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HISTORICAL PRECEDENTS FOR RESTITUTION OF PROPERTY OR PAYMENT OF COMPENSATION TO REFUGEES

(Working paper prepared by the Secretariat)

1. The underlying principle of paragraph 11, sub-paragraph 1, of the resolution of the General Assembly of 19 December 1948, is that the Palestine refugees shall be permitted either to return to their homes and be reinstated in the possession of the property which they previously held or that they shall be paid adequate compensation for their property. The purpose of the present paper is to furnish some background for this principle and to recall similar historical situations where claims of restitution of property or payment of compensation were put forward.

2. Such historical background became important during World War II when the question arose whether, according to international law, the Allied Nations at the end of the war could protect the property interests of the Axis refugees. At the International Law Conference in London,[1/] 1943, a collection of precedents was presented showing that in similar circumstances in the past, states had in fact safeguarded the interests of foreign nationals against their own governments. Of these precedents it would appear that the following three, because of their similarity with the Palestine situation, should be mentioned here:

(a) Art.XXI of the Treaty of Nimmeguen of 17 September 1678.

(b) Art.XVI of the Treaty of London of 19 April 1839.

(c) Art. 144 of the Treaty of Sèvres of 10 August 1920.

1/ The International Law Conference of London, 1943, was held under the auspices of the Institut de Droit International, the International Law Association, the Grotius Society and the Allied University Professors' Association. Their proceedings have been edited by W.R. Bisschop.

3. The Treaty of Nimmeguen, signed by Spain and France on 17 September 1678, provided in Article XXI that:

"All the Subjects of the one part as well as the other, both Ecclestiatick and Secular, shall be re-established in the Enjoyment of their Honour, Dignities and Benefices of which they were possessed of before the War as well as in all their Effects, Movables and Immovables and Rents upon Lives seized and occupied from the said time as well on the Occasion of the War as for having followed the contrary Party. Likewise in their Rights, Actions and Successions fallen to them, thought since the War commenced without nevertheless, demanding or pretending anything of the Fruits and Revenues coming from the seizing of the said effects, Immovables, Rents and Benefices till the Publication of this present Treaty."

This Treaty of Nimmeguen followed the war of 1672-1678 between the France of Louis XIV and Holland. The war had spread into the Spanish Netherlands, and though it was the Dutch who fought, it was Spain who lost to the French, giving up Franche Compté and a chain of towns on the northeast frontier of France.

4. The Treaty of London, of 19 April 1839, whereby the independence and neutrality of Belgium was agreed to, provided in Article XVI that:

"The Sequestrations which may have been imposed in Belgium during the troubles, for political causes, on any Property or Hereditary Estates whatsoever, shall be taken off without delay, and the enjoyment of the Property and Estates above mentioned shall be immediately restored to the lawful owners thereof."

5. The Peace Treaty with Turkey, signed in Sèvres on 10 August 1920 contained in Article 144 provisions for the compensation of Armenian refugees who had fled from Turkey. Paragraphs 1 and 2 of this Article read:

"The Turkish Government recognises the injustice of the law of 1915 relating to Abandoned Properties (Emval-i-Metroukeh), and of the supplementary provisions thereof, and declares them to be null and void, in the past as in the future.

"The Turkish Government solemnly undertakes to facilitate to the greatest possible extent the return to their homes and re-establishment in their businesses of the Turkish subjects of non-Turkish race who have been forcibly driven from their homes by fear of massacre or any other form of pressure since January 1st, 1914. It recognises that any immovable or movable property of the said Turkish subjects or of the communities to which they belong, which can be recovered, must be restored to them as soon as possible, in whatever hands it may be found. Such property shall be restored free of all charges or servitudes with which it may have been burdened and without compensation of any kind to the present owners or occupiers, subject to any action which they may be able to bring against the persons from whom they derived title."

The Sèvres Treaty, as it will be recalled, was not ratified by Turkey and was finally replaced by the Treaty of Lausanne of 24 July 1923 which did not contain any clause corresponding to Article 144 of the Sèvres Treaty.

6. In the period between World War I and World War II, the question of payment of compensation for immovable property arose in particular in the Hungarian-Rumanian Land dispute which in 1923 was brought before the Council of the League of Nations by Hungary. This dispute developed out of a Rumanian land reform law (Garoflid law) whereby property rights of Hungarian Optants in territory transferred to Rumania were confiscated on grounds of absenteeism. For several years this dispute remained unsettled in spite of the conciliatory efforts of the Council. Finally, it was narrowed down to one of the amount of compensation to be paid to the Optants and was ultimately solved as part of the general financial settlement brought about by the The Hague and Paris negotiations in 1930 on reparations in Eastern Europe.

