

## REFUGEES AND REPARATIONS

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To an extent which exceeds any other catastrophe in modern times, the events of 1933-1945, and particularly 1939-1945, destroyed people and created refugees. Mass expropriations and condemnations were accompanied and followed by mass slaughter. The destructiveness of war was more than matched by the ferocities of Buchenwald and Bergen-Belsen.<sup>1</sup> And as the smoke of the gas chambers abated after the German collapse, the outlines of a new and fantastically huge problem in the relief of human misery became apparent.

Systematically and with characteristic attention to the ritualistic niceties of bureaucracy, the Germans under Hitler exterminated about six million Jews in Europe and some numbers of other persecutees, political or religious. The extermination was preceded, accompanied, and followed by a methodical confiscation of property. The device of the communal fine was used.<sup>2</sup> When Nazi riots occurred, it was considered to be appropriate to fine the "non-cooperating elements" who were suspected of hostility toward the regime which demanded their deaths.<sup>3</sup> And steadily, as sums large enough in the absolute sense but in this sense relatively small filled the pockets of individual Nazis, the main stream of persecutee properties went into the ample coffers of the German state. To impoverish the Jew was to enrich the state; and acts of violence thus had their appeal not merely to the sadistic and the cruel, but also to the careful and meticulous bankers and keepers of accounts. Murder thus turned a neat profit for Nazi officials and the Nazi state.

Out of this most brutal fact of modern times there grew a conviction that has found its way into international agreements—that, to at least a small extent, the German state should make some reparation to the victims of Nazidom. This principle has been at the heart of declarations and conferences. But, despite the moral

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<sup>1</sup> Other wars were almost as destructive. See MOORE, *INTERNATIONAL LAW AND SOME CURRENT ILLUSIONS* 1, 10 (1924): "When the Thirty Years' War . . . opened in 1618, the population of the old German Empire was between 16 and 17 millions; in 1648, when it closed, the population was 4,000,000." But other wars were not accompanied, as in modern times, by a determination to exterminate an entire "race."

<sup>2</sup> E.g., *Durchführungsverordnung Ueber die Suchneleistung der Juden* (Regulations for administration of the decree imposing an atonement fine on Jewish subjects) of 21 November 1938. [1938] *REICHSGESETZBLATT*, Part I, 1638.

<sup>3</sup> Thus, the "Decree for the Reconstruction of the Streets at Jewish Concerns," of November 12, 1938, provided that: "All damages which were caused by the indignation of the people about the provocation of international Jewry against National Socialistic Germany . . . have to be repaired immediately by the Jewish owners or tradesmen." (translation) [1938] *REICHSGESETZBLATT JAHRGANG*, Part I, 1581.

force that lies behind it, the principle has been implemented to a pitifully small extent. One way in which it has been partially implemented has been in connection with German assets lying outside the borders of Germany. The treatment of such German external assets is one of the two subjects of this article. The other subject—the treatment of “heirless assets”—relates to a corollary conviction, the conviction that the property of deceased persecutees who left no heirs can be devoted to no better purpose than the relief and rehabilitation of surviving persecutees. This conviction, too, has had more “sympathetic consideration” than actuality breathed into it.

In the expectation that other articles in this symposium will deal with such subjects as the indemnification and restitution programs, this article is thus limited to the external assets and heirless property problems.

## I

### GERMAN EXTERNAL ASSETS

From the inception of exchange controls, governments using those controls have regarded the holdings abroad of their own nationals as not entirely different from the property of the government itself. True, most governments listed such assets as the property of the citizen; but the latter's ownership was in fact little more than a right to receive compensation, in local currency, if his government decided it needed the foreign exchange represented by the foreign assets. In any realistic view of the matter there can be little doubt that foreign exchange assets have been regarded, even by non-socialist governments, as private property of a different sort than most private property; and this difference has been reflected in the treatment accorded to the private property of enemy nationals.<sup>4</sup>

Thus the Allied and Associated Powers, after World War I, made it possible for themselves to take over and apply to reparation accounts the property within their territories of German nationals; and the United States, in the Treaty of Berlin, adopted the clauses of the Versailles Treaty applicable to this concept. The German Government was obligated to recompense its citizens for property which they thus lost. Despite argument that this represented a deterioration in if not a violation of international law, the United States used the same concept after World War II; and the Trading with the Enemy Act contains specific provision, adopted in 1948, that German enemy property shall not be returned.<sup>5</sup> Such property is being applied to the war claims of the United States and its nationals.<sup>6</sup>

<sup>4</sup> There is a great deal of literature on this subject, much of which is summarized and discussed in: Somerich, *A Brief against Confiscation*; Rubin, “*Inviolability*” of Enemy Private Property; and Gearhart, *Post-War Prospects for Treatment of Enemy Property*, 11 *LAW & CONTEMP. PROB.* 152, 166, and 183, respectively (1945). It will be no surprise that the view stated in the text is that of the article by Rubin cited in this note.

<sup>5</sup> Trading with the Enemy Act, §39: “No property or interest therein of Germany, Japan, or any national of either such country . . . shall be returned to former owners thereof . . . and the United States shall not pay compensation for any such property . . .” 62 *STAT.* 1246 (1948), 50 *U. S. C. App.* §2011 (Supp. 1950). Although the Trading with the Enemy Act does not so state, it is contemplated that the national who thus loses his property will be compensated by his own government. *Cf.* Italian Treaty of Peace, Art. 79(3).

<sup>6</sup> War Claims Act of 1948, 62 *STAT.* 1247 (1948), 50 *U. S. C. App.* 2012 (Supp. 1950).

