

# Military Occupation Currency

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*This article presents a modern survey of a State's monetary rights and duties during and after military occupation of another State. The belligerent occupant has broad monetary powers to issue currency, control financial institutions and regulate in response to military necessity. In contrast, the Hague Regulations impose upon the occupant a few, general obligations which can be construed to limit the occupant's unreasonably inflationary actions or total destruction of the occupied country's economy. The author concludes that international law governing the occupant's conduct is loose and lenient, as a result of a general lowering of the pertinent standards in modern times.*

## INTRODUCTION

Seventy-five years ago when the Hague Regulations "respecting the laws and customs of war on land"<sup>1</sup> were adopted, a topic of military occupation currency would have been, if not unthinkable, at least wholly academic. This does not mean that currency did not play any role in the preparation and conduct of wars, but it constituted a matter of domestic rather than international concern;<sup>2</sup> the one noticeable exception was counterfeiting enemy currencies,<sup>3</sup> which had long been practiced despite an almost

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1. Hague Convention, 1907, War on Land, 36 Stat. 2,227.

2. It is striking to note that in her book, D. GRABER, *THE DEVELOPMENT OF THE LAW OF BELLIGERENT OCCUPATION 1864-1917* (1949), she does not mention the existence of any monetary problem during this period.

3. See A. NUSSBAUM, *MONEY IN THE LAW—NATIONAL AND INTERNATIONAL* 493-95 (1950); F. MANN, *THE LEGAL ASPECT OF MONEY* 506-07 (3d ed. 1971).

unanimous condemnation as internationally unlawful.<sup>4</sup> Today, money and more generally monetary measures have become widespread and an extremely efficient means of total warfare. Belligerent occupants have all made extensive use of currency in the territories they occupied during World War II and, to a lesser degree, during World War I. This paper discusses the legal aspects of this new area of international law.

### *Currency and Belligerent Occupation*

If the issuance and regulation of currency in occupied territory by the occupying power cannot be termed an entirely new phenomenon, however, the generalization, new purposes and duration of these monetary experiences during the two world wars have given birth to a series of complex and basic problems arising at the end of the hostilities and yet to be solved.

The recent developments in wartime monetary experiences

#### *Before 1914*

Before World War I, if we brush aside the frequent uses of counterfeiting enemy currency, very few and inconclusive examples of monetary manipulations by belligerent occupants may be gathered.<sup>5</sup> As far back as the year 1123 during the siege of Tyre, the Doge of Venice is reported to have paid his troops a money of necessity, a leather money, with a solemn promise to redeem it at face value. Much later on, Frederic II is said to have adopted the same technique when he besieged Milan.<sup>6</sup> At the turn of the 19th century, the Turks in Greece, the British during the Boer War, and the Japanese in Korea and Manchuria at the time of the Russo-Japanese War of 1905 all issued occupation currency, modifying in various degrees the monetary system of the occupied territories. Such transactions were not completely unknown in American history either. During the Revolution, the Continental Congress issued currency "even before the issuance of the Declaration of Independence" in the territories it controlled, and the Confederacy did the same in Confederate territories.<sup>7</sup>

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4. See *contra* F. MANN, *THE LEGAL ASPECT OF MONEY* 507 (3d ed. 1971).

5. See P. FAUCHILLE, 2 *TRAITÉ DE DROIT INTERNATIONAL PUBLIC* 267-68 (8th ed. 1921); memorandum prepared by the U.S. Treasury Department, Sept. 23, 1943, reproduced in *Hearings Before the Comm. on Appropriations Armed Services and Banking and Currency, U.S. Senate, on Occupation Currency Transactions*, 80th Cong., 1st Sess. 72, 72-84 (1947) [hereinafter cited as U.S. Treasury Memo]; V. PETROV, *MONEY AND CONQUEST* 15 (1967).

6. U.S. Treasury Memo, *supra* note 5, at 76-77.

7. *Id.*

These scattered precedents illustrate clearly the very specific and limited purposes which the issuance of military currencies was designed to serve:<sup>8</sup> the payment of occupation troops and purchase of requisitioned goods in the occupied territories.<sup>9</sup> Likewise, circumscribed, military currency experiences took place when the British occupied Arkangel, Russia, before and after World War I;<sup>10</sup> when the Americans occupied part of Siberia;<sup>11</sup> and when the French occupied the Ruhr in 1923.<sup>12</sup> These experiences are exceptional compared to modern practices which States inaugurated in World War I.

### *Contemporary experiences*

In World War I, drastic and far reaching monetary measures were imposed by Germany in Belgium, Poland and Rumania and, to a lesser degree, imposed by Austria in Serbia.<sup>13</sup> During World War II, the Axis powers and the Allies followed suit: Japan modified the monetary system of Burma, China, Hong Kong, Malaya, the Philippines and Singapore;<sup>14</sup> Germany did the same in the Baltic States, Belgium, Croatia, Czechoslovakia, Denmark, France, Hungary, the Netherlands, Norway, Rumania, Russia, Slovakia, the Ukraine and Yugoslavia.<sup>15</sup> On the Allied side, mili-

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8. This statement, however, might not be accurate with respect to Japanese "war moneys" in Korea and Manchuria during the 1905 war with Russia. This rather unique episode seemed to presage the most recent war monetary experiences. See generally U.S. Treasury Memo, *supra* note 5, at 77; note 28 *infra*.

9. PETROV, *supra* note 5, at 15.

10. U.S. Treasury Memo, *supra* note 5, at 77; LEAGUE OF NATIONS, CURRENCIES AFTER THE WAR 100 (1920).

11. LEAGUE OF NATIONS, CURRENCIES AFTER THE WAR 100 (1920).

12. *Id.* at 76; G. SCHACHT, THE STABILIZATION OF THE MARK 62 (1927).

13. Fauchille, *Chronique des Faits Internationaux*, 26 R.G.D.I.P. 310 (1919); P. FAUCHILLE, 2 TRAITÉ DE DROIT INTERNATIONAL PUBLIC 267-68 (1921); Nolde, *La monnaie en Droit International Public*, 27 A.D.I. 245, 306-12 (1929) (courses of the Hague Academy of Int'l Law); Hyde, *Concerning the Haw-Pia Case*, 24 PHIL. L.J. 141, 147-48 (1949).

14. See generally S. DAS, JAPANESE OCCUPATION AND EX-POST FACTO LEGISLATION IN MALAYA, SINGAPORE (1944); Maung, *Enemy Legislation and Judgments in Burma*, 30 J. COMP. LEGIS. & INT'L L. 11, 11-17 (1948) (ser. 3); Perkins, *Enemy Legislation in the Liberated Countries: The Philippines*, 30 J. COMP. LEGIS. & INT'L L. 17 (1948) (ser. 3); O'Connor, *Liberated Legislation in Malaya*, 33 J. COMP. LEGIS. & INT'L L. 1 (1951) (ser. 3); Feliciano, *The Belligerent Occupant and the Returning Sovereign: Aspects of the Philippine Law of Belligerent Occupation*, 28 PHIL. L.J. 645 (1953).

15. See generally R. LEMKIN, AXIS RULE IN OCCUPIED EUROPE (1944); V. VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY (1957); PETROV, *supra* note 5, at 23-42.

tary currencies<sup>16</sup> were introduced in Austria, Greece, Germany, Italy and Sicily; yellow seal dollars (spearheads) were used in French North Africa; supplemental francs were introduced in France; and British Military Authority notes and pounds were used in Tripolitania. The Russians<sup>17</sup> imposed a military currency of their own in the Baltic States, Bulgaria, Czechoslovakia, Hungary, Poland, Romania and Germany (where the Russians issued the same war notes as the Western powers with the special engraving plates furnished by the United States).<sup>18</sup>

*The significance of these new experiences*

All these experiences are far from being similar, and it is beyond the scope of this article to describe them.<sup>19</sup> However, despite the fact that they do not follow the same pattern, it is possible to draw a certain number of common features. First, these experiences with military occupation currency have involved every important representative country. Secondly, they have consisted of complete changes in the monetary systems of the occupied countries. Thirdly, the general occurrence of these experiences establish them as a social fact of modern wars. Finally, the purposes of occupation currencies (and other monetary reforms) have been greatly expanded by pursuit of numerous

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16. See generally *Hearings Before the Committee on Appropriations Armed Services and Banking and Currency, U.S. Senate, on Occupation Currency Transactions*, 80th Cong., 1st Sess. (1947) [hereinafter cited as *U.S. Senate Hearings*]; PETROV, *supra* note 5, at 42-51. The combined Chiefs of Staff of the Supreme Allied Commander issued a directive on May 13, 1943 that the task forces use yellow seal dollars besides regular United States coins and use British Military Authority (BMA) notes besides regular British coins to supplement lire currency in Sicily. The Combined Directive for Military Government in Germany, April 28, 1944, directed the Allied force to use yellow seal dollars and British Military Authority notes if the Reichsmark currency became inadequate. The American Directive on Military Government of Austria, June 27, 1945, ordered United States forces to use, for military purposes only, Allied military shillings. For the text of these directives, see H. HOLBORN, *AMERICAN MILITARY GOVERNMENT* 115-16, 140, 192 (1947).

17. PETROV, *supra* note 5, at 172-91; *U.S. Senate Hearings*, *supra* note 16, at 53, 122, 135.

18. On this much-debated affair of turning over to Russia the engraving plates with which to issue marks in Germany on behalf of the Allies, see *U.S. Senate Hearings*, *supra* note 16, at 7, 14, 16-17, 19, 27, 32, 68, 103-04, 118, 121, 130, 132-33; PETROV, *supra* note 5, at 107-32.

19. This is not to say that the practices followed by belligerent occupants in World War II, Allied as well as enemy powers, have to be placed on an equal footing. But although the aims differed, the techniques used and occasionally the results have been close to identical. It is self-evident that there can be no comparison whatsoever between the Allied and enemy practices, which would be suggesting that the former are internationally lawful and the latter unlawful. See U.S. Treasury Memo, *supra* note 5, at 82; D. Kemmerer, *Allied Military Currency in Constitutional and International Law*. On Money and the Law, Proceedings of the Institute on Money and the Law 83 (1945).

goals;<sup>20</sup> a weapon of total warfare—what a British author described as a “good piece of political and economic warfare,”<sup>21</sup> a means of assessing the costs of occupation, of securing political and economic advantages, of punishing the occupied enemy territory, and sometimes of fostering a social and economic revolution (in the case of the Russian experiences).<sup>22</sup>

#### General problems raised by recent wartime monetary experiences

A first round of questions is related to the international legality of the belligerent occupant's actions in the monetary field. Does the occupant have any monetary powers in the occupied territory; and if so, what are these powers, and what are their limits, if any? Secondly, who, at the end of the war, is going to assume the responsibility for these monetary measures, the former belligerent occupant or the previously occupied country? Thirdly, the fate of war notes or other monetary measures enforced by the belligerent occupant also have to be settled after a war. Specifically, what are the rights and duties, if any, of the returning sovereign? This raises involved questions of postliminy (or intertemporal) law. Fourthly, what acknowledgement must be given by the belligerent occupant of its private debts originating with occupation currency in the occupied country? In what respect are debtor-creditor relationships modified after a war, and what are the possible remedies, if any?

Despite their growing practical as well as theoretical importance in the law of belligerent occupation, these developments have received very little attention from writers. No comprehensive study has ever been devoted to the legal aspects of military occupation currencies.

#### *An Area of the Law of Belligerent Occupation Almost Completely Neglected by Writers*

Many reasons may be put forward to explain this doctrinal gap. Classical treatises on the law of war or on international law are generally rather old and have been written before or just after World War I at a time when few precedents could be relied on to

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20. LEMKIN, *supra* note 15, at 50; PETROV, *supra* note 5, at 252-53.

21. PETROV, *supra* note 5, at 44.

22. *Id.* at 173, 177.

determine and define the monetary powers of a military occupant.<sup>23</sup> The temptation then was great for lawyers either to ignore completely what might have appeared as a purely academic question<sup>24</sup> or to condemn as internationally unlawful these exceptional practices.<sup>25</sup>

The extensive use of currency devices in occupied territories during World War II should have led to a thorough study and a reappraisal of these new developments in the law of belligerent occupation. But, with few conspicuous exceptions,<sup>26</sup> most lawyers were unable to overcome their traditional uneasiness while dealing with economic, monetary or financial matters and left the field to economists<sup>27</sup> or political scientists.<sup>28</sup> Furthermore, it is fair to add that the looseness and uncertainty of applicable rules of international law in this area hardly constitute a scholarly incentive.

### *Currency and the Hague Regulations of 1907*

When the laws and customs of land war were codified at The

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23. *Id.*; Nolde, *supra* note 13, at 306.

24. The classical international law treatises of Hall, Westlake, and Wheaton are silent on this problem. Likewise, the landmark books on the law of war, such as PILLET, *LES LOIS ACTUELLES DE LA GUERRE*, (2d ed. 1901) and J.M. SPAIGHT, *WAR RIGHTS ON LAND* (1911), do not mention this issue. The noteworthy exception is FAUCHILLE, *supra* note 5, at 267-68.

