

Chapter 1: The Jewish People as the “Heir”

It was anticipated even before the culmination of the war that the majority of the Central and East European Jewish communities had already been annihilated beyond any possibility of revival. The few surviving Jews, who were often the sole survivors of entire families, would surely leave pain ridden Europe for good in the direction of Palestine or the other parts of the world. In all probability, an exorbitant amount of Jewish property would remain on the Continent. It was held that there would be no one alive to make a claim, or that so few survivors would endure more years of lingering in the Anti-Semitic environments in order to regain their property – that they would simply abandon such property.

The recuperation of such property – which was otherwise destined to remain in the hands of non-Jews – for the purpose of the rehabilitation and the resettlement of the surviving Jews, was imperative to the Jewish circles outside of Europe. It was self-evident that it should not revert to the Treasury of the states who were not completely absolved of wartime collaboration with the Nazis. That Jewish property become a source of postwar reconstruction of the countries which now became, with the Nazi terminology, “judenfrei” (free of Jews), was simply intolerable. Such property belonged to the victims, asserted the Jewish leaders. On behalf of those who were unable to talk, their brethren should be allowed to claim what they had left. The Jewish people as a whole should be regarded as the collective heir to the ownerless property, they demanded.

The presentation of a collective claim posed a fundamental problem theoretically as well as legally. The prerequisite for it was that the Jews, as such, constitute a legally distinguishable group among the peoples, and that it actually exist as a collectivity. In the practice of international law however, a people is neither considered to possess a juristic

personality, nor recognized as an entity comparable to sovereign nations. Certainly, as having been targeted as Jews, and suffering damages as such – this created a group of victims definable through their damages. Yet, this group of Jews, who were directly affected by the Nazi persecution, was not identical with the entire Jewish people, even though the Jewish communities of the world shared the burden of absorbing the fleeing Jewish refugees (and therefore these communities should be, to a certain extent, included in the party affected).

This chapter examines how the Jewish people as a whole emerged as the heir to the property of destroyed European Jewry ideologically, and analyzes how the leading Jewish organizations tried to influence the European nations in their postwar restitution programs. What was achieved, and what indeed failed?

1.1. The Emergence of the “Jewish People”: National Minority Rights

A discussion on the long history of the socio-cultural peculiarity of the Jews and their feeling of “togetherness” they were said to have shared, cannot be undertaken here. The notion “Jewish people,” as discussed in this chapter, appeared on the political scene of nineteenth century European nationalism with the emergence of Zionism. This newly rising ideology presumed that the Jews compose a nationality, and that Anti-Semitism is an inherent component of gentile society – a reaction toward the foreignness of the Jews in the “national corps.” Zionism propagated that the Jews needed a state of their own. In reality, the Jews themselves had never been in accord as to whether a Jew referred to a religion or a nationality. A gap existed between the emancipated West European Jews, who enjoyed civic equality, and their East European counterparts, who kept the collective

structure of a tight-knit, autonomous community well into the twentieth century. What the East European Jews took for granted – the existence of the Jewish people – had to be first discussed, then theorized, and then politicized among their Western counterparts.

For the East European Jews, the recognition of the Jewish people as a nationality and the granting of a legal status to it, was a matter which would make a substantial difference in their daily lives. The understanding that the mere civic and political equality as individuals following the West European model would not suffice to eradicate Anti-Semitism in the East, led them to demand protection and the guarantee of their rights as a distinct minority. In order to solve the specific problems they faced, recognition of a Jewish nationality was the first step. Yet, the West European Jews observed such moves on the part of the Eastern counterparts with certain reservation. Although they acknowledged the peculiar geographical and historical situation in the East, the Western Jews feared the quest for recognition as a distinct minority might jeopardize the foundation of their emancipation as citizens of Jewish faith.

Disaccord among Jews manifested itself at the 1919 Peace Conference at Versailles, where the treaties of peace with the defeated nations of the First World War were discussed. The end of hostilities and the redrawing of the national boundaries resulted in the creation of large racial, religious and cultural minorities in the new and enlarged states, which called for their protection in an international framework, namely, by the League of Nations which was to be established. While most of the minorities had states where their kin constituted a majority, the Jews were without such a state. Hence, it was important that their rights be guaranteed by specific minority provisions to be incorporated in the peace treaties.

The Jewish delegates from East and West – including those from the United States –

had several discussions to formulate their demands as Jews at the Peace Conference, but the disparity of opinions between the nationalist Eastern Jews and the anti-nationalist British and French Jews became soon apparent.¹ The former demanded their rights as a national minority, for example, the right to organize their own schools, to use the Yiddish language in the courtroom, and the right to observe their Sabbath day (Saturday) and thus work on Sunday. They went so far as to claim that the Jews as a people be admitted to the League of Nations, and that a part of the reparations between the states be paid to the pogrom victims.²

On the other hand, the West European Jews were unwilling to advance any motion which might give an impression that the Jews made up a “people.” They desired no more than civic, political and religious equality of the Jews in their respective countries. From their position which denied the existence of the Jewish people, they even opposed the use of the word “national.” It was the American Jews, even though they were inclined to be “anti-nationalist” in their sentiment, who acted as the intermediates of the two. They were flexible enough to accommodate the demands of their East European brethren, which resulted in the creation of a delegation made up of the East European and American Jews, the *Comité des délégation juives auprès de la Conférences de la Paix* (Committee of Jewish Delegations at the Peace Conference). The British and French Jews did not participate in the Committee, but collaborated with it in its efforts to advance the Jewish demands at the conference.³ Minority clauses were signed by fifteen countries, some of which included provisions related to the rights of Jews.

¹ See, Oscar Janowsky, *Jews and the Minority Rights 1898-1919* (New York: AMS Press, 1966), pp. 253-319.

² Ibid., p.312.

³ Salo W. Baron, *Ethnic Minority Rights: Some Older and Newer Trends* (Oxford: Oxford Centre for Postgraduate Hebrew Studies, 1985), p.16.

Yet, the League minority system was a failure.⁴ With its time-consuming petition system and half-hearted commitment of the League, along with the resistance of the signatories, it was doomed to fail. In 1939, the Minority Section of the Secretariat of the League of Nations was liquidated. It was the official end of the League minority system, which existed in name only.

1.2. Jewish Collective Claims

The Jewish world has always been characterized by its cultural and religious plurality, varying political orientations and conflicting interests. The different historical and geographical backgrounds of the Jewish communities made Jewish unity almost impossible to attain, as witnessed in the debate on the Minority Treaties. A break in this tradition was forcibly brought by the advent of Hitler and the persecution that followed. As early as 1933, the influx of German Jewish refugees into the neighboring countries alerted the Jews of Europe to a new form of Anti-Semitism and political violence. It brought about a closer cooperation among the Jewish communities, and groups were formed to aid these refugees.⁵ Within a number of years however, it was no more a German Jewish tragedy but a European Jewish catastrophe. The Evian Conference to open the gates of free but indifferent countries to Jewish immigration bore no fruit, and the restrictive British White Paper came into force in 1939. Meanwhile, the Jewish communities in Europe were engulfed by the Nazi aggression one after another, and the

⁴ See, Jacob Robinson et al., *Were the Minority Treaties a Failure?* (New York: Institute of Jewish Affairs of the American Jewish Congress and the World Jewish Congress, 1943).

⁵ Following aid organizations were born after the Hitler's coming to power: the Central British Fund for Germany Jewry (CBF) in the U.K. in 1933, the *Comité voor Bijzondere Joodse Belangen* (Committee for Special Jewish Affairs) in 1933 in the Netherlands, the *Comité national français de secours aux réfugiés allemands, victimes de l'Antisémitisme* in France, and the Council for German Jewry established by the CBF in 1936 in the U.K.

deportation trains to the East were soon to start to roll. Desperate European Jews were left to their own fate.

Over the Atlantic, frustration, indignation, and a feeling of powerlessness dominated American Jewry – now practically the only Jewish community with the power and resources to aid their brethren. Yet, in the midst of diversified political and religious interests, American Jewry remained divided even in the face of disaster.⁶ It was arguably around 1942, when the atmosphere changed. In May 1942 the Extraordinary Zionist Conference convened in New York and adopted the Biltmore Program, which called for the establishment of the Jewish Commonwealth in Palestine. A sense of crisis, triggered by the leaking news of the Holocaust from the end of 1942, began to unite those who had been in constant disaccord. When no nation seemed able or willing to take any significant measures to rescue Jews and interfere in the destruction, they were left to themselves to help themselves. What Zionism had been propagating – establishing their own state as the sole answer for the so-called Jewish problem – was more pertinent than ever. A strong pro-Zionist consensus emerged, which was exemplified by the sharp rise in membership in the Zionist organizations. The shift of mood was materialized in the creation of the American Jewish Conference in August 1943, as the broadest representation of American Jewry, composed of thirty-two organizations of various political, religious, and cultural streams.⁷ Although it was manifestly a Zionist platform from its inception (and more so

⁶ Isaac Neustadt-Noy, "Toward Unity: Zionist and non-Zionist Cooperation, 1941-1942," in *American Jewish History vol.8, American Zionism: Mission and Politics*, ed. Jeffrey S. Gurock (New York and London: Routledge, 1998), p.164.

⁷ On the process leading to the establishment of the American Jewish Conference, see, *The American Jewish Conference: Its Organization and the Proceeding of the First Session, August 29 to September 2, 1943, New York, N.Y.*, ed. Alexander S. Kohanski (New York: American Jewish Conference, 1944); Monty Noam Penkower, "American Jewry and the Holocaust: From Biltmore to the American Jewish Conference," in *American Jewish History vol.7, America, American Jews, and the Holocaust*, ed. Jeffrey S. Gurock (New York and London: Routledge, 1998).

after the withdrawal of the non-Zionist AJC and the Jewish Labor Committee⁸), it nonetheless illustrated the new self-understanding of American Jewry: when targeted and persecuted as Jews, the sole response was to react as Jews.