Nothing effective was done after World War I with respect to German assets, private or public, in neutral territory.<sup>7</sup> But World War II brought with it the idea that such property ought to be responsive to reparation claims. The Potsdam Agreement thus distributed German external assets between East and West, assigning those assets in Hungary, Bulgaria, and Rumania and in the Soviet Zone of Austria to the USSR, and leaving the others to the Western Allies.<sup>8</sup> And in December 1945, the Paris Conference on Reparation provided, in its Final Act, which went into effect January 14, 1946, that the United States, the United Kingdom, and France, on behalf of the reparation claimant countries, should obtain German assets in the neutral countries.<sup>9</sup> Assets in the Allied countries were to be taken over by those countries and applied to reparation accounts.<sup>10</sup>

Out of German assets in neutral countries, the Paris Conference allocated the sum of \$25,000,000<sup>11</sup> to be made available for ". . . large numbers of persons [who] have suffered heavily at the hands of the Nazis and now stand in dire need of aid to promote their rehabilitation but will be unable to claim the assistance of any Government receiving reparation from Germany . . ." ;<sup>12</sup> and it directed five governments (the United States, United Kingdom, France, Czechoslovakia, and Yugoslavia) on behalf of those governments represented in the Inter-Allied Reparation Agency (IARA) to work out a plan, in consultation with the Inter-Governmental Committee on Refugees, to accomplish this end. At a subsequent conference in Paris the five governments agreed upon a plan embodied in an Agreement<sup>13</sup> and in a Letter of Instruction to the Director of the Inter-Governmental Committee on Refugees.<sup>14</sup>

The Five Powers agreed that 90 per cent of the \$25,000,000 should be used to rehabilitate and resettle Jewish victims; and that 10 per cent should be utilized to assist non-Jewish victims. All funds were to be used for rehabilitation and resettlement, none for compensation to individual victims. The 90-10 proportion reflected the overwhelming preponderance of Jews among the broad categories of political, racial, or religious persecutees of the Nazis who were unable to claim the assistance of any Government receiving reparation from Germany.<sup>15</sup>

<sup>7</sup> Although the Allied and Associated Powers, at the Versailles Conference, discussed German external assets without apparent distinction between those in Allied and in neutral territory. See memorandum cited in BERNARD M. BARUCH, *THE MAKING OF THE ECONOMIC AND REPARATION SECTIONS OF THE TREATY*, 338 *et seq.* (1920).

<sup>8</sup> It was understood that the USSR would compensate Poland out of its share; all other claimants would participate in the Western share. Potsdam Accord, Article IV, (2) and (3).

<sup>9</sup> Final Act of the Paris Conference on Reparations (sometimes referred to as Paris Reparation Agreement), Part I, Art. 6(c).

<sup>10</sup> *Id.*, Part I, Art. 6(A).

<sup>11</sup> *Id.*, Part I, Art. 8. The amount is pitifully small in relation to any conceivable measure of compensation. The United States position at the outset of the Paris Conference was for a larger sum.

<sup>12</sup> *Id.*, Preamble to Art. 8.

<sup>13</sup> Agreement on a Plan for Allocation of a Reparation Share to Non-Repatriable Victims of German Action, generally referred to as the Five Power Agreement of June 14, 1946.

<sup>14</sup> Letter of Instruction Transmitted by the Government of France on Behalf of the Signatories to the Five Power Agreement, dated Paris, June 21, 1946, incorporated by reference in the basic Agreement. It is considered an integral part of the Agreement.

<sup>15</sup> Par. A, Five Power Agreement.

To assure speedy implementation of the plan, the Five Power Agreement designated the Inter-Governmental Committee on Refugees and its Director to administer the funds and provided for transfer of functions to the successor United Nations agency and its Director-General;<sup>16</sup> but principal operating responsibility for rehabilitation and resettlement of the victims was placed upon appropriate public or private agencies. The Director of the Inter-Governmental Committee on Refugees, or his successor, was instructed to obtain the \$25,000,000 from designated neutral countries when the funds were available,<sup>17</sup> and to make payment of the funds to appropriate operating field agencies after he approved specific plans and projects of such agencies. By placing responsibility for approval of rehabilitation and resettlement schemes upon the Director of the Inter-Governmental Committee on Refugees and his successors, and not upon the organization, the Five Power Agreement anticipated and avoided delay which would otherwise have resulted if agreement of the member governments of the Inter-Governmental Committee on Refugees or its successors had been required on specific rehabilitation and resettlement plans.

Agreement was reached on the Jewish side that two organizations, the Jewish Agency for Palestine and the American Jewish Joint Distribution Committee, would receive and administer the funds pursuant to projects to be approved by the Director of the Inter-Governmental Committee on Refugees or the head of any United Nations successor organization. The Jewish Agency for Palestine was selected because of the belief that a great number of the victims would emigrate to Palestine, and the American Jewish Joint Distribution Committee because it was the largest Jewish field relief and resettlement organization with a program of wide and varied scope in countries other than Palestine. On the non-Jewish side, the Director-General was empowered to select the appropriate field organizations to work on behalf of non-Jewish victims.

The pattern for allocation and administration of funds was thus expeditiously established. But the problem first to be faced was the obtaining of these funds. For the purpose of obtaining German external assets located in neutral countries, therefore, the United States, the United Kingdom, and France, as representatives of IARA, suggested successive conferences with the Governments of Switzerland, Sweden, Portugal, and Spain. These conferences began with Switzerland in the spring of 1946, the invitation having been extended in February of that year. They still, in one form or another, continue so far as Switzerland and Portugal are concerned.

#### A. Switzerland

Negotiations with a Swiss delegation headed by Minister Walter Stucki were begun in Washington in March of 1946. In May 1946, an agreement was signed.

<sup>16</sup> Administration of the program and funds passed to the Executive Secretary and to the Preparatory Commission for the International Refugee Organization (PCIRO) on July 1, 1947, and subsequently to the Director General and the International Refugee Organization (IRO).

<sup>17</sup> Letter of Instruction, dated December 24, 1946, amending Letter of 21 June 1946.

