant's treatment of private enemy property.

(ii) *The Applicability of the Hague Regulations to a Post Hostilities-Occupation*

Do the Hague Regulations, in particular the provisions of Section III, apply to an occupation of enemy territory after hostilities of war come to an end? In order to find an answer to this question, the means of ending

138. See *In re Goering and Others* in International Military Tribunal, *Trial of the Major War Criminals before the International Military Tribunal* (Hereafter cited as International Military Tribunal, *Trial of the Major War Criminals*. 42 vols., Nuremberg, 1947-1949), Vol. 1, p. 227. For the German contention, see *ibid.*, Vol. 17, p. 522ff. For the concept of total war, see also Hersch Lauterpacht, "The Law of Nations and the Punishment of War Crimes," *British Year Book of International Law*, Vol. 21 (1944), pp. 74-75.

139. *In re Krauch and Others*, (1948) Ann. Dig. 677-678 (No. 218). See also *In re Weizsaecker and Others*, (1949) Ann. Dig. 344, 358 (No. 118); *In re Fiebig*, *ibid.* 487, 489 (No. 180).

140. *In re Goering and Others*, International Military Tribunal, *Trial of the Major War Criminals* (n. 138 *supra*), Vol. 1, p. 254. See also *In re Hirota and Others*, (1948) Ann. Dig. 356, 366 (No. 118).

141. For the record of the Conference, see *Final Record of the Diplomatic Conference of Geneva of 1949* (4 vols., Berne: Federal Political Department, Swiss Government, 1949).

142. See International Committee of the Red Cross, *The Geneva Conventions of 12 August 1949 Commentary* 4th Geneva Convention relating to the Protection of Civilian Persons in Time of War (Geneva, 1958), pp. 614-615 and 618-620.

hostilities in international law must be briefly stated.

In international law cessation of hostilities is distinguished from the formal termination of war.¹⁴³ The former does not end a state of war. According to the traditional view the relations between states are either in a state of peace or in a state of war.¹⁴⁴ When a state of war starts and when it ends is itself a difficult question,¹⁴⁵ but a state of war, once recognized to exist between states, is terminated ordinarily either by the subjugation of one belligerent to the other or by the conclusion of a peace treaty between them.¹⁴⁶ A state of peace is governed by the so-called law of peace, a state of war by the law of war: No intermediate status exists between a state of peace and that of war.

However, in recent times, questions have been raised as to the necessity to recognize the existence of an intermediate or third status so that application of the law of peace or war can be handled more flexibly.¹⁴⁷ As a result, it is now an open question whether and to what extent the law of war should govern the relations between belligerent states after their hostilities come to an end but before a state of peace is formally restored. The unconditional surrender of Japan and Germany brought an end to the hostilities of the Second World War, but their occupation by the Allied Powers took place before the treaty of peace was concluded between these two states and the Allies or any other corresponding measures were taken. Thus, whether and to what extent the Hague Regulations should govern the Allied occupation of Japan and Germany, and more generally, whether and to what extent the Hague Regulations should govern occupation of enemy territory after cessation of hostilities requires a careful examination.

Before the Second World War cessation of hostilities was usually brought about by conclusion of an armistice agreement.¹⁴⁸ An armistice is an agreement between belligerents to suspend hostilities. In the wider sense of the term it includes the suspension of arms, the local armistice, and the general armistice. While the first two concern only a portion of the

143. J. Stone, *Legal Controls of International Conflict* (n. 135 *supra*), p. 643.

144. See, for example, the case cited by Philip C. Jessup, "Intermediacy," *Nordisk Tidsskrift for International Ret*, Vol. 23 (1953), p. 16.

145. See, for example, Richard R. Baxter, "The Definition of War," *Revue égyptienne de droit international*, Vol. 16 (1960), p. 1ff; Fritz Grob, *The Relativity of War and Peace* (New Haven, Conn.: Yale University Press, 1949); Clyde Eagleton, "The Attempt to Define War," *International Conciliation*, No. 291 (1933), pp. 237-287.

146. On rare occasions a state of war may be terminated by simple cessation of hostilities. See L. Oppenheim, *International Law*, Vol. 2 (7th ed. by Hersch Lauterpacht. London: Longmans, 1963), pp. 597-599.

147. Philip C. Jessup, "Should International Law Recognize an Intermediate Status between Peace and War?" *American Journal of International Law*, Vol. 48 (1954), p. 98ff; Myres S. McDougal and Florentino P. Feliciano, *Law and Minimum World Public Order* (New Haven, Conn.: Yale University Press, 1961), pp. 6-11; Georg Schwarzenberger, *International Law as Applied by International Courts and Tribunals* (2 vols., London: Stevens, 1968), Vol. 2, p. 39f.

148. J. Stone, *Legal Controls of International Conflict* (n. 135 *supra*), pp. 643-645; In general, see Coleman Phillipson, *Termination of War and Treaties of Peace* (New York: Dutton, 1916).

belligerent's forces and for a comparatively short period of time, a general armistice covers the whole of belligerent forces and the whole region of a war.¹⁴⁹ An armistice may contain terms other than those of a military nature, but terms of a political nature must be approved by political authorities to be effective. A general armistice often contains political terms and is of great political importance.¹⁵⁰ In modern times, a general armistice has more and more assumed the character of a preliminary peace;¹⁵¹ that is to say, belligerents have entered into a general armistice with a view to putting a permanent end to hostilities pending eventual conclusion of a peace treaty.¹⁵² Thus, the hostilities of the First World War were terminated by a succession of general armistices entered into between the Allied Powers and the Central Powers in 1918.¹⁵³ Do, then, the Hague Regulations apply to an occupation of enemy territory after the conclusion of a general armistice?

As to the applicability of the Hague Regulations to an occupation of enemy territory during an armistice period, one view denies it on the ground that the Hague Regulations are designed to apply to an occupation of enemy territory only when actual hostilities are being carried on: Once hostilities are over, occupation of enemy territory loses its belligerent nature and the provisions of the Hague Regulations are no longer applicable. It is admitted, in this connection, that the occupation of enemy territory, originally envisaged by the draftsmen of the Hague Regulations, is so-called belligerent occupation, which occurs in the course of hostilities. Article 42 of the Regulations provides that: "Territory is considered occupied when it is actually placed under the authority of the hostile army," and that: "The occupation extends only to the territory where such authority has been established and can be exercised."

In regard to the occupation of the Rhineland under the 1918 armistice, some German writers argued that armistice occupation had a mixed character, lying as it did between belligerent occupation and pacific

149. Great Britain, War Office, *The Law of War on Land being Part III of the Manual of Military Law* (hereafter cited as *British Manual of Military Law*. London: Her Majesty's Stationery Office, 1958), Para. 418, p. 125; U. S., Department of the Army, *Field Manual: The Law of Land Warfare* (hereafter cited as *FM 27-10: The Law of Land Warfare*. Washington: Government Printing Office, 1956), Paras. 483-485, pp. 172-173.

150. *FM 27-10: The Law of Land Warfare* (n. 149 *supra*), Paras. 483-485, pp. 172-173; *British Manual of Military Law* (n. 149 *supra*), Para. 424, p. 126.

151. Gerald Fitzmaurice, "The juridical Clauses of the Peace Treaties," *Recueil des Cours*, Tome 73 (1948-II), note 1 at p. 271.

152. Lord McNair and A. D. Watt, *The Legal Effects of War* (4th ed. Cambridge, England: Cambridge University Press, 1966), p. 14; J. Stone, *Legal Controls of International Conflict* (n. 135 *supra*), p. 644. See, for recent practice, also Howard S. Levie, "The Nature and Scope of Armistice Agreement," *American Journal of International Law*, Vol. 50 (1956), pp. 880-906.