The years of National Socialism rendered the discussion on the existence of Jewish people completely irrelevant. The persecution and the shared loss fostered a strong sense of belonging to the community. The Nazis made no distinction between the German, Polish or Hungarian Jews; for them, there was only a Jewish race. This was the point of departure for the studies on estimated Jewish damages and their postwar claims against Germany, which started to appear from 1943. F. Gillis and H. Knopf for instance, flatly stated in their 1944 pamphlet on reparation claims that there was a Jewish people.⁹ Siegfried Moses, a German-born jurist in Palestine, also presupposed the Jewish people as the bearer of the collective claims in his 1944 *Jewish Post-War Claims*.¹⁰ The Nehemiah Robinson's 1944 *Indemnification and Reparations: Jewish Aspects*, which laid the groundwork for the postwar claims, and which served as a guideline of the actual negotiations in later years, also presented the blueprints of remedies for the Jews as a whole, and not for specific German, Austrian, Polish or Czech Jews.¹¹

These authors were aware that Jews as a subject of collective legal redress was not self-evident in the practice of international law. Therefore, after affirming the existence of

⁸ The AJC withdrew from the American Jewish Conference in October 1943 over the Palestine issue, and was soon followed by the Jewish Labor Committee. More radical segment of Zionists, the revisionists around Peter Bergson did not participate in the framework of the American Jewish Conference and pursued their own programs.

⁹ Dr. F. Gillis and Dr. H. Knopf, *Reparation Claim of the Jewish People* (Tel Aviv, 1944), p.26.

¹⁰ See, Siegfried Moses, *Jewish Post-War Claims* (Tel Aviv: Irgun Olej Merkaz Europa, 1944).

Moses was the food controller in Danzig and private lawyer before immigrating to Palestine in 1938.

¹¹ See, Nehemiah Robinson, *Indemnification and Reparations: Jewish Aspects* (New York: Institute of Jewish Affairs of the American Jewish Congress and World Jewish Congress, 1944). N. Robinson was from 1948 to his death in 1964 the director of the Institute of Jewish Affairs, which was sponsored by the American Jewish Congress and the World Jewish Congress. He was the director of Indemnification Department of the WJC (1946-1950). His brother Jacob had created the Institute and had been its director prior to Nehemiah (1941-1948). Robinson brothers greatly contributed to the formulation of Jewish postwar reparations and indemnification plans.

the Jewish people as a distinct entity, Gillis and Knopf hastily added: “what is needed is not merely the recognition of the Jewish People’s existence, but that of a legal status to it.”¹² One preferred argument to make a Jewish people a quasi-subject of international law, was to maintain that the Jewish people as a whole has been in the state of war with the Hitler’s Reich, for Hitler himself had declared a total war against the Jews. Therefore, the Jewish people should be considered as one of the belligerent powers equal to the Allied nations. One might add, to strengthen this argument, that the Jews indeed actively fought as partisans, or in the Jewish Brigade at the later phase of the war. Some further maintained that such a treatment was justified, for the Jews as a group has been a state in-the-making in Palestine, therefore it should be considered a subject of international law.¹³

The leeway for the recognition of Jewish collective claims stemmed in fact from the uncertainty in the legal system after the war. The human misery wrought by the war, and the Nazi atrocities in particular, shook the very foundation of international law and its order. It was unheard of that a state launch on a total annihilation of an ethnic group which it deemed undesirable. When confronted by a situation which deviated from the norm so greatly, international law proved to be nothing but an agreed set of codes in international behavior, which could easily be ignored or replaced by the prevailing reality. Any law is by nature flexible and changeable to meet the reality, and it is more so in case of international law, since wars and the changes of regimes always necessitate new interpretations to the existing systems. It was within this ambiguity, that the Jewish leaders sought a chance of redress.

In the entirety of Jewish claims, which ranged from natural restitution to compensation

¹² Gillis and Knopf, *op. cit.*, p.26.

¹³ *Ibid.*, p.32.

of various kinds, one of the most complex issues – legally as well as politically – was the treatment of heirless property. In countries such as Poland, Lithuania, Yugoslavia and Greece, the percentage of the Jewish loss amounted to more than 80 percent. Accordingly, the amount of Jewish property, which was presumed to have become heirless, was considerably high. As already mentioned, intestate or ownerless property in usual time reverts to the state. The practice of escheat, which is said to have been established after the Napoleonic Code, is based on one of the principles of a modern nation state: citizens are equal before the law regardless of their race and religion. Such a uniform treatment of property of citizens is legitimized, only when they are factually granted full equality. Without giving them the same rights, the state may neither impose the same obligations. Yet, the persecution of the Jews in Germany and in other Fascists states took place in sheer violation of this principle. In the countries occupied by Germany, although their governments were not responsible for the acts of Germans, it was also argued unjust for these states to succeed the masterless Jewish property, since the Jews were killed not as the citizens of these respective countries, but as Jews.¹⁴

Render to Jews things that are Jews' – as simple as it may sound, translating this elementary code into a legal language was extremely difficult. First, the practice of escheat was so embedded in the legal tradition of the Continental states, that they were extremely loathe to waive this right. For a sovereign to give up its dominance over the property which it assumed rightfully its own, required not only a certain moral standard and sacrifice on the part of the state, but also the adoption of a new legal principle. Understandably, this turned out to be difficult in the postwar destitution in Europe. The heirless property could become a source of postwar reconstruction, over which the state

¹⁴ See, for example, N. Robinson to the Office Committee, November 5, 1945, AJA, WJC, C230, 3.

had a free hand. Secondly, there was no precedent in history in which an ethnic group was granted a collective right of succession for the property left by its kin. One example, only somewhat comparable to the postwar Jewish situation, may be the aftermath of the Armenian genocide perpetrated in the Ottoman Empire during the First World War.¹⁵ The Treaty of Sèvres, signed between Turkey and the Allied and Associated Powers on August 10, 1920, is often mentioned by Jewish jurists as a precedent of a minority being treated as a subject of international law,¹⁶ for the Armenian delegation was one of the signatories of the Treaty which created the independent state of Armenia. The Treaty provided the speedy restoration of properties of those who had been forcibly driven from their homes in the course of massacres. It further declared the law of 1915 relating to the abandoned properties null and void. When necessary, it continued, an arbitral commission shall be appointed by the Council of the League of Nations with the power to order the transfer of the heirless Armenian property to their community, instead of to the state.¹⁷ This supposedly internationally-binding treaty was soon discarded by the Young Turks, who succeed in expelling Sultan and bringing the Ottoman Empire to an end. Moreover, there was no firm commitment on the side of Allied Powers to enforce the treaty. In 1923, the Treaty of Sèvres was replaced by the Treaty of Lausanne which spared Turkey from partition and ended the short-lived Republic of Armenia. The abandoned Armenian property inside Turkey became the obscure relics of the people who had once lived there.

¹⁵ In the series of violence starting from the end of the nineteenth century which continued into the First World War, presumably 1 to 1.5 million Armenians were killed and much more were displaced and dispossessed. During this period, many Armenians fled to East Armenia which later became a part of the Armenian Soviet Socialist Republic. On the Armenian genocide, see for example, Vahakn N. Dadrian, *The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus* (Providence and Oxford: Berghahn Books, 1995); *The Armenian People from Ancient to Modern Times Vol. II*, ed. Richard G. Hovannisian (London: Macmillan, 1997).

¹⁶ For example, see, Memorandum on the special nature of the Jewish claims to reparations, April 27, 1945, CZA, A140, 390. Also see, Gillis and Knopf, *op. cit.*, p.27.

¹⁷ Treaty of Peace between the Allied and Associated Powers and Turkey, August 10, 1920, Article 144 (Part IV, Protection of Minorities).

As the Armenian case showed, the problem of the heirless Jewish property lied in the domain of politics, where the strong moral support by the international community was indispensable. It was “not juridical but political work,” as Siegfried Moses rightly observed.¹⁸

In this regard the Jewish political organization made use of more direct, emotional words for their demands. The leading international and domestic organizations have been engaged in formulating postwar plans on restitution and reparations, not to mention the programs on relief and rehabilitation of the Nazi victims. To deal with this matter in a uniform fashion, the “Five Organizations” (the American Jewish Conference, the AJC, the WJC, the Jewish Agency, the JDC) had set up a working committee in October 1945. They cooperated, despite their political differences, in exerting effective pressure on the authority in charge.

The WJC was one of the organizations which had been most vocal in this cause. At its War Emergency Conference in Atlantic City in November 1944, it advocated that the Jewish people as a whole be entitled to the private and public heirless Jewish property. The idea that an entire people succeed the assets of its kin as a sort of “national assets” was to be called an “innovation” in its disregard of the framework of existing states. In this aspect it certainly “made history with its conception of the problem of heirless property,” as one WJC official later commented.¹⁹ The vision of collective successorship was most eloquently addressed by Nahum Goldmann, then the chairman of the Executive Committee of the WJC. He proclaimed at the Emergency Conference as follows:

What is more justifiable than to demand that at least the Jewish people as a whole

¹⁸ Moses, *op. cit.*, pp.20 and 22.

¹⁹ WJC, *Unity in Dispersion: A History of the World Jewish Congress* (New York: World Jewish Congress, 1948), p.231.

should be regarded as the heirs to those of its children who have been murdered? It would be adding mockery to tragedy were non-Jewish individuals, non-Jewish communities and governments to become the heirs to this property, which, if not legally, certainly morally, belongs to the Jewish community and must be used for rebuilding Jewish life and a Jewish future.²⁰

As an instrument of realizing this end, the Emergency Conference proposed the creation of an International Jewish Reconstruction Commission (IJRC) which was to receive the heirless Jewish property in the countries where the Jewish communities became extinct.²¹ Along with the IJRC, national reconstruction commissions were to be established in the countries with substantial local Jewish communities. Their work was to be complementary to each other. The national reconstruction commissions would retain the property which was needed for the rehabilitation of surviving indigenous Jews, while that which exceeded the actual needs of the existing communities was to be funneled to the IJRC to be used for the general benefit of the Jewish victims. Structurally, national commissions were subordinated to the IJRC as the regional arms to collect the property. To this end, it was urged that an international law be enacted for speedy restoration of property and property rights. A common international legislation would facilitate the operation of such a Jewish body in differing legal systems.²² If unattainable, uniform domestic laws were to be enacted in all territories formerly occupied or dominated by Axis powers. It was important that these domestic laws have articles in common in order to enable the equal treatment of Jewish property in different countries. First, missing persons were to be declared dead within a number of years after the termination of hostilities. Waiting for a death certificate for a decade or more would mean that the assets

²⁰ WJC, *War Emergency Conference of the World Jewish Congress: Addresses and Resolutions* (New York: WJC, 1944), p.11.