This was shortly thereafter ratified by the Swiss Parliament. The agreement contained a provision that:

The Swiss Government undertakes, in recognition of the special circumstances, to permit the three Allied Governments to draw immediately up to 50,000,000 Swiss francs upon the proceeds of liquidation of German property against their share thereof. These advances will be devoted to the rehabilitation and resettlement of non-repatriable victims of German action, through the Inter-Governmental Committee on Refugees.<sup>18</sup>

This provision formalized certain anterior exchanges between the Allies and the Swiss. In a preliminary letter indicating fundamental agreement on the bases of the agreement, the Allies had stated "the satisfaction felt by their Governments that it will be the intention of the Swiss Government, in recognition of the special circumstances, to permit the three Governments to draw advances in order that these advances will be devoted through the Inter-Governmental Committee on Refugees to the rehabilitation and relief of non-repatriable victims of German action."<sup>19</sup> The Swiss responded that they were prepared, "as soon as the Accord comes into force, to make certain advances. . . . The amount of these advances and the method of payment remain to be fixed."<sup>20</sup>

Under these circumstances, it was a not unreasonable hope that the funds in question would have been paid to the IRO shortly after the signing of the Accord. This was, unfortunately, not the case. Disputes between the Allies and the Swiss, on non-refugee matters, have held up execution of the Accord. In view of the delay being encountered, the Allies, in 1947 and 1948, requested an advance payment for IRO purposes from the Swiss Government. These requests, in the amount of 20,000,000 Swiss francs, were paid in July 1948, after the Allied requests had been supplemented by an urgent appeal from the Executive Director of the PCIRO.<sup>21</sup>

In 1950, further Allied requests for an advance in the amount of some 17,000,000 Swiss francs were made. These requests, again, were supplemented by a request of the Executive Director of the IRO. Although the Allied requests were rejected,<sup>22</sup> answer to the IRO request was delayed. There now appears to be substantial hope that this payment will be made shortly.

Although meetings which were held in Bern in the summer of 1950 apparently broke up even before they were well under way, under circumstances which seemed the opposite of amicable,<sup>23</sup> the latest negotiations on the Accord seem to have taken a different course. Reports indicate that the Allies and the Swiss, at long last, have

<sup>18</sup> Annex to Swiss-Allied Accord, Art. V.

<sup>19</sup> Letter, Randolph Paul, Special Assistant to the President, to Dr. Walter Stucki, Chief of Swiss Delegation, May 21, 1946.

<sup>20</sup> Letter, Stucki to Paul, May 22, 1946.

<sup>21</sup> INTERIM PROGRESS REPORT OF DIRECTOR GENERAL, IRO, FOR PERIOD JULY 1, 1947—SEPTEMBER 30, 1948, 8-9; Rapport du Conseil fédéral à l'Assemblée fédérale sur l'exécution de l'accord conclu à Washington le 25 Mai 1946 (du 13 Avril 1949) p. 10-11; IRO Press Release No. 334, July 24, 1948.

<sup>22</sup> Letter of Assistant Secretary of State McFall, dated May 9, 1950, in *Hearings before Sub-Committee of Committee on Interstate and Foreign Commerce on S. 603*, 81st Cong., 2d Sess. 195-196 (1950).

<sup>23</sup> N. Y. Times, July 2, 1950 (dispatch dated July 1, 1950).

composed their fundamental differences in connection with the Accord.<sup>24</sup> If these reports turn out to be accurate, as they seem to be, the payment of the added 17,000,000 Swiss francs should follow shortly after that composition of difficulties. In that event, all payments due under the Swiss Accord will have been made. Although it is regrettable, from the point of view at any rate of the refugees, that delay has occurred in this entire program, credit must be given to the Swiss Government for its willingness to make the not inconsiderable sum of 20,000,000 Swiss francs available to IRO, at a time when the entire fate of the Accord was in considerable doubt.

#### B. Sweden

A Swedish-Allied Accord was negotiated and signed in Washington in July of 1946. It contained a clause providing:

The Swedish Government will make available 50 million kronor to the Inter-Governmental Committee on Refugees for use in rehabilitation and resettlement of non-repatriable victims of German action.<sup>25</sup>

It was also stated that the Swedish Government, "while reserving its decision as to the manner in which the funds will be made available, will use its best efforts to make the funds available as soon as possible and in such manner as to best carry out the aims of the Committee."<sup>26</sup>

This provision of the Swedish-Allied Accord was promptly carried out, despite a dispute, since settled, between Sweden and the Allies over distribution of other sums to IARA members as reparations. The PCIRO, which had succeeded the Inter-Governmental Committee on Refugees on July 1, 1947, received a deposit of 50,000,000 kronor (then approximately \$12,500,000) in that same month.<sup>27</sup> Despite Sweden's exchange stringencies, a very considerable portion of these funds was made transferable into sterling<sup>28</sup> and other currencies and was used for the rehabilitation, transportation, and resettlement of refugees. Although a small portion of these sums available for non-Jewish victims is still on deposit in Sweden awaiting conversion to other currencies, the Swedish Government did promptly carry out its commitments under the Accord, despite the existence of unresolved issues on other points; and if the maxim that he who gives quickly gives twice is ever relevant, it is surely relevant here.

#### C. Portugal

So much cannot be said for the Portuguese attitude. Negotiations with Portugal

<sup>24</sup> N. Y. Times, March 26, 1951 (dispatch dated March 25, 1951). Fuller reports are contained in several Swiss newspapers. See Gazette de Lausanne, March 20, 1951; Neue Zürcher Zeitung, March 20, 1945; Journal de Geneve, March 20, 1945.

<sup>25</sup> Letter, Justice Emil Sandström, Chief, Swedish Delegation, to Chiefs of Allied Delegations, July 18, 1946.

<sup>26</sup> *Ibid.*

<sup>27</sup> PCIRO resolution PREP/111; PCIRO Press Release No. 255, July 23, 1947. This marked the first receipt of funds under the refugee-reparation program.