153. See *British and Foreign State Papers*, Vol. 111 (1917-1918), p. 610f (Bulgaria); *ibid.*, p. 611ff (Turkey); *ibid.*, p. 591ff (Austria-Hungary); *ibid.*, p. 624ff (Hungary); *ibid.*, p. 613ff (Germany). For the prolongation of the effects of the Armistice with Germany, see *ibid.*, p. 627 and *ibid.*, Vol. 112 (1919), p. 896ff and p. 900.

occupation. Pacific occupation, according to them, took place in peace-time rather than in war-time, ordinarily under the terms of an international agreement. As such an armistice occupation constituted a form of occupation *sui generis*, it should be termed "mixed occupation" or "Mischbesetzung," and should be governed not by the Hague Regulations but by the provisions of the armistice agreement on which it is based.¹⁵⁴ As a matter of fact, this argument was directed at a curtailment of the powers that the Hague Regulations accorded to a belligerent occupant. Therefore, the argument went on, under no conditions could occupying forces under an armistice claim powers more extensive than under the Hague Regulations.¹⁵⁵ Soon after its publication, this theory found its way into judgments of German courts. German courts adopted the theory in denying the occupying forces authority to exercise an ordinary belligerent's power in Alsace-Lorraine.¹⁵⁶

However, it must be kept in mind that not every provision of the Hague Regulations presupposes the existence of hostilities as a condition for its application. No doubt, the provisions concerning means of injuring enemy or bombardment apply only when hostilities are going on,¹⁵⁷ but the provisions of Section III of the Regulations, which primarily deal with belligerent's rights and duties with respect to occupied enemy territory and population therein, cannot by their nature be regarded as applicable exclusively during hostilities. The study in the preceding Sub-Section made it clear that the provisions of Section III are established around the principle of humanity and the principle of precariousness. There is no denying the fact that the principle of humanity should apply to an occupation of enemy territory during an armistice, because the interests of enemy civilians must be protected from an occupant's undue interference in the armistice period as much as in the period of hostilities.

However, in examining the applicability of the principle of precariousness to an occupation of enemy territory during an armistice, a distinction must be made between an armistice which merely suspends hostilities and a one which purports to end them. In the former, hostilities may resume and occupied territory may be restored to the legitimate sovereign. His interests need to be protected, and the principle of precariousness should apply. But, in the latter, the possibility of resumption of hostilities is, in substance, ruled out, and the question of occupied territory may be dealt

154. Karl Strupp, "Das Waffenstillstandsabkommen zwischen Deutschland und der Entente vom 11 November 1918 im Lichte des Völkerrechts," *Zeitschrift für Völkerrecht*, Bd. 11 (1920), S. 252ff; Karl Heyland, *Die Rechtsstellung der besetzten Rheinlande* (Stuttgart, 1923), S. 26ff.

155. K. Strupp in *Zeitschrift für Völkerrecht*, (n. 154 *supra*), SS. 265-267.

156. *Rhineland (German Decrees) Case*, (1919-1922) Ann. Dig. 450 (No. 315). See also Ernst Fraenkel, *Military Occupation and the Rule of Law* (London: Oxford University Press, 1944), pp. 186-188.

157. See Articles 23-27 of the Hague Regulations. For the text, see Heinrich Triepel, *Nouveau Recueil Général de Traités et Autres Actes relatifs aux Rapports de Droit International*, Continuation du Grand Recueil de G. Fr. de Martens, 3ème Série, Tome 3 (Leipzig, Libraire Dieterich Theodor Weicher, 1910), pp. 494-496. For the text of Articles 42-56, see *ibid.*, pp. 499-503.

with in an armistice agreement. Nonetheless, it must not be forgotten that the final disposition of occupied territory ordinarily awaits the conclusion of a peace treaty and that, pending the conclusion of a peace, the precarious character of occupation continues during an armistice period. Thus, even when an armistice is entered into with a view to terminating hostilities, the principle of precariousness retains its relevance with respect to an occupation of enemy territory.

From the foregoing it follows that, so long as the final disposition of occupied territory remains uncertain, not only the principle of humanity but also the principle of precariousness are applicable to an occupation of enemy territory during an armistice period. This means that the provisions of Section III of the Hague Regulations should apply to such an occupation. Even those German writers who advocated the theory of *Mischbesetzung* had to admit that each provision of the Regulations should be examined carefully to decide whether its particular nature made it applicable to an armistice occupation.¹⁵⁸

Many writers maintain that rules of international law concerning belligerent occupation should apply to occupation of enemy territory which occurs during an armistice period. For example, Greenspan explains that, since an armistice is an temporary cessation of hostilities, the state of war continues between the parties. Therefore, he argues: "If no provision is made in the armistice agreement regarding the relations in the theater of war between belligerent forces and the civilian population and between the civilian populations themselves, each contracting party continues to exercise the same rights as before the armistice, in other words, as though there were no armistice.... The situation in occupied territory during an armistice remains unchanged from that during hostilities." ¹⁵⁹ Several other monographs published in recent times on the law of land warfare follow this argument.¹⁶⁰ Both the British and the U. S. Army Manuals on Military Law, which were in force during World War II, provided that the Hague Regulations continued to apply to military occupation of enemy territory during an armistice period.¹⁶¹

The question of applicability of the Hague Regulations to occupation during an armistice was briefly discussed at the first Hague Peace Conference of 1899, where the draft articles of the Hague Regulations were

158. Karl Strupp, *Éléments du droit international public* (Paris: Éditions internationales, 1930), Tome 2, p. 561.

159. Morris Greenspan, *The Modern Law of Land Warfare* (Berkeley, Calif.: University of California Press, 1959), p. 390.

160. Erik Castren, *The Present Law of War and Neutrality* (Helsinki: Suomalaisen Kirjallisuuden Seuran Kirjapainon Oy., 1954), p. 214; Gerhard von Glahn, *The Occupation of Enemy Territory* (Minneapolis: University of Minnesota Press, 1957), p. 28; Odile Debbasch, *L'occupation militaire* (Paris: R. Pichon et R. Durand-Auzias, 1962), p. 200.

161. Great Britain, War Office, *Manual of Military Law* (amended 1929), No. 12 Para. 286; U. S., War Department, *Rules of Land Warfare* (Washington: Government Printing Office, 1940), pp. 91-92.

examined for adoption.¹⁶² The draft articles presented to the Conference were modeled after the famous Brussels draft of 1874.¹⁶³ Draft article 50 read: "It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held between the populations [of the occupied territory and those of the unoccupied territory]. " The second subcommittee of the second committee of the Conference, which examined this particular provision, amended the last clause of the draft article 50 to read: "[W] hat communications may be held with and between the populations on [in?] the theater of war. " ¹⁶⁴ The amendment, according to the report of the subcommittee:

permits an armistice to regulate not only the communications *between* the populations but also those *with* them.... In the absence of special clauses in the armistice these matters are necessarily governed by the ordinary rules of warfare, especially by those concerning occupation of hostile territory.¹⁶⁵

This amendment and the report were later approved, with slight modifications of wording, by the plenary meeting of the 1899 Conference.¹⁶⁶ Eight years later, the plenary meeting of the Second Hague Peace Conference of 1907 adopted the text with the report, as approved at the 1899 Conference.¹⁶⁷ Thus, at both the Hague Conferences, the participants regarded the provisions of the Hague Regulations concerning belligerent occupation as applicable to occupation during armistice period.

The above-mentioned writers as well as the delegates to the Peace Conferences do not seem to have distinguished between a local and a general armistice or between an armistice purporting to end hostilities and a one retaining the possibility of resumption of hostilities. Their argument, therefore, may not be valid with respect to all kinds of armistices. And yet, so long as the final disposition of occupied territory remains unsettled, the essence of the argument remains valid even for a general armistice which is designed to end hostilities pending the conclusion of a peace. The ensuing observation of state practice confirms the soundness of the conclusion.

