SEARCHING for JUSTICE AFTER the HOLOCAUST

Fulfilling the Terezin Declaration and Immovable Property Restitution

MICHAEL J. BAZYLER
KATHRYN LEE BOYD
KRISTEN L. NELSON
RAJIKA L. SHAH

OXFORD

SEARCHING FOR JUSTICE AFTER THE HOLOCAUST

SEARCHING FOR JUSTICE AFTER THE HOLOCAUST

Fulfilling the Terezin Declaration and Immovable Property Restitution

Michael J. Bazyler
Kathryn Lee Boyd
Kristen L. Nelson
Rajika L. Shah

OXFORD
UNIVERSITY PRESS

OXFORD
UNIVERSITY PRESS

Oxford University Press is a department of the University of Oxford. It furthers the University's objective of excellence in research, scholarship, and education by publishing worldwide. Oxford is a registered trademark of Oxford University Press in the UK and certain other countries.

Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America.

Library of Congress Cataloging-in-Publication Data

Names: Bazyler, Michael J., author. | Boyd, Kathryn Lee, author. | Nelson, Kristen (Lawyer), author. | Shah, Rajika, author.
Title: Searching for Justice after the Holocaust : fulfilling the Terezin declaration and immovable property restitution / Michael Bazyler, Kathryn Lee Boyd, Kristen Nelson, Rajika Shah.
Description: New York : Oxford University Press, 2019. | Includes bibliographical references and index.
Identifiers: LCCN 2018019063 | ISBN 9780190923068 ((hardback) : alk. paper)
Subjects: LCSH: Terezin Declaration on Holocaust Era Assets and Related Issues (2009 June 30) | World War, 1939–1945—Claims. | Jewish property. | Holocaust, Jewish (1939–1945)—Economic aspects.
Classification: LCC KZ193.2 2009 .F85 2018 | DDC 940.53/18144—dc23
LC record available at https://lccn.loc.gov/2018019063

1 3 5 7 9 8 6 4 2

Printed by Sheridan Books, Inc., United States of America

Note to Readers

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is based upon sources believed to be accurate and reliable and is intended to be current as of the time it was written. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. Also, to confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate.

(Based on the Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.)

In memory of victims of mass murder and mass theft, which take place during every genocide and other mass atrocity

and

To Halyna Senyk, former Executive Director of the European Shoah Legacy Institute, whose vision led to the Holocaust (Shoah) Immovable Property Restitution Study and this book

Contents

Foreword

HOW TO DO JUSTICE TO JUSTICE?

There is a general assumption that people at their core are good, given ordinary circumstances. In the early part of the twentieth century during the two world wars, circumstances were, however, quite extraordinary, in fact extraordinarily horrible for some. Since the end of the Second World War, our modern civilization has been grappling with the reality of the Holocaust's blunt traumatic blow to our assumptions of humanity's goodness. Through many attempts, the postwar democracies consoled their hurt consciences by restoring a modicum of justice. Yet the results were unsatisfying and inadequate. There remains much unfinished business in the aftermath of the Holocaust. However, it is not right to be dispirited. On the contrary, this unfinished business spurs and encourages our collective imagination to persevere and hope that we, as people, still can be in principle good—without forgetting anything or forgiving everything. Moreover, we realize our human efforts can only approximate a Platonic justice. There is not, and should not be, any silver bullet, magic formula, or quick fix for full restoration of post-Holocaust losses. Within this post-modern realization of our imperfect collective "goodness," we strive.

From this vantage point, the Czech Republic in 2009, while holding the Presidency of the Council of the European Union, convened the International Holocaust Era Assets Conference in Prague. This conference led to the adoption of the Terezin Declaration, endorsed by all 47 participating countries, in which these nations committed themselves to ensuring assistance, redress, and remembrance for victims of Nazi persecution.

The European Shoah Legacy Institute, created in 2010, strived over the following seven years to carry out activities addressing several key post-Holocaust issues included in the Terezin Declaration: restitution of immovable property, art, Judaica, and Jewish cultural assets stolen by the Nazis; social welfare for Holocaust survivors and other victims of Nazism; and the promotion of Holocaust education, research, and remembrance, in order to help with the process of restoration of justice.

In 2017, after exploiting its full potential, the work of ESLI ended and its individual partner states remain committed to carrying out its objectives. This Study, which ESLI initiated and financed using respective Israeli and U.S. grants, is an important legacy of ESLI, and ensures that its results and materials are available to all who are interested. May it be found as useful in our common striving for restored justice.

Ambassador Tomáš Kafka, Chair of the Administrative Board of the European Shoah Legacy Institute (2014–2018)

Acknowledgments

Preparation and publication of this Study was a four-year journey. Along the way, hundreds of people generously assisted us in many ways, big and small. We acknowledge their contributions with gratitude and appreciation.

There are individuals and organizations without whom the Study would not have been possible. First, the enthusiastic support and assistance of five major law firms, whose *pro bono* assistance was crucial to the success of the Study. The law firm attorneys who supervised these *pro bono* efforts are Lauren Schmidt at *Brownstein Hyatt Farber Schreck LLP*; Amber Fitzgerald at *Fried, Frank, Harris, Shriver & Jacobson LLP*; Seth Gerber at *Morgan, Lewis & Bockius LLP*; David Lash at *O'Melveny & Meyers LLP;* and Owen Pell at *White & Case LLP*. We give our heartfelt thanks to the dozens of lawyers throughout these law firms who contributed hundreds of *pro bono* hours to this effort and started us on our way. Each is named individually in the bibliography of the country chapter they worked on. We also thank Stan Levy at *Manatt, Phelps & Phillips LLP* for his support over the years. Stan, who has devoted years to obtaining a modicum of justice for Holocaust survivors, came up with the brilliant idea of getting *pro bono* assistance from law firms in the massive effort to compile restitution laws from the 47 countries that signed on to the Terezin Declaration.

The Study also benefited from the able work of numerous volunteer law student interns from the Fowler School of Law at Chapman University and the University of Houston Law Center: Ren Henry, Kirill Nielson, D'Andrea Sykes, Garrett Schiponi, and Elaine Turner.

The World Jewish Restitution Organization (WJRO) provided invaluable advice and assistance throughout this process. Their expertise in the field of Holocaust immovable property restitution, deep connections with local Jewish community groups, and keen understanding of governmental affairs helped us to better appreciate the context of current Holocaust-era property restitution efforts. In particular, Evan Hochberg and Gideon Taylor gave generously of their time and knowledge.

We also thank the Oxford University Press, our editor Blake Ratcliff, assistant editor David Lipp, and editor-in-chief John Louth for recognizing the valuable contribution the Study makes to the field of Holocaust property restitution, as well as wider developments in the international law of property restitution following mass atrocities.

Finally, we turn to those who conceived of and sponsored the Study: the European Shoah Legacy Institute (ESLI), which commissioned the Study; the Ministry of Foreign

Affairs of the Czech Republic, which established ESLI as a Prague-based NGO in 2010 following the issuance of the Terezin Declaration, and Czech Ambassador Tomáš Kafka, Chair of the Administrative Board of ESLI. They are all to be commended for their tireless and unwavering support in ensuring that this Study reached completion. The Study was their brainchild, and it forms a lasting part of their legacy. Publication of this Study will, we hope, help to ensure that states' compliance with the Terezin Declaration remains in the spotlight for years to come.