25. See e.g., C. HYDE, *3 INTERNATIONAL LAW 1897* (2d ed. 1945). But see FAUCHILLE, *supra* note 5, at 267, who seems to be the first leading author to have dealt, although not very extensively, with the monetary aspects of the law of belligerent occupations and to have noticed that participants in modern wars had recognized the right of the occupying power to modify the monetary system of the occupied country.

26. Here again the modern treatises of international law appear tremendously inadequate: Cavare, Guggenheim and O'Connell ignore the problem. Oppenheim devotes one footnote only to the monetary powers of the belligerent occupant. L. OPPENHEIM, *2 INTERNATIONAL LAW 437-38 n.4* (7th ed. Lauterparht 1948). The first articulate (although not exhaustive) study was given by ERNST H. FEILCHENFELD, *INTERNATIONAL ECONOMIC LAW OF BELLIGERENT OCCUPATION 70-83* (1942). Short but interesting surveys of the monetary aspects of the law of belligerent occupation may be found in NUSSBAUM, *supra* note 3, at 495-501; F. MANN, *THE LEGAL ASPECT OF MONEY 507-15* (3d ed. 1971). Much valuable information can be gathered from Nolde, *supra* note 13, at 306-12; U.S. Treasury Memo, *supra* note 5, at 72-94 (the careful study made in 1943 by the General Counsel of the Treasury Department, Randolph Paul); A. MCNAIR & A. WATTS, *THE LEGAL EFFECTS OF WAR 391-92* (1966); Feliciano, *supra* note 14; Fraleigh, *The Validity of Acts of Enemy Occupation Authorities Affecting Property Rights*, 35 CORNELL L.Q. 89 (1950); Hyde, *Concerning the Haw-Pia Case*, 24 PHIL. L.J. 141 (1949) (a controversial note); KEMMERER, *supra* note 19, at 83-92. See also note 14 *supra*.

27. R. LESTER, *INTERNATIONAL ASPECTS OF WARTIME MONETARY EXPERIENCES* (1944); F. SOUTHARD, *THE FINANCES OF EUROPEAN LIBERATION* (1946); SPAHR, *ALLIED MILITARY CURRENCY* (1943).

28. C. FRIEDRICH, *AMERICAN EXPERIENCES IN MILITARY GOVERNMENT IN WORLD WAR II* (1948); H. HOLBORN, *AMERICAN MILITARY GOVERNMENT* (1947); LEMKIN, *supra* note 15; PETROV, *supra* note 5; VON GLAHN, *supra* note 15.

Hague at the beginning of this century, section III of article 42-56 was dedicated to the "Military Authority over the Territory of the Hostile State."<sup>29</sup> These customary rules of law of belligerent occupation have never been changed since then, despite their obvious incompleteness and what has been described as their obsolescence. Nevertheless, their present usefulness cannot be questioned as an invaluable starting point for any legal construction and reflection regarding belligerent occupation problems.

### The shortcomings of the Hague Regulations

The Hague Regulations reflect (but who would wonder?) a 19th century philosophical and economic background which is obviously no longer in line with contemporary conceptions of war and economics nor with the broad transformations of the international society.<sup>30</sup> Also, the Hague Regulations concerning belligerent occupation are certainly incomplete. Although 12 out of 16 articles of section III discuss economic matters, they do not even mention monetary concerns. The words "currency," "money," "central banks," and "gold" never appear in the text.

It goes without saying that a redrafting of the Convention on the law of belligerent occupation should include provisions dealing with monetary matters; but as a Singapore court pointed out, "[The Hague] Convention is not exhaustive. . . . [I]t cannot be said that anything not expressly authorized is forbidden, by implication."<sup>31</sup> This reasonable principle of interpretation and construction greatly diminishes the weight of numerous criticisms which have described the Hague Regulations as "archaic,"<sup>32</sup> "very scant in extent and very superficial in character,"<sup>33</sup> "vague and almost meaningless generalities,"<sup>34</sup> and obsolete because frequently transgressed.<sup>35</sup> However appealing and impressive these sweeping judgments might be, they represent a simplified over-

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29. Hague Convention, note 1 *supra*.

30. For an excellent analysis and appraisal of the impact of these changes, see FEILCHENFELD, *supra* note 26, at 10-29.

31. Public Trustee v. Chartered Bank of India, Australia and China, 23 I.L.R. 687, 693 (Org. Civ. Jur., Singapore, 1956) [hereinafter cited as the Public Trustee case].

32. Smith, *The Government of Occupied Territory*, 21 B.Y.I.L. 151 (1944).

33. Colby, *Occupation Under the Laws of War*, 25 COLUM. L. REV. 904, 917 (1925).

34. Feliciano, *supra* note 14, at 669.

35. PETROV, *supra* note 5, at 82-83.

statement of reality. The Hague Regulations are still useful in many respects.

### The present usefulness of the Hague Regulations

The value of the Hague Regulations derives from their very existence. Without them, there would be no law of belligerent occupation whatsoever, and the powers of the military occupant would be unrestrained, which is clearly unacceptable. Moreover, these customary rules have never been formally denounced by belligerents.<sup>36</sup> Their frequent violation in modern wars does not imply that they have been actually repudiated; they are still applied by national as well as international tribunals as the test of international legality of warfare acts. It is the opinion of this writer that in spite of their gaps which would be desirable to fill, the Hague Regulations can still be very helpful in areas of the law of belligerent occupation (such as the monetary field) which the Regulations do not expressly cover. As a matter of fact, the express, broad and flexible rules can be easily adapted to new circumstances<sup>37</sup> of modern wars and constitute invaluable guideposts which need only to be completed, interpreted and developed in the light of subsequent States' practices. The crux of the matter appears to be a mere question of legal construction and reasoning.

### *The Expounding of the Hague Regulations*

Besides the Hague Regulations which provide for the basic customary rules of international law, other sources of applicable law concerning monetary powers of a belligerent occupant have to be found in miscellaneous international agreements, national court decisions, States' practices, and the opinions of leading authorities on international law.<sup>38</sup>

The relevant international agreements to be taken into account consist mainly of peace treaties,<sup>39</sup> armistice conventions,<sup>40</sup> and

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36. FEILCHENFELD, *supra* note 26, at 5.

37. In this sense, *see also* Feliciano, *supra* note 14, at 670.

38. FEILCHENFELD, *supra* note 26, at 5.

39. Curiously enough, none of the peace treaties concluded after World War I contain any specific provision dealing with occupation currencies, although this problem was studied by a commission appointed "to inquire and to report upon the violations of international law committed by Germany." Hyde, *supra* note 13, at 147. One of the 32 hearings retained was "Debasement of the Currency, and Issue of Spurious Currency." *Id.* at 147 n.11. But a different practice was followed after World War II. *See e.g.*, Treaty of Peace with Bulgaria, Feb. 10, 1947, art. 28, para. 1(b), 41 U.N.T.S. 21; Treaty of Peace with Hungary, Feb. 10, 1947, art. 32, para. 4, 41 U.N.T.S. 135; Treaty of Peace with Italy, Feb. 10, 1947, art. 76, para. 4, 49 U.N.T.S. 3; Treaty of Peace with Roumania, Feb. 10, 1947, art. 30, para. 4, 42 U.N.T.S.



various agreements regarding either reparations<sup>41</sup> or other financial matters.<sup>42</sup> These conventions which deal exclusively with questions of responsibility and leave aside all problems of legality have to be used carefully, for they represent the political views of the victorious States imposing their will on the defeated side, rather than the present state of development of international law.<sup>43</sup>

Decisions of national courts of the returning sovereign, and of the former belligerent as well, contain an invaluable source of information and constitute certainly the primary source of law in this field. However, two reservations are to be made: these decisions are not always consistent,<sup>44</sup> and they may only reflect the purely national interest of the States involved. States' practices in recent wars have to be scrutinized, if not heavily relied upon. Field manuals of war departments and armies (although often sketchy), directives sent to army commanders in occupied countries, and, more generally, policy followed by States with regard to the currency management of the occupied countries have to be carefully considered in order to determine the common rules which seem generally accepted and respected. Finally, the opinions of leading writers have to be considered, due consideration being given to the schools of interpretation to which they belong.<sup>45</sup>

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3; Treaty of Peace with Japan, Sept. 8, 1951, art. 14, para. a, 136 U.N.T.S. 45; State Treaty for the Re-establishment of an Independent Austria, May 15, 1955, art. 24, para. 4, 217 U.N.T.S. 223. *See also* notes 191-201 and accompanying text *infra*.

40. *See* Armistice Convention of September 29, 1943, cl. 23, DEP'T STATE Pub. No. 2669 (European Series 17). *See also* Quadripartite Agreement for Control of Germany by Allied Representatives, Sept. 20, 1945, in 3 TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA 1949-1976, at 1254-58 (C. Bevans ed. 1969).

41. *See* the Convention of Nov. 10, 1928 between Roumania and Germany. Martens Nouveau Recueil 484 (3d ser. (21)); the Agreement between Germany and Belgium Regarding the Marks, Jul. 13, 1929, 104 L.N.T.S. 202; Final Act and Annex of the Paris Conference on Reparation, Nov. 9 - Dec. 21, 1945, art. 2, para. A in 8 DOCUMENTS ON AMERICAN FOREIGN RELATIONS 1945-46, at 227, 230 (R. Dennet & R. Turner eds. 1976) [World Peace Foundation].

42. *See* Agreement on German External Debts, Feb. 27, 1953, art. 5, para. 2, 333 U.N.T.S. 3, which excludes expressly all governmental claims and the costs of German occupation until a final general settlement. *See also* the Memorandum of Understanding between the U.S. and Italy Regarding Settlement of Certain Wartime Claims and Related Matters, Aug. 14, 1947, 17 DEP'T STATE BULL. 372 (1947).

43. *See* Feliciano, *supra* note 14, at 698-99; MANN, *supra* note 3, at 513; NUSSBAUM, *supra* note 3, at 494-500.

44. MCNAIR & WATTS, *supra* note 26, at 392.

45. *See* FEILCHENFELD, *supra* note 26, at 15-17, who correctly emphasizes that

Thus, this article will be an attempt to outline the present positive rules of law concerning wartime, international, monetary experiences in occupied countries and their aftermath. It will be a "*lex lata*" and not a "*de ferenda*" approach. Three main problems will be investigated: 1) the foundation of monetary powers of the military occupant, 2) the scope of monetary powers of the military occupant, and 3) the post-war impact of monetary measures adopted by the military occupant.

## I. THE FOUNDATION OF MONETARY POWERS OF THE MILITARY OCCUPANT

It would be highly unrealistic and very likely incorrect as well to construe the relevant customary rules of international law as condemning what is now universally practiced by States, generally accepted by leading authors, and widely recognized by national courts: namely, that belligerent occupants possess monetary powers in the territories they occupy.<sup>46</sup> This is not to say that everything practiced by States was lawful,<sup>47</sup> which would be a comment without any value and interest, but rather that they had the power to act, leaving aside at this stage of the study the problems connected with the exercise of this monetary power.

### *Affirmation By the Universal Practice of States in Modern Wars*

The great variety of wartime monetary experiences in occupied countries reveals some common techniques followed by States which, it is worth noting, justified their actions with identical rules of international law.

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[c]ountries which had been or expected to be occupants, such as Germany, were inclined to favor comparatively extensive interpretation of the powers of occupants, [while] [c]ountries which had suffered from occupation, such as Belgium and France, favored strict interpretations and a narrowing down of powers of occupants. Countries which were friends or allies of past or prospective victims, but were not afraid of occupation for their own territories and had themselves engaged in occupations, such as England and the United States, were inclined to adopt in-between positions.

*Id.* at 15.

46. This point appears clearly from the U.S. Treasury Memo, *supra* note 5, at 79.

47. Another danger would be to suggest that all that has been done on the Allied side was internationally lawful, while the corresponding actions undertaken by the enemy powers were internationally unlawful. This is the main criticism which might be addressed to Lemkin, who, lightheartedly and indiscriminately, condemns as a whole the Nazi monetary experiences in Europe. See LEMKIN, *supra* note 15, at 50-63.

### The common monetary techniques used by belligerent occupants

With respect to currency (in particular, monetary units), occupying powers pursued three different courses, sometimes combined. First, on rare occasion because it was not always possible, the military occupant used the existing currency of the occupied country.<sup>48</sup> In such cases, the expenses caused by the presence of foreign troops and other military requirements resulted in an unavoidable increase of currency in circulation and inflationary pressures. Another possible course for the occupant was the use of its own currency.<sup>49</sup> Although not infrequent in the past, this method was not followed in World War II for any extended period of time because of the strains of currency claims and the inflationary dangers which the method imposed on the occupant's monetary system.