The applicability of the Hague Regulations to armistice occupation has actually been recognized in state practice. The hostilities of the First World War was brought to an end in 1918 by armistices with Bulgaria of September 29, with Turkey of October 30, with Austria-Hungary of November 3, and with Germany of November 11.¹⁶⁸ These armistices

162. For the record of the Conference, see n. 127 *supra*.

163. For the Brussels draft, see, for example, A. Pearce Higgins, *The Hague Conference and Other International Conferences concerning the Laws and Usages of War* (London: Stevens, 1904).

164. J. B. Scott, *The Proceedings of the Hague Conferences: The Conference of 1899* (n. 127 *supra*), pp. 426-427, 484, and 577.

165. *Ibid.*, p. 427.

166. *Ibid.*, pp. 45 and 259.

167. J. B. Scott, *The Proceedings of the Hague Conferences: The Conference of 1907* (n. 127 *supra*), Vol. 1, pp. 85 and 629.

168. For the text of the armistices, see n. 153 *supra*.

provided for the cessation of hostilities and the evacuation from the occupied territories of the Central Powers' armed forces.¹⁶⁹ The territory of each Central Power was to be partly occupied by the Allied and U. S. armed forces.¹⁷⁰ In the case of Austria-Hungary, the occupation was defined as being for the sake of military operations of the Allied and Associated forces and for the maintenance of order.¹⁷¹ In the case of Bulgaria, it was defined as provisional and was to serve as a guarantee.¹⁷² As for Germany, the occupation was to secure the observance of the armistice, and the occupied territory was to be administered by the local authorities under the control of the occupation forces.¹⁷³

There were no provisions in these armistice agreements which specifically dealt with the applicability of the Hague Regulations to the armistice occupations. However, in a basic order issued on November 15, 1918, regarding the occupation of the Rhineland, Marshal Foch, the Supreme Commander of the Allied and Associated Powers, referred to the Hague Regulations as the basis of supervision to be exercised over the German administrative structure.¹⁷⁴

Decisions of several domestic tribunals on various problems arising during the armistice period seem to have concurred in this statement. In the early stage of the Rhineland occupation, German courts did not make any distinction between the period of the armistice and the period of hostilities in applying the Hague Regulations to Allied administration of the area. For example, in dealing with the effect of a proclamation issued by the U. S. military authorities in its area of occupation, the Reichsgericht held on April 19, 1921, that since Article 43 of the Hague Regulations required an occupant to respect local laws as much as possible, the American decree could not interfere in the relations of private law between German citizens.¹⁷⁵ Furthermore, the French Court of Cassation, in its judgment rendered on November 13, 1919, referred to the order of the Prime Minister concerning the exchange of German money in the territory of Alsace-Lorraine, which was then occupied by French forces according to the 1918 armistice. The court held that, in virtue of the right of occupation, the Prime Minister had been invested with "power to issue such regulations as were necessary for the security of the army and the maintenance of public order." ¹⁷⁶ Similarly, in its decision of September 30,

169. Articles 1 and 2 (Bulgaria), Articles 1 and 3 (Austria-Hungary), Article 1 (Hungary), and Articles 1, 2, and 5 (Germany).

170. Article 3 (Austria-Hungary), Article 3 (Hungary), Article 6 (Germany).

171. Article 4.

172. Article (Secret) 2-3. See U. S., Senate, 66th Congress, 1st Session, Document No. 147 reprinted and quoted from *American Journal of International Law*, Vol. 13 (1919) Supp., pp. 403-404.

173. Article 6.

174. Report of Officer in Charge of Civil Affairs (written by Irvin L. Hunt) *American Military Government of Occupied Germany 1918-1920* (4 vols., U. S., War Department), Vol. 1, p. 40.

175. *Armistice Agreement (Coblentz) Case*, (1919-1922) Ann. Dig. 440, 441 (No. 305).

176. *In re Weber*, (1919-1922) Ann. Dig. 448, 449 (No. 313).

1927, the Supreme Court of Hungary dealt with the effect of a seizure of certain private property, which had been carried out by the Serbian troops then occupying part of the Hungarian territory in accordance with the armistice of 1918. The court observed that, though the procedure involved had gone beyond that of ordinary requisition, the seizure had not been in violation of Articles 46 and 47 of the Hague Regulations.¹⁷⁷ It is also to be noted that the Court of Appeal of Milan, Italy, had the following to say, in its decision of November 24, 1920, concerning a decree of divorce issued by the Italian authorities in Trieste, then under Italian occupation by virtue of the 1918 armistice:

It is universally held nowadays that warlike occupation cannot attribute to the occupying State the sovereignty over the occupied territory. The destruction or modification of the rights of a vanquished State cannot be accomplished except by the treaty of peace or by annexation.... Therefore, the question of the territories of Venezia Giulia cannot yet be regarded as settled. The condition created by the armistice must be deemed as constituting war-time occupation in regard to the territory in question.¹⁷⁸

All the foregoing appears to indicate that, unless otherwise stipulated in an armistice, occupation of enemy territory during an armistice period should be governed by the Hague Regulations. It was pointed out earlier that the conclusion of an armistice agreement does not automatically end the state of war in international law.¹⁷⁹ It is also invariably accepted that armistice occupation does not transfer the sovereignty over occupied territory to the occupant: Such transfer is possible usually through a treaty of peace or annexation following conquest.¹⁸⁰ Moreover, it must be admitted that, in so far as a military occupant's rights and duties with respect to enemy property are concerned, no set of rules, other than the Hague Regulations, has come into existence. On the basis of the above authorities, it is submitted that the rights and duties of an occupant of enemy territory during an armistice should be basically regulated by the provisions of the Hague Regulations, unless otherwise stipulated in the armistice. This does not exclude a general armistice purporting to terminate hostilities, and it is concluded that the Hague Regulations continue to apply to an occupation of enemy territory after cessation of hostilities.

Nevertheless, that the Hague Regulations apply to an occupation of enemy territory after cessation of hostilities by a general armistice does not necessarily mean that an occupation of enemy territory after an unconditional surrender should likewise be governed by the same

177. *I. Véték v. Dürnbacher & Co.*, (1927-1928) Ann. Dig. 566, 567 (N. 386).

178. *Del Vecchio v. Connio*, (1919-1922) Ann. Dig. 454, 455 (No. 320).

179. See pp. 39-40 *supra*. See also Lord McNair and A. D. Watts, *The Legal Effects of War* (n. 152 *supra*), pp. 13-14.

180. *Ibid.*, p. 368ff.

Regulations. Whether the legal effect of an unconditional surrender with respect to an occupation of enemy territory is similar to that of a general armistice requires a careful examination. For the purpose of this examination, the legal nature of an unconditional surrender must be analyzed in comparison with that of a general armistice. The relationships of an unconditional surrender to occupation of enemy territory ought to be scrutinized. For these reasons, it is proposed to observe in detail the situation in which the term "unconditional surrender" was originated, developed, and applied in terminating the hostilities of the Second World War. The Japanese surrender and ensuing occupation by the Allied Powers having been studied in Chapter 2, the observations that follow will be limited to the surrender of the other Axis states and their satellites. How their surrenders were related to their occupation by the Allies, and how Allied occupation measures affected the private property of their nationals will also be briefly observed.

Section 2: The Axis Surrenders and the Ensuing Occupations in Practice

It is generally considered that the principle of unconditional surrender, made public for the first time at the Casablanca Conference of January 1943, was President Roosevelt's own idea.¹⁸¹ However, a careful examination of the publications of the U. S. Department of State reveals that the President had been informally apprised of this principle nearly eight months prior to his departure for Casablanca.¹⁸² The U. S. effort for post-World War II foreign policy planning began as soon as the war started in 1939. Late in 1941 this effort led to the formation of the Advisory Committee on Post-War Foreign Relations, whose function was to submit recommendations for American post-war foreign policy to the President.¹⁸³ The Advisory Committee pursued its work by organizing several subcommittees on various specific problems, and it is in one of these subcommittees that the question of unconditional surrender was probably first taken up. According to its minutes, the Subcommittee on Security Problems decided on May 6, 1942, to start its discussion on the assumption

181. Elliot Roosevelt, *As He Saw It* (New York: Dulle, Sloan, Pearce; 1946), pp. 117-119; Cordell Hull, *The Memoirs of Cordell Hull* (2 vols., New York: MacMillan, 1948), Vol. 2, p. 1367; Robert E. Sherwood, *Roosevelt and Hopkins* (New York: Harper, 1950), p. 696; Winston S. Churchill, *The Hinge of Fate* (Boston: Houghton Mifflin, 1950), pp. 685-691; Lord Hankey, *Politics—Trials and Errors* (Chicago: Henry Regnery, 1950), pp. 29-30; Paul Kecskemeti, *Strategic Surrender* (Stanford, Calif.: Stanford University Press, 1958), p. 216; Anne Armstrong, *Unconditional Surrender* (New Brunswick, N. J.: Rutgers University Press, 1961), p. 11.