Table of Cases

SLOVAKIA

SLOVENIA

SWITZERLAND

UNITED STATES

Table of Legislation

BELARUS

BELGIUM

BOSNIA-HERZEGOVINA, REPUBLIC OF, & SRPSKA, REPUBLIC OF

See also Yugoslavia

Republic of Srpska

DENMARK

ESTONIA

FRANCE

GERMANY

GREECE

HUNGARY

LUXEMBOURG

MACEDONIA

See also Bulgaria; Yugoslavia

MOLDOVA

MONTENEGRO

See also Yugoslavia

NETHERLANDS

NORWAY

POLAND

ROMANIA

SERBIA

SLOVAKIA

UNITED KINGDOM

UNITED STATES

YUGOSLAVIA

Introduction

The Nazis and their state-sponsored cohorts stole mercilessly from the Jews of Europe. Civilian and government bystanders became beneficiaries of this mass looting. As summarized in a best-selling study:

> The plunder of Jewish property during the war had taken place in every country, and at every level of society. The comprehensive nature of this plundering was sometimes quite astounding. In the old Jewish quarter of Amsterdam, for example, the houses were stripped of everything right down to the wooden window and door frames. In Hungary, Slovakia and Romania, Jewish land and property was often divided up amongst the poor. Sometimes people did not even wait until the Jews had gone. There are examples in Poland of acquaintances approaching Jews during the war with the words, "Since you are going to die anyway, why should someone else get your boots? Why not give them to me so I will remember you?"
>
> When handfuls of Jews began to come home after the war, their property was sometimes returned to them without any fuss—but this tended to be the exception rather than the rule. The historiography of this period in Europe is littered with stories of Jews trying, and failing, to get back what was rightfully theirs. Neighbors and friends who had promised to look after valuable items for Jews while they were away frequently refused to return them: in the intervening years they had come to regard them as their own. Villagers who had farmed Jewish land during the war saw no reason why returning Jews should benefit from the fruits of their labours. Christians who had been granted empty apartments by the wartime authorities considered those apartments rightfully theirs, and they had papers to prove it. All these people tended to regard Jews with varying degrees of resentment, and cursed their luck that, of all of the Jews that had "disappeared" during the war, *theirs* had to be the ones who came back.[1]

In the aftermath of the Holocaust, returning victims—not only surviving European Jews but also Roma, political dissidents, homosexuals, persons with disabilities, Jehovah's

[1] Keith Lowe, *Savage Continent: Europe in the Aftermath of World War II* (New York, St. Martin's Press, 2012), at 197–198 (emphasis in original).

Witnesses, and others—were forced to navigate a frequently unclear and cumbersome legal path to recover their property from governments and neighbors who had failed to protect them, and often, who were complicit in their persecution. Many survivors persevered for years, attempting to recover their family's property with little evidence or hope that they would succeed. Many others never knew recovering their stolen property was an option. Law was not the survivors' ally; more often it was their enemy, providing impunity for thieves and those who held stolen property.

While the return of Nazi-looted art starting in the 1990s, and well-publicized settlements involving dormant Swiss bank accounts and unpaid insurance policies, have garnered media attention,[2] most legal mechanisms available in domestic courts and international tribunals for survivors and their heirs to recover real property stolen during the largest theft in history have not been addressed. Specifically, a significant amount of immovable property confiscated from European Jews remains unrestituted.

This book is about the less publicized, less well-known area of restitution: immovable property confiscated during World War II, and specifically the restitution efforts of the 47 countries that endorsed the Terezin Declaration. The success of such efforts is mixed. Countries across the European continent have passed an array of legal and diplomatic restitution or compensation measures. Some were enacted even before the war ended (e.g., the 1943 Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation and Control, the "London Declaration" endorsed by 18 governments). Others have come into force more than 70 years later (e.g., Serbia's 2016 Law on Elimination of Consequence of Property Confiscation of Heirless Holocaust Victims). Some measures resulted in at least partial restoration of the victims' losses. Others existed in name only. In Eastern Europe, many property restitution laws were in effect for only a few years and were overturned as soon as the Communist authorities took power. Jews caught behind the Iron Curtain became double victims: first losing their assets to the Nazis, and then to the Communists. Much has still not been returned.

Against this backdrop of what U.S. Ambassador Stuart Eizenstat has termed "the unfinished business of World War II,"[3] 47 countries[4] in June 2009 issued the Terezin Declaration on the site of the Terezin concentration camp in the Czech Republic. By endorsing the Terezin Declaration, these nations agreed to continue and enhance their efforts to right the economic wrongs that accompanied the genocide committed against European Jews and other groups persecuted during the Holocaust ("Shoah," in Hebrew).

The Terezin Declaration (and its companion document, the 2010 Guidelines and Best Practices,[5] endorsed by 43 countries[6]) focuses in substantial part on the treatment of

---

[2] For Swiss bank deposits, *see, e.g., In re: Holocaust Victim Assets Litigation*, United States District Court for the Eastern District of New York, Case No. CV-96-4849; *see also* http://swissbankclaims.com (official website of the *Swiss Banks Settlement*). For insurance proceeds, *see, e.g.*, http://icheic.ushmm.org (official website of the International Commission on Holocaust Era Insurance Claims).

[3] *See, e.g.*, Stuart Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II* (New York: PublicAffairs 2003). Ambassador Eizenstat served as Special Representative of the President and Secretary of State on Holocaust Issues during the Bill Clinton presidency and as Special Adviser on Holocaust issues during the George W. Bush and Barack Obama presidencies.

[4] Serbia attended the 2009 Prague Conference on Holocaust Era Assets as an observer but later became the 47th country to endorse the Terezin Declaration.

[5] The complete title of the 2010 Guidelines and Best Practices is: Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933–145, Including the Period of World War II.

[6] Of the 47 countries that endorsed the Terezin Declaration, only Belarus, Malta, Poland, and Russia did not endorse the Best Practices.

immovable (real) property restitution: private, communal, and heirless property.[7] Private property includes both prewar Jewish private property currently in the hands of the state and private individuals or entities. Immovable property also includes large amounts of Jewish communal property such as synagogues, clubs, social service organizations, and cemeteries, that have never been returned to the local Jewish community or the Jewish people at large. Finally, because 6 million European Jews were murdered between 1933 and 1945, including up to 90 percent of the Jewish population in some countries, such as Poland and the Baltic countries of Lithuania, Latvia, and Estonia, much of this lost property remains heirless, with the state becoming the legal successor to such heirless property. In the Terezin Declaration, countries agreed that the heirless property instead should be used to benefit needy Holocaust survivors, and for commemoration of destroyed communities and Holocaust education.

ESLI AND THE HOLOCAUST (SHOAH) IMMOVABLE PROPERTY RESTITUTION STUDY

Beginning with the so-called London Gold Conference in 1997, states have held numerous international conferences focusing on the restitution of various forms of Jewish property stolen during the Shoah. At the conclusion of each of these multinational conferences, the government delegates issued pronouncements to implement measures to finally confront Holocaust-era thievery. These pronouncements led to little action and actual implementation. The 2009 Prague Holocaust Era Assets Conference leading to the issuance of the Terezin Declaration aimed to change this pattern by creating the European Shoah Legacy Institute (ESLI).

ESLI was established in 2010 to monitor the signatory states' progress and advocate for the principles enshrined in the Terezin Declaration.[8] In 2014, in fulfillment of its mission, ESLI commissioned the Holocaust (Shoah) Immovable Property Restitution Study (the "Study"), published in full in this book. Completed in January 2017, the Study is the first-ever comprehensive compilation of significant legislation passed by the 47 endorsing states since 1945, dealing with the return or compensation of land and businesses confiscated or otherwise misappropriated during the Holocaust era. It applies both to states where the Holocaust took place and states to which the proceeds of such misappropriated land and businesses had been moved.