²¹ *Ibid.*, pp.37-38.

²² Report on restitution by Dr. F.R. Bienenfeld, November 15, 1946, AJA, WJC, C230, 7.

would remain idle when they were most needed. Secondly, inheritance was to be limited to close relatives in order to prevent distant relatives from claiming the assets, which in normal times would be never fall to them. This also served as the boundary of heirless and non-heirless assets. Thirdly, the right of a sovereign on masterless property in the case of mass-murder was to be relinquished. And lastly, the authority of an international Jewish body as the successor to the heirless property was to be acknowledged and its status guaranteed.

The proposal of the WJC to create the IJRC was adopted by the American Jewish Conference.²³ Given that the American Jewish Congress was the driving force of the Conference, this should come as no surprise. It emphasized on the funds accrued be used for the development of Palestine and the establishment of a Jewish state, reflecting the Zionist course it took during the war. For the Zionist elements, the restitution of heirless property to a representative Jewish body was directly linked to the up-building of a Jewish state. The Jewish Agency considered itself the representative of the Jews in Palestine and the recipient of the reparations from Germany.²⁴ After the catastrophe it seemed only natural that the available resources be concentrated on the national endeavor, and this priority was largely accepted by the Jews outside of Palestine.

Not only did the Zionists have vital interests in the restitution of heirless property. The German Jews, now scattered all around the world, also took this issue to heart. The existence of heirless Jewish property was of a European dimension, but the immorality of a state claiming such property was especially true for Germany. The prospect of uniform restitution laws for all of Europe might be bleak, but in occupied Germany at least,

²³ American Jewish Conference, *The Jewish People in the Post-War World*, Memorandum submitted by the American Jewish Conference to Secretary of State, Edward R. Stettinius Jr., April 2, 1945, p.22. Also, American Jewish Conference, *Program for Postwar Jewish Reconstruction*, April 1945, p.10.

²⁴ See, for example, Moses, op. cit., p.57.

special treatment of Jewish property was feasible. Since the majority of the German Jews who had emigrated since 1933 had no intention of returning to Germany, they shared a common interest in the liquidation of the Jewish assets remaining in Germany. Generally, they were supportive of the idea that the Jewish people as a whole be the heir to the masterless property left in Germany. The *Irgun Olej Merkas Europa* (Association of Settlers from Central Europe), a branch of the Council of Jews in then Palestine, declared in its weekly paper that “the Jewish people as a whole should inherit the property of German Jewry.”²⁵ In an analogy to the ancient Israeli tribes, it claimed, what belonged to a destroyed branch should be inherited by the rest of the people. Once proudly calling themselves the “German citizens of Jewish faith,” their identification with the entire kin was largely the result of Nazi persecution. The old antagonism between the so-called the *deutsche Juden* (German Jews) and the *Ostjuden* (East European Jews) had not yet disappeared, however, distinguishing German Jews and those who were not was meaningless in the face of total annihilation. The Council of Jews from Germany, their representative, generally acted in line with the Zionism-inclined world Jewish leadership on the restitution matter, although it latter conflicted with the non-German Jewish organizations concerning the allocation of the proceeds from the heirless property.²⁶

It is important to note however, that the notion of the succession of heirless property by an international Jewish body was not shared unanimously by the leading Jewish organizations. The non-Zionist AJC for instance, stopped short of endorsing the “international” nature of the Jewish claim, although its “collective” character was recognized on a national level. True to its assimilationist orientation, it advocated the creation of “national” agencies to serve as trustees for the claims of absent Jews, and that

²⁵ “Die Beerbung der deutschen Juden,” *Mitteilungsblatt (MB)*, April 4, 1947.

²⁶ See the chapter 3.6. 5) of this work.

their proceeds be assigned to the local Jewish communities for the reconstruction and for the relief and rehabilitation of the Jewish victims of Nazi persecution.²⁷ Yet, the questions as to whether there would be enough survivors willing to stay in Europe to reconstruct the communities, or whether it be appropriate for such decimated communities to draw from the funds which might be disproportionately large to their actual needs, were not answered. In the face of the massive pro-Zionist consensus of postwar World Jewry, the national solution of the problem of heirless property was in the minority.

It is safe to say that the majority of world Jewry supported the collective claim on the heirless Jewish property. This was explicitly alluded in the letter sent by Chaim Weizmann, in the name of the Jewish Agency, to four Allied governments (the U.S., the U.K., France and the Soviet Union) in September 1945.

It is submitted that the provisions for heirless property falling to the State were not designed to cover the case of mass-murder of a people. Such properties belong to the victim, and that victim is the Jewish people as a whole. The true heir, therefore, is the Jewish people, and those properties should be transferred to the representative of the Jewish people, to be employed in the material, spiritual and cultural rehabilitation of the Jews.²⁸

From this letter to the establishment of the first Jewish successor organization, another three years had to lapse.

1.3. Jewish DP Problem and the Paris Conference on Reparation

²⁷ AJC, *To the Counselors of Peace: Recommendations of the American Jewish Committee*, March 1945, p.36.

²⁸ Weizmann to the Secretary of State, September 20, 1945, CZA, C7 (American Jewish Conference Collection), 1194/3. Weizmann was then the head of the World Zionist Organization.

Apart from the moral argument that the states should not enrich themselves with the property of victims, international politics called for the creation of a body to administer the heirless Jewish property. In the immediate postwar period, millions of civilians found themselves outside the borders of their countries of residence. They were either forcibly removed from their domicile or voluntarily fled the scourge of war. They were called “displaced persons” (DPs), and the Western Allies established assembly centers and DP camps in their occupied areas of Germany, Austria and Italy to accommodate them.²⁹ It was the time of mass migration; people were on the constant move in all directions. Among this wandering mass, Jews consisted only a tiny minority. However, their tracks and paths differed from that of the majority, which usually headed for their home countries.

For the majority of the surviving East European Jews, it was apparent that they would not return to their countries to rebuild their shattered existence. While the West European Jews, who had been liberated from the concentration camps, headed for home with the first transports which their governments organized to bring back their citizens, the East European Jews had nowhere to go. After the almost complete annihilation of the Jewish communities in the East, there was no use in talking about their reconstruction. Palestine became their only future. With the hope of speedy emigration, they headed south and west in an attempt to enter the areas controlled by the Western Allies. While the number of non-Jewish DPs sharply declined within a short period, a reversed tendency existed among the Jewish DPs. In the latter half of 1945, there were more than 90,000 Jewish

²⁹ There were no such camps in the Soviet occupation zones, for all DPs were held repatriable. In fact, the Soviet citizens were forcibly repatriated based on a secret agreement reached at Yalta in February 1945 between Roosevelt, Churchill and Stalin.

DPs in the western occupation zones of Germany, Austria and Italy.³⁰ The infiltration of the Jews was to reach its peak after the pogrom in Kielce, Poland, in June 1946, where more than forty Jews were killed by the local residents and by the militias.³¹ This event triggered a panic-driven influx of Jews into the western zones, among others, the American zones. In the U.S. Zone of Germany, the number of the Jewish DPs in the beginning of 1946 was under 40,000. It increased during the course of the summer, and at the end of the year it reached 145,735 persons.³² The total number of the Jewish DPs in Germany, Austria and Italy swelled to 247,000 in the summer of 1947, of which 157,000 were concentrated in the American Zone of Germany, excluding the American sector of Berlin.³³ The Jewish DP population was highly fluid. Some of them left the camps after a short period of time and resurfaced in some of the coastal towns of Southern France, Italy, Greece or Yugoslavia, in an attempt to reach the shore of British controlled Palestine. This clandestine immigration by sea route was called the Bricha (escape) movement, and an estimated 250,000 Jews reached Palestine by the Bricha routes.³⁴

³⁰ Kurt R. Grossmann, *The Jewish DP Problem: Its Origin, Scope, and Liquidation* (New York: Institute of Jewish Affairs, 1951), p.11.

³¹ On the Kielce pogrom, see for example, Michael Checinski, "The Kielce Pogrom: Some Unanswered Questions," in *Soviet Jewish Affairs* 5, No.2 (1995), pp.57-72; Bozena Szaynok, "The Pogrom of Jews in Kielce, July 4, 1946," in *Vad Vashem Studies XXII* (1992), pp.199-235; Stanislaw Meducki, "The Pogrom in Kielce on 4 July 1946," in *Polin*, vol. 9 (1996), pp.158-169; David Engel, "Patterns of Anti-Jewish Violence in Poland, 1944-1946," in *Yad Vashem Studies XXVI* (1998), pp. 43-85.

³² G.H. Muentz to Leo W. Schwarz, u.d., Zentrum für Antisemitismusforschung (ZfA), YIVO-DPG, Folder 1501, Roll 107.

³³ Malcom J. Proudfoot, *European Refugees 1939-1952: A Study in Forced Population Movement* (London: Faber and Faber, 1957), p.341. On the Jewish DPs, see also: Leonard Dinnerstein, *America and the Survivors of the Holocaust* (New York: Columbia University Press, 1982); Wolfgang Jacobmeyer, *Vom Zwangsarbeiter zum Heimatlosen Ausländer: Die Displaced Persons in Westdeutschland 1945-1951* (Göttingen: Vandenhoeck & Ruprecht, 1985); Angelika Königseder and Juliane Wetzel, *Lebensmut im Wartesaal: Die jüdischen DPs (Displaced Persons) im Nachkriegsdeutschland* (Frankfurt am Main: Fischer, 1994); *Überlebt und Unterwegs: Jüdische Displaced Persons im Nachkriegsdeutschland*, ed. Fritz Bauer Institut (Frankfurt and New York: Campus, 1997).