<sup>28</sup> To the extent of £1,500,000. See PCIRO Press Release No. 681, January 30, 1948.

were begun in the fall of 1946. An Accord on the subject of German assets in Portugal was eventually signed in the following February. Article V of the Accord contained a provision that allocation of the proceeds of German assets would be made: "In the first place, the sum of escudos 100 million for assistance to the non-repatriable victims of German aggression."<sup>29</sup> But the charges of the Allies that Portugal had received gold looted by Germany from occupied areas have not yet been settled; and the Portuguese have delayed implementation of even those provisions of the Accord which provide assistance to refugees. This delay is despite the existence of liquid German assets almost double the refugee-allocated 100 million escudos; and despite the fact that these sums allocated to refugee needs are in any case given a firm priority under the Accord, so that it is hard to see what dangers could inhere in allowing payment to the International Refugee Organization. The status of these 100 million escudos (at present rates of exchange about \$3,300,000) remains in a curious limbo of stalemate. However, negotiations continue, and, as in the Swiss case, there is some reason to hope that a reconciliation of views can be achieved which will permit implementation of the Accord on German assets.

#### D. Spain

An agreement on German assets was reached between the Allies and the Spanish in May 1948. It contained no provision for allocation of funds to refugee relief, largely because (1) it had been believed that the Swiss, Swedish, and Portuguese Accords would, by that time, have produced the full \$25,000,000 promised under the Paris Reparation Agreement; and (2) the Spanish peseta was not considered to be a currency which could be usefully employed by the International Refugee Organizations or the private agencies operating in the refugee field.

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Thus, out of the \$25,000,000 allocated to refugee purposes under the Paris Reparation Agreement of January 1946, the following is the situation.

1. *Switzerland*. About \$5,000,000 paid in 1948 in response to Allied and International Refugee Organization appeals. An Allied request for an additional \$3,200,000 has been rejected, but an International Refugee Organization request is still pending.

2. *Sweden*. Payment of all sums due, amounting to about \$12,500,000, were promptly made in 1947.

3. *Portugal*. About \$3,000,000 is allocated under the Allied-Portuguese Accord, signed in 1947, as a priority item. Payment awaits the outcome of negotiations still going forward, or Portuguese consent to payment immediately.

Thus, of the \$25,000,000 allocated in 1946, about \$7,500,000 remains, at the end of 1950, still unpaid. It would seem not inappropriate for the Swiss and Portuguese Governments, in recognition of what was urgent in 1946 and is even more urgent

<sup>29</sup> The Accord has as yet not been published, though portions of it have been fully disclosed to and discussed with interested persons.

now that refugee resettlement programs must be wound up, to release the indicated sums without making such release dependent on settlement of issues in which refugees have no interest, can exercise no control, and for the existence of which they are not responsible.

#### E. Italy

One unexpected source of funds for refugee-reparations purposes has developed. The Paris Reparation Agreement said nothing about German assets in Italy—neither a neutral nor an Allied country. As a result, the Italian Treaty of Peace provided that “Italy agrees to take all necessary measures to facilitate such transfer of German assets in Italy as may be determined by those of the Powers occupying Germany which are empowered to dispose of the said assets.”<sup>30</sup> These Powers were, under the Potsdam Agreement, the United States, United Kingdom, and France.

In the fall of 1948, the suggestion was made to the United States on behalf of the American Jewish Committee that some share of the German assets in Italy be used for a contribution to the reparation fund of the International Refugee Organization. Although no international agreement calling for such a contribution existed, it was suggested that it would be an appropriate disposition of a part of the German assets in Italy—the more so since it was understood that the United States proposed to renounce its share of such assets.

Negotiations between representatives of the three powers and of the International Refugee Organization culminated, in December 1950, in agreement between the interested Powers, and in a letter addressed to the International Refugee Organization stating that 500,000,000 lire would be turned over to the International Refugee Organization reparations fund. Without the strong initiative of the United States, this step would not have been taken. It is heartening to find a decision of governments, based, particularly today, solely on humanitarian motives. The moral might well be pertinent to the pending Portuguese discussions.

## II

### NON-MONETARY GOLD; HEIRLESS ASSETS

Article 8, Part I of the Paris Reparation Agreement provided three bases for funds for refugee assistance: one was the \$25,000,000 fund already discussed; the others were “non-monetary gold” and “heirless assets” in neutral countries.

These categories of property, strictly, cannot be classified as reparations. “Non-monetary gold” is looted property—wedding rings, gold teeth, silver plate, and the like. Heirless assets are those which had belonged to persons who, with their entire families, were exterminated by the Nazis. Both kinds of property, thus, unlike German external assets, derived from the victims themselves. It is difficult to designate as “reparations” the proceeds of property of the Nazi victims. Nevertheless, since the non-monetary gold and heirless assets problems are linked with the

<sup>30</sup> Art. 77(5).



general program of assistance to victims of the Nazis, these subjects can be discussed here.<sup>31</sup>

#### A. Non-monetary Gold

The Paris Reparation Agreement provided that "A share of reparation consisting of all the non-monetary gold found by the Allied Armed Forces in Germany . . . shall be allocated for the rehabilitation and resettlement of non-repatriable victims of German action."<sup>32</sup>

By early agreement between representatives of the Inter-Governmental Committee on Refugees and the United States, it was agreed that "non-monetary gold" should include "all valuable personal property which represents loot seized or obtained under duress from political, racial or religious victims of Nazi Government or its satellite governments or nationals thereof. . . ."<sup>33</sup> If this property was such that it could not be restituted because determination of individual ownership was impractical, it was, both in *Germany and Austria*, made subject to the directive addressed in November 1946, to the United States Army commands in Germany and Austria.<sup>34</sup> The British and French apparently accepted a similar definition of non-monetary gold, but refused to expand the scope of the agreement into Austria. The reluctance of the British and French on this score turned out to be largely irrelevant, in any case; by the end of 1950 the British had not turned over any "non-monetary gold" to the Inter-Governmental Committee on Refugees or to the International Refugee Organization, and the French transferred non-monetary gold of a total value of less than \$200.00. Although there were semi-official reports from time to time that such property had been found and would be made available in the British Zone of Germany, no transfer, as of the end of 1950, had been made. The Armed Forces of the United States, on the other hand, have located considerable quantities of such property in their zones of occupation and have promptly turned these properties over to the Inter-Governmental Committee on Refugees and to the International Refugee Organization.<sup>35</sup>