7. During World War II, the Institute of Jewish Affairs of the World Jewish Congress took up the question of indemnities to be paid to Jewish refugees after the war. In a book entitled Indemnities and Reparations by Nehemiah Robinson, published in 1944 by the Institute, careful consideration is given to the problem of compensation and all its aspects. The author admits that as a general rule states are entitled to lodge claims with foreign nations only in respect to their own citizens. He admits further that it normally would be required that the persons for whom they seek indemnification from another state be citizens also at the time the injury occurred. But he points out that if this principle were universally accepted, it would exclude almost all victims of the former Axis countries who are now citizens of other countries from claims against the Axis for damages inflicted before and during the war. From the viewpoint of international law there seems, in his opinion, to be no reason why diplomatic protection should not be extended to all citizens regardless of the time of injury if the states in question wish to do so. This view has already been expressed by the United States-Peru Mixed Tribunal.

The author calls attention to other precedents of this kind. At the insistence of the French after World War I Germany was compelled to pay indemnities

for fines it had imposed during the war on the inhabitants of Alsace-Lorraine[2] although the Alsatians became French nationals only as a result of the re-annexation of Alsace-Lorraine by France. It was also reported that Estonia, in obedience to German demands, paid indemnification to large landowners whose estates were used for the purposes of agrarian reform; these landowners migrated to Germany and became citizens only after the loss was sustained.

But even if all citizens were granted diplomatic protection, continues the author, there is still the problem of all those emigrants from Europe who have not yet acquired citizenship in their new homelands. Should protection be denied to them by the states of their refuge, then their claims against the Axis nations and their nationals would in many cases remain without indemnification. To prevent such losses and positively to redress the effects of the Nazi persecution and spoliation, the principle must be accepted by the United Nations (as war-time allied powers) and those countries where persons of this category reside, that in the question of claims against the Axis the territorial, not the national, principle be applied.

Finally there is the case of those who remained in or would be willing to return to their former homeland, and with respect to this category of victims the author makes a strong case that the United Nations must intervene on their behalf. There is, in his opinion, nothing revolutionary in this suggestion, for many cases of such intervention are known. The minorities treaties forced upon a number of states after the first World War were just this sort of intervention. To carry out these suggestions, the author argues for the establishment of internationally organized courts or similar bodies, empowered to make decisions and execute them, irrespective of the residence of the respondents and the location of the goods. Only internationally organized jurisdiction and execution would guarantee full impartiality and justice, and would shorten the delays inherent in the usual system of two or three court instances in every case.

8. After World War II, most of the former Axis and Axis-occupied countries passed laws in favor of such persons who had been persecuted or forced to leave the

2/ Article 63 of the Versailles Treaty.

country. In the US occupied zone of Germany on 10 August 1949, a General Claims Law was passed.3/ Article 1 of this law provides:

"Those persons shall be entitled to restitution pursuant to this law who, under the National Socialist dictatorship (30 Jan 1933 to 8 May 1945), were persecuted because of political convictions or on racial, religious or ideological grounds and have therefore suffered damage to life and limb, health, liberty, possessions, property or economic advancement."

Machinery is set up under this law for the filing of individual claims and provisions are made for the payment of compensation.

In the British zone of occupation in Germany, Law No. 59 entitled Restitution of Identifiable Property to Victims of Nazi Oppression was passed on 12 May 1949.4/ Article 1 of this law provides:

"The purpose of this Law is to effect to the largest extent possible the speedy restitution of identifiable property (tangible and intangible) to persons whether natural or juristic who were unjustly deprived of such property between 30 January 1933 and 8 May 1945 for reasons of race, religion, nationality, political views, or political opposition to National Socialism."

This law also establishes a procedure for the filing of individual claims for restitution with appropriate provisions for compensation.

9. Even before these acts for individual restitution in Germany, the Allied Governments in the Final Act of the Paris Conference on Reparations of 21 December 1945 and the Agreement of 14 June 1946 provided for a lump-sum payment into a fund for non-repatriable victims of German action. This allocation for the rehabilitation and resettlement of Nazi victims was to be made up of three items: a) all non-monetary gold found by the Allies in Germany; b) a sum not exceeding 25 million dollars from the proceeds of German assets in neutral countries; c) assets in neutral countries of victims of Nazi action, who have died and left no heirs. This method of collective reparations was not to be prejudicial to the future claims against a future German government.5/

3/ This law is published in English by the IRO Documentation Branch, IRO/LEG/LS/5, 3 Nov. 1949.

4/ This law is published in German and English in Rückerstattungs-Gesetz, by Dr. H.G. van Dam, Koblenz, 1949.

5/ Reference is made to these agreements in a letter to the PCC of 22 Nov. 1949, from the Chairman of the UN Economic Survey Commission. Also a discussion of these agreements may be found in Indemnification and Reparations, Nehemiah Robinson, N.Y., 1944, Annex #2, 1946, p-157-162.