The last and by far the most frequent system to date consisted of issuing a new currency having legal tender and replacing or circulating together with the previous monetary unit in the occupied country.<sup>50</sup> The use of such war notes was extremely convenient

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48. During World War I, Germany in Northern France and the United States in Rhineland used this technique. See NUSSBAUM, *supra* note 3, at 495-96. The same writer adds that "in World War II the money supply for the occupation of territories of Allied Powers was secured through arrangements with the Allied Governments concerned." *Id.* at 496 n.26. More particularly, on the frictions between France and its Allies as to the issuance of "supplemental francs" and the Eisenhower-Koenig Agreement of Aug. 25, 1944, see PETROV, *supra* note 5, at 56-62. Feilchenfeld places under the same heading the German practice in Belgium during World War I, but the facts of this case do not suggest such a classification. By vesting the privilege of issuing a new currency in Belgium in a private bank (the Société Générale de Belgique) instead of the Belgium National Bank, which had taken away all its printing plates and monetary assets, the German occupants were actually introducing indirectly a brand new monetary unit. See Nolde, *supra* note 13, at 306-11; MANN, *supra* note 3, at 507-08.

49. This was the general practice followed by Austria-Hungary in World War I. See NUSSBAUM, *supra* note 3, at 497 n.29; FEILCHENFELD, *supra* note 26, at 76-80. During the first phase of the Second World War while occupying North Africa, American troops provisionally used spearhead currencies or regular silver certificates bearing a yellow seal, in contrast to the blue seal printed on silver certificates in the United States. Likewise, the German army in occupied areas introduced "Reichskreditkassenscheine," denominated in Reichsmarks which were progressively withdrawn by the end of 1943. See LEMKIN, *supra* note 15, at 51; PETROV, *supra* note 5, at 23-41 (particularly P.35). In Jersey, Germany introduced the regular German notes, which was highly exceptional. See Duret Aubin, *Enemy Legislation and Judgments in Jersey*, 31 J. COMP. LEGIS. & INT'L L. 8 (1949).

50. This technique was followed by Germany in World War I during its occupation of Belgium, Rumania, and a small part of Italy. See FEILCHENFELD, *supra*

to meet the day-to-day monetary needs of an occupation army without impairing too much the economic life in the occupied territory. Furthermore, this system avoided commitments as to the distribution of occupation costs between Allied and enemy powers and postponed the solution of these financial questions until a definitive peace treaty settlement.<sup>51</sup> But these advantages remained only as long as military currencies were properly managed and operated by occupying powers, which was far from being the general rule. These war monies bore with them many dangers for the belligerent occupant, the greatest of which was the ruination of the occupied country through the complete collapse of its monetary system. From the viewpoint of international legality, this scheme was certainly the most questionable of all.

If the belligerent occupant chose to utilize its own currency or to introduce a new one from scratch, it was faced with valuation problems in the sense that it would have to fix an exchange rate between the different circulating media.<sup>52</sup> During World War II, all of the belligerent occupants exercised this valuation power, even though sometimes unscrupulously.<sup>53</sup>

Among other common practices, occupying powers have always been eager to seize "State treasures," like state-owned gold (or monetary gold), funds, foreign exchange and generally all monetary assets in order to finance their war operations.<sup>54</sup> Also, traditionally, belligerent occupants have carefully regulated inflows and outflows of funds from territories they occupied through the complex machinery of exchange control systems.<sup>55</sup> Finally, belligerent occupants have promoted many other types of monetary reforms in the occupied countries. Reforms varied from drastic and complete reorganization of the whole monetary system<sup>56</sup> to the modification of the banking institution (mainly central banks)<sup>57</sup>

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note 26, at 80-81; Nolde, *supra* note 13, at 306-12. In World War II, Allied as well as enemy powers introduced occupation currencies in the territories they occupied. See references cited in notes 14-17 *supra*.

51. This point was emphasized by the U.S. Treasury Memo, *supra* note 5, at 83.

52. See FEILCHENFELD, *supra* note 26, at 80-82; VON GLAHN, *supra* note 15, at 203.

53. See notes 168-78 and accompanying text *infra*.

54. See FEILCHENFELD, *supra* note 26, at 71; LEMKIN, *supra* note 15 at 57-58; VON GLAHN, *supra* note 15, at 204. See also the Directive to the Commander in Chief of the U.S. Forces of Occupation on July 11, 1947, as reproduced in W. BISHOP, INTERNATIONAL LAW 989 (3d ed. 1971). See also notes 144-48 and accompanying text *infra*.

55. LEMKIN, *supra* note 15, at 56-57; VON GLAHN, *supra* note 15, at 203-04. See also notes 142-43 and accompanying text *infra*.

56. See e.g., the German practice in the so-called "incorporated areas," LEMKIN, *supra* note 15, at 52, or the monetary reform imposed by the Western Allies in Germany in 1948, PETROV, *supra* note 5, at 236-51.

57. For the German practice in World War I in Belgium, see FEILCHENFELD,

or the mere liquidation of hostile banks and other enemy financial businesses and monetary assets.<sup>58</sup>

### Common justification

States have always affirmed that they were acting within the recognized powers of military occupants by the "principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of public conscience,"<sup>59</sup> quoting the preamble of the 1907 Hague Regulations. More specifically, States have invoked and relied upon section three of Convention IV of the Hague Regulations, dealing with belligerent occupation.<sup>60</sup> Such a contention has never been seriously challenged either by the majority of writers or by national courts' decisions.

### *General Acceptance by Writers*

However greatly doctrine and practice differ as to the exercise of monetary powers of belligerent occupants, they concur with regard to the source or basis of these powers. Fauchille was probably the first prominent writer to acknowledge the existence of these powers.<sup>61</sup> Oppenheim, although reluctantly, admits that "conditions may compel the occupant to issue regulations concerning currency. . . ." <sup>62</sup> Fitzmaurice recognizes that "under the conditions of modern warfare, the issue of occupation currency by a belligerent occupant for the use of its troops is a practical necessity and is justified. . . ." <sup>63</sup> Likewise, Lord McNair writes that "so long as [the introduction of a new currency by the military occupant] can be justified as being in exercise of the legitimate powers of a belligerent occupant, the practice is not unlawful. . . ." <sup>64</sup> For Nussbaum, "[t]he power to issue currency forms

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*supra* note 26, at 71-76, 96-104. For practices in almost every occupied country in World War II, see LEMKIN, *supra* note 15, at 54-55; VON GLAHN, *supra* note 15, at 205.

58. On the Japanese actions, see DAS, *supra* note 14, at 100.

59. Hague Convention, note 1 *supra*.

60. See U.S. Treasury Memo, *supra* note 5, at 72-84; DEPARTMENT OF THE ARMY [United States], THE LAW OF LAND WARFARE 157, para. 430 (1956) (FM27-10) [hereinafter cited as Army Field Manual].

61. See note 25 *supra*.

62. OPPENHEIM, *supra* note 26, at 437-48 n.4.

63. Fitzmaurice, *The Juridical Clauses of Peace Treaties*, 73 A.D.I. 259, 342 (1948) (courses of the Hague Academy of Int'l Law).

64. McNAIR & WATTS, *supra* note 26, at 391.

part of the occupant's vicarious sovereignty rights."<sup>65</sup> According to Professor Mann, "the introduction of a new currency cannot be considered as unlawful."<sup>66</sup> Generally, Feilchenfeld states that "[t]he powers of occupants in regard to money and currency are based on the occupant's general power to maintain law and order. This may be effected by several methods, varying according to circumstances and policy."<sup>67</sup> And in their previously mentioned studies, Das, Feliciano, Fraleigh, Hyde, and Kemmerer all take for granted the existence of monetary powers vested in the belligerent occupant.

In short, writers have not questioned the validity of war notes or occupation currencies, and no significant condemnation of this universal and necessary practice has ever been written. The same conclusion can be drawn from the score of national courts' decisions available.

### *General Recognition by National Courts*

The trend in judicial decisions rendered by courts of the returning sovereign or the former belligerent occupant is reasonably clear: American,<sup>68</sup> Burmese,<sup>69</sup> German,<sup>70</sup> Italian,<sup>71</sup> Malayan,<sup>72</sup> Filipino,<sup>73</sup> Polish,<sup>74</sup> and Singapore<sup>75</sup> tribunals have accepted (to use the broad words of the United States Court of Claims) the general principle that "the task of occupying powers . . . certainly . . . include[s] the power to establish a rational monetary system."<sup>76</sup> Furthermore, even when some national

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65. NUSSBAUM, *supra* note 3, at 498.

66. MANN, *supra* note 3, at 509.

67. FEILCHENFELD, *supra* note 26, at 70.

68. Aboitz and Co. v. Price, 99 F. Supp. 602, 18 LLR. 592 (D. Utah 1951); Eisner v. United States, 117 F. Supp. 197, 21 LLR. 476 (Ct. Cl. 1954).

69. U Hoke Wan v. Maung Ba San, 14 ANN. DIG. 235 (High Court, Burma, 1947); Taik v. Ariff Moosa Jee Dooply, 15 ANN. DIG. 576 (High Court, Burma, 1948).

70. RGZ 103, 231 (Reichsgericht, Nov. 28, 1921); JW 1922, 1324 (Reichsgericht, April 22, 1922); RGZ 109, 357 (Reichsgericht, Dec. 20, 1924).

71. See digest of Nicolo v. Creni, 19 LLR. 145 (Court of Cassation, Italy, 1952).

72. Planters Loans Board v. Managalam, 18 LLR. 585 (High Court, Malaya, 1951).

73. See the leading case, Haw-Pia v. The China Banking Corp., 18 LLR. 642 (Sup. Ct. Phil. 1948), confirmed by a long line of decisions by the Philippines Supreme Court in Gibbs v. Rodriguez, 18 LLR. 661 (Sup. Ct. Phil. 1950); Hilado v. de la Costa, decision of April 30, 1949, as summarized in 44 AM. J. INT'L L. 211-12 (1950); and by the Philippines Court of Appeals in Madlambayan v. Aquino, 22 LLR. 994 (Ct. App. Phil. 1954); Singson v. Veloso, 23 LLR. 800 (Ct. App., Phil. 1955).

74. Wladislaw F. v. Mebli, 26 LLR. 719 (Sup. Ct. Pol., 1947). See also the cases cited in the note following the Wladislaw opinion, 26 LLR. 721 (1947).

75. Public Trustee case, *supra* note 31, at 687.

76. Eisner v. United States, 117 F. Supp. 197, 199, 21 LLR. 476, 477 (Ct. Cl. 1954).

courts in Belgium<sup>77</sup> and Poland<sup>78</sup> after World War I and Hong Kong<sup>79</sup> and Luxemburg<sup>80</sup> after World War II have refused to uphold (usually on very unclear grounds) the validity of monetary measures imposed by Germany and Japan, respectively, these courts have not denied the possible existence of a belligerent occupant's monetary power.

Only one and perhaps two decisions by the Burma High Court have formally and explicitly refused to admit that the military occupant was acting within its authority under international law in effecting changes in the currency system of the occupied country. In *Ko Maung Tin v. U Gon Man*,<sup>81</sup> the Burmese judges described the Japanese war notes as "mere scraps of paper devoid of all barter value."<sup>82</sup> In *Dooply v. Chan Taik*,<sup>83</sup> the Burma Supreme Court followed the same line and stated that the Japanese military notes were "no better than tokens" and reaffirmed that they "never formed part of the currency system in Burma and were not money."<sup>84</sup> In this author's opinion, Feliciano is right in criticizing this decision as "distinctly unrealistic."<sup>85</sup> This lone case is not enough to cast doubt on the soundness of the aforementioned views of the almost unanimous, national courts, recognizing the existence of monetary powers of belligerent occupants.

*The International Law Foundation of Belligerent Occupants' Monetary Powers*

The primary source of monetary powers of the belligerent occupant is traditionally ferreted out from the law of belligerent occupation expressed in the Hague Regulations of 1907. A secondary, although rarely mentioned,<sup>86</sup> source of these powers may be deduced from certain fundamental principles of law of money.

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77. Pasicrisie belge 1923-I-269 (Ct. of Cassation, Belgium, April 16, 1923).

78. JW 1922, 1689 (Sup. Ct., Pol., Aug. 28, 1919).

79. Tse Chung v. Lee Yau Chu, 18 I.L.R. 636 (Sup. Ct., Hong Kong, 1951).

80. G. v. H., 18 I.L.R. 633 (Dist. Ct., Luxembourg, 1951).

81. 14 ANN. DIG. 233 (High Court, Burma, 1947).

82. *Id.* at 235.

83. 19 I.L.R. 619 (Sup. Ct., Burma, 1950).

84. *Id.* at 620.

85. Feliciano, *supra* note 14, at 677.

86. See, e.g., NUSSBAUM, *supra* note 3, at 498. But see MANN, *supra* note 3, at 508 (who denies that any principle of the law of money is relevant).