The United States authorities collected a vast array of Nazi loot at the Foreign Exchange Depository established at Frankfurt. It ranged from jewelry and silverplate to bag after bag of gold teeth. A similarly grim array was collected at Salzburg. IRO and Army personnel then made a joint inventory. A good part of the material was found to be best disposed of by smelting, refining, and selling it in bar form.<sup>36</sup> The balance—rugs, diamonds, silverplate, jewelry, and the like—was shipped to the United States on International Refugee Organization vessels and was

<sup>31</sup> See Howard, *The Paris Agreement on Reparation from Germany*, DEP'T STATE PUBLICATION NO. 2584, at p. 5 (1946).

<sup>32</sup> Part I, Art. 8(A).

<sup>33</sup> Joint Chiefs of Staff Directive addressed to Commanding Generals, United States Forces, Austria, in November 1946. Reprinted in INTERIM PROGRESS REPORT OF DIRECTOR GENERAL OF THE INTERNATIONAL REFUGEE ORGANIZATION, FOR PERIOD JULY 1, 1947-SEPTEMBER 30, 1948.

<sup>34</sup> *Ibid.*

<sup>35</sup> See PCIRO Resolution PREP/134, October 1947.

<sup>36</sup> See PCIRO Press Release No. 715, February 11, 1948.

disposed of at auction sales. This project would have been entirely impractical had it not been for the efforts of a group of New York businessmen, headed by Colonel Ray C. Kramer, who volunteered their services in a "Merchandising Advisory Committee" and who assisted IRO personnel in best disposing of these objects.<sup>37</sup> Through all of these efforts, over \$3,000,000 was realized from "non-monetary gold" proceeds.<sup>38</sup>

Agreement with respect to non-monetary gold did not extend outside of Germany. But there was a similar cache of property in Italy. This property had been captured by the American Fifth Army from one of the German armies in Italy. It was stored in the vaults of the Bank of Italy in Rome under joint custodianship of the American and British Embassies in Rome. After long negotiations between the United States and British authorities and the International Refugee Organization, in consultation with the American Jewish Committee, it was agreed that this property would be turned over to the reparations division of the International Refugee Organization; that it would be liquidated by the International Refugee Organization; and that half of the proceeds would be turned over by the International Refugee Organization to Italy for use in the relief of Italian war orphans, while the other half would be retained by the International Refugee Organization for the benefit of non-repatriable victims of German action.<sup>39</sup> It is expected that the value of these properties will be in the neighborhood of \$250,000.

#### B. Heirless Assets

The Paris Reparation Agreement provided: "Governments of neutral countries shall be requested to make available for this purpose [rehabilitation and resettlement of non-repatriable victims of German action] (in addition to the sum of 25 million dollars) assets in such countries of victims of Nazi action who have since died and left no heirs."<sup>40</sup> Pursuant to this directive, the Allies, in negotiating on German property questions with the neutrals, attempted to obtain commitments with regard to the disposal of heirless assets. The International Refugee Organization has also, from time to time, called upon the neutrals to take appropriate action.<sup>41</sup> Although sympathetic interest was shown in all cases, until now the results have been negative.

##### I.

The principal probable location of heirless assets in neutral countries is Switzerland. The amounts of that type of property in any one place is a fact very difficult to determine. That an asset is heirless is not always known to its custodian. In

<sup>37</sup> ANNUAL PROGRESS REPORT, DIRECTOR GENERAL, IRO 64 (July 1, 1949-June 30, 1950).

<sup>38</sup> INTERIM REPORT, *op. cit. supra* note 33, at 9 *et seq.*

<sup>39</sup> The terms of this settlement were confirmed in Washington in November 1950, by exchange of correspondence between the Department of State and the British Embassy, and the Director General of the International Refugee Organization.

<sup>40</sup> Part I, Art. 8(C).

<sup>41</sup> INTERIM PROGRESS REPORT, *op. cit. supra* note 33, at 15; Report of the Executive Secretary (PCIRO) on the Status of the Organization and its Activities during the First Three Months, Document PREP/130, October 1947; PCIRO Resolution PREP/112, July 1947.

many cases, funds had been deposited in Switzerland by clients of the Swiss banks with the understanding that such funds would remain safe and undisturbed until their proprietors were able to or found it necessary to appear to claim them. Funds were deposited in Switzerland—as they were in the United States—in order to avoid taxes, or in order to provide “flight capital” in case of the kind of emergency which the troubled years after the First World War threatened at any time, or for a variety of other personal reasons. Funds were often deposited in secret and numbered accounts, or held in the name of a Swiss proxy. It was far from unusual, in such cases, for these accounts to remain undisturbed for a period of years. All of these elements enter into the difficulties of determining what are in fact heirless assets, and baffle attempts to forecast—and sometimes to ascertain—the amounts of such assets.