The Study's comprehensiveness and methodology aims to break new ground in research and analysis of immovable property restitution following the Holocaust. It captures historical trends and reflects current gaps in law. It seeks to inspire answers, and raise new questions, to the intractable problems of property restitution—for example, with respect to heirless property that has been sparsely addressed. It aims to promote thoughtful discourse on the rationale behind immovable property restitution in general, who should benefit from it and who should pay for it. It is our hope that the Study will promote an ongoing, multilateral dialogue amongst states, nongovernmental organizations (NGOs), and domestic and international lawyers and jurists, and will lead to progress on the outstanding issues related to Holocaust-era immovable property restitution.

---

[7] *See also* Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York: W. W. Norton & Company, Inc. 2000), at 4 (describing the importance of restitution of all three types of property).

[8] After eight years as a supporting platform for post-Holocaust issues, ESLI closed its doors in August 2017.

The Study also fulfills a practical purpose. Jewish and non-Jewish claimants, heirs, governments, NGOs, and other stakeholders will now have a one-stop resource where all significant Holocaust restitution legislation and case law dealing with immovable property over the last 70 years has been compiled and analyzed.

No such resource, in print or online, in any language, is available elsewhere. The Study is composed of 47 individual country reports, each of which is contained in a separate chapter in this book. The success of the restitution experience varies from country to country, depending largely on how each state has addressed some of the following challenges to devising a property restitution regime:

- The time frame for enacting restitution legislation—was restitution immediate or stalled until the 1990s or the present day?
- The nature and scope of nominal ownership for property to be restituted—was property in both public and private hands subject to restitution?
- The effectiveness of the claims process—do existing judicial and/or administrative structures have the capacity to adequately, efficiently, and transparently resolve property claims?
- The eligibility of claimants—is the claims process available to citizens only or open to persons of any nationality?
- Who keeps restituted property—does the state require foreign claimants to sell property back to a national?
- The rate of compensation—are claimants symbolically, partially, or fully compensated for property (in cash or bonds) when restitution *in rem* is not practicable?
- Former owners versus subsequent good faith purchasers—do restitution laws fairly protect those whose property was stolen as well as subsequent good faith purchasers?
- The treatment of heirless property—are the country's usual inheritance rules overridden so that heirless property can be used for the benefit of Holocaust survivors and their heirs most in need?

In one form or another, these challenges track the benchmarks set forth in the 2010 Guidelines and Best Practices. They present a roadmap to carrying out restitution schemes in countries where there is still, in the words of Ambassador Eizenstat, "unfinished business."

METHODOLOGY

Work on the Study began in the winter of 2014. The resulting country reports published in this book are the product of multilayer research and involved four stages.

In the first stage, *pro bono* attorneys from several top-tier international law firms conducted initial independent country research. Five leading multinational law firms contributed *pro bono* resources: Brownstein Hyatt Farber Schreck LLP; Fried, Frank, Harris, Shriver & Jacobson LLP; Morgan, Lewis & Bockius LLP; O'Melveny & Meyers LLP; and White & Case LLP.

A supervising attorney in each firm coordinated the *pro bono* work of each firm. Many of the participating lawyers were physically located in the country they researched and/or were licensed to practice there. These *pro bono* attorneys contributed hundreds of hours of their time toward gathering primary restitution legislation and case law.

The next stage involved contacting the Terezin Declaration governments directly. Government consultation is one of the unique features of the Study that sets its content apart from shorter, less comprehensive (yet still valuable) reports on immovable property prepared by other organizations. During summer 2015, all Terezin countries received

questionnaires and preliminary research findings. Nearly half the governments responded, some with just a few sentences and others with comprehensive information and statistics, for example, Austria and Israel.[9]

In the third stage, the ESLI research team (the authors herein) then conducted its own independent research, to verify, synthesize, and analyze the information provided by the law firms and governments to create a comprehensive report for each of the 47 Terezin Declaration countries. The length of each country report varies, depending on that country's connection to the Holocaust. For the European countries occupied by Nazi Germany, and especially those with a large prewar Jewish population such as Poland and the Baltic countries, the reports are more detailed than for those that remained neutral during the war, for example, Sweden, Spain, and Turkey—with the exception of neutral Switzerland, which disproportionally benefited from Nazi theft of Jewish property, or those countries outside the European theater of war (North and South America, Australia) that nevertheless endorsed the Terezin Declaration.

In the last stage, independent scholars, legal experts, and historians active in the Holocaust restitution field for that country reviewed each report for accuracy and provided valued input. The bibliography for each country report lists the outside experts who reviewed the reports prepared by the Study team.

CHAPTER OVERVIEWS

Each chapter of this book covers the restitution efforts of one of the 47 Terezin Declaration countries. Each chapter is therefore standardized. The chapters present the legal rubric for each country in the following order: (1) commitments made in post war armistice agreements, treaties, and claims settlement agreements following the immediate end of the Second World War; (2) private property restitution law and legislation, and restitution efforts undertaken from 1944 to the present time for such property; (3) communal property law and legislation, and restitution efforts undertaken from 1944 to the present time for such property; and (4) heirless property restitution law and legislation, and restitution efforts undertaken from 1944 to the present time for such property.[10]

For each country's restitution regime, either historical or current, the chapter:

- Catalogues the historical scope of restitution *in rem* and/or compensation legislation and its associated regulations;
- Identifies the time period covered by the legislation and what kind of property (private, communal, heirless) is covered;
- Ascertains whether eligibility is contingent upon citizenship in the legislating country;
- Clearly lists claim-filing deadlines;
- Describes how the claims process works, including who decides the claims, standards of proof, necessary documentation, associated costs, and appeals procedures;[11]
- Describes notable judicial decisions interpreting the legislation, including national court decisions and decisions of the European Court of Human Rights; and

[9] The government responses from the Study can be viewed in their entirety at http://shoahlegacy.org.

[10] Some of the countries were liberated in 1944, and so began enacting restitution legislation immediately upon liberation.

[11] The Study team did not conduct on-the-ground archival research, but did review digitized archival material available (or accessible) online in English.

- Includes, where available, statistical information concerning, for example, the status of claims, value of restituted property, and length of claims process.

The chapters also place each country's legislation and restitution regime into its unique historical context. For example, the chapters include information regarding the so-called double confiscations—the widespread nationalization efforts by emerging postwar, Communist regimes which impacted the entire population, to elucidate why restitution efforts faltered or failed to come to fruition for decades following the end of the war. In addition, such context helps explain why restitution in these countries often involves more than returning or compensating for property confiscated during the Holocaust. It is also a matter of unwinding subsequent Communist nationalizations of that same property.

SUMMARY OF FINDINGS

The Study examined private, communal, and heirless property as discrete components of each country's restitution efforts from 1944 to 2016.

While the historical experiences of each country make its country report and the laws described therein wholly unique, certain patterns emerged as to how, when, and why the various restitution regimes have been or are still being carried out.

Broadly, countries in Western Europe initiated restitution measures almost immediately after the end of World War II. The work of national commissions and subsequent legislation of the 1990s and 2000s was therefore mainly focused on restitution completion efforts—gap-filling the restitution measures of the 1940s and 1950s. By contrast, for Eastern Europe, there was little time to create successful restitution schemes before Communist regimes came to power in each country and collectivized and nationalized private property. As a consequence, for Eastern European countries, legislation of the 1990s and 2000s required a more comprehensive approach—covering greater time periods and more property. Often, Holocaust-era confiscated property is specifically excluded from post-Communist restitution legislation.

More than 70 years after the conclusion of World War II, the "unfinished business"[12] of immovable property restitution remains unfinished. It remains to be seen whether there will be a future gap-filling period for restitution measures in Eastern Europe.