## The primary source: the law of belligerent occupation

It is a well accepted principle that the Hague Regulations constitute the "measure of international legality,"<sup>87</sup> the one objective test<sup>88</sup> by which acts of belligerent occupants have to be appraised. In this respect, article 43 of Convention IV is the crux of the problem, providing that "[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, *public order and safety*. . . ."<sup>89</sup> From this general power and specific duty of maintaining public order and safety under article 43, it has been generally deduced by courts, and writers as well, that belligerent occupants had the right to "provide for and regulate matters of currency and banking so that the population could live orderly lives."<sup>90</sup> In other words, military occupants are entitled and even compelled to use their monetary powers in the occupied country to the extent necessary to "keep the economic life of the community going."<sup>91</sup> In so doing, military occupants are acting in the primary interest of the inhabitants whose country they occupy.<sup>92</sup>

But monetary powers of belligerent occupants may also be based upon a more selfish foundation. It is widely recognized that military necessity can be used as a proper basis. According to Hall, "rights of occupation may be placed upon the broad foundation of simple military necessity,"<sup>93</sup> and this notion underlies section III of the Hague Regulations. As a matter of fact, the already long history, the widespread use of war monies or occupation currencies, and the acceptance of this foundation by most national courts have proved Hall right.<sup>94</sup> In short, the military necessity which is behind this much debated section III of the Hague Regulations and, more particularly, the maintenance of law and order mentioned in article 43 have generally been deemed a sufficient basis for the exercise of monetary powers vested in belligerent

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87. *Aboitz and Co. v. Price*, 99 F. Supp. 602, 623, 18 LLR. 592, 603 (D. Utah 1951).

88. However, this character of objectivity might be disputed in light of the above-mentioned contradictory decisions handed down by some Belgian, Burmese and Polish courts. See cases cited in notes 78-80 *supra*.

89. Hague Convention, art. 43, *supra* note 1, at 2307.

90. Public Trustee case, *supra* note 31, at 694.

91. *Aboitz and Co. v. Price*, 99 F. Supp. 602, 613, 18 LLR. 592, 600 (D. Utah 1951).

92. This was expressly mentioned in the decisions of the Reichsgericht, *supra* note 70.

93. W. HALL, A TREATISE ON INTERNATIONAL LAW 559 (8th ed. 1924).

94. Military necessity is also relied on in the Public Trustee case, *supra* note 31; *Haw-Pia v. The China Banking Corp.*, 18 LLR. 642 (Sup. Ct., Phil., 1948) and *Gibbs v. Rodriguez*, 18 LLR. 661 (Sup. Ct., Phil., 1950).



occupants. The law of money does not command a different conclusion.

A possible secondary source: the law of money

It is often said that money is an attribute of sovereignty in the sense that States, within the territory they control,<sup>95</sup> have the inherent right to coin money and regulate its value;<sup>96</sup> most of the time, they are sovereign entities so that the power to issue a currency coincides with the possession of State sovereignty. But a disassociation between the two notions may not disturb a State's power to issue currency as long as the critical element does not consist of "State sovereignty" but rather of actual supremacy, the exercise of unchallenged supreme powers over a certain territory.

It is a well known phenomenon that insurgents have validly issued currency in the territory they dominated and that this power has been recognized by courts.<sup>97</sup> For instance, in the landmark case, *Thorington v. Smith*,<sup>98</sup> the United States Supreme Court dealt with the problem of confederacy notes issued during the Civil War in the Confederate territory and upheld the issuance of Confederate currency. The Court, while regarding those notes "as a currency, imposed on the community by irresistible force," pointed out the fundamental principle that

it seems to follow as a necessary consequence from this *actual supremacy* of the insurgent government, as a belligerent, within the territory where it circulates, and from the necessity of civil obedience on the part of all who remained in it, that this currency must be considered in courts of law in the same light as if it *has been issued by a foreign government, temporarily occupying a part of the territory of the United States* (emphasis added).<sup>99</sup>

The obvious analogy in this respect between insurgency and belligerent occupation and "the *de facto* government character of the occupation authorities"<sup>100</sup> is enough to justify the monetary powers of belligerent occupants. However, no court decision has ever relied on this ground.

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95. See generally Mann, *Money in Public International Law*, 96 A.D.I. 75 (1959) (courses of the Hague Academy of Int'l Law).

96. See U.S. CONST. art. I, § 8, cl. 5.

97. See U.S. Treasury Memo, *supra* note 5, at 76-77, 79; NUSSBAUM, *supra* note 3, at 6-7, 592-94; MANN, *supra* note 3, at 19.

98. *Thorington v. Smith*, 75 U.S. (8 Wall.) 8 (1868).

99. *Id.* at 11-12.

100. NUSSBAUM, *supra* note 3, at 498.

## *Summary*

In brief, the existence of monetary powers of belligerent occupants and their general basis on well accepted rules of international law are unquestionable and have never been seriously challenged. But beyond this point, the greatest uncertainty remains in connection with the scope of the monetary powers of the belligerent occupant. There are many more questions than definitive answers concerning this next issue.

## II. THE SCOPE OF THE MONETARY POWERS OF THE BELLIGERENT OCCUPANT

The rights and duties of belligerent occupants with regard to the monetary system of the occupied country have to be appraised according to a test of validity as determined by international law and interpreted in the light of economic consideration.

### *The Test of Validity According to International Law*

The guiding principles in administering this test are to be inferred from the Hague Regulations of 1907, concerning belligerent occupation. The basic idea of such a test is that belligerent occupation, by its very nature, imposes certain broad obligations upon occupants which limit their exercise of monetary powers.

### The very nature of belligerent occupation

It was not before the middle of the 18th century that the basis of modern theory of belligerent occupation emerged. Until then, the prevailing doctrine accepted the idea of a temporary and quasi-unbound substitution of sovereignty analogous to conquest or annexation of the territory concerned.<sup>101</sup> Since then, it has become a well accepted principle that military occupation, being "essentially provisional,"<sup>102</sup> does not constitute a transfer or displacement of sovereignty although the legitimate sovereign is unable to exercise its rights during the period of occupation.<sup>103</sup> As a Singapore court noted, "[t]he position of a belligerent State occupying enemy territory during a war differs from that of a state exercising sovereignty in its own territory."<sup>104</sup> The occupying State can be regarded only as "administrator and usufructuary" in the

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101. See SPAIGHT, *supra* note 24, at 321-22, 329; FAUCHILLE, *supra* note 5, at 215-18; WESTLAKE, *INTERNATIONAL LAW - WAR* 95-96 (1910); WHEATON, *INTERNATIONAL LAW* 231, 233-34 (7th ed. A. Keith ed. 1944). HALL, *supra* note 93, at 555-58.

102. HYDE, *supra* note 25, at 1898.

103. MCNAIR & WATTS, *supra* note 26, at 369.

104. Public Trustee case, *supra* note 31, at 687, 692.

territory it occupies, to use the words of article 55 of the Hague Regulations.<sup>105</sup> International law grants belligerent occupants fewer rights in extension and character than those ordinarily vested in legitimate governments and, accordingly, prescribes a general code of conduct which mandates broad goals for belligerent occupation while permitting a choice of means.

#### The general obligations of belligerent occupants

Article 43 of the Hague Regulations provides that the occupant "shall take all the measures in his power to restore and ensure as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."<sup>106</sup> Other provisions stipulate that the occupant cannot confiscate private property<sup>107</sup> or levy money contributions beyond the needs of the army or of the administration of the occupied territory.<sup>108</sup> General and unlimited contributions are forbidden;<sup>109</sup> likewise, "[r]equisitions in kind and services" shall not be demanded from the population except for military needs and shall be proportionate to the resources of the country.<sup>110</sup> If we keep in mind the transient character of belligerent occupation and the vicarious powers of the occupant, it is possible to draw from these provisos a certain number of unquestionable principles which are protective of the interest of the occupied country and its inhabitants, while not interfering with the military effort of the occupant.

First, as a Singapore court stated, a belligerent occupant may not be "required to enforce or administer [the local laws in force, which] would be impracticable."<sup>111</sup> A belligerent occupant must, however, abstain from promoting measures aimed at fundamental, social or economic changes in the established order equivalent to a revolution.<sup>112</sup> Secondly, a belligerent occupant

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105. Hague Convention, art. 55, *supra* note 1, at 2309.

106. *Id.* art. 43 at 2306.

107. *Id.* art. 46 at 2306.

108. *Id.* art. 49 at 2307.

109. *Id.* art. 51 at 2307.

110. *Id.* art. 53 at 2308.

111. Public Trustee case, *supra* note 31, at 693.

112. Pillet states that the occupant's domination is, by nature, "limited and conservative" in PILLET, *LES LOIS ACTUELLES DE LA GUERRE* 242-43 (2d ed. 1901). Fitzmaurice remarks that there is a "fundamental obligation of an occupying belligerent not to effect fundamental alterations in the general constitutional and administrative, and probably also the financial system of the occupied territory." Fitzmaurice, *supra* note 63, at 342.

must not deliberately deprive inhabitants of their property, either directly or indirectly, through the introduction of social or economic legislation or the imposition of exorbitant requisition or unreasonable money contributions.<sup>113</sup> Thirdly, a belligerent occupant must avoid any unjust or undue enrichment to the detriment of the occupied country.<sup>114</sup> Finally, the occupant must abstain from driving the occupied country to economic ruination by stripping it of its wealth.<sup>115</sup>

Obviously, these broad rules imposing restrictions on the belligerent occupant are not easily enforceable, particularly in the monetary field, because of their looseness and abstraction. But, when properly qualified by economic considerations, they seem flexible enough to have practical application.

*The Monetary Powers of the Military Occupant and the Economics of Belligerent Occupation*

While evaluating the lawfulness or unlawfulness of any monetary measure adopted by a belligerent occupant, it is necessary to consider the State's management of money in peacetime and the particular economic conditions initially prevailing in the occupied territory.

Management of currency by States in peacetime<sup>116</sup>

Currency manipulation, stringent exchange control regulations, nationalization of central banks and other financial institutions, freezes of foreign and monetary assets, prohibition of gold and other monetary clauses in private contracts, and compulsory surrender of privately-owned gold or foreign exchange are all well-known techniques for managing currency in present times, although universally condemned sixty years ago. The same can be said of inflation. Because of fundamental changes in thoughts and conditions, what appeared unacceptable and unlawful before World War I is now generally accepted as lawful, if not actually recommended by some theoreticians. A similar lowering of monetary standards for belligerent occupation must correspond to this lowering of peacetime standards. A belligerent occupant can never be expected to behave as the legitimate sovereign and, a

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113. SPAIGHT, *supra* note 24, at 384-85; KEMMERER, *supra* note 19, at 88; LEMKIN, *supra* note 15, at 50, 53.

114. LEMKIN, *supra* note 15, at 53; MANN, *supra* note 3, at 513-14; FEILCHENFELD, *supra* note 26, at 14, 41, 47, 82, 92; HYDE, *supra* note 25, at 1897.

115. LEMKIN, *supra* note 15, at 50; KEMMERER, *supra* note 19, at 85; FEILCHENFELD, *supra* note 26, at 82.

116. For further developments, see the excellent analysis of FEILCHENFELD, *supra* note 26, at 17-19.

*fortiori*, it would be highly unrealistic to require him to follow rules of conduct which are not compulsory according to international law.

The particular economic conditions prevailing in the occupied country

The lawfulness of an occupant's monetary measures may be determined, in part, by the prior conduct of the conquered legitimate government or former belligerent occupant. Mitigating circumstances may include: the removal abroad of printing plates and monetary cover, as was the case in Belgium in 1919;<sup>117</sup> the destruction of huge stocks of existing currency, as the British did in Malaysia in 1941;<sup>118</sup> and other currency sabotages<sup>119</sup> designed to make the maintenance of public order and safety by the belligerent occupant as difficult as possible. These acts may render lawful the belligerent occupant's monetary measures which might have been deemed unlawful in other circumstances.

Another important factor is the purpose behind the monetary choice of the belligerent occupant, namely, whether or not it intended to exploit the occupied country. In this respect, a rule has been proposed by Hyde that "[t]he scope of the occupant's right depends upon the degree of harm wrought to the creditor by the occupant's decrees."<sup>120</sup> This proposal is both too tight and incomplete in its formulation. It is unavoidable that the occupant's monetary measures will be harmful to the whole economy of the occupied country, not only to the creditors. The degree of harm is a secondary factor compared with the occupant's intent. The emphasis should be placed on the actual behavior of the belligerent occupant, who is only required to choose the least harmful monetary policy compatible with the conduct of the war, its own war-oriented national economy, and the particular economic structure of the occupied country (probably also of a war-oriented type).

Finally, psychological elements, mainly confidence, constitute key factors in understanding monetary mechanisms. In the case of war currencies, the "fate of arms" or turn of war is enough to cause a depreciation or an appreciation in the value of the occu-

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117. *Id.* at 70-76; Nolde, *supra* note 13, at 306-12.

118. Public Trustee case, *supra* note 31, at 696.

119. See U.S. Treasury Memo, *supra* note 5, at 81.

120. Hyde, *supra* note 13, at 144.

pation currency.<sup>121</sup>

Thus, economic considerations are introduced into the ponderation over a test for lawful monetary measures during occupation. International validity of certain measures will be relative to purely economic factors, which will serve to qualify the applicable international law. This qualified law gives a more scientific and objective approach to the determination of the monetary powers of the belligerent occupant.