³⁴ On the Bricha movement, see example, Yehuda Bauer, *Flight and Rescue: Brichah* (New York, 1970); *Habricha: Escape and Flight from Europe to Eretz Israel 1945-1948*, ed. David Schiff and Sher

The postwar movement of Jews extended well beyond Europe. As one Jewish observer had rightly predicted before the end of the war, it involved the “transplantation of almost entire people” and therefore exceeded the “limits of normal post-war reconstruction.”³⁵ Their rescue and resettlement was an international issue. In this light, the Jewish leaders thought it legitimate to ask a portion of reparations to be paid by Germany be earmarked for the rehabilitation and resettlement of the Jewish victims of Nazi persecution. Because the stateless Jews were unable to claim the assistance of any government, special consideration should be given to them. This opinion had been expressed on a number of occasions, notably in the Weizmann letter to the four Allied governments of September 20.³⁶ On October 19, 1945, a Jewish delegation led by Nahum Goldmann visited Under Secretary of State Dean Achson to seek the support on the reparation shares, and to submit the Weizmann letter. Goldmann reiterated his claim that the heirless Jewish property belonged to the Jewish people. Meanwhile, Jacob Blaustein, then the executive committee chairman of the AJC, who enjoyed personal ties with the high officials in the Government, approached Secretary of State James F. Byrnes.³⁷

The U.S. government had been sympathetic to the idea that a reparation share be given to the Jews. There was a feeling of strong sympathy (or pricking conscience) toward the Jewish suffering and their plight after the war in the Truman administration, including on the part of the president himself. It was already suggested at the Potsdam Conference in August 1945 by the U.S. delegation, that a part of German external assets be used for the assistance of Nazi victims.³⁸ When eighteen countries convened a Reparation Conference

Ben-Nathan (n.p.: Ministry of Defense Publishing House, 1998).

³⁵ Memorandum on the special nature of the Jewish claims to reparations, April 27, 1945, CZA, A140, 390.

³⁶ Chaim Weizmann to Secretary of State, September 20, 1945, CZA, C7, 1194-3.

³⁷ Goschler, *Wiedergutmachung*, pp.64-65.

³⁸ See, *Eizenstat Report*. Also, see, Foreign and Commonwealth Office (FCO), *History Notes No. 12*,

in Paris from November 9 through December 21, 1945,³⁹ James W. Angell, the U.S. representative to the Allied Commission on Reparations, presented a plan to his British and French counterparts which proposed that 2 percent of the total reparation be set aside for the assistance of the persecutees.⁴⁰ Needless to say, the Americans were motivated not only by altruism, but also by their own interests. At the time of the conference there were more than 60,000 Jewish DPs in the American Occupation Zones of Germany and Austria, and its number was growing.⁴¹ Although the peak of the DP problem was yet to come in 1946/47, the maintenance of the DP camps heavily burdened the military governments, as well as the local economy, not to mention the friction it was generating with the indigenous population. The speedy solution of the DP problem was an economic and strategic imperative. To that end it was necessary to find a means to finance the relief programs for the DPs, and a way to physically remove them from Europe. The burden for the assistance of persecutees should be shouldered by the international community, including the wartime neutral countries. As Zweig notes, the Americans were interested in solving the DP problem through a “non-American source of funding.”⁴²

Prior to the conference, the Allied Control Council Law No.5 of October 30, 1945 declared all German assets outside the territorial boundary of the former Reich under the control of the Allied Control Council for Germany. Accordingly, it demanded a share of the liquidation of German external assets in the wartime neutral countries (Sweden, Spain,

Nazi Gold: Information From the British Archives: Part II, Monetary Gold, Non-Monetary Gold and the Tripartite Gold Commission (May 1997),

<http://www.fco.gov.uk/Files/KFile/aacb3d42-2fnazigold-2frpt2,0.pdf>, p.38.

³⁹ Albania, Australia, Belgium, Canada, Czechoslovakia, Denmark, Egypt, France, Greece, India, Luxembourg, Netherlands, New Zealand, Norway, South Africa, Yugoslavia, United Kingdom, United States. The Soviet Union had the right to draw its reparation directly from its zones of occupation by way of démontage.

⁴⁰ *Eizenstat Report*, p.58.

⁴¹ Grossmann, *op. cit.*, p.11.

⁴² Zweig, “Restitution and the Problem of Jewish Displaced Persons,” p.60.

Portugal and Switzerland) at the conference. In light of international law its legality was disputable, since the disposition of enemy assets was usually at the discretion of a country in which such assets were located. Drawing the reparation from German assets in the neutral countries was justified with the devastation wrought by Germany, and by the need for European reconstruction. Nevertheless, there was also the consideration that the neutrals profited from the willing or unwilling economic collaboration with Nazi Germany. For instance, Sweden – known for the rescue of Danish Jews and the heroic acts of Raoul Wallenberg – was in fact the supplier of iron ore and ball-bearings to the Third Reich.⁴³ Franco’s Spain and Salazar’s Portugal together provided Germany almost all the wartime supply of wolfram, which is the essential mineral in processing tungsten, vitally needed for industrial and military uses.⁴⁴ Yet, the country which was most deeply involved with the trading with Germany was Switzerland.⁴⁵

Part I, Article 8 (Allocation of a Reparation Share to Non-Repatriable Victims of German Action) of the Final Act of Paris Conference on Reparation (see Appendix 1), adopted by the five Allied Powers (the United States, the United Kingdom, France, Czechoslovakia and Yugoslavia) on December 18, stipulated as follows:

A. A share of reparation consisting of all the non-monetary gold found by the Allied

⁴³ See, Sven Fredrik Hedin and Göran Elgemyr, “Quiet Collusion: Sweden’s Financial Links to Nazi Germany,” in *The Plunder of Jewish Property*, pp.193-208.

⁴⁴ See, *U.S. and Allied Wartime and Postwar Relations and Negotiations With Argentina, Portugal, Spain, Sweden, and Turkey on Looted Gold and German External Assets and U.S. Concerns About the Fate of the Wartime Ustasha Treasury, Supplement to Preliminary Study on Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II* (hereafter: *U.S. and Allied Wartime and Postwar Relations and Negotiations*), Coordinated by Stuart E. Eizenstat Under Secretary of State for Economic, Business, and Agricultural Affairs, Prepared by William Slany, The Historian Department of State, June 1998, http://www.state.gov/www/regions/eur/rpt_9806_ng_links.html.

⁴⁵ On the Swiss-German trade, next to the *Eizenstat Report*, see for example, Arthur L Smith, Jr., *Hitler’s Gold: The Story of the Nazi War Loot* (Oxford and Washington D.C.: Berg, 1996); Unabhängige Expertenkommission Schweiz-Zweiten Weltkrieg (UEK), *Die Schweiz, der Nationalsozialismus und der Zweite Weltkrieg, Schlussbericht* (Zurich; Pendo, 2002).

Armed Forces in Germany and in addition a sum not exceeding 25 million dollars shall be allocated for the rehabilitation and resettlement of non-repatriable victims of German action.

B. The sum of 25 million dollars shall be met from a portion of the proceeds of German assets in neutral countries which are available for reparation.

C. Governments of neutral countries shall be requested to make available for this purpose (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.⁴⁶

Article 8 was not exactly a measure to oblige the Germans to pay for the consequence of their wrong-doings. Excepting the \$25 million from the German external assets in neutral countries, what was reserved for the victims stemmed in fact from their own belongings. Non-monetary gold – understood as unidentified gold taken from the concentration camp inmates – was overwhelmingly Jewish in origin.⁴⁷ It consisted of, for example, gold wedding rings and other jewelry taken from the victims, and in extreme cases, tooth fillings of the murdered camp inmates. Likewise, the greatest majority of the heirless property in neutral countries belonged, beyond reasonable doubt, to Jewish owners. In brief, the Jews were indeed “graciously” allowed to share the cost of their own relief. Nevertheless, Paris Conference on Reparation set a precedent in many respects. While referring to the stateless Jews as “non-repatriable victims of German actions” and thus concealing their ethnic identity, an attempt was made to treat a group, which did not exist as a subject of international law, through an international agreement.

The signatories of the Final Act continued to negotiate the method of implementation of Article 8. On June 14, 1946, they signed the “Agreement on a Plan for Allocation of a

⁴⁶ “Paris Conference on Reparation November 9th-December 21st, 1945, Final Act,” pp.13-14, MAE, AEF-AAA, 53. The Final Act came into operation on January 24, 1946. For the full text, see Appendix 1 of this work.

⁴⁷ For the definition of monetary and non-monetary gold, see FCO, *History Notes No.12*, p.35.

Reparation Share to Non-Repatriable Victims of German Action.”⁴⁸ Contrary to the Final Act, which carefully avoided any references to the ethnicity of the eligible groups, here for the first time appeared the word “Jew.” It proclaimed: “all available statistics indicate beyond any reasonable doubt that the overwhelming majority of eligible persons under the provisions of Article 8 are Jewish.”⁴⁹ The affirmation of the group as Jewish was significant in light of the diplomatic practice of camouflaging the ethnic identity with some nebulous expressions. Furthermore, the “overwhelming majority” was translated into figures, which were then adopted as the portions of the reparations to be delivered to the Jewish victims. 90 percent of non-monetary gold and 95 percent of the heirless property was to be used for the Jewish resettlement and the rehabilitation, indicating that at least this much property was presumed to have belonged to the Jewish owners. Proceeds from these sources were to be made available to appropriate field organizations. The Jewish Agency and the JDC were later designated as such, to receive the allocations.⁵⁰ In accordance with the agreement with the Inter-Governmental Committee on Refugees (IGCR),⁵¹ the allocations were divided in 60 percent for the Jewish Agency and 40 percent for the JDC. On the other hand, \$2.5 million from the proceeds of the German assets in neutral countries (10 percent of the \$25 million dollar fund for non-repatriables), 10 percent of the non-monetary gold, and 5 percent of the heirless assets, were to go to the non-Jewish victims of Nazi persecution who needed

⁴⁸ “Agreement on a Plan for Allocation of a Reparation Share to Non-Repatriable Victims of German Action, June 14, 1946,” (hereafter cited as Agreement) MAE, AEF-AAA 53.

⁴⁹ Ibid.

⁵⁰ Translation of a letter, to Director of the Inter-Governmental Committee on Refugees, n.d., MAE, AEF-AAA 53. The appointment of above organizations owed to one of the American delegates of the State Department, Prof. Eli Ginzberg, who negotiated with the five powers in advance for their designation. (Memorandum on the allocation of a reparation share to non-repatriable victims of German action, July 1, 1946, YV, M56, CBF, R38, frame 204/1.)