The Study examined restitution measures across the three main categories of immovable property: private, communal, and heirless. The findings are broken down into each category, and then grouped by region, Western Europe and Eastern Europe. While Terezin Declaration countries include many located outside of Europe, the cause and effect of World War II immovable property confiscation was contained within the continent—with certain exceptions, chiefly the United States and Israel.

Private Property

Private immovable (real) property is described in the Terezin Declaration Guidelines and Best Practices for the purpose of restitution as:

> property owned by private individuals or legal persons, who either themselves or through their families owned homes, buildings, apartments or land, or who had other

[12] Stuart Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II* (New York: PublicAffairs 2003). Much of the "unfinished business" identified by Ambassador Eizenstat concerned restitution or compensation of stolen property.

> legal property rights, recognized by national law as of the last date before the commencement of persecution by the Nazis, Fascists and their collaborators, in such properties.
>
> (Terezin Best Practices, para. b.)

For most Western European countries, including Belgium, Denmark, France, Germany (the then West Germany or Federal Republic of Germany), Greece, Italy, Luxembourg, the Netherlands, and Norway, private property restitution measures were established immediately after the end of World War II and applied equally to citizens and noncitizens.[13] The measures were relatively successful. This is, however, not to suggest that it was uniformly *easy* to get back what had been taken, that there was an absence of resistance to restitution, or that *all* property was restituted after the war. And in contrast to West Germany, in the former East Germany (German Democratic Republic), with few exceptions, no property restitution regime was established after the war. It was not until the unification of Germany in 1990 that property restitution measures in East Germany were established.

A resurgence of interest in Holocaust-era confiscations in the 1990s led to the creation of numerous national commissions of inquiry in Western Europe that examined the extent of property confiscation in each country and the degree to which property was returned—for example, the Austrian Historical Commission (Austria), The Study Mission on the Spoliation of Jews in France (France), and the Van Kemenade Commission (the Netherlands).

In general, the reports identified gaps in restitution or unfair or unreasonable consequences resulting from incomplete remedies for property restitution. Due to these commission findings, new national restitution mechanisms were established or lump-sum settlements reached with the domestic Jewish community.

For example, in 1999, the French government established the Commission for the Compensation for Victims of Spoliation (CIVS), to provide compensation to individual victims or their heirs who had not been previously compensated for damages resulting from legislation passed either by the Vichy government or by the occupying Germans.

In 1998, the government of Norway approved a comprehensive settlement with the Jewish community worth NOK 250 million (USD 33 million) that covered all claims—private, communal, and heirless—of the Jewish community. It has also been the case in some countries, such as Italy, that despite a historical commission's finding restitution gaps and making recommendations that further restitution be made, no additional measures have since been carried out.

Somewhat unique is private property restitution in the United Kingdom. While not occupied during World War II, the United Kingdom enacted legislation that confiscated property from "enemies" of the state. After the war, the United Kingdom set up a scheme to compensate victims of property confiscation. Around the time that other Western European national commissions were being set up in the late 1990s, the United Kingdom investigated the shortcomings of its initial restitution scheme and set up the Enemy Property Payment Scheme for victims of persecution under the confiscation law.

---

[13] The exceptions included Denmark, whose restitution legislation applied only to Danish citizens, and France, where the immediate post-war restitution laws excluded both noncitizens and minors. This effectively excluded nearly half of the surviving Jews in France at the time. In addition, Luxembourg's 1950 Law for War Damages only applied to Luxembourg citizens.

The restitution experience of countries in Eastern Europe also began at the end of the war, but in the end followed a far more delayed and complicated path than that in most Western European countries.

Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia all passed some form of restitution legislation shortly after the end of World War II. Many of these states were compelled to do so by the terms of armistice agreements or a treaty of peace, for example, Article 5 of the 28 October 1944 Armistice Agreement with Bulgaria required that Bulgaria cancel all discriminatory legislation.

Shortly after early restitution measures were established, private industry, financial enterprises, and residential properties were nationalized by the newly installed Communist regimes throughout Eastern Europe. The outcome was that whatever property had been restituted was subject to a second round of confiscations, this time by Communist authorities. In Estonia, Latvia, and Lithuania, Soviet authorities nationalized private property twice, first upon their initial occupation during World War II and then a second time after expulsion of the Nazi German occupiers.

After emerging as transitional democratic states in the early 1990s, the post-Communist regimes passed private property restitution legislation. This legislation covered both Holocaust-era confiscations and Communist-era takings, when applicable. The amount of compensatory restitution and *in rem* restitution varied widely by country. Among them, the Czech Republic, Hungary, Lithuania, and Slovakia limited eligible claimants to those who were citizens of their respective countries.[14]

Yugoslavia, which broke into the constituent states of Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia after the fall of Communism, also enacted private property restitution legislation after World War II, for example, Law No. 36/45 (on Handling Property Abandoned by its Owner during the Occupation and Property Seized by the Occupier and his Collaborators) (Yugoslavia). However, like its Eastern European neighbors, restituted property was soon subject to Communist takings and nationalization.

The new democratic states of Croatia, Slovenia, Macedonia, and Montenegro all passed denationalization legislation in the 1990s and 2000s, but the laws did *not* cover Holocaust-era takings (e.g., Law No. 92/96 on Restitution/Compensation of Property Taken under the Yugoslav Communist Rule (Croatia), Law No. 43/2000 (2000 Denationalization Law) (Macedonia)). Moreover, eligible claimants in Croatia, Slovenia, and Macedonia were limited to citizens of the respective countries.[15] Serbia passed private property restitution legislation in 2011 (Law on Property Restitution and Compensation). Unlike many of the other Balkan countries, Serbia's legislation applies to both citizens and noncitizens. However, the text of the law is not clear whether it covers Holocaust-era property confiscations. Similarly, Moldova passed a law on restitution in 1992 and set up property commissions, such as the Law Concerning the Rehabilitation of Victims of Political Repressions. But on its face, the law does not include Holocaust-era property confiscations.

[14] A portion of a 2001 endowment fund set up by the Czech Republic later provided symbolic compensation for people unable to make restitution claims because of the citizenship requirement. In the case of Hungary, while the law did not strictly limit restitution to current citizens, it limited eligible claimants to those persons who were Hungarian citizens at the time of suffering the damage, suffered damage in conjunction with being deprived of their Hungarian citizenship, or were non-Hungarian citizens but were permanent residents in Hungary on December 31, 1990.

[15] Contrary to the provisions of the existing laws in Croatia, the Supreme Court of the Republic of Croatia held in 2010 that a foreign national claimant *did* have a right to compensation.

Among Eastern European countries, Belarus, Bosnia-Herzegovina (BiH), Poland, Russia, and Ukraine have all failed to establish a comprehensive private property restitution regime for property taken either during the Holocaust or Communist eras, or one that addresses both types of takings. A few of these countries established private property restitution legislation shortly after the war—for example, the 6 June 1945 Decree on the Binding Force of Judicial Decisions made during the German Occupation in the Territory of the Republic of Poland. But these measures were again short-lived due to the nationalization measures of the Communists who took over each country. In the mid- to late 1990s, one of the two autonomous entities that comprise BiH—the Republic of Srpska—also passed legislation on the denationalization of property, but not for Holocaust-era confiscations. The laws were later annulled and no new legislation has come into force at either the entity or national level.