182. U. S., *Foreign Relations*, The Conferences at Washington, 1941-1942, and Casablanca, 1943, n. 2 at p. 506.

183. U. S., Department of State (Written by Harley Notter), *Post-War Foreign Policy Preparation 1939-1945* (n. 26 *supra*), pp. 63-65, 69 and 78ff. See also *ibid.*, pp. 127 and 163 on "unconditional surrender".

that the Allies insisted on an unconditional surrender of the Axis states.¹⁸⁴

Interestingly enough, during the course of that discussion, one of the members of the Subcommittee raised a question as to the difference between an armistice and an unconditional surrender. To this question Mr. Norman Davis, the Chairman of the Subcommittee, is recorded to have replied that:

[O]ne is "a negotiated cessation of hostilities" and the other "an imposed cessation of hostilities"... [A]ll cessations of hostilities during the present war [have] been on the basis of unconditional surrender with the single exception of the case of France where there [was] an armistice which is still in effect.... [T]here [may] be a negotiated cessation of hostilities in the case of Italy in order to pull her out of the war but...there must be unconditional surrender by Germany and Japan.¹⁸⁵

Perhaps this represents the common understanding of the Subcommittee as to what an unconditional surrender implies. The minutes also indicate that the Subcommittee considered an unconditional surrender as an act of an essentially technical, military character. Any questions of a political character should, therefore, be kept for the subsequent negotiations of the final peace treaty.¹⁸⁶ Furthermore, the Subcommittee examined the possibility of concluding an armistice with Germany and studied possible terms of surrender modeled after the Franco-German armistice of 1940.¹⁸⁷ It is important to note that at May 20 meeting of the same Subcommittee the chairman reported that he had lately informed the President of its work and suggested that the President should have an opportunity to discuss with its members the matter being considered by it. The President is recorded to have replied that his mind had been pretty well made up on some of these issues.¹⁸⁸

The famous Casablanca statement on "unconditional surrender," published at a press conference of January 24, 1943, shows a slight difference from the tone of the discussion at the Subcommittee meeting. In this statement, President Roosevelt and Prime Minister Churchill made clear their determination that peace could come to the world only by a total elimination of Axis war power. The simplest formula to attain this objective would be an unconditional surrender of Germany, Italy, and Japan.

"Unconditional surrender means not the destruction of the German populace, nor of the Italian or Japanese populace, but it does mean the destruction of a philosophy in Germany, Italy, and Japan which is based on

184. U. S., Department of State, Division of Special Research, *Chronological*, minutes S-3, Meeting of May 6, 1942, p. 1. For a detailed study on the origins of "unconditional surrender", see Makoto Iokibe, "American Policy toward Japan's 'Unconditional Surrender'", *Japanese Journal of American Studies*, No. 1 (1981), pp. 19-53.

185. U. S., Department of State, Division of Special Research, *Chronological*, minutes S-3 (n. 184 *supra*), p. 1.

186. *Ibid.*, minutes S-4, Meeting of May 20, 1942, p. 2.

187. *Ibid.*, minutes S-4, Meeting of May 20, 1942, pp. 1-3.

188. *Ibid.*, p. 2

the conquest and subjugation of other peoples. " ¹⁸⁹ It must not be overlooked that, before the publication of this statement, the U. S. Joint Chiefs of Staff had been consulted by the President about the principle of unconditional surrender at a White House meeting of January 7, 1943.¹⁹⁰ Similarly, on January 18 at Casablanca, President Roosevelt asked both Prime Minister Churchill and the British Chiefs of Staff for their opinion of the unconditional surrender.¹⁹¹

Despite all these precautions of the President, the principle of unconditional surrender was severely criticized and tenaciously opposed by some of his own advisers and generals. Cordell Hull, the then U. S. Secretary of State, was among the most eloquent opponents. According to Hull, the principle had not originally formed part of State Department thinking.¹⁹² That is why, in the United Nations declaration of January 1, 1942, each government had simply pledged itself not to make a separate peace and had not demanded unconditional surrenders of the Axis states. But, after the dramatic statement at Casablanca, "there was nothing we could do except to follow it *at least in form*." ¹⁹³ Admiral Leahy, the Chief of Staff to the Commander-in-Chief, had been critical of the principle from the beginning.¹⁹⁴ Also, from a purely military point of view, General Wedemeyer of the U. S. Army was bitterly against the demand for an unconditional surrender, because it would only weld all the Germans together, including those who wanted to get rid of Hitler. During the Casablanca Conference, General Marshall, the U. S. Army Chief of Staff, asked Wedemeyer to express his opinion at a Joint Chiefs of Staff meeting, and it seems that the staff were generally sympathetic with him.¹⁹⁵ Secretary of the Navy Forrestal was concerned that a policy of unconditional surrender would lead merely to the destruction of Germany and Japan and might seriously unbalance the international system in the face of U. S. S. R. power.¹⁹⁶

Nevertheless, Roosevelt adhered to the unconditional surrender principle stubbornly. The situation surrounding the Italian surrender will be analyzed shortly, and even after the Italian surrender, both officials of the Department of State and generals of the armed forces repeatedly requested of the President either abandonment or modification of that principle, but

189. U. S., *Foreign Relations*, The Conferences at Washington, 1941–1942, and Casablanca, 1943, p. 837.

190. *Ibid.*, p. 506.

191. *Ibid.*, p. 635. See also n. 6 at the same page.

192. C. S. Hull, *The Memoirs of Cordell Hull* (n. 181 *supra*), Vol. 2, p. 1570

193. *Ibid.*, Vol. 2, p. 1571. Emphasis supplied.

194. See William D. Leahy, *I Was There* (New York: McGraw Hill, 1950), p. 147.

195. Albert C. W. Wedemeyer, *Wedemeyer Reports!* (New York: Henry Holt, 1958), pp. 186–187 and 90.

196. James Forrestal (Walter Millis ed.), *The Forrestal Diaries* (n. 94 *supra*), p. 24. For the view that the Allied demand of unconditional surrender prolonged the war and would become a cause of a Third World War, see F. O. Miksche, *Unconditional Surrender* (London: Faber, 1951) and Russell Grenfell, *Unconditional Hatred* (New York: Devin-Adair, 1953).

all in vain.¹⁹⁷ The reason for this stubbornness is usually explained as Roosevelt's obsession not to repeat the tragedy of Woodrow Wilson.¹⁹⁸ In the course of the First World War the then American President proposed the Fourteen Points for the purpose of ending the war and securing the permanent peace of the world. The Germans took Wilson's proposal as constituting the prearmistice agreement for terminating hostilities, and the armistice of 1918 was concluded. However, the Treaty of Versailles betrayed their expectations. This resulted in German resentment against the injustice of Versailles and paved the way for Hitler's adventure. Indeed, on May 24, 1944, Winston Churchill, the co-author of the Casablanca Proclamation, clearly stated in the British House of Commons that the principle of the unconditional surrender "wipes away the danger of anything like Mr. Wilson's Fourteen Points being brought up by the Germans, after their defeat, claiming that they surrendered in consideration of them."¹⁹⁹