⁵¹ IGCR: Established in 1938 to aid the emigration and resettlement of refugees from Germany. Its achievement was meager, and in 1947 its functions were merged with those of the Preparatory Commission of the International Refugee Organization (PCIRO) of the United Nations.

resettlement.⁵² The money for the non-Jewish victims was to be administered by the IGCR or by an appropriate successor agency. Regarding the ownerless property, the Agreement states that 5 percent for non-Jewish victims is “based upon a liberal presumption,” implying that even higher percentage of the property of Jewish origin.⁵³

What seemed a landmark recognition of the Jewish claims was not achieved without overcoming serious obstacles. First, knowing that the greatest majority of the beneficiaries under Article 8 were undoubtedly Jewish, the British resisted linking their resettlement with the Palestine issue. They indeed succeeded in having a reference to Palestine as an area of resettlement deleted from the final draft of the Agreement.⁵⁴ Then, two of the signatories, Czechoslovakia and Yugoslavia, declared that they would not be bound domestically by what they were signing. Both having suffered a considerable loss of its Jewish population, there was considerable heirless Jewish property within their borders. Their insistence was registered in an Annex attached to the Agreement, which read that they “have not by so accepting [the Agreement], given up their claim to the forthcoming inheritances...which, according to the provisions of international law, belong to their respective states.”⁵⁵ The two governments did, however, request the neutral countries to submit the heirless Jewish property.

Future negotiations with the neutral countries to obtain the heirless property were delegated to the French Government. The neutral countries were only requested, never obliged, to submit such assets. The Allies did not have the power of enforcement, and therefore could only appeal to their morals and conscience. The signatories were aware of the extraordinary nature of their request. In urging the neutrals to comply, they justified

⁵² “Agreement,” June 14, 1946, MAE, AEF-AAA 53.

⁵³ Ibid.

⁵⁴ Report by Eli Grinzberg to James F. Byrnes (confidential copy), n.d., AJA, WJC, C231,5.

⁵⁵ Annex to the Agreement, June 14, 1946, MAE, AEF-AAA 53.

that the extraordinary crime called for an exceptional solution. They stressed that such need has “arisen out of a unique condition in international law and morality.”⁵⁶ In reality, none of the neutrals fulfilled their moral obligation.

1.4. Paris Peace Conference

In July 1946, Paris Peace Conference was convened by twenty-one nations to discuss the treaties of peace with ex-enemy states of Italy, Hungary, Rumania, Bulgaria and Finland.⁵⁷ The Conference debated the drafts of the peace treaties prepared by the Council of Foreign Ministers (CFM), which was composed of the five principal victors: the U.S, the U.K., the Soviet Union, France, and China.⁵⁸ Although the Jewish organizations had no formal representation at the conference, they were active in behind-the-scene negotiation in an attempt to safeguard Jewish rights and interests. One of their focuses was to insert provisions in the peace treaties in order to make the heirless Jewish property in the ex-enemy countries available for the purpose of Jewish rehabilitation. Their efforts were directed, among others, to the U.S. and U.K. delegations. The WJC, the American Jewish Conference, and the Board of Deputies of British Jews formulated detailed principles, which were to be embodied into the peace treaties, and

⁵⁶ “Agreement,” June 14, 1946, MAE, AEF-AAA 53.

⁵⁷ Twenty-one nations were as follows: the United States, the United Kingdom, the Soviet Union, France, China, Australia, Belgium, the Byelorussian Soviet Socialist Republic, Brazil, Canada, Czechoslovakia, Ethiopia, Greece, India, the Netherlands, Norway, New Zealand, Poland, the Ukrainian Soviet Socialist Republic, the Union of South Africa, and Yugoslavia.

⁵⁸ The establishment of the CMF was agreed upon by the “Big Three” at the Potsdam Conference of July 1945. Each peace treaty was drafted by the state which signed the armistice with that particular enemy. Peace treaties with Rumania, Bulgaria, and Hungary were drafted by the foreign ministers of the U.K., the U.S., and the Soviet Union. Treaty with Italy was drafted by the three big powers and France.

submitted their draft to the CFM in Paris on June 28, 1946.⁵⁹ It demanded, among others, the restitution and re-establishment of the Jewish private and public properties, their rights and interests, and the transfer of the heirless Jewish property to an appropriate Jewish body.⁶⁰

Forging a united Jewish front at the conference was crucial. They were conscious of the lessons learned from the previous Peace Conference in Paris after the First World War, where the disaccord among the Eastern and Western Jews hindered a unified approach to the Jewish interests. A meeting was held by the Jewish organizations gathered in Paris on August 18, 1946, and a joint memorandum entitled “Statement Submitted to the Paris Conference” was agreed upon.⁶¹ In its content, it was similar to what was submitted to the CFM in June. It requested the transfer of heirless Jewish property to the representatives of the Jewish communities in Rumania, Hungary and Italy, free of taxes, duties or other charges.⁶² The signed memorandum was sent to the secretary general of the conference and to each of the twenty-one delegations on August 20, 1946.⁶³

The cooperation among the Jewish organizations at the Paris Peace Conference represented a visible change in the inter-Jewish relations. Jacob Robinson of the WJC – one of those who were engaged in unofficial talks with the delegations in an attempt to win their support – observed a “tremendous reduction of points of difference among various Jewish groups.” He reported with pleasant surprise that “World Jewry spoke with

⁵⁹ FCO, *History Notes No.13, British Policy Towards Enemy Property During and After the Second World War* (London: FCO, April 1998), <http://www.enemyproperty.gov.uk/fcoreport.pdf>, p.33.

⁶⁰ WJC, *Unity in Dispersion: A History of the World Jewish Congress* (New York: WJC, 1948), p.251.

⁶¹ There were nine Jewish organizations present in Paris to promote Jewish interests: the WJC, the American Jewish Conference, the Board of Deputies of British Jews, the Agudath Israel, the Anglo-Jewish Association, the AIU, the CRIF, the AJC and the South African Jewish Board of Deputies.

⁶² Report on restitution, November 15, 1946, AJA, WJC, C230.7.

⁶³ Interim report on activities at the Paris Peace Conference, September 11 and 13, 1946, AJA, WJC, C231.7.

one voice, and with one voice only.”⁶⁴

The statement from the Jewish organizations induced the U.S. delegation to put forward the amendments of the drafts of the peace treaties with Rumania and Hungary, both of whom had poor records in terms of their treatment of Jews. The American amendments officially recommended the insertion of two articles in respective drafts: one concerned the human rights for Jews, which prohibited discrimination of their nationals on the grounds of race, sex, language or religion,⁶⁵ and the other concerned the transfer of the Holocaust victims’ heirless property to the International Refugee Organization (IRO)⁶⁶ or its successor organization.⁶⁷ The American motion was carried by a majority vote at the conference and the final decision was left to the CFM, which was to convene in New York.

Not surprisingly, however, opinions concerning the heirless property varied according to the political regime of the Allies. At the session of the CFM, the Soviet foreign minister Molotov declared that the heirless and unclaimed property should be owned by the state, in accordance with the laws thereof, and there was no “real need” for such articles.⁶⁸ Nevertheless, the clauses on the restitution of Jewish property in the Rumanian and Hungarian treaties were finally adapted at the CMF, after the United States made a concession with the Soviets by eliminating the IRO as the trustee of the assets.

Article 25, Paragraph 2 of the Rumanian Peace Treaty provided that the Rumanian

⁶⁴ Ibid.

⁶⁵ *FRUS*, 1946, vol. IV, Paris Peace Conference Documents, articles 3a of the Draft Peace Treaty with Rumania and 2 of the Draft Peace Treaty with Hungary, pp.920 and 939, respectively.

⁶⁶ International Refugee Organization (IRO): constituted in December 1946, the successor of the United Nations Relief and Rehabilitation Administration (UNRRA), dissolved in 1952.

⁶⁷ *FRUS*, 1946, vol. IV, Paris Peace Conference Documents, articles 24 bis of the Draft Peace Treaty with Rumania and 23 bis of the Draft Peace Treaty with Hungary, pp. 925 and 942-943, respectively.

⁶⁸ *FRUS*, 1946, vol. II, Council of Foreign Ministers, pp. 1364-1365. Byrnes contested Molotov by saying that “[t]he Soviet Delegation knows that all the Jewish people are interested in this Article. Perhaps he would see them and hear their point of view.” In his reply, Molotov stated: “The Jewish people do not take offence at the Soviet Union.” For other supporting comments by Byrnes on behalf of the Jews, also see, *FRUS*, 1946, vol. II, p.1371.

government transfer (within twelve months of the treaty's coming into effect) all heirless and unclaimed property of persons, organizations or communities, who were victims of the Nazi or other Fascist persecution, to organizations in Rumania – representative of such persons – for their relief and rehabilitation. Article 27, Paragraph 2 of the Hungarian Peace Treaty was almost identical in its content. They were both signed on February 10, 1947, and came into force on September 15.

As to the Bulgarian Peace Treaty, articles on the compensation for the victims did not secure the majority vote at the CFM, although the Jewish organizations were opposed to the withdrawal of the clause.⁶⁹ After all, Bulgaria was the only country in Europe in which hardly any decimation of the Jewish population had occurred, and it issued the restitution laws and handled the matter with equity.⁷⁰ Likewise, it was held unnecessary to bind Italy with such a clause, for Article 15 of the draft peace treaty guaranteed human rights and fundamental freedoms for all citizens.⁷¹ Changes in the draft treaties with Bulgaria and Italy were not pursued energetically by the Jewish organizations either. The Finish Treaty was – from the beginning – left out from the Jewish efforts due to the small size of its Jewish community.⁷²

It was largely the American, and to a lesser degree British, support, which paved the way for the special provisions for Jews in the Rumanian and Hungarian Peace Treaties. The implementation of those clauses was, however, hampered by the Communization of Eastern Europe. In both countries such properties were nationalized or subjected to the agrarian reform as we shall see later.

⁶⁹ FCO, *History Notes No.13*, p.34.

⁷⁰ American Institute of International Information, NY, "Reparation and Restitution of the Property of Nazi Victims in Europe," 1946, CZA, C7, 1194-3.

⁷¹ FCO, *History Notes No.13*, p.34.

⁷² WJC, *Unity in Dispersion*, p.249.