Poland is the only member of the European Union (and a former Eastern European member of the Communist bloc) not to have passed comprehensive private property restitution legislation in the post-communist era. In the case of Poland, with the exception of so-called Bug River properties (property located in prewar Poland east of the Bug River that became part of the Soviet Union after the war), where legislation from 2005 has provided for a property compensation scheme that has withstood scrutiny from the European Court of Human Rights (ECHR), Poland has no comprehensive private property restitution scheme for either Holocaust-era confiscations or Communist-era takings. The only recourse for rightful owners and heirs is to rely on long-standing provisions of generally applicable Polish law in the Polish Civil Code and the Polish Administrative Procedure Code, which are not tailored to address the experience of Holocaust victims and others who suffered massive personal and property losses in Poland during the war. Successful claimants before Polish courts appear to be only those who can demonstrate that their property was nationalized contrary to the letter of Communist legislation. This means that for property "legally" nationalized under then-existing Soviet-styled laws, there is no recourse.

The situation in Poland regarding restitution remains fluid, with proposals for a comprehensive restitution program still being hotly debated in the country.[16]

As the U.S. Department of State Special Envoy for Holocaust Issues explained in late 2015, "Jewish and non-Jewish Americans of former Polish citizenship have long complained that Polish laws governing property and the Polish court system are especially cumbersome, challenging, time consuming and expensive for claimants outside of Poland. The United States has consistently advocated for legislation or reforms to the court system that are fair, comprehensive, and nondiscriminatory and that are neither burdensome nor costly to the individual claimant."[17]

---

[16] For example, a special restitution regime was established in 1945 just for Warsaw under the so-called Bierut Decree (named after the first Communist leader of postwar Poland). The Communist authorities, however, failed to implement the law. Reprivatization of Warsaw properties only began taking place after 1989, but the process has lacked transparency. In 2016, city officials involved with the reprivatization process of Warsaw properties were forced to resign and the Anti-Corruption Bureau began an investigation, which is still ongoing. A law passed by the national parliament that came into effect on September 17, 2016, created a six-month deadline for pre-war owners of property in Warsaw to reactivate previous claims made under the Bierut Decree, although there are a number of exceptions and limitations on who may apply and what property is covered.

[17] Letter from U.S. Dept. of State Special Envoy for Holocaust Issues to *Nowy Dziennik (Polish Daily News)*, December 22, 2015, available at http://wjro.org.il/cms/assets/uploads/2016/01/Nick-Dean-Response-to-Nowy-Dziennik-Letter-12.22.15.pdf.

When asked about the situation in Poland during a visit to Israel in 2016, Polish Foreign Minister Witold Waszczykowski explained:

> [P]roperty restitution has been underway in Poland for well over two decades now [. . .] Property restitution is a process in which claimants' ethnic or religious background is irrelevant: the Polish law treats everyone in the same manner. As far as private property is concerned, the existing legal system in Poland makes it perfectly clear that any legal or natural person (or their heir) is entitled to recover prewar property unlawfully seized by either the Nazi German or the Soviet occupation authorities, or by the postwar communist regime.[18]

Finally, in Cyprus, Finland, Ireland, Malta, Portugal, Switzerland, Spain, and Sweden,[19] private property of targeted groups was not confiscated as a cause or consequence of World War II and the Holocaust (Shoah). As a result, these countries do not have specifically applicable private property restitution legislation.

Communal Property

Communal property is described in the Terezin Declaration Guidelines and Best Practices for the purpose of restitution as:

> property owned by religious or communal organizations and includes buildings and land used for religious purposes, e.g. synagogues, churches[,] cemeteries, and other immovable religious sites which should be restituted in proper order and protected from desecration or misuse, as well as buildings and land used for communal purposes, e.g. schools, hospitals, social institutions and youth camps, or for income generating purposes.
>
> (Terezin Best Practices, para. b.)

In Western Europe, Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, and Norway have all made provisions for communal property restitution. In many of the countries, communal property was restituted pursuant to the same laws as private property restitution. This contrasts with communal property legislation enacted in Eastern European countries, where communal property laws were often separate from private property laws.

For countries such as Austria, France, and Germany (West Germany), efforts were made shortly after World War II to return or pay compensation for communal property, for example, the First, Second, and Third Restitution Acts (Federal Law Gazette Nos. 156/1946, 53/1947, 148/1947) (Austria). Those initial measures have been supplemented by more recent legislation meant to gap-fill the return of communal property that was formerly missed or not included, for example, the Amendment to the General Social Security

---

[18] Eldad Beck, "Polish Foreign Minister: There's more to us than the Holocaust," ynetnews.com, June 15, 2016 (last accessed August 1, 2016). The restitution of immovable property stolen during the Nazi and Communist eras remains a volatile issue in Poland. *See, e.g.*, Joanna Berendt, "Polish Court Limits World War II–Era Restitution Claims in Warsaw," *N.Y. Times*, July 27, 2016 (last accessed October 20, 2016).

[19] In certain instances, German firms with Swedish subsidiaries used German Aryanization measures to their own advantage. However, Aryanization efforts in Sweden were largely unsuccessful. There is also evidence that some German Jewish property in Sweden was liquidated after the war.

Law and the Victims' Welfare Act (setting up the General Settlement Fund) (Federal Law Gazette No. 12/2001) (Austria).

Countries such as Greece and Italy relied upon laws passed immediately after the war for restitution and repair of communal property, for example, Law DLG 736/1948 (extending the provisions of DLG 35/1946 to non-Catholic buildings of worship, which were destroyed or damaged during the war) (Italy).

For Belgium and Luxembourg, communal property confiscation and damage was more isolated, and the Jewish communities were compensated directly for damages after the war. For Norway, as a result of its national commission of inquiry established in the late 1990s, a comprehensive settlement with the Jewish community was made to compensate for the economic and physical liquidation of the community, and for the local preservation of Jewish culture and the Jewish community.

In Eastern Europe, communal property restitution legislation of some type—be it applicable to both Holocaust-era confiscations and denationalization, or just denationalization—has been passed in Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Slovakia, Slovenia, and Serbia.

Bulgaria, Estonia, Hungary, Poland, and Slovakia all passed communal property restitution legislation in the early 1990s that covered property confiscated during the Holocaust era and during the Communist era, for example, Act No. 282/1993 (on the Mitigation of Certain Injustices Caused to Churches and Religious Communities) (Slovakia), and the 1997 Law on the Relationship Between the State and Jewish Communities (Poland). In Slovakia, the communal property restitution law applied generally to property seized *after* 1945, but a special provision permitted Jewish communities to file claims dating back to 1938.

For Latvia, Lithuania, and Romania, limitations written into their communal property restitution laws from the early 1990s—which addressed restitution of communal property confiscated during both the Holocaust era and Communist era—made it difficult for Jewish communities to receive restitution or compensation for communal property, for example, the 1992 Law of Restitution of Property to Religious Organizations (Latvia). However, between 2011 and 2016 each of these countries passed specific legislation facilitating the return of or compensation for formerly Jewish communal property to the Jewish community, for example, the 2011 Good Will Compensation Law (Lithuania), the 2016 laws returning five pieces of property to the Jewish community (Latvia), and 2016 legislation addressing community successorship and forced "donation" issues (Romania). For countries such as Latvia, recent communal property legislation is a positive development. But ownership over many other formerly Jewish communal properties in Latvia remains in dispute and the properties are not subject to current restitution legislation.

Regarding countries in the Balkans, Croatia, Macedonia, and Slovenia passed restitution laws in the early 1990s which covered only Communist-era property confiscations and excluded property that was taken during the Holocaust. And in the case of Croatia, its law also did not cover properties that were not directly owned by Jewish organizations, for example, Law No. 92/96 (on Restitution/Compensation of Property Taken under the Yugoslav Communist Rule) (Croatia), and the 1991 Denationalization Act (Official Gazette RS, No. 27/91) (Slovenia).[20] The laws addressed both private and communal property that had been confiscated during the Communist era. Similarly, Serbia's 2006 Law on the Restitution of Property to Churches and Religious Communities only covers property

[20] Note, however, that in 2002, the government and the Jewish Community of Macedonia settled all remaining Jewish communal property claims.

confiscated *after* 1945. Only Bosnia-Herzegovina and Montenegro have failed to enact communal property restitution legislation covering either Holocaust-era confiscations or Communist-era takings, or both.