Partially because of these uncertainties, negotiations on the subject of heirless assets have been particularly difficult. The Allies first entered into such negotiations with the Swiss; but the Swiss-Allied Accord of 1946 contained no definite statement with respect to heirless assets. Instead, a letter was directed to the Allies by the Chief of the Swiss Delegation, in which it was stated that “my Government will examine sympathetically the question of seeking means whereby they might put at the disposal of the three Allied Governments, for the purposes of relief and rehabilitation, the proceeds of property found in Switzerland which belonged to victims of recent acts of violence of the late Government of Germany, who have died without heirs.”<sup>42</sup>

Negotiations with the Swiss Government on the subject of heirless assets have been carried on intermittently since 1946 by interested private organizations, by the Swiss Jewish community,<sup>43</sup> and by the Allied Governments. Proposals have been placed before the Swiss to the effect that legislation be enacted which would place heirless property at the disposal of a Jewish restitution successor organization, or some similar organization which could use its proceeds for assistance to surviving persecutees. With the assurance of the benevolent support of the Allies, representatives of interested Jewish organizations met with the Swiss authorities, headed by the Swiss Minister of Justice in early July, 1949. Although the meeting came only after a considerable exchange of correspondence and views, it was devoted largely to a review of the legal problems and difficulties. Chief among these were the problems of penetrating the curtain of the Swiss banking secrecy laws in a manner which would enable one to identify heirless property; and the question of whether Switzerland, as the country in which the heirless assets were located, had the right to dispose of such assets, or whether the country to which the decedent had owed allegiance had that right. Since no question existed—by definition—of a fiduciary duty owed to a living client or his heirs or claimants, it was thought by the interested organizations that techniques could be devised to overcome the banking

<sup>42</sup> Letter of May 25, 1946.

<sup>43</sup> RAPPORT ANNUEL DE LA FEDERATION SUISSE DES COMMUNAUTES ISRAELITES POUR L'ANNEE 1949 23-24.

secrecy obstacle. Moreover, it was felt that there was sufficient precedent in international law and practice for the taking of jurisdiction by the state in which the property was located rather than the state of the decedent's nationality.<sup>44</sup>

Although it was agreed in the July meeting that legal materials, including copies of the laws enacted in the United States Zone of Germany and proposed in the Congress of the United States, would be furnished, the enthusiasm of the interested organizations suffered a severe blow by the discovery that an agreement had been reached between Switzerland and Poland shortly before the July 1949 meeting, included in which was a "secret" provision effectively disposing of heirless assets in Switzerland of Polish origin. The general outlines of the agreement were of a somewhat familiar pattern: a trade and compensation agreement, under which the proceeds of trade were to be partially used to compensate Switzerland for expropriations in Poland of the property of Swiss nationals. What was novel in the agreement were the provisions to the effect that unclaimed property of Polish origin, remaining unclaimed for a five year period, would be consolidated in an account which would be made available to the Polish authorities. It thus appeared that the legal difficulties arising out of banking secrecy requirements had been successfully surmounted; and that the jurisdictional aspects of the problem had been circumvented by an agreement which seemed to recognize Polish rights with respect to the unclaimed property of Polish nationals, while at the same time cooperation in making such property available was used as a partial *quid pro* an agreement on compensation for the expropriation of Swiss property in Poland.<sup>45</sup> The Polish-Swiss agreement was ratified over the opposition of an appreciable minority of the Swiss Parliament.

Subsequent negotiations in Switzerland have been directed toward two objectives: the confining of the Polish precedent to its own facts, so that heirless assets of other than Polish origin might nevertheless be disposed of in a manner consistent with the needs of the survivors of that class of persecutees whose slaughter created the problem of heirlessness;<sup>46</sup> and the working out of procedures which would make it possible for claimants, whose possession of supporting facts or documents was necessarily scanty, to lay claims to properties which might otherwise be classified as heirless. In neither of these directions have developments to the date of writing been particularly encouraging. At the very least, since an extraordinary situation is recognized in the Swiss-Polish agreement, it would seem appropriate for some steps to be taken by the Swiss Government and the Swiss banking and insurance authori-

<sup>44</sup> Although published records with respect to these matters do not exist, numerous private exchanges of letters confirm these facts.

<sup>45</sup> The *RAPPORT ANNUEL*, *supra*, note 43, states that representations were made to the Swiss Federal Council declaring that its manner of proceeding in this connection had been "une surprise et une deception," *Id.* at 23.

<sup>46</sup> It is understood that a Swiss-Hungarian agreement, the details of which are not available, may have been reached.

ties to assist putative claimants in the establishment of the facts on which their claims can be proved or disproved.<sup>47</sup>

## 2.

Some discussions between the interested charitable organizations and the authorities of other neutral countries have taken place, though such talks were not pressed pending the outcome of the much more important Swiss negotiations. In other countries the amounts of heirless property were estimated not to be substantial. There is probably some property of this sort in Sweden, but it is undoubtedly insignificant in comparison to the amounts involved in Switzerland. Although some sympathetic interest has been shown by the Swedish authorities,<sup>48</sup> the undoubted complexities of the problem and the smallness of the sums at issue have combined to produce no affirmative action.

## 3.

The most advanced and complete treatment of the heirless property problem exists in the United States Zone of Germany. There the occupation authorities, both OMGUS and HICOG, have shown an extraordinary amount of sensitivity to the general problem of restitution and of its corollary where a claimant does not exist. Military Government Law No. 59, since emulated in the British Zone, set up procedures for the recovery of properties taken from persecutees under duress. Under the Law and its regulations, provision was made for successor organizations competent to process restitution claims in the all-too-common situation where no claimant existed.<sup>49</sup> The Jewish Restitution Successor Organization, a corporation

<sup>47</sup> Private lawyers have suggested to the Swiss Government that extraordinary measures be adopted to assist claimants in locating property as to which all records in their possession or possession of their families may have been destroyed. The Swiss Government has replied that this is a task for the Swiss Bankers Association or, in the case of insurance policies, for the Swiss Union of Life Insurance Companies. (Letter of Swiss Legation in Washington to S. J. Rubin, May 26, 1950). Inquiries were thereafter directed to these two associations. The Swiss Bankers Association, under date of June 7, 1950, replied and stated that it would be glad to help "within the limits of possibility," but that first the claimant would have to:

1. prove "on the basis of official and authenticated documents" the death of the original owner;
2. establish, on the same basis, claimant's right of succession; and
3. give exact details about the banks in which the accounts exist.