Moreover, Roosevelt was very reluctant to define the term "unconditional surrender" or to clarify exactly what it implied. During 1944, in the face of German propaganda to exploit the natural fear of the German people at this harsh-sounding expression, the U. S. Joint Chiefs of Staff as well as the Office of Strategic Services more than once suggested the issuance of an Allied statement to specify the meaning of an unconditional surrender.²⁰⁰ Further, in relation to the Germany's East European satellites, Secretary of State Hull repeated to the President that both the U. S. S. R. and Great Britain had been urging the United States to define an unconditional surrender or even to abandon the principle in order to facilitate Allied military operations against Germany.²⁰¹ What they obtained as the President's explanation was not much different from the Casablanca formula. In his memorandum dated January 17, 1944, replying to one of Hull's requests, Roosevelt quoted the story of Lee's surrender to Grant in the American Civil War. After stating frankly that he did not like to define the term unconditional surrender, the President wrote that:

The story of Lee's surrender to Grant is the best illustration. Lee wanted to talk about all kinds of conditions. Grant said that Lee must put his confidence in his [Grant's] [sic.] fairness. Then Lee surrendered. Immediately Lee brought up the question of the Confederate officers' horses, which belonged to them personally in most cases, and Grant settled that item by telling Lee that they should take their horses home as they would be needed in the spring ploughing.

A few little incidents like the above will have more effect on the

197. See notes 202 and 236 *infra*.

198. R. E. Sherwood, *Roosevelt and Hopkins* (n. 181 *supra*), p. 227.

199. Great Britain, *Parliamentary Debates* (Hansard), Commons, 5th Ser., Vol. 400, cols. 783-784.

200. U. S., *Foreign Relations*, 1944 Vol. 1, pp. 501-502, 533-534 and 567-569.

201. *Ibid.*, pp. 580-581, 583-584, and 586-588.

Germans than lots of conversation between the Russians, British and ourselves trying to define "unconditional surrender." ²⁰² Indeed, this is one of the very few clues to indicate Roosevelt's idea of an unconditional surrender. ²⁰³

Whether the foregoing sequence of events provides any help in ascertaining the legal character of an unconditional surrender awaits further study. Here it is proposed to observe how this principle of unconditional surrender was applied in terminating the hostilities of the Second World War.

(i) *Italy*

The invasion of Italy, starting in July 1943, provided the first opportunity for the application of the principle of unconditional surrender. While Hitler's Germany was engaging in a serious battle with the Russians in Eastern Europe, the United States, British, and some other Allied forces launched an invasion of Sicily on July 9, 1943. On July 16, Roosevelt and Churchill published a joint message to Italian people, in which they accused Mussolini's fascist regime of its irresponsible leadership and of the resulting disaster brought on the people of Italy. They also warned that Italy's sole hope for survival would lie in its honorable capitulation to the United Nations. ²⁰⁴ It is interesting to note that, whereas this message did not contain the term unconditional surrender, Roosevelt's broadcast address to the American people on July 28 had the following sentence in it. "The first crack in the Axis has come. The criminal, corrupt Fascist regime in Italy is going to pieces.... Our terms to Italy are still the same as our terms to Germany and Japan—'unconditional surrender.'" ²⁰⁵ The next day General Eisenhower, the Commander-in-Chief of the Allied Forces in the European theater, issued a statement to the Italian people, urging them to cease collaboration with Germany and extending a promise of peace with honorable conditions.

Eisenhower's move was to profit from the political change which was taking place in Italy. On July 25, 1943, the Fascist Grand Council met and deposed Mussolini, and King Victor Emmanuel III assumed command of the Italian armed forces. Mussolini was imprisoned and Marshal Badoglio was named prime minister to form a cabinet. On July 27 the new Council of Ministers ordered dissolution of the Fascist Party and rescinded the power of the Grand Council. Subsequently, Badoglio declared the state under martial law and took over direct control of all the Italian forces. Although it procrastinated in fear of German vengeance, the Badoglio cabinet managed

202. U. S., *Foreign Relations*, 1944 Vol. 1., pp. 493-494.

203. See n. 275 *infra*.

204. U. S., *Department of State Bulletin*, Vol. 9, pp. 27-28.

205. *Ibid.*, pp. 57-62 at p. 57.

to respond to Eisenhower's offer. On August 19 it sent General Castellano as Badoglio's plenipotentiary to meet secretly with Eisenhower's Chief of Staff, General Smith, in Lisbon.²⁰⁶ In fact, as early as July 30, Roosevelt informed Churchill that the new Italian Government would probably attempt to negotiate with the Allies for an armistice.²⁰⁷ During the month of August 1943, the Anglo-American draft instrument of Italian surrender was sent to and approved by the U. S. S. R., though the draft contained no expression of an unconditional surrender.²⁰⁸ Moreover, in their joint letter to Stalin of September 2, Roosevelt and Churchill explained that, since matters were moving so fast in Italy, they considered General Eisenhower should have discretion not to delay a settlement with that state.²⁰⁹

On September 8, 1943, Marshal Badoglio and General Eisenhower simultaneously announced that an armistice had been signed between Italy and the Allies.²¹⁰ This armistice, known as the short armistice with Italy, provided for the immediate cessation of hostilities by the Italian forces and for the supply of various Italian facilities for Allied military use. Italy was to prevent the Germans from utilizing Italian facilities against the Allies, and the Allies reserved the right to impose measures of disarmament, demobilization, and demilitarization of Italy. Besides, Article 12 provided that: "Other conditions of a political, economic and financial nature with which Italy will be bound to comply will be transmitted at later date." Based on this article, the so-called long armistice was concluded in late September.²¹¹ The long armistice called for the surrender of all the Italian forces and provided for detailed measures of Italian disarmament and demobilization. Further, it provided that Italy should take such measures of commercial and financial control as would be required by the Allies; that Italy was to sever relations with the other Axis states; and that Italy was to arrest fascists and surrender them to the Allies and to comply with Allied directives regarding suppression of fascist organizations.

As to occupation of the Italian territory, it was provided in the short armistice that an Allied military government would be established in Italy. The long armistice reiterated this point by stipulating that the Allied forces would occupy certain parts of Italian territory; that they would exercise all the rights of an occupying power in such occupied parts; and that personnel of the Italian administration were to carry out their functions under the

206. Pietro Badoglio, *Italy in the Second World War* (London: Oxford University Press, 1948), note at p. 69; Henry C. Bucher, *My Three Years with Eisenhower* (New York: Simons and Schuster, 1946), p. 393; C. Hull, *The Memoirs of Cordell Hull* (n. 181 *supra*), Vol. 2, p. 1571. For a detailed account of the Italian surrender, see P. Badoglio, *Italy in the Second World War* (*supra*), pp. 63-75; P. Kecskemeti, *Strategic Surrender* (n. 181 *supra*), pp. 71-118.

207. U. S., *Foreign Relations*, 1943 Vol. 2, p. 337.

208. *Ibid.*, pp. 341-344.

209. *Ibid.*, pp. 360-361.

210. U. S., *Department of State Bulletin*, Vol. 13, pp. 748-749.

211. *Ibid.*, p. 749ff.

control of the Allied commander-in-chief.²¹² The Allied occupation of Italy underwent numerous difficulties. The difficulties were due to the facts that the Italian forces had been operating in cooperation with the German forces and that the Italian chain of command centralized in Rome had been constantly dominated by the Germans in Italy. Thus, before announcing the conclusion of the short armistice, the whole Badoglio cabinet as well as the King fled from Rome, leaving no one to give orders to or to communicate with the Italian forces in the field. When the armistice was published, the German forces in Italy quickly moved to disarm, without much resistance, all Italian military units in the areas under their control.²¹³ Reinforcements were sent in from Germany, and the Allies had to advance inch by inch up the Italian Peninsula until only several weeks before the German surrender of May 1945.