In Belarus, Moldova, and Russia, property has been returned to Jewish communities only on an ad hoc basis. In Ukraine, there are a variety of regulations and decrees, but no specific law that governs communal property restitution. While some property is being returned to the Jewish community in Ukraine, it is being carried out at a much slower rate than property belonging to other religious institutions.

For Cyprus, Denmark, Finland, Ireland, Malta, Portugal, Spain, Sweden, Switzerland, and the United Kingdom, no communal property was confiscated during the Holocaust era. As a result, there is no specific communal property restitution legislation.

Heirless Property

Heirless property is described in the Terezin Declaration Guidelines and Best Practices for the purpose of restitution as:

> property which was confiscated or otherwise taken from the original owners by the Nazis, Fascists and their collaborators and where the former owner died or dies intestate without leaving a spouse or relative entitled to his inheritances. . . . From these properties, special funds may be allocated for the benefit of needy Holocaust (Shoah) survivors from the local community, irrespective of their country of residence. From such funds, down payments should be allocated at once for needy Holocaust (Shoah) survivors. Such funds, among others, may also be allocated for purposes of commemoration of destroyed communities and Holocaust (Shoah) education.
>
> (Terezin Best Practices, para. j.)

Heirless stolen property has received the least legislative attention, for the obvious reason that there are no direct claimants to the property. Heirless property restitution presents the most challenging problem in addressing the lingering injustice from the genocide of the Jews committed in Nazi-occupied Europe, where almost the entire Jewish community in certain countries of Europe was wiped out. In such instances, equity principles dictate that it would be inappropriate to apply the usual rule that heirless property simply reverts (escheats) to the state. As Elazar Barkan explains, using the example of Jewish communal property in Czechoslovakia:

> By law, since the Hapsburg premodern period, heirless property reverts to the state. Yet since the genocide created heirless property to an unprecedented extent, the community has a strong moral claim for the property of its members who were murdered in the Holocaust. The notion that the state, rather than the community, would be the beneficiary of this property may have been legally correct but was viewed by Jews outside the Czech Republic as morally offensive. The moral justification for restitution has collided with the new realities of privatization. Pragmatically, rapid privatization severely limited possible restitution because much of the potential property for restitution has been transferred to private ownership.[21]

[21] Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York: W. W. Norton & Company, Inc. 2000), at 150–151.

There are more than a dozen European countries that have not enacted heirless property laws. To comply with what the Terezin Declaration required, and what certain provisions from the 1947 Peace Treaties demanded, states would have to break with established European laws: where there are no heirs to immovable property, the state becomes the owner of the property (known as escheat). In the instance of property made heirless as a consequence of the Holocaust, the Terezin Declaration urged that the property be used for the benefit of Holocaust survivors most in need. In countries where the overwhelming majority of Jews did not survive the Holocaust, such as Poland, a large amount of heirless property remains unreckoned.

Austria, Belgium, France, Germany, Greece, Hungary, Italy, Macedonia, the Netherlands, Norway, Romania, Serbia, and Slovakia have all technically enacted heirless property legislation. Yet, a list of enacting countries fails to capture whether the country has fulfilled the letter and spirit of the Terezin Declaration. For example, while Romania has an heirless property law on its books (Law No. 113/1948, passed in connection with obligations under the 1947 Paris Peace Treaty), the law was never meaningfully implemented. Likewise, Hungary has taken certain legislative measures with respect to heirless property since 1997, but the Jewish community views these measures as only a "down payment" by the government against the value of all heirless property. Conversely, while the Czech Republic does not technically have a special heirless property law—all heirless property, even Jewish property, escheats to the state—the Czech Republic has acknowledged and acted upon a moral duty to provide care for its survivors. The positive effect of those measures, for example, the establishment of the 2001 Czech Endowment Fund for Holocaust Victims, concretely demonstrates the principles underpinning the use of heirless property funds for the benefit of Holocaust survivors.

In general, Western European countries enacted heirless property legislation in the immediate postwar years, for example, the 1955 State Treaty (Austria), the 1947–1949 Allied Restitution Laws (West Germany), and Law DLCPS 364/1947 (Italy). For most Eastern European countries, which fell under Communist rule almost immediately after World War II, heirless property legislation, either partial or comprehensive, is a more recent construct, for example, Act X of 1997 (on the implementation of provisions included in Article 27, Item No. 2, of Act XVIII of 1947, related to the Peace Treaty of Paris) (Hungary), 2016 Law on Elimination of Consequences of Property Confiscation of Heirless Holocaust Victims (Serbia), and the 2002 Partial Financial Compensation of Holocaust Victims in the SR (Slovakia). It has also been the case that, following the work of historical inquiry commissions, some Western European countries have made provisions for heirless property, for example, Belgium and Norway.

Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Latvia, Lithuania, Luxembourg, Moldova, Montenegro, Russia, Poland, Slovenia, and Ukraine have not enacted heirless property legislation. The majority are Eastern European countries. Of particular note are the Baltic States and Poland, which had the highest percentage of deaths in their Jewish populations in all of Europe, and correspondingly, likely the largest percentage of heirless property due to the number of deaths. Two of the countries can also be deemed exceptions to the requirements of heirless property legislation: Denmark, where the heroic efforts of ordinary Danes resulted in few Danish Jews dying during the war or property stolen, and Luxembourg, where its historical commission in 2009 found only a few isolated instances of heirless property.

Finally, Cyprus, Finland, Ireland, Malta, Portugal, Spain, Sweden, Switzerland, and the United Kingdom were not occupied during the war. As a result, no property was confiscated that might have eventually become heirless.

WHY HOLOCAUST-ERA PROPERTY RESTITUTION STILL MATTERS

If fulfilled, the commitments in the Terezin Declaration made by countries more than 60 years after the fall of Nazism bring a measure of long-overdue justice to Holocaust victims and their heirs.[22] Though far from perfect, the widespread adoption of at least some form of restitutionary legal regime in virtually all European countries in the last 70 years, and especially beginning in the 1990s, has resulted in far more property returning to its rightful owners than would have otherwise been the case.

The Study highlights another equally important development, that was a historical first in the international community. Countries took steps to provide "some measure of justice" through restitution to a group of victims solely because they were the targets of persecution and genocidal extermination. The Study and the chapters in this book chronicle in detail how these efforts contributed to a growing body of law on reparations, which has been supported by more than two decades of substantial state practice. Countries' acceptance and implementation of the Terezin Declaration principles underscore a willingness to amend existing legislation or pass new legislation specifically in light of Terezin commitments. Such state practice acts as a model and continuing call for states to commit to and engage in post-atrocity property restitution.

Yet, as long as the proceeds of mass theft that accompany genocide remain in the hands of those not entitled to it, post-Holocaust justice demands that the stolen assets be returned to their rightful owners or heirs. The answer provided by international practice today to the question asked of the Polish Jew in 1939–1943, *Since you are going to die anyway, why should someone else get your boots? Why not give them to me so I will remember you?* is: *The boots do not belong to you. They rightfully belong to me and my own. Give them back.*

[22] *See* Michael R. Marrus, *Some Measure of Justice: The Holocaust Era Campaign of the 1990s* (Madison, WI: University of Wisconsin Press 2009).