1.5. Balance: Postwar Legislations in Europe

As early as late 1946, the hope of establishing an international Jewish body to administer the heirless Jewish property was fading. Most of the European countries proclaimed their adherence to the “London Declaration” of January 1943 (Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control) and the changes in ownership due to the racial, religious or political reasons which have taken place under the German occupation or its influence null and void.⁷³ Yet, lack of concern on the problems of Jewish heirless property and the absence of inter-states cooperation on this issue made a supra-national Jewish body unrealistic. The setting in of the Cold War definitively shelved the idea. However, some Jewish leaders still thought that the problem of heirless property could be effectively solved only in an international framework. They saw a ray of hope in the newly established United Nations Organization (U.N.), which possessed certain power of enforcement and which might give the Jewish body a needed authority. Nehemiah Robinson of the Institute of Jewish Affairs, for instance, prepared a draft of an “International Convention on Masterless and Unclaimed Properties” in 1947, designed to be submitted to the U.N. Economic and Social Council (ESC). It stipulated that would-be signatory states of the convention renounce the right of escheat on heirless property, and that the property shall be transferred to an international agency to be used exclusively for relief, rehabilitation and resettlement of the persecutees.⁷⁴ The WJC submitted this draft convention, unofficially and in confidence, to the head of the U.S. Delegation to the ESC,

⁷³ For the complete text of the Inter-Allied Declaration, see N. Robinson, *Indemnification and Reparations*, p.275-278.

⁷⁴ Draft by N. Robinson, “Convention on Masterless and Unclaimed Properties Which Belonged to Victims of Racial and Religious Persecution,” July 1947, AJA, WJC, C232,5,.

Willard Thorp, with a request for comments. No immediate reply followed. Robinson met with Thorp at the end of 1947, however, the latter found it difficult for the U.S. government to endorse such a proposal. Although the U.S. government advocated for the aid of the stateless Jews with the reparation money and the heirless assets in neutral countries, it had not committed itself to heirless Jewish property – neither in its areas of control in Europe, nor within its border of the United States. No Jewish successor organization was yet admitted to the U.S. Occupation Zone of Germany. Attempts to enact a legislation to earmark the heirless assets of Jews located inside the United States for the Jewish rehabilitation failed in the years after the war.⁷⁵ The Jewish leaders made further efforts through the U.N. channel, but no concrete result was achieved.⁷⁶

What then became of the heirless Jewish property in the European countries after the war? Repeated appeals were made to the respective governments, either by local Jewish communities or by the international Jewish organizations such as the WJC, and, after the establishment of the Jewish state, by its foreign office. In brief, their efforts did not bear any substantial fruits. Generally it resulted in the escheat of the property to the treasury of the states, including those states whose wartime behavior was stained with the collaboration with the Nazis. Following is the balance of the Jewish efforts and the

⁷⁵ In 1941, pursuant to the Trading with the Enemy Act of 1917, President Roosevelt froze the assets of the enemy countries and their nationals, a fair number of whom were Jews. The assets were returned to the survivors of the Holocaust and to their heirs after 1946. As to the properties of the Holocaust victims which remained heirless, the Congress amended the Trading with the Enemy Act in 1954 under U.S. Public Law 626. In the following year, President Eisenhower appointed the Jewish Restitution Successor Organization (JRSO) as the successor in interest to the heirless Jewish property, by Executive Order 10587. The JRSO was to receive a lump sum payment with the upper limit of \$3 million, however, when it received the payment in 1963, the sum was reduced to \$500,000. The money was used for the rehabilitation of Nazi victims in the United States. See, JRSO, *Report on the Operation of the Jewish Restitution Successor Organization 1947-1972* (New York: JRSO, 1972) pp.32-34; *Ezenstat Report*, pp.195-198; Presidential Advisory Commission on Holocaust Assets in the US, *Plunder and Restitution: The United States and Holocaust Victims' Assets*, 2000, http://www.pcha.gov/PlunderRestitution.html/html/Home_Content.html.

⁷⁶ A draft proposal regarding the disposition of the assets of the Holocaust victims was to be submitted to the U.N. General Assembly by the ESC in September 1948. (JTA News, August 27, 1948, AJA, WJC, C232, 5.) Whether it was factually discussed at the assembly requires further research.

postwar developments in the major European countries.

1) Austria

Being an active part of the Third Reich after its *Anschluß* (Annexation) in 1938, the position of Austria toward restitution of Jewish property should have been fundamentally different from those of the Nazi occupied countries. However, it developed an inculpable self-definition due to the 1943 Allied declaration in Moscow, which proclaimed Austria the first victim of German expansion, and shunned away from taking extensive measures to retribute and compensate its Jewish victims. The Five Organizations pressured Austria to give up the heirless and unclaimed property for the benefit of its Jewish victims,⁷⁷ and despite the strong American support on this issue, Austria's attitude can best be described as evasive. The comment of the Interior Minister Oskar Helmer in the cabinet meeting in 1948 on the need of creating an heirless property fund exemplified the government's attitude: "We are no longer living in 1945. The English are now fighting the Jews: the Americans have not kept their obligations... I would be in favor of dragging things out."⁷⁸ Austria took advantage of the Moscow declaration and the shifting interests of the West due to the menace of the communism.

By signing the State Treaty on May 15, 1955, Austria regained its sovereignty and acknowledged its obligation to retribute the wrongfully taken property to the victims of racial persecution and agreed to take measures to use the heirless property for their benefit.⁷⁹ The *Auffangorganisationengesetz* of March 13, 1957 – literally the law to

⁷⁷ Five Organizations to Dean Acheson, March 25, 1947, AJA, WJC, C230, 10.

⁷⁸ Robert Knight, "Restitution and Legitimacy in Post-War Austria 1945-1953," in *LBIYB XXXVI* (1991), p. 436. See also, "*Ich bin dafür, die Sache in die Länge zu ziehen*": *Die Wortprotokolle der österreichischen Bundesregierung von 1945 bis 1952 über die Entschädigung der Juden*, ed. Robert Knight (Vienna: Böhlau, 2000), p.46.

⁷⁹ Republik Österreich Historikerkommission (RÖH), *Vermögensentzug während der NS-Zeit sowie*

establish organizations to catch the heirless and unclaimed properties which were destined to fall to the state – created two collecting points for the heirless and unclaimed property. The collecting point A was for the Jewish property – defined by the membership in the Jewish religious communities at the moment of December 31, 1937 – and the collecting point B was for the property of other victims, including those who were labeled as Jews according to Nuremberg laws but did not adhere to the Jewish faith.⁸⁰ The money these institutions collected were distributed among the Nazi victims inside Austria, but a part of it was used for the collective purpose, for example, for the financing of old-aged home in Israel.⁸¹ As for the Jewish public properties, those which belonged to the Jewish religious communities, associations or foundations which ceased to exist after 1938, could be claimed by their umbrella organizations or the communities located in the vicinity, based on the Second Restitution Law of July 11, 1951.⁸²

2) Neutral Countries

“[T]he postwar negotiations that the United States, Britain, and France conducted with the wartime neutrals were protracted and failed to meet fully their original goals”: this was one of the conclusions of the U.S. government-sponsored study on the Allied relations with the neutrals during and after the war.⁸³ The proposed heirless funds based on the 1946 Five Power Agreement never realized. Even the \$25 million fund for the assistance of non-repatriable refugees was collected only very slowly. The reason for this

Rückstellungen und Entschädigungen seit 1945 in Österreich: Forschungsbericht der Historikerkommission der Republik Österreich, Zusammenfassungen und Einschätzungen, Schlussbericht (Vienna, January 2003), p.293.

⁸⁰ Ibid., op. cit., p.295.

⁸¹ Brigitte Bailer-Galanda, “Die Rückstellungsproblematik in Österreich,” in *“Arisierung” und Restitution*, ed. Goschler and Lillteicher, p.182.

⁸² RÖH, op. cit., p.271.

⁸³ See, *U.S. and Allied Wartime and Postwar Relations and Negotiations*.

failure shall be sought, more in changing priorities of Western Allies at the onset of the Cold War, rather than in intransigence of the wartime neutrals. With the pressing need to forge a new security alliance, the negotiation with the neutrals became a secondary issue. The wartime neutrals, aware of the shift in the international landscape, took advantage of it.

Switzerland

According to Article 8 of the Final Act of the Paris Conference on Reparation, Switzerland was asked to contribute to the \$25 million fund for non-repatriables from the proceeds of German assets in its territory, as well as to submit the heirless property of Nazi victims into the heirless funds. On May 25, 1946, Switzerland signed Washington Accord with the U.S., the U.K. and France which obliged it to immediately advance SF (Swiss francs) 50 million (\$11.6 million) to the organization created for the rehabilitation and resettlement of the refugees.⁸⁴ In 1948, she transferred SF 20 million (approximately \$4.7 million) to the fund. However, this was carried out only after continuous pressure from the Allies, and only after Sweden – another neutral requested to contribute to the resettlement of refugees – swiftly paid out its share. The Allies and the Jewish organizations pressured Switzerland to pay the remaining SF 30 million without delay, but Switzerland protracted the implementation for technical reasons. Further agreements on German property in Switzerland were signed in 1952, revising the 1946 Washington Accord, in which the outstanding Swiss payment to the fund was reduced to SF 13 million (\$3.0 million). The sum was paid to the IRO in the following year. The total Swiss contribution to the fund for the resettlement and rehabilitation of Nazi victims amounted

⁸⁴ *Eizenstat Report*, p.99.

to approximately SF 33 million (\$7.7 million), an amount which was much smaller than originally promised SF 50 million, and which was far less than what Sweden had paid for the same purpose.⁸⁵

Nothing came out of the Allied request to submit the heirless assets. In the text of the Washington Accord, there was no provision dealing with the heirless assets inside Switzerland, due to the Swiss opposition. Switzerland even excused its non-action on behalf of the persecutees by pointing out that no measures had been taken in the United States to the same end.⁸⁶ On the contrary, the Swiss government signed agreements with Poland in 1949, and with Hungary in 1950, to transfer the money from the dormant bank accounts, which belonged to the citizens of these countries.⁸⁷ This was to offset the damage of Swiss properties in two countries which were nationalized by communist regimes, and the money was to be used for the compensation of Swiss businesses by the respective governments. These quasi-secret agreements – for they were publicized by none of the three governments – were severely criticized by Jewish leaders, especially by the Israeli government, for a large part of the money belonged, without any doubt, to the Polish and Hungarian Jewish victims of racial persecution.⁸⁸ It was as if both sides compensated each other with the property of Jews. Notwithstanding the Jewish protest, by the mid 1970s Bern transferred to Warsaw and Budapest SF 463,955 and SF 325,000

⁸⁵ Ibid., p.101.

⁸⁶ Ibid., p.193.

