

Ref.: Legation Councillor Dr. Conrad Roediger

File D III 560 g

Deputy Director Legal Division

The following observations from the viewpoint of international law are made on the memorandum by Department D on the possibilities of a treaty settlement on the treatment of Jews in the individual states of Europe:

1) The treatment of foreign citizens is usually regulated by trade and residence treaties between the country of residence and the country of origin. Inasmuch as none of these treaties differentiate between Jews and other citizens they are also valid for Jews. In order to remove the obligations on the part of the country of residence regarding the treatment of Jewish citizens of their treaty partner two possibilities appear evident:

a) The states which pursue a Jewish policy similar to that of the German Reich can agree by new bilateral treaties not to use the rights ensuing from the existing trade and residence treaties for the benefit of their Jewish citizens which are in contrast to legislation on Jews prevailing in the state of residence. The Legal Department has already pointed out this possibility in one case submitted for its comment in which the application of German legislation on Jews to Slovakian Jews residing in Germany was in question.

b) The states in question can also arrange by a collective treaty that their Jewish citizens in the territory of the other treaty partners are subject to their legislation on Jews without regard to existing trade and residence treaties. Such a treaty would, of course, only be effective between the partners of the treaty and would therefore not affect the rights of Jewish citizens of third countries. The suggestion

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of Department D, to propose such a collective treaty between the signatories of the Anti-Comintern Pact might meet with the obstacle,

emphasized by Department D itself, that Italy, Spain, and Hungary will probably not at this time agree to be tied down by such an approach to the Jewish question. The collective treaty would therefore for the time being be at least confined to the smaller circle of such states as can be expected to be agreeable to such a treaty. Slovakia, Rumania, Bulgaria, and possibly Croatia can be counted among those.

But even a collective treaty confined to these states would not be an easy matter to accomplish. The difficulties would arise primarily from economic considerations. The extent of the assets of Jewish citizens of the individual countries which are potential partners in the collective treaty deposited in the territory of other treaty partners are bound to be quite different. The potential partners of the projected collective treaty will therefore partly fear to suffer losses by denouncing protection of the assets of their Jewish citizens in other states which will not be balanced by the assets of Jewish nationals residing on their own territory. They might therefore insist on an economic adjustment of the movement of assets created by the application of the legislation on Jews on the part of the potential partner state of the collective treaty to Jewish citizens of other partner states in their territory. At least the states which are potential signatories to the collective treaty will want assurances that they will not have to accept on their territory their Jewish citizens living in another partner state without their property. These difficult economic

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questions can probably be solved better in bilateral treaties rather than in a collective treaty. Therefore the suggestion listed under a) would be preferable, even though it would only lead to a stop-by-step realization of the aim projected by Department D.

2) The Legal Department assumes that the international agreement suggested by Department D is to cover only the treatment of such Jewish citizens of potential partner states who do not reside in their home-states. The assumption of international obligations on the part of a state in regard to the treatment of a group of its citizens in its own territory seems theoretically possible but illegal in international usage. To

assume such an obligation would as a rule be considered as intervention in the national sovereignty. An international agreement between states pursuing a policy similar to that of Germany regarding the treatment of their own Jewish citizens in their own territory can therefore hardly be considered.

3) In respect to the treatment of Jewish citizens of states at war with Germany it is observed that here - from the point of view of the other states under consideration - no members of an enemy state are involved. For instance Spain and Bulgaria are not at all at war, while Hungary and Rumania are merely at war with the Soviet Union and England and Slovakia is at war only with the Soviet Union.

Insofar as the states under consideration are at peace with home states of Jews residing in their territory the rights of these Jews are still governed by the Trade and Residence Treaties prevailing between state of residence and state of domicile. A legal possibility

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for the dissolution of these treaty obligations can therefore only be effected with the consent of the home state, which can not be counted on in the case of states now engaged in hostilities with Germany.

Insofar as the states in question are themselves at war with the home states of the Jews residing in their territory the principles relevant to the treatment of enemy nationals are applicable, as was already pointed out by Department I.

Herewith

together with enclosures  
(handwritten:) via Department "A" (?) (WEISSBACHER's  
initial ?)  
submitted to the State Secretary

Berlin, 31 December 1941

(signature:) ALBRECHT

(initial:) "R" (ROEDIGER ?)

(initial:) "St 11/12"

CERTIFICATE OF TRANSLATION

I, Wolfgang Von Bekardt, U.S.Civ. AGO A 185634,  
hereby certify that I am thoroughly conversant  
with the English and German languages and that the  
above is a true and correct translation of  
document No. NG- 4689

Wolfgang Von Bekardt  
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