ONE

Albania

A. OVERVIEW

On April 7, 1939, on the eve of World War II, Italy invaded and annexed Albania. After the Axis powers (Germany, Italy, Bulgaria, Hungary, and Romania) carved up Yugoslavia in 1941, Kosovo became part of Italian-occupied Albania. When Italy surrendered to the Allied powers in 1943, Germany occupied Albania and Kosovo.

The treatment of Jews varied greatly between Albania and Kosovo. In general, Albanian Jews were protected during the Italian occupation, but they did face certain restrictions on their liberty and in some instances were required to move from the coast to inland towns. Foreign Jews who had found temporary refuge in Albania were by law supposed to be repatriated, but in practice were not expelled. They were instead put into concentration camps in Albania's interior. When the Nazis occupied Albania after Italy's surrender in 1943, they attempted to implement their Final Solution. The first step was collecting lists of Jews in each town. Albanians and Jews alike would not turn over the lists. During this period, many Jews (refugees and nationals) went into hiding, and the Albanian population (comprising Muslims, Eastern Orthodox, and Catholics) protected them. Many scholars have attributed the compassion of numerous Albanians toward Jews as a display of religious tolerance and *besa*—a national belief that obliges Albanians to provide uncompromising assistance to anyone seeking protection. (*See* Norman H. Gershman, *Besa: Muslims Who Saved Jews in World II* (2008).) According to Yad Vashem, only one family from Albania was deported and died in Pristina in Kosovo. (*See* Yael Weinstock Mashbaum, "'When Religious Prejudice and Hate Did Not Exist': Jews in Albania," Yad Vashem ("*Mashbaum*") (last accessed December 13, 2016).)

The Jewish population in Kosovo (attached to Albania in 1941) suffered comparatively more during World War II. Many Jewish refugees entering Kosovo were returned to places such as Belgrade, or were shot. In 1942, the Italians turned over lists of Jews in Kosovo to the Nazis, who then demanded they be handed over to German control. Some were turned over and murdered, and others went to camps in Albania or were taken to Albanian cities where locals protected them. In 1944, with the assistance of Albanian SS *Skanderbeg* troops, the Nazis deported Jews from Kosovo to the Bergen-Belson camp in Germany, where they were killed. Estimates of the number of Jews in Kosovo who were murdered during the Holocaust range from approximately 200 to more than 600.

Before World War II, approximately **200** Albanian Jews and **400** Jewish refugees (mainly from Germany and Austria) were in Albania. At the end of the war, there were

Searching for Justice after the Holocaust. European Shoah Legacy Institute.

approximately **1,800** Jews in Albania. By 1946, most had returned to their home countries and approximately **157** Jews were left in Albania.

Albania was the only Nazi-occupied country where the Jewish population increased at the end of the war. After Albania was liberated at the end of World War II, the country fell under Communist rule and was first known as the People's Republic of Albania, then later, the People's Socialist Republic of Albania. During the subsequent half century of Communist rule in Albania, religion was outlawed. In 1991, as the end of Communism drew near, almost all of the 300-person Jewish community in Albania emigrated to Israel. Estimates of the size of the current Jewish population range from **40** to **200**.

At the end of World War II, as an occupied country, Albania was not a party to an armistice agreement or any treaty of peace, which affected the return of property.

We are not aware of any settlement agreements between Albania and other countries for property belonging to their nationals confiscated during the Holocaust era. However, in 1995, Albania and the United States entered into a **U.S.-Albanian Claims Settlement Agreement**, which addressed claims of U.S. nationals against Albania arising from nationalization or expropriation of property.

The Republic of Albania was established in 1992 after the fall of Communism. Albania became a member of the Council of Europe in 1995 and ratified the European Convention on Human Rights in 1996. As a result, suits against Albania claiming violations of the Convention are subject to review by the European Court of Human Rights (ECHR). Albania was granted European Union candidate status in 2004.

Albania endorsed the Terezin Declaration in 2009 and the Guidelines and Best Practices in 2010.

As part of the European Shoah Legacy Institute's Immovable Property Restitution Study, a questionnaire covering past and present restitution regimes for private, communal, and heirless property was sent to all 47 Terezin Declaration governments in 2015. No response was received from Albania.

1. Private Property Restitution

Private immovable (real) property, as defined in the Terezin Declaration Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933–1945, Including the Period of World War II ("Terezin Best Practices") for the purpose of restitution, is:

> property owned by private individuals or legal persons, who either themselves or through their families owned homes, buildings, apartments or land, or who had other legal property rights, recognized by national law as of the last date before the commencement of persecution by the Nazis, Fascists and their collaborators, in such properties.
>
> (Terezin Best Practices, para. b.)

Albania does not have any restitution and/or compensation laws relating to Holocaust-era confiscations. There is little information regarding the treatment of Jews in Albanian concentration camps and what happened to Jewish property in coastal towns during the Italian occupation, when Jewish families were required to move inland.

Immediately after World War II, all private property in Albania was nationalized under Communist authorities—irrespective of the owners' race, religion, or ethnicity. In 1992, as Albania shifted away from Communism, laws were enacted to protect property rights. They included legislation on restitution/compensation of private property confiscated during

the Communist period, such as **Law No. 7512 of 10 August 1991** (privatization law), **Law No. 7652 of 21 December 1992** (rights of tenants to buy/sell state-owned flats), and **Law No. 7501 of 19 July 1991** (privatization of agricultural land). The first property restitution law was passed in 1993, **Law No. 7698 of 15 April 1993**. The most recent immovable private property restitution law is **2004 Law No. 9235 on Restitution and Compensation of Property (and amendments)**. It provides for restitution or compensation (at current market value) of property expropriated since November 29, 1944 (and also for property taken pursuant to a 1944 war profits tax). With limited exception, claims had to be filed by **December 31, 2008**.

There has been considerable criticism about the implementation of **Law No. 9235**, including judicial and administrative deficiencies, inability to access relevant archives, and, at least initially, that much of Albania's land was not registered with the government. In addition, the Property Restitution and Compensation Agency has been unable to obtain adequate funds or lands to satisfy successful claims (according to a European Parliament study, as of 2010 no land fund for payment of claims with in-kind property had been established). (*See* European Parliament—Directorate-General for Internal Policies, "Private Properties Issues Following the Change of Political Regime in Former Socialist of Communist Countries—Study," April 2010, p. 46.)

Hundreds of cases concerning Albania's property restitution regime have been filed with the European Court of Human Rights. Many cases relate to allegations of violations of Article 6 § 1 of the Convention (regarding the right to fair trial) and Article 1 of Protocol No. 1 (regarding the right to peaceful enjoyment of one's possessions). (*See, e.g., Driza v Albania*, EHCR, App no. 33771/02, Judgement of 13 November 2007; *Bushati and ors v Albania*, ECHR, App no. 6397/04, Judgement of 8 December 2009; and *Ramadhi v Albania*, ECHR, App no. 38222/02, Judgement of November 2007.) In 2007, the ECHR found that nonenforcement of domestic judgments and administrative decisions regarding restitution/compensation to former owners was a systemic problem in Albania. (*Ramadhi*, para. 90.) In 2015, the European Commission reported that Albania was finalizing a new law to set up a mechanism to enforce restitution/compensation decisions.

We are not aware whether any Albanian Jews filed claims under this law, and, if claims were filed, the number that have been successful.

2. Communal Property Restitution

Communal immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

> property owned by religious or communal organizations and includes buildings and land used for religious purposes, e.g. synagogues, churches[,] cemeteries, and other immovable religious sites which should be restituted in proper order and protected from desecration or misuse, as well as buildings and land used for communal purposes, e.g. schools, hospitals, social institutions and youth camps, or for income generating purposes.
>
> (Terezin Best Practices, para. b.)