⁸⁷ There are two legal theories concerning the disposition of heirless property. One is so-called territorial principle, and the other is the nationality principle. Most European countries adopt the former, meaning that heirless property reverts to the state where such property is located. In the Swiss Civil Code, however, an article exists which stipulates that heirless property may fall to the political community from which the person originated. This is the nationality principle, however, this was usually applied to a Swiss national, not to foreigners, and the political community here means canton.

⁸⁸ In the CZA, one may find a bulk of records documenting the diplomatic exchanges regarding the Swiss/Polish/Hungarian agreements.

respectively.⁸⁹

Investigations into the heirless bank accounts came only with the outside pressure. Swiss Bankers Association conducted a general survey in 1947 to grasp the accounts presumed to belong to the victims of Nazi persecution. The survey identified assets with a total of only SF 482,000.⁹⁰ In 1962, Federal Decree of December 20, 1962 required financial institutions to report the assets belonging to people from whom they received no contact since the end of the war. When the registration was completed, SF 9.8 million in assets, which increased to SF 11.2 million due to the interests, remained unclaimed. Of this, SF 3.7 million were later distributed to the identified heirs, and SF 2.1 million were allocated to the Swiss Federation of Jewish Communities.⁹¹

Sweden

It is claimed that the Allied postwar negotiations with Sweden were the most successful.⁹² It signed the Allied-Swedish accord in July 1946, and quickly turned over fifty million kroner (\$12.5 million) to the Intergovernmental Committee on Refugees in 1947.⁹³ However, similar to the Swiss case, nothing was achieved in terms of the contribution to the heirless funds. In 1972, Swedish Bankers' Association donated 1.2 million kroner from the heirless bank accounts – assumed to be Jewish in origin – to the Swedish Red Cross.⁹⁴ In the following year, the Swedish Red Cross distributed the money inside and outside of Sweden (not including Israel), a part of which went to the Jewish victims in Sweden.

⁸⁹ UEK, *Schlussbericht*, p.471.

⁹⁰ Independent Committee of Eminent Persons (ICEP), *Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks* (December 1999), http://www.icep-iaep.org/final_report/, p.89.

⁹¹ ICEP, op. cit., p.92.

⁹² See, *U.S. and Allied Wartime and Postwar Relations and Negotiations*.

⁹³ *Eizenstat Report*, p.101.

⁹⁴ Levin, op. cit., p.117.

3) Countries Occupied by Germany or Which Were under German Influence

France

Of the 300,000-330,000 Jews who lived in occupied and unoccupied France in the beginning of 1942 – approximately 50 percent of whom were of foreign nationality – 75,721 Jews were deported, and only 2,566 survived.⁹⁵ The *Centre de documentation juive contemporaine* (Center for Contemporary Jewish Documentation, CDJC), which had been set up in 1943 with the purpose of documenting the spoliation of Jews in order to reestablish their rights after the war, tackled the problem of heirless and unclaimed property, and tried to influence the government to retrieve such property for the Jewish communities. Until May 1948, with the subvention from the JDC, ten persons worked on the project.⁹⁶ The CDJC and the *Service de restitution des biens des victimes des lois et mesures de spoliation* (Service of Restitution of Property of the Victims of the Spoliation Laws and Measures), a governmental body, drew up a list of 27,000 unclaimed or assumed to be unclaimed properties.⁹⁷ The CDJC urged the French Jewish organizations to set up an institution which was to be responsible for the properties, so that the proceeds be used for communal reconstruction. Yet, this approach did not receive full support from the Jewish organizations for legal as well as political reasons. When the Jewish organizations proposed a general sequestrator to the heirless properties, the government rejected it this time.⁹⁸ Attempts to track the heirless bank accounts in the early 1950s

⁹⁵ Shmuel Trigano, "France and the Burden of Vichy," in *The Plunder of the Jewish Property*, pp.183. Also, see, Annette Wieviorka, "Les Juifs en France au lendemain de la guerre: état des lieux," in *Archives Juives*, No.28/1 (1995), pp.4-22.

⁹⁶ Mission d'étude sur la spoliation des Juifs de France (Mattéoli Mission), *Rapport Général* (Paris: La Documentation française, 2000), p.34.

⁹⁷ Shmuel Trigano, op. cit., pp.188-189.

⁹⁸ Ibid.

were also unsuccessful in the face of “banking secrecy.”⁹⁹ The endeavor, initiated by the CDJC, was given up in 1955.¹⁰⁰

Notwithstanding, individual restitution in France was carried out to a satisfactory degree. Despite the considerable reduction in size, the French Jewish community still maintained a strong presence of 180,000-200,000 people after the war, and the heirs usually claimed the restitution with success. Although the money, which had been confiscated from the Jews at the time of their arrests before deportation, and which had been deposited in their names in the Bank of France or consignment offices, remained for the most part heirless.¹⁰¹ These assets remained in the possession of the state, however, the scope of the heirless property was such that the creation of a Jewish successor organization was not required.¹⁰²

Yet, one must take the specific French context into consideration. The reestablishment of Republican legality meant that the Jews again became citizens with full civic and political rights but invisible as Jews. Escheat was one of the pillars of the Republican principle, upon which the French nation-state rested. Devolvement of the heirless property to the state meant, in the context of that time, handing it over to the French *nation*, the nation of *citoyens*.

The Netherlands

⁹⁹ After the Swiss banks settled with the Jewish organizations, the French banks also concluded a settlement regarding the heirless Jewish accounts in 2001. On the recent development involving the French banks, see the chapter sixteen of the Eizenstat's *Imperfect Justice*, pp.315-336, and the chapter four of Bazylar's *Holocaust Justice*, pp.173-201.

¹⁰⁰ Mission d'étude sur la spoliation des Juifs de France, op. cit., p.35.

¹⁰¹ Claire Andrieu, “Zweierlei Entschädigungspolitik in Frankreich: Restitution und Reparation,” in *Raub und Restitution: “Arisierung” und Rückerstattung des jüdischen Eigentums in Europa*, ed. Constantin Goschler and Philipp Ther (Frankfurt am Main: Fischer, 2003) p.111.

¹⁰² According to the estimate of the Mattéoli Mission, the value of the heirless property in France lies at F 2.3 billion (EUR 351 million), calculated according to its value in the year 2000. The *Fondation pour la mémoire de la Shoah* (Foundation for the Memory of Shoah) was called into being at the end of 2000, with the capital of F 2.5 billion, the highest estimated value of the heirless property in France.

Of the approximately 140,000 Dutch Jews at the break of the war, 102,000 perished in the Holocaust; this was proportionately the highest loss of a Jewish population in Western Europe. Prior to its deportation, Dutch Jewry had been systematically plundered through the Nazi-established Lippmann, Rosenhal & Co., Sarphatistraat (LiRo) Bank, in which the Jews were ordered to deposit their assets. In May 1945, the *Liquidation Vermogen Verwaltung Sarphatistraat* (Liquidation of the “Verwaltung” on the Sarphatistraat, LVVS) commenced its work to restitute and liquidate what remained in the LiRo Bank. When no rightful owners or their heirs were known, they were administered by lawyers and notaries or by the Foundation for the Administration of Missing Persons and Unclaimed Property, until it was established that they were indeed dead.¹⁰³ Of the 70,000 accounts traced at the LiRo bank after the war, 45,000 (approximately 65 percent) were assumed to be heirless.¹⁰⁴ It was not until October 1959, when the Royal Decree permitted the *Joods Maatschappelijk Werk* (Jewish Social Service Foundation) to benefit from the claims against LVVS in lieu of the persons died or disappeared without leaving heirs.¹⁰⁵ Meanwhile, the state exercised its right on unclaimed or intestate insurance policies (either those paid upon death or those paid in life as annuities), based on the 1954 agreement between the state and the life assurance companies.¹⁰⁶ Similarly, unclaimed securities devolved to the state.

¹⁰³ Gerard Aalders, “The Robbery of Dutch Jews and Postwar Restitution,” in *The Plunder of Jewish Property*, p.291.

¹⁰⁴ Levin, op. cit., p.113.

¹⁰⁵ Aalders, op. cit., p.292.

¹⁰⁶ R. Grüter in collaboration with L-F. Ahlers, *Life Assurances, Life Annuities, Pensions and Funeral Insurances* (Amsterdam: Supervisory Committee on the Investigation of WWII Financial Assets in the Netherlands, March 2000). This is the English translation of the original Dutch document entitled *Levensverzekeringen, lijfrenten, pensioenen en uitvaartverzekeringen*, published on December 15, 1999. It is to note that the insurers were partially “compensated” by being obliged to transfer to the state only the values that they had surrendered to the Liro Bank, but not the actual amount insured (therefore they kept the difference).

Poland

With about 85 percent of the prewar 3.5 million Jewish population wiped out, the amount of the Jewish property left ownerless was enormous. This also meant a large number of non-Jewish Poles came into possession of the former Jewish property even before the German retreat. Desire to keep the former Jewish property to themselves was said to be one of the dominant factors behind the violent Anti-Semitism in the first years after liberation. When the Jews came back after the war and claimed the return of their property, they were met with deadly violence on the part of the Poles. After the mass flight of Jews from Poland which was triggered by the Kielce pogrom in 1946, the remaining Jews were nothing but a *quantité négligeable*.

The physical absence of Jews in postwar Poland made the attempts toward restitution of Jewish property less than half-hearted. In addition to a series of decrees on nationalization, the decree of March 8, 1946 on abandoned property stipulated that what would not be claimed until December 31, 1948 revert to the state.¹⁰⁷ A law was even enacted in 1947 to limit the inheritance to the closest kin, which further reduced the number of potential claimants.¹⁰⁸

Regarding the communal property, Regulation No.3 of February 6, 1945 issued by the communist government defined the Jewish communities as cultural societies without legal personality, thus banning ownership by such bodies. Therefore the communal property was legally considered abandoned, and became the subject of nationalization.¹⁰⁹

¹⁰⁷ Weinbaum, "Defrosting History," p.101.

¹⁰⁸ Weinbaum, *Righting an Historic Wrong*, p.29.

¹⁰⁹ *Proceedings of the Washington Conference on Holocaust-Era Assets*, http://www.state.gov/www/regions/eur/wash_conf_material.html, p.710. In February 1997 a new law on the relationship between the state and the Jewish religious communities was issued, granting the communities legal status similar to that of before the Second World War. It opened the way for existing communities to own the real estate as well as to claim restitution of the communal property formerly belonged to the communities.