In observing the Allied machinery for the occupation of Italy, a distinction must be made between the Allied Military Government and the Allied Control Commission. The former was to rule the parts of Italian territory under its occupation in accordance with the armistice agreement. In most cases, it covered the forward areas of the combat. These areas were under the direct control of the Allied commander-in-chief, and the occupation had the character of belligerent occupation in many respects.²¹⁴ The Allied Control Commission was established in November 1943 and was in charge of the rest of the liberated Italian territory. It was to work as the channel of communication between the Italian Government and the United Nations, in order to supervise the carrying out by Italy of the armistice provisions.²¹⁵ As Italian cooperation in Allied military operations became urgently needed, the status of co-belligerency was granted to Italy in October 1944,²¹⁶ and while the resignation of the King and the establishment of a more representative government in Italy in June 1944 were welcomed by the Allies, control of the occupied territory was gradually turned from the Allied back to the Italian hands.²¹⁷ By the end of 1945 the whole territory of Italy, with the exception of Venezia Giulia and the provinces of Udine, regarding the possession of which the parties were in dispute, were turned over to Italian administration, and the Allied Military Government formally came to an end everywhere except in those disputed areas.²¹⁸

212. See Article 10 of the short armistice, and Articles 18 and 20 of the long armistice. For the text, see notes 210 and 211 *supra*.

213. P. Kecskemeti, *Strategic Surrender* (n. 181 *supra*), pp. 92-93 and 81.

214. Besides these two organs, there was the Allied Council for Italy, a product of the Moscow Conference of Foreign Ministers of 1943, which was to recommend on the co-ordination of the Allied occupation policy for Italy. See Carl J. Friedrich, *American Experiences in Military Government in World War II* (New York: Reinhart, 1948), p. 122.

215. U. S., *Department of State Bulletin*, Vol. 11, pp. 137-138.

216. *Ibid.*, Vol. 9, p. 254.

217. *Ibid.*, Vol. 11, p. 338.

218. Charles R. S. Harris, *Allied Military Government of Italy* (London: Her Majesty's Stationery Office, 1957), p. 366.

Simultaneously, the Allied Control Commission loosened its supervision. In October 1944 it was renamed as the Allied Commission.²¹⁹ After the revision of the Italian armistice in May 1946, the Commission lost most of its functions.²²⁰

Concerning the question of interference with Italian private property, the Allied forces in Italy did enjoy a full right of requisition as a belligerent occupant. Requisitioning was done through authorized army officers against payment.²²¹ Moreover, the armistices provided for Allied rights of free transport and use of facilities in the unoccupied Italian territory. Between 1943 and 1945, however, Italy was in such shortage of foodstuffs that the Allies found it necessary to improve the economic situation of the civilian population, if only for the sake of military expediency.²²² Apart from ordinary requisition and seizure, the only conspicuous interference that the occupying forces attempted with respect to Italian private property was in the process of implementing the defascistization program. As the Allied forces advanced along the Italian Peninsula, the Military Government issued successive proclamations to dissolve and disband Fascist organizations and affiliates. The property and assets of these organizations were, as a rule, impounded by the Allied Military Government and disposed of for the benefit of the local population.²²³ Members and collaborators of the Fascist Party were eliminated from public service. Part of their wealth which had been illicitly acquired under the Fascist regime was confiscated, but they were allowed to maintain their pension rights.²²⁴ Nevertheless, since most holders of important government posts had been associated with the Fascist Party, exceptions were often made in order to avoid a break-down of the Italian administration.²²⁵

(ii) *The East European States*

After the conclusion of armistices with Italy, the United States, Great Britain, and the U. S. S. R. held a tripartite conference of their foreign

219. Royal Institute of International Affairs, *Survey* (n. 36 *supra*) 1939-1946, The Realignment of Europe, p. 436. See also note 217 *supra*, and U. S., *Department of State Bulletin*, Vol. 12, pp. 539-542.

220. Hajo Holborn, *American Military Government* (Washington: Infantry Journal Press, 1947), p. 21.

221. C. J. Friedrich, *American Experiences in Military Government in World War II* (n. 214 *supra*), p. 146.

222. *Ibid.*, p. 144.

223. U. S., Department of the Army, *U. S. Army in World War II* Special Studies Civil Affairs: Soldiers Become Governors (Washington: Government Printing Office, 1946), p. 390ff.

224. C. R. S. Harris, *Allied Military Government of Italy* (n. 218 *supra*), p. 148; *Survey* 1939-1946, The Realignment of Europe (n. 219 *supra*), p. 435; C. J. Friedrich, *American Experiences in Military Government in World War II* (n. 214 *supra*), pp. 122-126.

225. U. S., Department of the Army, *U. S. Army in World War II* (n. 223 *supra*) Special Studies Civil Affairs: Soldiers Become Governors, p. 382.

ministers in Moscow in October 1943.²²⁶ The conference marked the first step to bring into coordination Soviet and Anglo-American war efforts against Germany. The coordination was further consolidated by the gathering of the three heads of governments at Teheran in December of the same year.²²⁷ The result was the simultaneous Allied offensive in June 1944 against the German forces both in Western and Eastern Europe. By the beginning of September, the superiority of Soviet forces in the Eastern front was proven,²²⁸ and the Russians were busy trying to pull the Axis satellites in Eastern Europe out of the war and, if possible, to make them fight against Germany. On May 12, 1944, Roosevelt, Churchill, and Stalin had issued a joint declaration to the Governments of Hungary, Rumania, Bulgaria, and Finland in which the three advised these Governments that they still had it within their power, by withdrawing from the war and ceasing their collaboration with Germany, to shorten the European struggle, diminish their own ultimate sacrifice, and contribute to the Allied victory.²²⁹

Even before the issuance of this declaration, the U. S. S. R. had been inquiring of the United States about the meaning of the unconditional surrender to be applied to the East European states.²³⁰ Actually, in February 1944, the Soviet Union had commenced negotiations with Finland, aiming at an early conclusion of an armistice.²³¹ In the eyes of the East European satellite states, this move of the U. S. S. R. helped reduce the weight of the term "unconditional surrender."²³² Late in March 1944, even the British Government recommended that the principle of unconditional surrender as laid down at Casablanca should be abandoned in the case of the satellites and that the three Allied Governments be freed to decide, according to the circumstances, whether or not to insist on an unconditional surrender.²³³ In response, the U. S. S. R. Government informed the United States and Great Britain that, as its proposed peace terms to Finland indicated, the Soviet Union considered it possible not to apply the unconditional surrender principle to the East European states.²³⁴ Nonetheless, Roosevelt argued that, as Italy had surrendered unconditionally and yet had been granted many privileges, it would be a mistake to abandon or make any exception with respect to the concept of unconditional surrender.²³⁵

Finally, early in April, the Department of State cautioned the President

226. See U. S., *Foreign Relations*, 1943 Vol. 1, pp. 513-781.

227. *Ibid.*, The Conferences at Cairo and Teheran 1943.

228. *Survey* (n. 219 *supra*), 1939-1946, America, Britain, and Russia 1941-1946, p. 454.

229. U. S., *Department of State Bulletin*, Vol. 10, p. 425.

230. U. S., *Foreign Relations*, 1944 Vol. 1, p. 580-581.

231. *Survey* (n. 219 *supra*) 1939-1946, The Realignment of Europe, pp. 262-263.

232. U. S., *Foreign Relations*, 1944, Vol. 1, pp. 583-584.

233. *Ibid.*, p. 584 and 586-588.

234. *Ibid.*

235. *Ibid.*, pp. 588-589.

that the inflexible attitude of the United States on the matter of unconditional surrender might be held responsible for stiffening the resistance of the satellites. In his memorandum to the Secretary of State dated April 5, 1944, Roosevelt had to admit that:

I understand the problem thoroughly but I want at all cost to prevent it from *being said* that the unconditional surrender principle has been abandoned.....

[Of course] I understand perfectly well that from time to time there will have to be exceptions not to the surrender principle but to the application of it in specific cases. This is a very different thing from changing the principle.