### *The Rights of the Belligerent Occupant Regarding Currency*

The rights to issue a new currency and to fix its value, to introduce exchange controls, to seize monetary assets, to modify the banking system, and to liquidate enemy monetary assets will be discussed in that order.

#### The right to issue a new currency

Military occupants may use their own national currency or the existing currency of the occupied country, introduce a new one having exclusive legal tender or circulate a new currency together with the existing national monetary unit.<sup>122</sup> International law recognizes the lawfulness of each of these techniques, the choice of which is left to the occupant. Most of the time, however, the techniques are dictated by factual circumstances.<sup>123</sup>

Whenever possible, international law probably requires the belligerent occupant to maintain the existing currency as the legal medium of exchange;<sup>124</sup> such a solution also coincides with the interests of the belligerent occupant because in such a case, it will not be held responsible for the management and redemption of the currency.<sup>125</sup> The whole monetary burden will be borne exclusively by the occupied country which will actually be barred at the end of the war from submitting a valid and identifiable claim of indemnification for the unavoidable increase of the currency in circulation due to the presence of foreign troops. This explains why governments have usually ordered their retreating armies to

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121. Thus, at the beginning of the occupation, the "good" money is the occupation currency introduced by the seemingly victorious power, but if it appears to be defeated, the occupation currency rapidly becomes worthless, the victory expectancy and then public confidence having disappeared. This is a new illustration of Gresham's Law: bad currency drives out good.

122. See generally FEILCHENFELD, *supra* note 26, at 70-83; MANN, *supra* note 3, at 507. See also Army Field Manual, *supra* note 60, at 157.

123. *Id.*

124. This was the opinion of the Hong Kong Supreme Court in *Tse Chung v. Lee Yau Chu*, 18 I.L.R. 636 (Sup. Ct., Hong Kong, 1951). However, this cannot be said to be an absolute rule of international law.

125. See *e.g.*, note 48 *supra*.

destroy all available stocks of currency and have taken abroad the printing plates and monetary assets backing the circulating notes.<sup>126</sup>

When this first method cannot be applied, it is impossible to say that international law compels the belligerent occupant to employ its own currency. National courts have recognized that this would add too much strain on the economy and the monetary system of their countries.<sup>127</sup> As the High Court of Malaya reasoned, occupants have a duty "of administering the government of the territory not only in the interest of themselves but also of the inhabitants *so far as consistent with their own safety*" (emphasis added).<sup>128</sup> Furthermore, the introduction of new currency would give rise to valid claims against the occupant and would make it responsible for the currency's redemption at the end of the war, a solution which the occupant has every reason to avoid whether victorious or defeated.<sup>129</sup>

Nevertheless, the issuance of a new currency constitutes probably the most acceptable provisional solution, while leaving the question of responsibility to be resolved at the peace conference table. It is the overwhelming opinion of national courts,<sup>130</sup> and writers,<sup>131</sup> that military occupants can impose occupation currencies having legal tender and thus bring a legal medium of exchange. In *Haw-Pia v. China Banking Corp.*,<sup>132</sup> the Philippines Supreme Court recognized that "[t]he power of the military government established in occupied enemy territory to issue military currency in the exercise of their governmental power has never been seriously questioned."<sup>133</sup> In *Aboitz v. Price*,<sup>134</sup> a United States District Court endorsed this ruling and added that his power "cannot seriously be questioned."<sup>135</sup> A conclusion to the contrary would be in complete contradiction to total economic

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126. See FELCHENFELD, *supra* note 26, at 70-83; Nolde, *supra* note 13, at 306-12.

127. Such hardship was lucidly examined in *Haw-Pia v. The China Banking Corp.*, 18 I.L.R. 642, 659 (Sup. Ct., Phil., 1948).

128. See *Planters Loans Board v. Managalam*, 18 I.L.R. 585, 588 (High Court, Malaya, 1951).

129. See the Churchill-Roosevelt correspondence cited by PETROV, *supra* note 5, at 58-59; *U.S. Senate Hearing*, *supra* note 16, at 115.

130. *Id.*

131. *Id.*

132. 18 I.L.R. 642 (Sup. Ct., Phil., 1948).

133. *Id.* at 657.

134. 99 F. Supp. 602, 18 I.L.R. 592 (D. Utah 1951).

135. *Id.* at 613, 18 I.L.R. at 600.

warfare as universally practiced by States and is not supported in international law.

The High Court of Burma concluded that "articles 42 to 56 of the Hague Regulations of 1907 clearly cannot be invoked in support of the exercise of the occupying power of effecting a change in the currency system of the occupied Territory"<sup>136</sup> and, accordingly, that the introduction of Japanese military action could not be deemed necessary for preserving order, peace and good government, thereby failing to pass the test of international law. This, however, was *obiter dictum*, a policy decision. As a matter of fact, it is noteworthy that the Burmese judges were chastized by their legislature.<sup>137</sup>

#### The right to fix a rate of exchange

The unequivocal right to issue occupation or war currency necessarily implies the regulation of its value by the establishment of a rate of exchange. A currency, being a universal medium of exchange, has to have a value corresponding to a certain purchasing power. Thus, one of the very first acts of the occupant, if it introduces a new currency, will be to give the currency a "valuation," a rate of exchange with the former (or concurring) notes in circulation in the occupied country.<sup>138</sup> This undisputable right to fix a rate of exchange for the occupation currency lies at the center of the controversies with regard to the monetary powers of belligerent occupants.<sup>139</sup>

Valuation involves the following questions: at what level must this rate be established; does international law require that valuation be pegged at the pre-war rate of exchange prevailing between the national currencies of the occupied and occupying countries, and if there were no pre-war rates, what governs; and may the occupant manipulate the occupation currency (for example, devalu-

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136. *Ko Maung Tin v. U Gon Man*, 14 ANN. DIG. 233, 234-35 (High Court, Burma, 1947). In *Dooply v. Chan Taik*, 19 ANN. DIG. 619 (Sup. Ct., Burma, 1948), the same result was reached. However, in *Taik v. Ariff Moosa Jee Dooply*, 15 ANN. DIG. 576 (High Court, Burma, 1948), the court conceded that "it was within the competence of the Japanese Military Authorities to issue their own military notes in order to supplement the lawful currency of the country as a measure to restore and ensure public order as required of an occupying power by art. 43 of the Hague Regulations." *Id.* at 581.

137. *DAS*, *supra* note 14, at 110; *Maung*, *supra* note 14, at 14-15; *Feliciano*, *supra* note 14, at 699-700.

138. *FEILCHENFELD*, *supra* note 26, at 81-82; *VON GLAHN*, *supra* note 15, at 203.

139. Two negative decisions, one by a Burmese Court, *Taik v. Ariff Moosa Jee Dooply*, 15 ANN. DIG. 576 (High Court, Burma, 1948), and one by a Luxembourg Tribunal, *G. v. H.*, 18 I.L.R. 633 (Dist. Ct., Luxembourg, 1951), rely expressly on specific and allegedly improper valuation of the occupation currency. See *Kemmerer*, *supra* note 19, at 88.



ate or appreciate it)? These valuation problems cannot be underestimated, for the belligerent occupant has a unique and easy opportunity to enrich itself, to the point of complete economic ruination of the occupied country, by simply imposing an overvaluated currency by means of an artificial, fictitious rate of exchange.<sup>140</sup>

International law does not prescribe any specific, practical requirement in this field, and it would be unrealistic and arbitrary to propose one. However, this does not mean that the belligerent occupant is free to impose any rate of exchange it thinks fit.<sup>141</sup> Here again, the limits to its powers have to be deduced from the broad principle relating to the law of belligerent occupation.

#### The right to introduce exchange controls

Another well accepted and much less debated power of the belligerent occupant is the right to introduce exchange control legislation or to tighten the already existing ones "in order to conserve the monetary assets of the occupied Territory."<sup>142</sup> This restriction or prohibition of inflow and outflow of funds is part and parcel of general legislation prohibiting trade with the enemy and enacted by any belligerent in the territories it controls.<sup>143</sup>

#### The right to seize monetary assets

Article 53 of the Hague Regulations admits that the belligerent occupant can "take possession of cash, funds or realizable securities *which are strictly the property of the State*" (emphasis added).<sup>144</sup> Thus, gold, foreign exchange and other monetary assets can be legally seized by the occupant to the extent that they are publicly and not privately owned.<sup>145</sup> This general principle seems

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140. Hyde, *supra* note 25, at 1897.

141. Moreover, a belligerent occupant is not compelled under international law to enforce a unitary rate of exchange. If, for instance, it prescribes the inhabitants of the occupied territory to surrender their old currency and to accept in exchange a new currency, it may do so by using different rates of conversion according to the worth or the social value of these monetary claims. Thus, in *Eisner v. United States*, 117 F. Supp. 197, 21 I.L.R. 476 (Ct. Cl. 1954), the United States Court of Claims, drawing an analogy from the law of bankruptcy, recognized the right of the Allies in Germany to privilege, labor, and post-occupation claims over pre-occupation and Reichmarks claims. *Id.* at 199, 21 I.L.R. at 477.

142. Army Field Manual, *supra* note 60, at 157.

143. VON GLAHN, *supra* note 15, at 203-04; LEMKIN, *supra* note 15, at 56-57.

144. Hague Convention, note 1 *supra*.

145. LEMKIN, *supra* note 15, at 57-78; Feilchenfeld, *supra* note 26, at 52-53, 58-60.

to be reasonably clear, but in fact, it has very often proved difficult to apply due to lack of definition.

For instance, how should one define "monetary gold belonging" to the occupied country?<sup>146</sup> Does this mean gold in the form of coins, bars or ingots, used as cover for a note issue which is recognized legal tender; or gold whose legal ownership is vested in a government or State instrumentality; or gold which in the economic and functional sense is a part of a country's monetary reserve? It seems preferable and more realistic to adopt this last functional approach, as does G. Sauser-Hall in his arbitration on "the Gold Looted by Germany from Rome,"<sup>147</sup> although emphasis is usually stressed on legalistic aspects.<sup>148</sup>

### The right to modify the banking system

Modification of the banking system in an occupied country and, principally, interference with the functioning of central banks have been controversial.<sup>149</sup> For instance, the organization by the Germans of new central banks in Belgium during World War I and in most Eastern countries in World War II has been condemned due to the fact that these institutions were "privately owned and operated."<sup>150</sup> This criticism reflects a 19th century-oriented attitude and attaches too much importance to purely legal terms.

Here again, it is necessary to make a more sophisticated study of the public functions filled by central banks in the economic, financial and monetary fields.<sup>151</sup> One cannot but agree with Feilchenfeld when he writes that "central banks, so far as their main function is concerned, do hardly anything which, under modern conditions, concepts and practices, would not be done by the state itself if central banks did not do it for the state."<sup>152</sup> Thus, if legal fictions and formalities are disregarded, central banks have to receive the same less favourable treatment as State instrumentalities. The unavoidable conclusion appears to be that

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146. For a thorough discussion of these problems of definition, see MANN, *supra* note 3, at 31, 508; Mann, *Money in Public International Law*, 96 A.D.I. 10 (1959) (courses of the Hague Academy of Int'l Law).

147. 20 I.L.R. 441, 466, 471 (1953). In the same case, see also the decision of Jenkins (J.) in *Dollfus Mieg & Co. v. Bank of England*, 1 Ch. 369 (1949).

148. As mentioned in MANN, *supra* note 3, at 508 n.3.

149. For an excellent survey, see generally FEILCHENFELD, *supra* note 26, at 96-104; VON GLAHN, *supra* note 15, at 205; LEMKIN, *supra* note 15, at 54-55 (Lemkin thinks that the interference in the organization and the functioning of Central Banks by the Germans in World War II represents a violation of international law.)

150. LEMKIN, *supra* note 15, at 57-58.

151. FEILCHENFELD, *supra* note 26, at 103-04.

152. *Id.* at 104.

the belligerent occupant has a legal right to reorganize central banks and regulate the whole credit system and all banking activities, to the extent, however, that it does not misuse its prerogatives.<sup>153</sup> These are only ancillary powers based on by the occupant's fundamental rights to issue an occupation currency and manage accordingly the new monetary system of the occupied country.

### The right to liquidate foreign assets

The right of a belligerent occupant to liquidate all foreign assets it considers hostile does not arouse the same controversies. The Supreme Court of the Philippines in the famous *Haw-Pia* case recognized the right of the Japanese military occupants to sequester assets of enemy corporations and to wind up foreign businesses (in this case, a bank) without any violation of the Hague Regulations.<sup>154</sup> In a subsequent affair, *Gibbs v. Rodriguez*,<sup>155</sup> the same court held to its previous ruling and maintained that those acts constituted "a mere sequestration of private property, not in excess of those limited rights granted to such occupants under International Law."<sup>156</sup> These solutions represent the positive international law as it exists now. A belligerent occupant is empowered to liquidate all foreign assets when it has good reason to suspect hostility.<sup>157</sup>

153. This has been admitted by the British Chancery Court, in *Bank of Ethiopia v. Nat'l Bank of Egypt & Ligouri*, 1 Ch. 513 (1937), and by a Singaporean tribunal, in the *Public Trustee* case, *supra* note 31 (which held lawful the liquidation of foreign branches of banks whose business could not be carried on, since liquidation was reasonably necessary for the preservation of the assets or for the orderly administration of the territory).