10. In the Axis and Axis-occupied countries, various laws have been passed for restitution and compensation to the victims of Nazi action. Below is a list of some of these laws and their dates:[6/]

a. France - Decree of 14 November 1944, concerning the restitution of property.

b. Rumania - Law of 19 December 1944, regarding the restitution of Jewish property rights.

c. Italy - Decree of 5 January 1944, regarding the reinstatement of Jews in property rights.

d. Bulgaria - Decree-law of 24 February 1945, concerning the material consequences of the abrogation of anti-Jewish laws.

e. Czechoslovakia - Decree of the President of Czechoslovakia of 19 May 1945, concerning the nullity of certain property transactions made during the period of bondage and the "national administration" of properties belonging to Germans, Hungarians, traitors, collaborators, and certain organizations and institutions.

f. Holland - Decree of 17 September 1944, concerning the re-establishment of justice.

g. Yugoslavia - Law of 24 May 1945, concerning the procedure with property which the owners were forced to leave at the time of occupation, as well as with property seized by the occupants or their helpers.

11. Finally, reference shall be made to a refugee problem of a comparatively recent date which also presents some similarity with the problem of the Palestine refugees. With the partition of India into the States of India and Pakistan, bloodshed, riots, massacre, and murder caused minority groups on both sides to flee. In spite of official governmental pleas by both India and Pakistan asking the population to remain in their homes, Hindus and Sikhs from Pakistan fled to India and Moslems in India fled to Pakistan. By the

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6/ Ibid. No claim is made that this list is complete or up-to-date.

spring of 1948, the total number of transferees exceeded 11 million.[7]

In the early stages of the unorganized two-way flight, when the abandonment of property was considered a temporary phenomenon, the joint Hindu-Moslem Partition Council came to the conclusion (on 6 August, 1947) that because "no arrangements have so far been made for the management of refugees' property, and because, so long as the local population and the majority community in villages and towns maintain a hostile attitude, the refugees will be unable to return and look after their property .... the two Governments have decided to appoint managers, at a suitable level, for the administration of refugees' property in the various areas; the expenses of these managers will be paid out of the proceeds of the properties which they were appointed to look after." It was also decided that, where this had not already been done, Provincial Governments should be asked to set up machinery for the assessment of damages to both the movable and immovable property of the minority groups involved.[8]

Later on, when the exchange of minorities proved both unprecedented in scope and final in nature, the Pakistan and India Governments agreed on the principle that the ownership of refugees' property, movable as well as immovable, should remain vested in the refugees. Custodians were appointed to look after and manage such property on behalf of the owners.[9] Similarly, Registrars of Claims were appointed and instructed to make records of the property left behind by the evacuees.[10] It was agreed that the Custodian's control and management, whether exercised by himself or through a lessee or any other person, would operate only during the absence of the evacuee-owner. It would be open to the owner of such property or his legal heirs to claim its restoration on payment of the excess, if any, of expenditure over receipts during the period the property had been under the Custodian's management.[11]

7/ Population Transfers in Asia, Joseph B. Schectman, New York, 1949. Chapter on the Hindu-Moslem Exchange of Population.

8/ Indian Information, September 1, 1947.

9/ Ibid., January 1, 1948.

10/ Millions on the Move, published by the Ministry of Information and Broadcasting, Govt. of India, Delhi, 1948, p. 46.

11/ Indian Information, December 1, 1947.

All these de jure guarantees of the inviolability of abandoned property did not seem to have reassured the refugees themselves. They repeatedly expressed their anxiety about their property and demanded final settlement of their accounts on the governmental level. It was suggested that in each case "the Government receiving the refugees should claim compensation on their behalf for the losses they have sustained from the Government from the territory of which the refugees have to come away" and that the same principle should be applied to expenditures incurred during rehabilitation. As an instructive pattern for such procedure, it was recalled that after the disturbances in the province of Bihar, the then Government of Bengal claimed that the cost of maintaining and rehabilitating Bihar refugees in Bengal should be borne by the Government of Bihar. When this matter was referred to the Government of India, which was at the time headed by Pandit Nehru and Liagat Ali Khan, the Government accepted the validity of the claim and introduced it on an all-India basis. "Now if that formula had been agreed to, there is no reason why it should not be revived again in the context of Indo-Pakistan population transfer," insisted Bismal Chandra Sinha.[12] In August, 1948, the Governments of India and Pakistan signed an agreement for the removal and disposal of evacuees' movable property, envisaging the establishment of a joint governmental agency on which the two Dominions would enjoy equal representation. The agency would supervise the execution of agreements and would set up an organization to facilitate the movement of movable property by rail and road.[13]

12/ Bismal Chandra Sinha, "Economic Relationship between India and Pakistan", in The Modern Review, February 1948, p. 108.

13/ Indian Information, January 1, 1948.