It is, of course, obvious that these requirements cannot be met. The typical situation is one in which death must be presumed from disappearance at Buchenwald or other concentration camp; in which documents were lost or destroyed in the general holocaust; and in which knowledge of the location of the account is lacking. Were the prerequisites stated by the Swiss Bankers' Association present, there would, of course, be no need for the assistance of the Association. And the attitude of the Association seems to ignore both the interests of deceased clients and their heirs and the fact of extraordinary occurrences between 1933-1945. This attitude has now been confirmed to the American Legation in Bern.

The Union of Swiss Life Insurance Companies, on the other hand, replied (Letter to S. J. Rubin, dated June 19, 1950) to the effect that it had requested all of its members to make an investigation, which, in the case at hand, had turned out to be negative. The attitude of this Association was thus more cooperative—and realistic—than that of the Swiss Bankers' Association, and might well commend itself to the latter.

<sup>48</sup> The Swedish-Allied Accord of 1946 included a letter from Justice Sandström, Chief of the Swedish Delegation, confirming his agreement to recommend favorable action *re* heirless property to his Government.

<sup>49</sup> Art. 13, M. G. Law No. 59.

having its seat in New York, was organized by various Jewish charitable organizations and was recognized by the occupation authorities.<sup>50</sup> It has processed in Germany many thousands of claims, and has recovered many properties. The problem is nevertheless of enormous magnitude; and the processing of individual claims has presented the JRSO with administrative problems which seem likely to continue for years. Under these circumstances, and in view of many other compelling factors—the growing unpopularity of restitution in Germany, the immediate need for funds—negotiations have been begun, with the benevolent concurrence of HICOG, looking toward bulk settlements with the various German laender. It is to be hoped that these negotiations will be successful.<sup>51</sup> If they are, the Jewish Restitution Successor Organization will be able to wind up its affairs within a reasonable period of time, to turn over the proceeds of its efforts to the designated operating agencies, and to leave the ultimate adjustments to the German laender authorities themselves. The rectification of the evils of the Hitler regime is a fundamental Allied policy; but it is a policy which is best implemented by being quickly implemented, and bulk sum settlements, gross though they may be, are the best instrument for the solution of the political problems which arise out of the operations of the Jewish Restitution Successor Organization in Germany five years after the end of active hostilities and out of the immediate and pressing needs of surviving persecutees.

Encouraging steps have also been taken in the British Zone of Germany, where the program is essentially similar to that in the American Zone, but is about two years later in inception. There, a successor trust company for heirless assets began to function only in the fall of 1950. Progress should, however, be rapid, since a pattern of operation will have been set by the Jewish Restitution Successor Organization. Action in the French Zone, though promised, is still not at hand. A restitution law has been also enacted in the Western Sectors of Berlin and the JRSO there recognized.

## 4.

Agreed sections of the draft treaty of peace with Austria recognize the principle of a successor organization to deal with and press claims to heirless property.<sup>52</sup> Again, negotiations have long been under way with the Austrian Government for measures which might put this principle into effect now, and in advance of the attainment of what seems to be the will-of-the-wisp of a finalized Austrian treaty. Restitution to individual claimants is already part of Austrian law;<sup>53</sup> but the heirless property problem has not been dealt with by the Austrians in any comprehensive way. Draft proposals have been submitted by interested organizations to the Austrians, but no Austrian legislative action has been taken. The major

<sup>50</sup> Regulation No. 3 under M. G. Law No. 59 and appointment thereunder—June 23, 1948.

<sup>51</sup> An agreement has been reached with Hesse.

<sup>52</sup> It is understood that these are Articles 44 and 57 of the draft treaty.

<sup>53</sup> Although a revision proposed in the fall of 1950 would have effectively killed restitution. These revisions were withdrawn, as was explained by Chancellor Figl to the Parliament, as a result of American objection.

achievement to date has been the advance of 5,000,000 Austrian schillings, an advance which was based on the security of the heirless property which was anticipated. Negotiations for an additional advance of 25,000,000 schillings reached a promising state in early 1950; but the promise of these negotiations has not so far been fulfilled.

A small advance on the security of heirless property has also been made in Greece.

5.

Outside of the American Zone of Germany (and the degree to which measures there have been emulated in other Zones), the most comprehensive legislative proposals with respect to heirless property have been advanced in the Congress of the United States. It is particularly unfortunate that these proposals have come to the brink of enactment, only to fail in the Eighty-first Congress at the very edge of success.

Bills were introduced in both the Senate and the House, in both the Eightieth and Eighty-first Congresses, and with bi-partisan support, for the disposition of heirless property found in the United States to successor organizations for relief and rehabilitation purposes. The Senate passed the bill in the Eightieth Congress; it failed of passage in the House. In the Eighty-first Congress, substantially identical bills were introduced in the Senate by Senators Taft and McGrath; in the House, by Congressmen Wolverton and Crosser, the ranking minority member and Chairman of the Interstate and Foreign Commerce Committee, which had jurisdiction over the matter. The Senate passed the bill<sup>54</sup> on the consent calendar in the first session of the Congress, after a favorable report by the Judiciary Committee. During the second session, hearings were held by the Beckworth Subcommittee of the House of the Interstate and Foreign Commerce Committee.<sup>55</sup> A favorable report was submitted and approved by the full Committee;<sup>56</sup> and the bill (S. 603) came up on the consent calendar of the House. It was there objected to,<sup>57</sup> and, unanimous consent failing, went to the Rules Committee. Although that Committee held hearings before the summer recess of 1950, the bill was not granted a rule, and did not come up for consideration on the floor of the House and therefore died pending introduction in the Eighty-second Congress.

The bi-partisan support—and the caliber of that support—which the heirless property legislation has enjoyed, and the subscription to its principles on the part even of those proposing amendments make it practically certain that the bill would be passed if it were to be considered, and make the death of the bill with the expiration of the Eighty-first Congress all the more disappointing. The bill itself is a simple one. Essentially, it provides that property which had belonged to persecutees, as

<sup>54</sup> Although there have been several slightly different versions, the fundamentals of all of the bills are contained in S. 603, 81st Cong., 2d Sess. (1950).