154. 18 I.L.R. 642 (Sup. Ct., Phil., 1948). *See* note 73 *supra*.

155. *Gibbs v. Rodriguez*, 18 I.L.R. 661, 696 (Sup. Ct., Phil., 1950).

156. *See also* DAS, *supra* note 14, at 100; Feliciano, *supra* note 14, at 694.

157. The U.S. ARMY AND NAVY MANUAL OF MILITARY GOVERNMENT AND CIVIL AFFAIRS 18, para. 12 (1) (Dec. 22, 1943) (FM 27-5, OPNAV 50E-3) instructs theatre commanders of United States forces in case of "occupation of foreign territories for a considerable period of time," as follows:

1. Money and Banking.

Closing, if necessary, and guarding of banks, bank funds, safe deposit boxes, securities and records; providing interim banking and credit needs; liquidation, reorganization, and reopening of banks at appropriate times; regulation and supervision of credit cooperatives and other financial agencies and organizations; execution of policies on currency fixed by higher authority, such as the designation of types of currency to be used and rates of exchange; supervision of the issue and use of all types of money and credit; declaration of debt moratoria; prevention of financial transactions with enemy occupied or enemy territory.

In brief, the existence of these belligerent occupants' monetary rights does not seem seriously questionable. However, the scope of the rights is rather poorly defined and must be constructed from the general duties imposed on the occupant under the international law of belligerent occupation.<sup>158</sup>

### *The Duties of the Belligerent Occupant Regarding Currency*

A belligerent occupant is under a general duty to act within the limits of its jurisdictional power and not to abuse its rights. This customary rule of international law is usually too vague to be practicably and objectively applicable,<sup>159</sup> and thus its content has to be precisely determined whenever possible.

Does the belligerent occupant have any specific duties in connection with the issuance and management of occupation currency? Is it obliged to back the new currency, to establish a "realistic" rate of exchange, and to avoid inflation? Such are the most controversial issues which raise more questions than answers. International law cannot be expected to set forth technical, mandatory rules in these fields because the belligerent occupant has the widest range of means. Nevertheless, it is submitted that international law imposes a certain standard of conduct from which the occupant is not entitled to depart.

#### No duty to back the occupation currency

In this respect, the practices followed by States differ greatly. For instance, Germany in World War I and II provided for a backing or cover of its war notes by employing several devices, such as loans or deposits in its own currency,<sup>160</sup> credits on occupation costs,<sup>161</sup> and general mortgages on the land of the occupied countries.<sup>162</sup> Likewise, the Japanese guaranteed their war notes in the Philippines and made it clear that they took "full responsibility

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158. It is worthy of note that in order to deny a belligerent occupant the power to introduce a new currency or to fix a certain rate of exchange, Polish, Luxembourg and Burmese courts have relied on this theory and have proceeded by way of sweeping and persuasive affirmations. See notes 60, 69 & 71 *supra*.

159. See, e.g., FEILCHENFELD, *supra* note 26, at 70; PETROV, *supra* note 5, at 32; Mann, *supra* note 146, at 93; note 5 *supra*.

160. *Id.*

161. LEMKIN, *supra* note 15, at 54.

162. These facts are excerpted from *Haw-Pia v. The China Banking Corp.*, 18 I.L.R. 642, 655 (Sup. Ct., Phil., 1948). The Japanese did the same in Singapore and Malaya, where unsigned notes bore the legend: "The Japanese Government promises to pay the bearer on demand." DAS, *supra* note 14, at 100. A Singapore court, in the Public Trustee case, rightly conceded that such a "promise . . . obviously would not be fulfilled at face value if [the Japanese] were defeated." 23 I.L.R. 687-96 (Org. Civ. Jur., Singapore, 1956).

for their usage, having the correct amount to back them up,"<sup>163</sup> although they did not mention the type of monetary backing.

On the contrary, the Allies in World War II did not envisage this problem or no backing of the occupation currencies was deemed necessary.<sup>164</sup> Similarly, there was no "promise to pay the bearer" or any other inscription or signature on these war notes which could lead to the conclusion that the Allies had undertaken any obligation or engaged their credit toward the occupied country.<sup>165</sup>

The Allies approach seems to be the correct view, corresponding to reality and accepted by international law as well. For, in fact, it is well known that the amount of the foreign exchange, gold or other coverage used to back a national currency is not, even in peacetime, the proper yardstick to evaluate the soundness of a monetary system. What really counts is the strength of the national economy. In wartime, due to the almost inescapable disruption of national economies, the primary element is the expectancy of victory. The turn of the war constitutes the real psychological backing (the confidence element) of any occupation currency.<sup>166</sup>

Furthermore, the presence or absence of a "promise to pay to the bearer" in gold or silver the amount of the sum inscribed on a bank note appears rather superfluous today, because such currency convertibility has since ceased to exist for 40 to 50 years in every country, without exception. Recently, such a promise disappeared from United States Federal Reserve notes. Thus, it

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163. NUSSBAUM, *supra* note 3, at 497-98. LESTER, *supra* note 27, at 2, is right when he describes military currency as pure "flat money." Feliciano, *supra* note 14, at 663, mentions that none of the fiat money emitted by the Japanese had any coverage, metal or otherwise.

164. NUSSBAUM, *supra* note 3, at 498; *U.S. Senate Hearings*, *supra* note 16, at 95-96; LESTER, *supra* note 27, at 2.

165. In *Gibbs v. Rodriguez*, 18 LL.R. 661 (Sup. Ct., Phil., 1950), a carefully weighted decision, the Philippine Supreme Court very sensibly pointed out that "[i]f the Japanese war notes became depressed and valueless, it was because the war was prolonged and lost by the Japanese contrary to their expectation of winning the war in a short time. . . ." *Id.* at 669 (Emphasis added).

166. MANN, *supra* note 3, at 509, 511. Mann attaches great importance to this question of cover but he does not seem to make it a prerequisite for the legality of the issuance of an occupation currency. *Id.* However, Fraleigh, *supra* note 26, at 115, writes that "presumably currency issued by an occupant should have coverage." But he does not justify his contention, while recognizing the problems raised by his proposal: who is going to furnish this cover; what kind of "adequate" cover?

would be unreasonable and contrary to all modern monetary experiences to compel the belligerent occupant to provide for a backing of occupation currency with (or without) a promise to pay.<sup>167</sup> No rule of international law can be invoked to require it to do what most States in peacetime refuse to do.<sup>168</sup>

#### No duty to impose a fair and reasonable rate of exchange

States have followed a universal pattern in one respect: when they have issued war notes or introduced their own currency during the first period of occupation, they have always overvalued their money and consequently undervalued enemies' currency.<sup>169</sup> It is true that in exceptional cases an opposite result was obtained in reoccupied Allied territory (as in France),<sup>170</sup> and in enemy territories as in Italian Tripolitania. But, in the former case this was done purposely for political reasons, and in the latter case, this appreciation was due to unexpected economic and psychological reasons.<sup>171</sup> These are only exceptions that prove the rule, and they are not significant enough to permit serious doubt in the general trend.

These overvaluations of occupation currencies in comparison with the pre-war official rates greatly varied from a range of a low 10 percent to sky-high levels of as much as 3 to 4,000 percent.<sup>172</sup> Such highly inflated, fictitious rates of exchange are extremely useful to belligerent occupants, who can buy for a song all of the economic output of the occupied country and thereby enrich themselves unduly and strip the occupied territory of its wealth. This has been correctly described as "legalized looting" of the occupied territory.<sup>173</sup> Obviously, such extremes have to be condemned and constitute international wrongdoings. It is difficult,

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167. See in the same sense, NUSSBAUM, *supra* note 3, at 498; Feliciano, *supra* note 14, at 698.

168. See e.g., LEMKIN, *supra* note 15, at 52; LESTER, *supra* note 27, at 4; PETROV, *supra* note 5, at 31, 78, 172-73, 195 (particularly pp. 252-53).

169. *Id.* at 64-65; Kemmerer, *supra* note 19, at 92.

170. See the facts in *Nicolo v. Creni*, 19 LL.R. 145 (Court of Cassation, Italy, 1952).

171. PETROV, *supra* note 5, at 252-53. Petrov estimates that the Germans overvalued their war notes which they introduced by an average of 25% to 30%. The Russians overvalued currency by up to 4,000%, and the Allies (United Kingdom and United States) in Italy and Germany overvalued their currency by about 200% to 300%. This last figure would be contested by Kemmerer, *supra* note 19, at 89, who affirms that the Allies undervalued their own currencies and accordingly overvalued the lira and the Reichmarks.

172. *U.S. Senate Hearings*, *supra* note 16, at 98.

173. American, German, Italian, Malayan, Filipino, Polish, and Singaporean courts have recognized the validity of overvalued occupation currencies. See notes 59, 61-66 *supra*.

however, to draw a clear-cut objective line between what rates of exchange should be held unlawful because fictitious.

Perhaps surprisingly, the general principle seems to be that overvaluated occupation currencies are not internationally unlawful. Overvaluation in itself is not illegal and condemned by international law. Most national courts have held valid the issuance of occupation currencies despite their obvious inflated rates of exchange.<sup>174</sup>

The crux of the problem consists of a question of degree in the overvaluation of an occupation currency.<sup>175</sup> Compelling practical reasons push in this direction. A rule of international law to the contrary prescribing the belligerent occupant to respect and enforce the pre-war rates of exchange between the two national currencies would be highly unrealistic. First, how does one fix the proper period of reference to adopt this pre-war rate: at the time of the declaration of war or of the crossing of the borders by the enemy's army or of the complete and definitive military occupation of the country concerned? Secondly, what rate of exchange is to be adopted: the official one prevailing on the market (i.e. stock exchange of the occupied State) or the one prevailing on the official market of the occupying country; the rate of exchange on some free (or official) market of a third country or else the

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174. Burmese and Luxemburger courts emphasized that the overvaluation of occupation currencies was "ultra vires" of the belligerent occupant. The High Court of Burma in the *Taik* case specified that it was "entirely beyond the [Japanese military authorities'] competence . . . [to equate] their currency to the lawful currency of [Burma]." *Taik v. Ariff Moosa Jee Dooply*, 15 ANN. DIG. 576, 582 (High Court, Burma, 1948). The Burma Supreme Court reached the same conclusion in *Dooply v. Chan Taik*, 19 ANN. DIG. 619 (Sup. Ct., Burma, 1950), as did the District Court of Luxembourg in *G. v. H.*, 18 I.L.R. 633 (Dist. Ct., Luxembourg, 1951) which found that there was "no convention authorizing [the belligerent occupant] to fix, in a manner which is arbitrary and damaging to the inhabitants of the occupied territory, the exchange rate of [its] own currency in relation to that of the occupied territory, and to decree that it shall be legal and compulsory tender." *Id.* at 634. If this principle in itself is sound, although probably too strictly formulated, the same cannot be said of its appreciation in these two cases.

175. In the same sense, see FEILCHENFELD, *supra* note 26, at 81-82; HYDE, *supra* note 25, at 1897; MANN, *supra* note 3, at 513-14; LEMKIN, *supra* note 15, at 52, 55, 58; OPPENHEIM, *supra* note 26, at 437-38 n.4; VON GLAHN, *supra* note 15, at 203; Army Field Manual, *supra* note 60, at 157-58. However, the Polish Supreme Court recognized the lawfulness of the occupation "zlotys" issued by the Germans, although they "were meant to serve the purpose of exploiting the economic wealth of the country to the advantage of the occupant and to the detriment of the population." *Wladislaw F. v. Mebli*, 26 I.L.R. 719, 721 (Sup. Ct., Poland, 1947). After such a finding, the court would have been entitled to condemn the German monetary measures.

rate of exchange on the black market? Thirdly, what if official rates of exchange are not determined by the free forces of the marketplace, as in Western-type stock exchanges, but rather by arbitrary and authoritarian decisions of governments, as is the case of Socialist countries? All of these uncertainties cannot be met by a specific and precise rule of international law, admitting as lawful a certain overvaluation, such as 50 percent with respect to the pre-war official rate of exchange. It would be unworkable for the aforementioned reasons. Rather it is more fruitful to try to determine an abstract, broad and flexible rule which would primarily take into account the economic results or harm caused to the occupied country by the overvaluation of the occupation currency. In other words, here again, the guiding principles will have to be found in a functional approach.