If the Soviet and British Governments will advise us of any case of this kind, I am quite sure that you will agree with them. This should be made clear to both of these Governments. Then they cannot accuse us of having rendered more difficult the Soviet military task. ²³⁶

Accordingly, the Secretary of State informed the Soviet and the British Governments that the U. S. Government would rather not abandon the unconditional surrender principle but would favor its modification vis-à-vis the satellite states, when either the U. S. S. R. or Great Britain believed it advantageous. ²³⁷ Thus, the Allies concluded an armistice with Rumania on September 12, 1944. ²³⁸ On October 28 the armistice with Bulgaria was entered into. ²³⁹ Hungary had to struggle under German control, but on January 20, 1945, it followed suit. ²⁴⁰ As for Finland, the U. S. S. R. and Great Britain signed an armistice on behalf of the United Nations on September 19, 1944. ²⁴¹

These four, and particularly the first three, armistices were in large part similar. All four states were to cease hostilities with the Allies, mainly with the U. S. S. R., and to disarm German troops within their respective territories and hand them over to the Soviet Union as prisoners of war. They were also to sever relations with Germany. Rumania was, further, to enter war on the Allied side under U. S. S. R. command. Bulgarian and Hungarian war facilities were to be made available to the Allied forces, whereas Finland had only to make certain air bases available for Soviet bombing of Germany. Some Finnish naval bases were to be used by the U. S. S. R. . Rumania, Bulgaria, and Hungary were to withdraw their respective forces from any of the Allied territories that they were occupying, such as in Czechoslovakia, Yugoslavia, and Greece. All their industrial enterprises, and means of communication, as well as power stations and fuel stocks, were

236. *Ibid.*, p. 592. Emphasis supplied.

237. *Ibid.*, p. 593. Note that Hull used the word "modification" in the place of Roosevelt's "application" .

238. U. S., *Statutes at Large*, Vol. 59 Pt. 2, p. 1712ff.

239. *Ibid.*, Vol. 58 Pt. 2, p. 1498ff.

240. *Ibid.*, Vol. 59 Pt. 2, p. 1321ff.

241. Great Britain, Parliament, *Papers by Command*, Cmd. 6586.

to be made available for Allied military use. Finnish vessels were to be treated similarly, and Finland had to provide materials and products required by the United Nations for war purposes. The four states must hand over German war materials within their respective territories to the U. S. S. R. as "war booty." Rumania, Hungary, and Finland had each to make war reparations to the U. S. S. R., amounting to \$300, 000, 000 payable in commodity over six years. Their frontiers were to be restored to the prewar or 1940 lines.²⁴²

As a matter of fact, Finland managed to remain unoccupied by any of the Allied forces.²⁴³ In the case of the other three states, Article 3 of each armistice provided that they would afford to Soviet and other Allied forces freedom of movement over their territories in any direction, if the Allied high command considered that the military situation required it. Also, each of the four armistices had in common the provision that, until the conclusion of a treaty of peace, an Allied Control Commission would be established in each occupied state, which would regulate and supervise the execution of the armistice terms. The Allied Control Commissions thus established were to work as the liaison between the Allied High Command and the satellite Governments. Since the Commissions were defined as subordinate organs to the High Commands and the positions of the High Commands were occupied by Russians all the time, the U. S. S. R. role in the occupation of the East European States corresponded to that of the United States in the occupation of Japan. The occupation armies were solely Russian. The United States had decided, as early as August 1944, that American forces should not be used for the occupations of Eastern Europe.²⁴⁴ Moreover, it is generally believed that the common understanding reached between Great Britain and the Soviet Union as to the post-war sphere of influence in Europe, to which the United States afterward gave its reluctant consent, precluded any significant Western participation in the occupations.²⁴⁵

Not much material is available on how the U. S. S. R. planned and implemented its occupation policies toward Rumania, Bulgaria, and Hungary or on what international legal ground those policies were based. The fact remains, however, that in all three states the Soviet army had been occupying at least some part of their territories before their respective armistices were concluded.²⁴⁶ Thus, the occupation after the armistices was, in many ways, a continuation of belligerent occupation. Furthermore, throughout the period of occupation, the U. S. S. R. intervened in the domestic affairs of the occupied states, mainly for the purpose of putting

242. See Article 19 of the Rumanian armistice, Article 19 of the Hungarian armistice, and Articles 6, 7, 8, and 9 of the Finnish armistice. For the text, see notes 238, 240, and 241 *supra*.

243. *Survey* (n. 219 *supra*) 1939-1946, The Realignment of Europe, p. 284.

244. U. S., *Foreign Relations*, 1944 Vol. 1, p. 612.

245. *Survey* (n. 219 *supra*) 1939-1946, America, Britain, and Russia, pp. 422-425.

246. See Reginald R. Bett (Ed.), *Central and South Europe 1945-1948* (London: Royal Institute of International Affairs, 1950), pp. 3-4 for Rumania, p. 29 for Bulgaria, and p. 101 for Hungary.

pro-Moscow groups into power.²⁴⁷ In any event, the U. S. S. R. did not lose much time in starting the implementation of the armistice terms. In the armistice agreements the three states had undertaken to dissolve all pro-Nazi or Fascistic organizations.²⁴⁸ This was one of the first tasks in which the Governments of these states had to engage. The ex-collaborators were not only purged from their positions but also many of them were tried and convicted.²⁴⁹ But, how their property rights were affected by these measures is not exactly known.

The period of occupation witnessed large-scale land reforms and nationalizations of private enterprises in all three states. For example, in Rumania, a land reform law was promulgated in March 1945. All the lands of private owners in excess of 50 hectares were expropriated without compensation for redistribution to peasants. Lands belonging to German citizens and Rumanian citizens of German ethnic origin who had collaborated with the Hitler regime was treated similarly.²⁵⁰ The same type of land reform took place in Bulgaria and Hungary.²⁵¹ It is generally considered that no such a reform would have been possible without Soviet pressure.²⁵² The same would presumably hold true of the nationalization of hitherto private industries. Between 1945 and 1947, along with nationalization of main industries such as coal-mining and banking, joint U. S. S. R. —Rumanian or U. S. S. R. —Bulgarian state-owned enterprises were set up in important sectors of each national economy.²⁵³ This trend was further strengthened after the conclusion of the peace treaties with the three states in 1947.

(iii) *Germany*

The surrender of Germany took place under circumstances which were largely different from those of the other Axis states or their satellites. It has been pointed out that in 1944 the U. S. military recommended in vain a clarification of the term unconditional surrender.²⁵⁴ In several public statements, the Allied heads of governments tried to make known that an unconditional surrender of Germany did not mean the destruction of the

247. See *ibid.*, p. 7ff for Rumania, p. 36ff for Bulgaria, and p. 101 for Hungary.

248. See Article 15 of the Rumanian armistice, Article 7 of the Bulgarian armistice, and Article 15 of the Hungarian armistice. For the text, see notes 238, 240, and 241 *supra*.

249. R. R. Bett, *Central and South Europe 1945-1948* (n. 246 *supra*), pp. 4 and 30.

250. Henry L. Roberts, *Rumania: Political Problem of the Agrarian State* (New Haven, Conn. : Yale University Press, 1951), pp. 294-295.

251. *Survey* (n. 219 *supra*), 1939-1946, The Realignment of Europe, pp. 320-321.

252. R. R. Bett, *Central and South Europe 1945-1948* (n. 246 *supra*), p. 102.

253. Elizabeth Barker, *Truce in Balkan* (London: Percival Marshall, 1948), pp. 115-119.

254. See n. 200 *supra*.

German people,²⁵⁵ but these statements did not go much beyond the Casablanca formula and failed to bring on an early German surrender. The propaganda was spread among the Germans that the Allied insistence on an unconditional surrender implied the breaking-up and demilitarization of Germany as well as the eternal slavery and even sterilization of the German race.²⁵⁶ As the Allied forces advanced into the German territory proper, the German resistance stiffened helplessly and needlessly. Amidst a chaotic military situation, Hitler committed suicide in late April 1945. His successor Doenitz quickly contacted Eisenhower to negotiate terms of surrender. But, by the time the German High Command signed acts of military surrender in succession with the United States, Great Britain, and with the U. S. S. R. in early May, the whole German territory was occupied by the Allied forces, and there was no central government competent to speak for the entire German people. Doenitz and his colleagues were soon to be arrested as war criminals.