<sup>55</sup> *Hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce on S. 603*, 81st Cong., 2d Sess., *inter alia*, 149 *et seq.* (1950).

<sup>56</sup> H. R. REP. NO. 2338, 81st Cong. 2d Sess. (1950).

<sup>57</sup> 96 Cong. Rec. 10571 (July 17, 1950).

defined in subsections (c) and (d) of section 32 of the Trading with the Enemy Act, shall be subject to return to a successor organization after the lapse of two years from the time of vesting. In general, the enactment rests on the principle already found in the Trading with the Enemy Act—that the vested property of persecutes should be returned to them. Here, the vested property of persecutees who died heirless is used for the relief of survivors of the same class. Charitable organizations may ask to be designated by the President as successor organizations. If so designated, they may file claims with the Office of Alien Property of the Department of Justice, and may recover heirless property which belonged to persons of like nature to those on whose behalf they propose to act. Since the great part of heirless property, in the United States as elsewhere, is Jewish in origin, it is to be anticipated that the major organization operating in this field will be the Jewish Restitution Successor Organization—which, as mentioned, has already been accredited in Germany. The burden will be on that organization, or, for that matter, any similar organization, to establish its right to claim particular assets: the Jewish organization will have to demonstrate—it is to be hoped under fairly flexible requirements of proof—that the decedent whose property is claimed was in fact Jewish. A limitation of \$3,000,000 is imposed on returns to successor organizations. In practice, this probably means little since, although there well may be heirless property in excess of that amount in the United States, it is extremely unlikely that claims to that amount can be substantiated. The limit was imposed primarily to close off the open-end nature of the legislation, so that estimates of the amounts necessary and available for other aspects of the war claims program, and particularly for the legislation now administered by the War Claims Commission, could be established.<sup>68</sup>

It is regrettable that a bill supported by the Administration, enjoying strong bi-partisan support, and, it may be added, which has the added attraction of being meritorious, should fail of passage because of the unwillingness of the Rules Committee to discharge it for full House debate. It is to be hoped, however, that the Eighty-second Congress will enact the legislation which has twice come so close to passage.

## 6.

A variety of miscellaneous problems cut across the heirless property field. What is to be the status of heirless property in such countries as the Netherlands, for example? There, some discussions have taken place between representatives of interested Jewish organizations and Dutch authorities, with some accent on the question of whether such assets, once recovered, would be available for relief purposes outside of the Netherlands or would be reserved for general use in Holland, or for the use of the remnants in Holland of the once-strong Jewish community there. Other aspects of the problem affect heirless properties in the United States which were owned by nationals of Allied countries. Should such properties be

<sup>68</sup> H. R. REP. NO. 2338, *supra* note 56, at 3-4.



returned to the governments of those Allied countries, or be treated like other heirless property in the United States? If they are to be returned, should such governments be free to utilize them as they see fit? Should a condition of turning the properties over be that they be used for relief purposes? Should a requirement be made that Jewish heirless properties be used for Jewish relief? And so on.

Another problem arises in connection with the non-vested heirless assets in the United States. How should heirless property be treated which is blocked but not vested? Senate Bill No. 603 deals only with vested assets. Should the Office of Alien Property undertake to vest all such assets, in order to bring them within the purview of S. 603 or some similar legislation? How is the Office of Alien Property to select such property for vesting, when in the main it consists of assets previously owned by nationals of the Iron Curtain countries, and no general policy of vesting assets of Iron Curtain countries, has—so far—been adopted? And even if the vesting program is extended to Iron Curtain assets in general, with special return provisions to successor organizations applicable to heirless property, what about heirless property in the United States which belonged to nationals of previously Allied countries like Poland—which may well have a status somewhat different from such countries as the Netherlands?

Solutions, in a number of these cases, can be worked out. It has been suggested, for example, that heirless property in the United States of Dutch origin be treated as follows: that it be vested by the Dutch, in a decree which would be recognized formally by the State Department; that it then be unblocked; after which it could (in all probability) be recovered by the Dutch authorities; and that an overall agreement be worked out in advance under which property so recovered would be used for relief purposes, in a proportion to be determined, within and outside of the Netherlands. But the solution to almost any of these aspects of the general heirless property problem is a complicated matter; and it hardly seems worth while—particularly to government officials harassed by other and more immediate problems—to give much attention to questions such as these while the fundamental problem remains in the limbo of Congressional inaction.

### III

In the context of a world but lately at war, and with the clouds of a threatened general war hovering overhead, the problems of refugees and resettlement are generally overshadowed. What can be done is pitifully small in terms of what damage remains to be repaired, and what losses are irreparable. But in a picture whose pervading color is dark, there is some light. The measure of the actions taken by individuals and by states is not entirely a material one. The aid that can be given is small in proportion to the problem. But that not only individuals but also states are willing to take action based on humanitarian grounds, and to recognize more than a material basis for their policies, is a note of encouragement.

From first to last, the attitude of the United States and its officials has been a

sign post of hope in a rather bleak landscape. The United States was foremost in sponsoring the claims of refugees at the Paris Reparation Conference. It has taken the initiative on many occasions when inaction would have been easier—and would have been the course of a more cynical bureaucracy. Sweden, too, has been impelled by a high moral spirit, as was Switzerland in making its first advance.

But more remains to be done. The question of Portuguese advances is still pending, though that of the Swiss advance is close to settlement. Heirless property continues to present an open question, in the United States no less than elsewhere. The time for action in favor of the refugees was yesterday, and the day before. But the opportunity is not lost. The grim problems of resettlement and rehabilitation remain, and are the more pressing as new dangers threaten. Time was; time is; hopefully, action will occur before time vanishes into the dust of the past and of resolutions unfulfilled.