Any rate of exchange imposed by the belligerent occupant which 1) would result in its undue enrichment by stripping the occupied country of its wealth up to a point of economic ruination,<sup>176</sup> 2) would be equated with a general and indiscriminate money contribution aimed at confiscating private property,<sup>177</sup> and 3) would pass as a deliberate goal of a nation-wide social transfer of wealth<sup>178</sup> should be held internationally unlawful. Such a fictitious rate of exchange would not be in conformity either with the occupant's obligation to maintain law and order in the occupied country or with its limited right to raise money to compensate for the occupation costs and military operations.<sup>179</sup> In short, it is assumed that international law bars the belligerent occupant from imposing economically ruinous or socially-oriented rates of exchange but does not prevent it from introducing an overvaluated occupation currency to the extent that the currency's rate of exchange is fair and reasonable.

#### A limited duty to avoid inflation

Avoidance of inflation is not only in the interest of the inhabitants of the occupied territory but also in those of the occupant, for a creeping inflation will have the result of overvaluing the occupation currency.<sup>180</sup> As a matter of fact, all belligerent occu-

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176. *Accord*, Kemmerer, *supra* note 19, at 88; McNAIR & WATTS, *supra* note 26, at 319; Army Field Manual, *supra* note 60, at 157.

177. See PETROV, *supra* note 5, at 173, 177.

178. FEILCHENFELD, *supra* note 26, at 82.

179. *Id.*; LESTER, *supra* note 27, at 16-17.

180. See generally PETROV, *supra* note 5; LEMKIN, *supra* note 15, at 53; Feliciano, *supra* note 14, at 697. However, the Germans were seemingly successful in keeping the rise in prices within reasonable bounds during their occupation of Norway. See Stabell, *Enemy Legislation and Judgments in Norway*, 31 J. COMP. LEGIS. & INT'L LAW 3, 8 (1949).



pants have adopted drastic measures to avoid and limit inflation through stringent price controls, but almost all have failed.<sup>181</sup> Inflation in militarily occupied areas and in most peacetime national economies is a common phenomenon.

Inflation in occupied countries is actually inevitable because of too many adverse factors. The occupied country has probably built up a war-like economy with all the disequilibriums which constitute corresponding causes of inflation; and a military defeat, by the very nature of things, is likely to free all of the economic inflationary evils. Furthermore, extra economic disruption is added by the mere presence of an occupation army, thus increasing the ratio between active and inactive populations. Finally, inflation may also be increased by such perfectly lawful measures of the belligerent occupant as contributions or requisitions imposed to meet the military needs of the occupying army.<sup>182</sup>

A belligerent occupant cannot be held responsible for a creeping inflation to the extent that the occupant has not voluntarily contributed to it by a "printing-press"<sup>183</sup> monetary policy, for example.<sup>184</sup> On the other hand, the occupation currency may progressively deteriorate and fall to a fantastic discount, like the German Mark in 1923, to finally become almost valueless because of excessive money issues by a belligerent occupant. In such a case the occupant will have trespassed the international law standard, not for failing to prevent inflation which the occupant very likely cannot do,<sup>185</sup> but for having contributed to a catastrophic inflation. In other words, international law does not require belligerent occupants to curb any depreciation of the occupation currency leading to moderate inflationary pressures in the occupied territory; but, international law does prevent belligerent occupants from inducing catastrophic inflation by, among other means, flooding the country with uncontrolled monetary emissions.<sup>186</sup> There cannot be imposed upon the belligerent occupant

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181. FELCHENFELD, *supra* note 26, at 82; FRALEIGH, *supra* note 26, at 114.

182. Public Trustee case, *supra* note 31, at 696.

183. In the same sense, see Feliciano, *supra* note 14, at 697; FRALEIGH, *supra* note 26, at 114.

184. See note 157 *supra*.

185. See MANN, *supra* note 3, at 513 (who condemns an "extraordinary increase of the quantity of circulating money").

186. It is difficult to follow completely Professor Mann when he writes that the "occupant commits a breach of duty if he promotes, or at least does not stop, inflation and depreciation of the value of money." *Id.* (emphasis added). Fraleigh is

a general duty to avoid any inflation in the occupied territory.<sup>187</sup>

### *Summary*

The disequilibrium between the great number and extent of a belligerent occupant's rights regarding currency and its limited obligations may be a frustrating, disappointing conclusion, although inescapable if the law in books has to coincide with the law in action. It has been the basic idea of this article that any realistic international standard of conduct in this area of the law of belligerent occupation is dictated by the economics of modern wartime and peacetime monetary experiences. The next phase, the liquidation of military currencies, is dominated by political rather than economic or purely legal considerations.

### III. THE POST-WAR IMPACT OF THE MONETARY MEASURES ADOPTED BY THE BELLIGERENT OCCUPANT

At the end of the war, the monetary measures introduced by the belligerent occupant have to be liquidated, except of course, in a case of *debellatio*. Liquidation raises certain problems, two of which are clearly within the realm of public international law and a third problem bordering on international law but more likely related to private, domestic law.<sup>188</sup> First, when a new military currency had been issued and now has to be redeemed or exchanged for the lawful currency of the returning sovereign, who will bear the responsibility and the costs of this operation? Secondly, when the occupied territory is reacquired by the former sovereign, what are its rights and obligations, if any, with regard to the monetary measures imposed by the belligerent occupant? Finally, what are the after effects on private debts of the introduction of war notes in the occupied territory?

#### *The Responsibility for Redemption of the Military Occupation Currency*

A responsibility for redemption may be vested either in the belligerent occupant or in the occupied territory, according to the practical circumstances of the case and the legality (or illegality) of the monetary measures concerned. However, peace treaties have generally disregarded these academic niceties, and the bur-

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right when he mentions that "[a duty to prevent currency depreciation] is too heavy a burden to place upon an occupant . . . [T]he most that can be said is that an occupant is not authorized to take certain types of action which tend to cause currency depreciation." FRALEIGH, *supra* note 26, at 113-14.

187. MANN, *supra* note 3, at 514-15.

188. *Id.* at 11, 24.

den of redeeming occupation currency has been borne by the defeated side. Such a result is legally disappointing but in practice unavoidable.

#### Responsibility of the former belligerent occupant

Placing the burden on the defeated side would be a logical solution if the belligerent occupant had introduced its own currency, declared its assumption of full responsibility for the new currency, or acted unlawfully in the monetary area. In the first hypothesis, the occupied country would have acquired valid claims against the occupant's currency and economy, which explains why this technique is very seldom used or is employed only during the first phase of occupation.<sup>189</sup> In the second case, assumption of responsibility is extremely rare and is sufficiently self-explanatory to not require any further comment.<sup>190</sup> Finally, the third possibility of unlawful actions would result in a sort of penalty, aimed at discouraging misconduct and poor administration by the belligerent occupant who failed to respect its duties under international law. In all other instances, the restored government of the occupied territory should be held liable.<sup>191</sup>

#### Responsibility of the occupied country

In all cases where the former belligerent occupant has acted lawfully under international law, the occupied country should bear the responsibility for the redemption of the occupation currency. This would be the logical conclusion because it is here assumed that the interests of the occupied territory have been carefully respected and that it has only suffered the economic hardships inherent in any war and occupation situation.

Such an objective pattern would have the great advantage of ensuring a rule of law and of avoiding the damaging uncertainties due to the turn of the war. But unfortunately, these proposed so-

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189. *Id.* at 30.

190. There is no evidence to support Nolde's statement that "la liquidation des mesures relatives au papier-monnaie, qui peuvent être introduites par l'Etat occupant, appartient en droit à ce dernier." Nolde, *supra* note 13, at 311. His reliance on the 1929 Germano-Belgian convention on marks, note 34 *supra*, is inconclusive, because this agreement constitutes a very weak precedent, if any, "the two parties maintaining their legal standpoint." See NUSSEBAUM, *supra* note 3, at 499-500.

191. See MANN, *supra* note 3, at 512; Feliciano, *supra* note 14, at 698-99. See also *Haw-Pia v. The China Banking Corp.*, 18 I.L.R. 642, 659 (Sup. Ct., Phil., 1948).

lutions are contradicted by the universal practice of States as it appears from peace treaties, which only recognize might and the law of the jungle.

The peace treaties solution: responsibility of the defeated side

If the former belligerent occupant is the victor, it will impose the burden of redemption, as well as a war indemnity to cover occupation and other military costs, on the defeated countries it occupied during the war.<sup>192</sup> This was the policy of the Allies after World War II. Thus, peace treaties with Italy,<sup>193</sup> Rumania,<sup>194</sup> and Hungary<sup>195</sup> contain a standard clause according to which these governments "shall assume full responsibility for all Allied military currency issued in [their countries] by the Allied military authorities, including all such currency in circulation at the coming into force of the present Treaty."<sup>196</sup> A similar but milder provision may be found in the Austrian State Treaty of 1955.<sup>197</sup>

If the former belligerent occupant is defeated, the former occupied countries will usually require it to pay a compensation equivalent to the redemption of the occupation currency plus occupation costs.<sup>198</sup> After World War I, Rumania<sup>199</sup> and Belgium<sup>200</sup> succeeded through efficient political pressures in imposing on Germany an indemnity corresponding to the losses they had allegedly suffered because of the introduction of an occupation currency.<sup>201</sup> Likewise, this was the common view held by the Allies in World War II regarding war notes which they progressively issued.<sup>202</sup> In the "Draft Agreement on Reparations from Germany,"

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192. Treaty of Peace with Italy, Feb. 10, 1947, art. 76, para. 4, 49 U.N.T.S. 3.

193. Treaty of Peace with Roumania, Feb. 10, 1947, art. 30, para. 4, 42 U.N.T.S. 3.

194. Treaty of Peace with Hungary, Feb. 10, 1947, art. 32, para. 4, 41 U.N.T.S. 135.

195. *Id.*

196. The State Treaty for the Re-establishment of an Independent Austria, May 15, 1955, art. 24, para. 4, 217 U.N.T.S. 233, provides that Austria will assume full responsibility for Allied military currency of denominations of five shillings and under; the higher notes issued by the Allies shall be destroyed, Austria waiving any claims against the Allies in this respect.

197. *See* note 5 *supra*.

198. Convention of Nov. 10, 1928 between Roumania and Germany, Martens Nouveau Recueil 484 (3d ser. (21)).

199. Agreement between Germany and Belgium Regarding the Marks, Jul. 13, 1929, 104 L.N.T.S. 202.

200. As already mentioned, the legal value of these agreements as precedent is very weak, because in both cases the legal controversy between the contracting parties was brushed aside in the preambles. *Id.* *See also* MANN, *supra* note 3, at 512-13.

201. *U.S. Senate Hearings, supra* note 16, at 29, 115, 117-18.

202. Quadripartite Agreement for Control of Germany by Allied Representatives, Sept. 20, 1945, para. 20, in 3 TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA 1949-1976, at 1254-58 (C. Bevans ed. 1969).

the Allies agreed to include in their official claims the "costs of German occupation, credits during occupation on clearing accounts and claims against the Reichskreditkassen."<sup>203</sup>

No peace treaty has yet been concluded with Germany; but the Allies (except Russia) recognized in a peace treaty with Japan that Japan was unable to pay damages and "maintain a viable economy" because of insufficient economic resources.<sup>204</sup> A similar conclusion was reached for Italy shortly after the signing of a peace treaty in 1947.<sup>205</sup> So, in these last two cases, the burden of redemption was actually shifted because of the insolvency of the defeated countries.<sup>206</sup> Finally, the inhabitants of the occupied territories had "to suffer, as everybody else, the losses incident to all wars," to use the words of the Philippines Supreme Court in the *Haw-Pia* case.<sup>207</sup>

Thus, the soundness of the principle, that the responsibility for the redemption of occupation currencies should be borne by the ex-enemy governments and is the "natural and convenient thing in the circumstances,"<sup>208</sup> is questionable in two respects. First, this principle overlooks any question of international legality of the actions of the belligerent occupant; the problem of responsibility for redemption should be linked to the legality of the currency's issuance and management of the occupation currency, not to the issue of wars. Secondly, the improbability that the defeated powers would pay makes this solution practically unworkable. Neither the rule of law nor the inhabitants of the occupied territory have anything to gain with this type of expedient.

Identical, unsatisfactory results are reached when, at the end of the occupation, the legitimate State regains jurisdiction over its formerly occupied territory.

203. Treaty of Peace with Japan, Sept. 8, 1951, art. 14, para. a, 136 U.N.T.S. 45, 60.

204. In a Memorandum of Understanding of Aug. 14, 1947, "[to alleviate] several of the burdensome economic and financial clauses of the Italian peace treaty," the United States Government waived its claims for certain types of occupation costs (including the military currency, Art. 9-6) totaling \$305 million. *Financial and Economic Understandings with Italy, Summary of Deliberations*, 17 DEP'T STATE BULL. 371 (1947).

205. Feliciano, *supra* note 14, at 698-99.

206. 18 I.L.R. 642, 659 (Sup. Ct. Phil, 1948).