In these acts of military surrender, it was stated that the German High Command unconditionally surrendered all the forces under German control to the Allied Supreme Command and the Soviet High Command simultaneously.²⁵⁷ The German forces were to cease hostilities and to carry out orders issued by the Allied and the U. S. S. R. High Commands. It was also provided, in each of these acts, that: "This act of military surrender is without prejudice to and will be superseded by any general instrument of surrender, imposed by or on behalf of the United Nations and applicable to Germany and the German armed forces as a whole." Originally the Allies had prepared one single document, entitled "the Instrument of Unconditional Surrender of Germany," which included political provisions as well and which was to be signed not only by military but also by civil representatives of Germany.²⁵⁸ But, considering the possibility that no responsible German Government might be in existence at the moment of final collapse of Germany, the British Government suggested in March 1945 that preparation should also be made for a unilateral Allied declaration by which the Allies would assume all necessary authority and powers with respect to Germany.²⁵⁹

Thus, on June 5, 1945, the representatives of the United States, Great Britain, the Soviet Union, and the Provisional French Government issued a joint declaration regarding the defeat of Germany and the assumption of supreme authority over Germany by the Allied Powers.²⁶⁰ It was stated in

255. See, for example, the official statement of the Yalta Conference in U. S., *Department of State Bulletin*, Vol. 12, p. 213ff, especially p. 214.

256. See, for example, U. S., *Foreign Relations*, 1944 Vol. 1, p. 567. As a matter of fact, some Germans were attempting to assassinate Hitler. There were also moves for peace among some German officials. A. Armstrong, *Unconditional Surrender* (n. 181 *supra*), pp. 132-133.

257. U. S., *Statutes at Large*, Vol. 59 Pt. 2, p. 1857.

258. U. S., *Foreign Relations*, 1945 Vol. 3, pp. 168-169.

259. *Ibid.*, pp. 208-209. For a U. S. S. R. reaction to this proposal, see *ibid.*, pp. 217-218.

260. U. S., *Department of State Bulletin*, Vol. 12, p. 1051ff.

this declaration that, as a result of complete military defeat and unconditional surrender, Germany had become subject to such requirements as might then or thereafter be imposed on it. It was also noted that no central government or authority existed in Germany which was capable of accepting responsibility for the maintenance of order, the administration of the country, and compliance with Allied requirements. Therefore, the declaration goes on, "in the interest of the United Nations, " :

The Governments of the United States of America, the Union of Soviet Socialist Republics and the United Kingdom, and the Provisional Government of the French Republic, hereby assume supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command and any state, municipal, or local government or authority. The assumption...of the said authority and powers does not effect the annexation of Germany.

The [said] Governments...will hereafter determine the boundaries of Germany or any part thereof and the status of Germany or of any area at present being part of German territory. It must be noted that, in the declaration, the Allied Powers made clear their understanding that the assumption of supreme authority did not effect the annexation of Germany.

As to the occupation of Germany, the agreement reached among the United States, Great Britain, and the U. S. S. R. at the Yalta Conference of February 1945 had expected that each power would occupy a separate zone of Germany, and that a central control commission, composed of the supreme commanders of each occupying force, was to coordinate the administration and control of the occupied areas.²⁶¹ The purpose of the occupation was to destroy German militarism and Nazism so that Germany would never again disturb the peace of the world. The Allied joint declaration of June 5 further provided that Germany would be divided into four zones of occupation, namely the U. S., British, the U. S. S. R., and French zones; that each occupying force had supreme authority in its own zone of occupation; that the Berlin area alone would be occupied by forces of all of the four powers; and that the Control Commission sitting in Berlin would exercise supreme authority on matters affecting Germany as a whole.²⁶² Nevertheless, since the motivations and objectives of the four Allies in regard to the occupation of Germany was far from uniform, the mission of the Control Commission was doomed to be a failure. It was indeed over the question of occupation of Germany that East-West relations first showed clear signs of deterioration. Eventually, it lead to the creation of West Germany and its counterpart in the east.

The U. S. occupation of its zone of Germany anticipated the pattern of its occupation of Japan, with the important exception that it was a direct

261. See n. 255 *supra*.

262. For the text, see n. 260 *supra*.

military government. The initial U. S. objectives were to prevent Germany from again becoming a threat to world peace, and, to that end, the elimination of Nazism and militarism in all their forms, the apprehension and punishment of war criminals, industrial disarmament and demilitarization, the exaction of reparations for war damages, and the eventual reconstruction of German political life on a democratic basis.²⁶³

Accordingly, all Nazi organizations and affiliates were dissolved and their property was confiscated.²⁶⁴ Members and collaborators of the Nazi Party were removed from public office and positions of importance in private enterprises.²⁶⁵ Nazi leaders were arrested for trial and punishment. Upon conviction, some of them were fined.²⁶⁶ In order to prevent the use of economic resources belonging to these people for underground purposes, free transactions of their property were prohibited and their bank account frozen, but they and their families were allowed to withdraw minimum amounts necessary to maintain a livelihood.²⁶⁷ Furthermore, factories capable of weapons production were dismantled. The installations and assets of some big industrial monopolies were confiscated. Measures were also taken to exclude private monopolies from the German economy.²⁶⁸ Although it was not urgently needed in the western part of Germany, land reform was pressed by the occupant on every *Land*.²⁶⁹ As was the case with Japan, however, these measures were gradually relaxed and many of them were eventually abandoned with the intensification of the East-West antagonism.^{270*}

263. See the directive from the Joint Chiefs of Staff to the Commander-in-Chief of the U. S. Forces of the Occupation of Germany in U. S., *Department of State Bulletin*, Vol. 13, p. 596ff. In general, see Harold Zink, *American Military Government in Germany* (New York: MacMillan, 1949).

264. See, for example, Military Government Law No. 5 in U. S., Office of Military Government for Germany, *Military Government Gazette* (Hereafter cited as U. S., *Military Government Gazette* (Germany)), Issue A (June 1, 1946), pp. 17-19.

265. See Military Government Law No. 8 in *ibid.*, pp. 20-21.

266. See, for example, Elmer Plischke, "Denazification Law and Procedure," *American Journal of International Law*, Vol. 41 (1947), pp. 824-825.

267. Military Government Law No. 52 in U. S., *Military Government Gazette* (Germany) (n. 264 *supra*), Issue A, p. 24ff. Also, see General License No. 1 attached to the Law in *ibid.*, pp. 33-34.

268. *Survey* (n. 219 *supra*) 1939-1946, Four-Power Control in Germany and Austria 1945-1946, p. 162ff. See also Military Government Law Nos. 55 and 56 in U. S., *Military Government Gazette* (Germany) (n. 264 *supra*), Issue A, pp. 41-42 and *ibid.*, Issue C (April 1, 1947), p. 2ff respectively; Military Government Order Nos. 2 and 3 in *ibid.*, Issue A, pp. 31-33 and 32 respectively.

269. *Survey* (n. 219 *supra*) 1939-1946, Four Power Control in Germany and Austria 1945-1946, pp. 154-155.

270. In general, see Baete Ruhn von Oppen, *Documents on Germany under Occupation* (London: Oxford University Press, 1955). See also Military Government Laws Nos. 57 and 75 in U. S., *Military Government Gazette* (Germany) (n. 264 *supra*), Issue M (April 16, 1949), pp. 21-22 and *ibid.*, Issue L (December 16, 1948), p. 22ff respectively.

(* to be continued to the NEXT VOLUME OF THIS LAW REVIEW)