Czechoslovakia

The different fate of Bohemian and Moravian Jews in the *Protektorat* and those in the Nazi-controlled “independent” Slovakia requires different approaches. The Decree of May 19, 1945 nullified all property transactions and transfers made after September 29, 1938 (the date when the cession of the Sudetenland to Germany was agreed at the Munich Conference) under the German/Hungarian occupation or under the menace of persecution.¹¹⁰ Excluded from this regulation was the property of “unreliable” persons, which in actual context implied ethnic Germans and Hungarians, as well as collaborators. The restitution to Jews was made difficult by the fact that a great number of German-speaking Czech Jews had registered their nationality as German in the 1930 census (some were even expelled to the west based on the Potsdam Agreement!).¹¹¹ In addition, Aryanized property was perceived as German property to be confiscated by the state. The end of the Second World War offered a chance of a radical break from the uneven prewar distribution of wealth.

On November 30, 1945 the properties owned by the Jewish religious communities and Jewish associations or societies as of September 29, 1938, were placed under the state administration. Although limited to Bohemia and Moravia, the Jewish Council of Elders was empowered to administer the Jewish property held by it as of May 5, 1945.¹¹² This measure was amended on June 17, 1946, and applied to the country as a whole. The Council of Elders engaged itself in locating the rightful heirs of the properties which it took in custody. The restitution could be carried out only in behalf of the religious

¹¹⁰ Eduard Kubů and Jan Kuklik jun., “Ungewolte Restitution: Die Rückerstattung jüdischen Eigentums in den böhmischen Ländern nach dem Zweiten Weltkrieg,” in *Raub und Restitution*, p.186.

¹¹¹ *Ibid.*, pp.187-190.

¹¹² “Present Status of the Restitution of Jewish Property in Europe,” October 9, 1946, CAHJP, 880a.

communities which were re-established, and there was no provision to the property of entities which have ceased to exist. Yet, a little gesture was made. The government turned over the sum of 60 million Koruna (\$1.2 million) to the Council of Jewish Communities of Bohemia and Moravia, which was made available from the confiscated funds of Jews who died in Theresienstadt without leaving heirs. Following the communist putsch in February 1948, activities aimed at restitution came to a halt.

Hungary

The Jewish Rehabilitation Act of October 7, 1946 (Law XXV) stipulated the creation of a Jewish Rehabilitation Fund to administer heirless, unclaimed property under joint government and Jewish administration.¹¹³ The proceeds of the property were to be used for the aid of needy Jewish victims. Although the Hungarian government was more inclined to establish a common fund for all the persecuted persons, the Jewish view to create an exclusively Jewish fund finally prevailed after prolonged negotiations between the government and the WJC.¹¹⁴ By Article 27, Paragraph 2 of the Peace Treaty signed in the following year, Hungary was obliged to make available the heirless property of Jews for their rehabilitation. The Jewish Rehabilitation Fund, provided by the 1946 Act, was to become the vehicle to implement the provisions of the Peace Treaty. After the communist take over in 1947/48, the legislation favorable to the Jewish interests became a dead letter. Another half a century was to pass until the provisions of Article 27 were actually implemented.¹¹⁵

¹¹³ "Survey of Restitution in Europe," 1947, AJA, WJC, C231.10.

¹¹⁴ Draft of a press release, October 22, 1946, AJA, WJC, C231.3.

¹¹⁵ Act XXV of 1991 and Act XXIV of 1992 provided compensation to persons whose property suffered damages due to the racial discrimination during the Second World War, or due to the measures of nationalization after the war. By Act XXIV, Hungary fulfilled the obligation under Art. 27, Para. 1 of the 1947 Peace Treaty, which stipulated the fair compensations to the victims of racial and religious

Rumania

Although at first lined up with Germany among the Axis powers, Rumania switched over to the side of the Allies in August 1944. The Decree of December 19, 1944 provided that any Jewish property seized by the state shall be returned. After the communist government was installed under Soviet pressure in February 1945, the landed property fell victims to the agrarian reform laws, and larger properties were not restored for the interests of the Rumanian state. Although restitution laws were enacted which partially fulfilled the provisions of the Peace Treaty, there was no national solution. Moreover, the Communists-dominated Federation of Jewish Communities “voluntarily” relinquished 256 communal properties in 1949 and they were nationalized.¹¹⁶

In the countries which fell behind the Iron Curtain, heirless Jewish property was generally incorporated into the socialistic national economy by way of nationalization and land reforms.

5) Exceptions

There were, however, several exceptions in the treatment of heirless Jewish property. The first example was Greece. Before the Germans overrun the country, the Greek Jewish population had been estimated at 75,000 and organized in twenty-four communities. Of

persecution. However, Para. 2 of Art. 27, providing the transfer of the heirless property to organizations representing the interests of the victims, had not yet been put into practice. In 1997, Act X was enacted and it created the National Jewish Indemnification Fund to indemnify the victims in the form of life annuity. The fund also received the restitution of some real estates and works of art. After half a century of neglect, Hungary fulfilled its obligation of the Peace Treaty. On the developments in Hungary after the fall of the communist regime, see, *Proceedings of the Washington Conference on Holocaust-Era Assets*, pp.695-698.

¹¹⁶ Weinbaum, “Defrosting History,” p.105.

these 75,000 Jews, approximately 10,000 survived the war, and of the twenty-four communities, five were reconstituted at the end of 1947.¹¹⁷ On January 18, 1946, Law No. 846 on the “Abolition of the Hereditary Rights of the State on the Abandoned Jewish Property” was issued. It stipulated that the property of Jews killed or disappeared as a result of German actions (given that they died intestate or without any heirs), would be transferred to a legal institution to be founded by a royal decree, to be used for the relief and rehabilitation of Greek Jews.¹¹⁸ Greece was the first country whose government took legal measures to surrender the heirless property of murdered Jews to the Jewish community. However, neither a law nor the creation of an institution to receive the property immediately followed. It was not until October 1947, that minister of finance published a decision to appoint the Central Board of Jewish Communities of Greece, to be the temporary administrator of the heirless Jewish property.¹¹⁹ In January 1948, the Greek government adapted a decree to execute Law No. 846.¹²⁰ According to an AJC report from the year 1951, the total value of the heirless funds for the Greek Jewish community was estimated at four to five million dollars.¹²¹

The second exception, in terms of its treatment of heirless Jewish property, was Italy. Although an ally of Germany under the Fascist dictatorship, no Jews were deported from Italy until Mussolini’s fall in 1943. Traditionally, Anti-Semitism found little support among Italian citizens, and a considerable number of Jews were hid in Catholic churches.

¹¹⁷ Rapport général succinct sur la communautés Israélites de Grece, December 4, 1947, AJA, WJC, C265, 6.

¹¹⁸ Law No. 846, January 18, 1946, AJA, WJC, C232, 11.

¹¹⁹ Decision, Minister of Finance, October 15, 1947, AJA, WJC, C232, 11. N. Robinson gives October 17 as the date of the above mentioned decision. See, N. Robinson, “Spoliation and Remedial Action,” p.48.

¹²⁰ WJC, *Unity in Dispersion*, p.279.

¹²¹ Eugene Hevesi to Jacob Blaustein, January 17, 1951, in *Archives of the Holocaust : An International Collection of Selected Documents*, ed. Henry Friedlander and Sybil Milton (general editors), Vol. 17. American Jewish Committee, New York, ed. Frederick D. Bogin (New York: Columbia University Library, 1995), p. 356.

Of the 8,369 Jews deported from Italy, 980 survived. Another 292 Jews were died in prisons and in concentration camps in Italy.¹²²

Italy's postwar restitution did, however, lack sincerity in its rehabilitation of the wronged.¹²³ Yet, by Decree No.364 of May 11, 1947, the *Unione delle comunità ebraiche italiane* (Union of the Italian Jewish Communities) was authorized to receive the property of Jews who perished in the Holocaust.¹²⁴ At the same time it was made the responsibility of the communities to deal with matters of property, such as payment to heirs who were subsequently identified.¹²⁵ Nonetheless, the assets which fell under this law were of no great importance.

The third example, in terms of restitution, was the Free City of Trieste, which was placed under the Anglo-American control in 1947 due to the conflict over Italo-Yugoslav border. On January 27, 1948 the U.S. commander of the British-US zone ordered that the property of Jews who died without heirs as a result of racial persecution be transferred to the Jewish community of Trieste.¹²⁶

As seen, the Jewish efforts in most of the European countries remained largely unsuccessful. To a certain extent this can be attributed to the change in the international climate with the setting in of the Cold War. Yet, the unwillingness of the states to deal with the Jewish heirless property separately from that of the "general" war victims, were based on the claim of non-discrimination. There was a clear confusion of the doctrine of emancipation and the dogmatism of equal treatment, which blinded them to the specific

¹²² Nicola Caracciolo, *Uncertain Refuge: Italy and the Jews During the Holocaust* (Urbana and Chicago: University of Illinois Press, 1986), p.xli.

¹²³ See, for example, Ilaria Pavan, "Indifferenz und Vergessen: Juden in Italien in der Kriegs- und Nachkriegszeit (1938-1970)," in *Raub und Restitution*, pp.154-168.

¹²⁴ Max Isenbergh to Eduard von Steiger, August 3, 1949, CZA, A.140, 57.

¹²⁵ Levin, op. cit., p.186.

¹²⁶ Order No.133, January 27, 1948, AJA, C269, 5.

needs of Jews, who had been exposed to harsher persecution for a longer period of time. Nonetheless, the developments in the early postwar years signaled a change in international political norms. Article 8 of the Reparation Conference and the subsequent Agreement of 1946 made a precedent in the recognition of the Jews as a separate category, which would require differential treatment. The specific clauses in Hungarian and Rumanian peace treaties demonstrated that certain international coercion was necessary to enable an equitable treatment of victims. The laws introduced in Greece, Italy and Trieste showed that good will on the part of a government could suffice and thus result in the transfer of the heirless property of Jews to the hands of their coreligionists, and that the hindrance to such action was not legal complexities, as many governments claimed. Although the changing international politics shelved many attempts in the interests of the Jews, the ground was prepared for the establishment of Jewish successor organizations in the three Western Zones of Germany.