207. Fitzmaurice, *supra* note 63, at 343.

208. On this problem, see generally FEILCHENFELD, *supra* note 26, at 144; Feliciano, *supra* note 14, at 689-90.

When the occupation is over and the legitimate government is restored, the fate of the monetary measures adopted by the occupant has to be settled. The basic question is to determine what importance will be given by the returning sovereign to the acts of the belligerent occupant. This area of the law arising from changes of jurisdiction, known as "intertemporal or postliminy law" (*jus postliminii*), is usually governed by the commanding test of international validity, for example, whether or not the acts performed by the occupant were lawful under international law.<sup>209</sup> But the recent tendency, as clearly shown by modern States' practices, is to set aside the test of international legality for the benefit of policy considerations. The monetary field illustrates this trend.

An obligation on the part of the returning sovereign to respect the lawful acts of the former belligerent occupant

The almost unanimous opinion of writers is that restored governments are under the obligation to respect lawful, authorized acts of occupants. Restored governments cannot annul these acts. Pillet states that there exists "a general law of validity" applying to the acts of the belligerent occupant on the condition, however, that "he has not acted beyond the limits attached to his powers by international law."<sup>210</sup> Likewise, Spaight affirms that "[c]onsiderations of general convenience approve the rule that acts done by the occupant, within his powers as an occupant, stand. But he must not have exceeded those powers."<sup>211</sup> The same writer adds that the occupant cannot bind its successor, the legal ruler beyond the duration of its occupancy, "for to do so would be to encroach on the latter's sovereignty."<sup>212</sup>

According to Pillet, if this were not so, it would mean a paralysis of social life, and persons would refuse to enter into any legal relationships should they foresee that all transactions during the occupation period would be voided at the end of hostilities.<sup>213</sup> In the same line, Spaight emphasizes that "to deny the validity of such acts would . . . bring the social life of a community to a standstill during occupation . . . , would be unjust to the individual inhabitants, and impolitic as regards the community at

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209. PILLET, *supra* note 24, at 255.

210. SPAIGHT, *supra* note 24, at 367.

211. *Id.* See also HALL, *supra* note 93, at 483; WESTLAKE, *supra* note 101, at 18.

212. PILLET, *supra* note 24, at 255.

213. SPAIGHT, *supra* note 24, at 366.

large.”<sup>214</sup> The least that can be said, however, is that when States have chosen to validate monetary measures introduced by the belligerent occupant, they have done so freely by their own choice and not under the obligation of a recognized rule of international law.

No obligation on the part of the returning sovereign to  
invalidate the unlawful acts of the former belligerent  
occupant

While most writers are split on this issue, the majority share the opinion that no obligation exists to invalidate prior unlawful acts. Where the acts of the former occupant were clearly unlawful, the restored government is free to recognize them or not.<sup>215</sup> Hyde makes an extreme contention that the Supreme Court of the Philippines in the *Haw-Pia* case committed a violation of international law in recognizing the validity of Japanese military monetary decrees and that the Philippines might be responsible for the violation. This contention is groundless, even were he correct in saying that the Japanese actions were internationally unlawful.<sup>216</sup> There is no precedent, no example whatsoever, to affirm that a returning sovereign commits a breach of international law when it fails to invalidate unauthorized monetary (or other) measures taken by a belligerent occupant.

Scope of the returning government's freedom in its  
recovered sovereignty

Contemporary States' practices clearly show that returning sovereigns have acknowledged no duty regarding the currency management undertaken by former military occupants. They have felt completely free to install a monetary reform and to determine its extent and character as they thought fit.<sup>217</sup>

One can sympathize with Pillet when he writes that if the "restored, legal government was allowed to nullify the [lawful] acts done by his enemy, the existence of an international law of belligerent occupation would be destroyed."

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214. Feliciano, *supra* note 14, at 699; McNAIR & WATTS, *supra* note 26, at 369-70. But see FRALEIGH, *supra* note 26, at 96 (whose views seem inconsistent with this position); Hyde, note 12 *supra*.

215. *Id.* at 141, 163.

216. Feliciano, *supra* note 14, at 703; FRALEIGH, *supra* note 26, at 117; MANN, *supra* note 3, at 514-15.

217. PILLET, *supra* note 24, at 255.

erent occupation would lose the greatest part of its usefulness,"<sup>218</sup> however, no present rule of positive international law prevents the returning sovereign from doing so, at least in the monetary area. Postwar legislation regarding private debts constitutes a good example of this regrettable gap in international law.

### *Military Occupation Monetary Experiences and Private Debts*

Monetary measures adopted by belligerent occupants are very likely to affect and disrupt debtor/creditor relationships up to a point where the returning sovereign will be obliged to intervene through appropriate legislation. This primarily raises questions of domestic law which, as such, are beyond the ambit of this article.<sup>219</sup> In light of the postliminy law principles, however, is the returning sovereign obliged to adopt certain types of solutions, (for example, revalorization legislation) and failing to do so, may the sovereign be held internationally responsible?

The policy of returning governments regarding private debts:  
a general pattern

#### *Pre-war obligations and payments in occupation currency*

The general rule is that payments in occupation currency (depreciated or not) are to be held valid at face value.<sup>220</sup> This is the common view of national courts (except Burmese and Luxembourg tribunals which have rejected the validity of such discharges).<sup>221</sup> Also, the rule represents current policies of States, according to their revalorization or debtor/creditor legislations.

Revaluations are only marginally significant for certain types of socially privileged debts or in a case of coercion.<sup>222</sup> The Dutch in Indonesia, however, provided for a complete revalorization of payments made during occupation to discharge pre-war debts.<sup>223</sup> This occurrence is considered to be exceptional.

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218. MANN, *supra* note 3, at 514-15.

219. FRALEIGH, *supra* note 26, at 108; DAS, *supra* note 14, at 105.

220. Taik v. Ariff Moosa Jee Dooply, 15 ANN. DIG. 576 (High Court, Burma, 1948); G. V. H., 18 I.L.R. 633 (Dist. Ct., Luxembourg, 1951).

221. In the case of Malaya, see O'Connor, *supra* note 14, at 7.

222. Feliciano, *supra* note 14, at 702; DAS, *supra* note 14, at 107.

223. See O'Connor, *supra* note 14, at 7; Wladislaw F. v. Mebli, 26 I.L.R. 719 (Sup. Ct., Pol., 1947). See generally the Philippine decisions, which have consistently held that "payment made in Japanese money for obligations contracted before and during the war was valid and extinguished such obligations." Singson v. Veloso, 23 I.L.R. 800, 800 (Ct. App., Phil., 1955).



*Obligations entered into and payments made in occupation  
currency during the occupation period*

It is the general opinion of national courts, and the policy of States as well, that face value should be given to such payments.<sup>224</sup> On the contrary, the Hong Kong Supreme Court limited the application of this principle to unchallenged payments and admitted a revaluation at the end of the war when the creditor had refused to receive a payment in highly depreciated, occupation currency for full discharge.<sup>225</sup>

*Obligations entered into during the occupation period and  
maturing after the end of the war*

The general tendency of legislatures has been to accept the validity of these transactions, while providing for a revalorization of debts according to a scheduled rate of conversion for the occupation currency and giving due consideration to the progressive depreciation of that currency.<sup>226</sup> National courts have reached similar results,<sup>227</sup> although in some instances they have recognized valid discharge of such debts in worthless occupation currencies<sup>228</sup> or have imposed a payment at face value in the newly reestablished currency.<sup>229</sup> In both cases this is obviously unfair,

224. *Tse Chung v. Lee Yau Chu*, 18 I.L.R. 636 (Sup. Ct., Hong Kong, 1951).

225. See the revalorization legislations in Burma, Hong Kong, Indonesia, Malaya, Singapore, Sarawak, North Borneo, and Brunei. For a more detailed analysis of these statutes, see DAS, *supra* note 14, at 110-19; Maung, *supra* note 14, at 14-15; O'Connor, *supra* note 14, at 6-8.

226. In the Philippines, the courts have implemented a judiciary revaluation of such debts. See Feliciano, *supra* note 14, at 692-94. While in Poland, for instance, some courts seem to have allowed a dissolution or a modification of contracts, with insufficient payments in highly depreciated occupation currency constituting exonerating, exceptional circumstances. Editor's note following Wladyslaw F. v. Mebli, 26 I.L.R. 719, 721 (Sup. Ct., Pol., 1947).

227. See Wladyslaw F. v. Mebli, 26 I.L.R. 719 (Sup. Ct., Pol., 1947). However, this ruling relies on very practical circumstances, which left no choice to the court.

228. See the British decisions, *In re Chesterman's Trusts*, 2 Ch. 466 (1923); Russian Commercial & Indus. Bank v. British Bank for Foreign Trade, Ltd., 2 A.C. 438 (1922).

229. DAS, *supra* note 14, at 107. It is to be noted that deposits in banks and, more generally, bank accounts in occupation currency have been treated less favorably than other private monetary claims. The Supreme Court of the Philippines in *Hilado v. de la Costa*, decision of April 30, 1949, summarized in 44 AM. J. INT'L L. 211-12 (1949), held that deposits in Japanese military currency could not be equated with deposits identical in kind and nature denominated in lawful Philippine currency, "particularly in view of the fact that, after liberation, such notes have no real value." The general principle seems to be that the depositor shall

the risk of fluctuation having been flatly thrown on the creditor or on the debtor and not shared between them equitably.<sup>230</sup>

### Revalorization of private debts and international law

It is of cardinal importance for private creditors who are nationals of third States to know whether or not there exists a rule of international law prescribing the restored government to revalorize discharged debts in greatly depreciated occupation currency through appropriate legislation (or through the judicial branch). Professor Hyde vehemently criticized the *Haw-Pia* ruling<sup>231</sup> of the Supreme Court of the Philippines which recognized that the Japanese Military notes issued during the period of occupation were legal tender and could validly discharge at par a peso debt. He submitted that this decision constituted "internationally illegal conduct on the part of the Philippine Government which is productive of a solid claim for compensation in behalf of alien nationals or creditors who suffered loss as a direct consequence of such a decision."<sup>232</sup> And Hyde added that this decision "would do the utmost harm to American interest"; this is an obvious but inevitable result.

As a matter of fact, there is no rule of international law prohibiting the failure of a returning sovereign to enforce a legislative or judicial revalorization of private debts.<sup>233</sup> In other words, revalorization measures (or the absence of them) adopted by the restored government are irrelevant as a criterion of the lawfulness (or unlawfulness) of the former occupant's actions; they represent only the expression of sovereign policy decisions aimed at social purposes. Creditors who were nationals of third States would have a valid international claim against the returning government's refusal to enact a revalorization legislation if the refusal was intended to injure foreigners (for instance, by revaluating only debts owed to national creditors). In such a case, this government would breach the minimum standard of conduct any State must respect, and this would amount to an obvious abuse of rights.

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have to suffer the loss. See also *Eisner v. U.S.*, 117 F. Supp. 197, 21 I.L.R. 476 (Ct. Cl. 1954) decided by the U.S. Court of Claims.

230. This article was carefully refuted by the Philippine Supreme Court in *Gibbs v. Rodriguez*, 18 I.L.R. 204 (Sup. Ct., Phil., 1950), and it appears that Hyde missed the point and misinterpreted the *Haw-Pia* decision.

231. Hyde, *supra* note 13, at 141.

232. In the same sense, see MANN, *supra* note 3, at 514-15.

233. On the notion of abuse of rights applied to monetary matters, see Mann, *supra* note 95, at 92-98.

## CONCLUSION

To summarize, the following principles are supportable by international law:

1. The belligerent occupant unquestionably has the right to introduce a new currency with or without any backing, to regulate its value, to introduce exchange controls (or tighten existing ones), to seize national and enemy monetary assets, and to adapt the banking system of the occupied country to the new situation arising from the war and occupation.

2. The occupant has the right to fix a rate of exchange between the old currency, as established by the legitimate government, and the new military currency being introduced. More specifically, it may overvalue its own currency, for example by undervaluing the currency in circulation in the occupied territory, although only within certain reasonable limits. These limits include unjust enrichments, deterioration and ruination of the economy of the occupied territory, and levying massive monetary contributions.

3. As a general rule, the belligerent occupant cannot be held liable for the inflation occurring in the occupied territory unless it has greatly contributed to this situation by grossly overvaluing the new monetary unit it has introduced or by deliberately flooding the country with worthless paper money.

4. The occupant should not be held responsible for redemption of the military currency which it has issued unless the occupant has acted unlawfully according to the above-mentioned criteria. The occupied country should be liable for this redemption. However, this point seems rather academic since the solution will actually depend exclusively upon the turn of the war.

5. In the present state of international law, the returning sovereign has no particular duty or obligation concerning the recognition or the non-recognition of the monetary measures adopted during the period of occupation by the military occupant. The sovereign may accept the legality, completely refuse it, or accept it *beneficium inventarii*.

6. These positive rules of international law governing the conduct of belligerent occupants in the monetary area may appear loose and lenient and therefore rather disappointing. This inevitable result clearly illustrates the general lowering of the international standards that belligerents are expected to respect. This

corresponds to a similar trend in peacetime standards. What the international law of war has gained in scope, it has lost in depth.