During the Communist period after World War II, religion was banned in Albania. In 1991, as the country was transitioning from Communism to a market economy, nearly all of Albania's Jewish population left for Israel. Today there is little organized communal life. In 2010, Chabad opened a synagogue in Tirana and appointed an unofficial chief rabbi of Albania (who is based in Greece).

Under the **2004 Law No. 9235 on Restitution and Compensation of Property (and amendments)**, religious communities have the same restitution/compensation rights as natural/legal persons. In 2014, the U.S. Department of State reported some religious groups in Albania have entered into bilateral agreements with the government to address prioritized property restitution. The U.S. Department of State also reported in 2014 that notwithstanding the fact that the state restitution agency was required to give priority to properties owned by religious groups, hundreds of their claims remained unresolved. (*See* U.S. Department of State—Bureau of Democracy, Human Rights and Labor, "Albania 2014 International Religious Freedom Report" (last accessed December 13, 2016).)

We are unaware whether any communal property was confiscated from the Jewish community during World War II or during the subsequent Communist period. We are also unaware as to whether any claims have been filed by Albania's Jewish community for the return of property.

3. Heirless Property Restitution

The Terezin Declaration states "that in some states heirless property could serve as a basis for addressing the material necessities of needy Holocaust (Shoah) survivors and to ensure ongoing education about the Holocaust (Shoah), its causes and consequences." (Terezin Declaration, Immovable (Real) Property, para. 3.) The Terezin Best Practices also "encourage[s] [states] to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators." Heirless immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

> property which was confiscated or otherwise taken from the original owners by the Nazis, Fascists and their collaborators and where the former owner died or dies intestate without leaving a spouse or relative entitled to his inheritances. . . . From these properties, special funds may be allocated for the benefit of needy Holocaust (Shoah) survivors from the local community, irrespective of their country of residence. From such funds, down payments should be allocated at once for needy Holocaust (Shoah) survivors. Such funds, among others, may also be allocated for purposes of commemoration of destroyed communities and Holocaust (Shoah) education.
>
> (Terezin Best Practices, para. j.)

According to Yad Vashem, only one Albanian Jewish family was deported to Pristina in Kosovo and murdered during World War II (a second Kosovar Albanian Jewish family was also deported from Albania to Kosovo but survived). (*See Mashbaum.*) Since becoming a signatory to the Terezin Declaration in 2009, Albania has not passed any laws dealing with restitution of heirless property.

B. BIBLIOGRAPHY

ARTICLES, BOOKS, AND PAPERS

Joseph Berger, "Casting Light on Little-Known Story of Albania Rescuing Jews from Nazis," *N.Y. Times*, November 18, 2013 (http://www.nytimes.com/2013/11/19/world/europe/casting-light-on-little-known-story-of-albania-rescuing-jews-from-nazis.html).

Encyclopedia of the Holocaust (Robert Rozett & Shmuel Spector, eds., Routledge 2000).

The Encyclopedia of Jewish Life Before and During the Holocaust, Vol. 1 A–J (Shmuel Spector & Geoffrey Wigoder, eds., New York: New York University Press 2001).

European Commission, "Commission Staff Working Document—Albania 2014 Report" (http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_albania.pdf).

European Parliament—Directorate-General for Internal Policies, "Private Properties Issues Following the Change of Political Regime in Former Socialist of Communist Countries—Study," April 2010.

Bernd J. Fischer, "The Jews of Albania During the Zogist Period and the Second World War," *in NATO Science for Peace and Security Series—Strengthening Religious Tolerance for a Secure Civil Society in Albania and the Southern Balkans* (James Pettifer & Mentor Nazarko, eds. 2007).

Norman H. Gershman, *Besa: Muslims Who Saved Jews in World II* (New York: Syracuse University Press 2008).

The Jewish Virtual Library, "Albania" (http://www.jewishvirtuallibrary.org/jsource/vjw/albania.html).

Yael Weinstock Mashbaum, "'When Religious Prejudice and Hate Did Not Exist': Jews in Albania," Yad Vashem, http://www.yadvashem.org/yv/en/education/newsletter/22/main_article.asp#01.

Paul Mojzes, *Balkan Genocides: Holocaust and Ethnic Cleansing in the Twentieth Century* (Lanham, MD: Rowman & Littlefield 2011).

Daniel Perez, "Our Conscience Is Clean: Albanian Elites and the Memory of the Holocaust in Postsocialist Albania," *in Bringing the Dark Past to Light: The Reception of the Holocaust in Postcommunist Europe* (John-Paul Himka & Joanna Beata Michlic, eds., Lincoln and London: University of Nebraska Press 2013).

The United States Department of Justice—Foreign Claims Settlement Commission, "Current Programs—Albania Claims Program" (https://www.justice.gov/fcsc/current-programs).

U.S. Department of State—Bureau of Democracy, Human Rights and Labor, "Albania 2014 International Religious Freedom Report" (http://www.state.gov/documents/organization/238560.pdf).

United States Holocaust Memorial Museum—Holocaust Encyclopedia, "Axis Invasion of Yugoslavia" (https://www.ushmm.org/wlc/en/article.php?ModuleId=10005456).

United States Holocaust Memorial Museum—Holocaust Encyclopedia, "World War II: In Depth" (https://www.ushmm.org/wlc/en/article.php?ModuleId=10007314).

World Bank—Poverty Reduction and Economic Management Unit Europe and Central Asia Region, "Governance in the Protection of Immovable Property Rights in Albania: A Continuing Challenge—A World Bank Issue Brief," April 2012 (http://siteresources.worldbank.org/INTALBANIA/Resources/WB_Property_Rights_Issue_Brief_Revised_April_2012.pdf).

World Jewish Congress, "Communities: Albania" (http://www.worldjewishcongress.org/en/about/communities/al).

CASES

Bushati and ors v Albania, ECHR, App no. 6397/04, Judgement of 8 December 2009.

Driza v Albania, EHCR, App no. 33771/02, Judgement of 13 November 2007.

Ramadhi v Albania, ECHR, App no. 38222/02, Judgement of November 2007.

INDIVIDUALS

Fried, Frank, Harris, Shriver & Jacobson LLP.

Michael Dougherty, Associate, Fried, Frank, Harris, Shriver & Jacobson LLP, New York.

TWO

Argentina

A. OVERVIEW

Argentina was technically neutral for most of World War II but ended up providing substantial support to the Axis powers during the war. Even though the Allied powers constructed effective blockades off the coast of South America, Argentinian sympathizers smuggled precious metals, drugs, and other valuables to the Axis powers. Toward the end of World War II, Argentina changed its position and openly supported the Allied powers. However, at the end of the war, President Juan Perón went to great lengths to coordinate the rescue of many Nazis and provide them safe haven, money, and sometimes employment in Argentina.

In its contribution to the 2012 Green Paper on the Immovable Property Review Conference, Argentina stated that no immovable property was confiscated during World War II and that the Nazi regime never occupied the country. Thus, owing to its neutral status, no immovable property was confiscated from Jews or other targeted groups in Argentina during the Holocaust. Argentina also stated in the 2012 Green Paper that it remained committed to "education, remembrance and research on all aspects of the Holocaust."

As best as we are aware, Argentina is not a party to any treaties or agreements with other countries that address restitution and/or compensation for immovable property confiscated or wrongfully taken during the Holocaust. However, Argentina entered into at least one lump-sum settlement agreement with Yugoslavia on March 21, 1964, which pertained to Argentinian property seized in the foreign state, by the foreign state during nationalization measures instituted after World War II.

As best as we are aware, there are no laws in Argentina that permit Argentinian citizens to file claims in domestic courts for the return of immovable property, which is located in another country. Argentina's **1995 Inmunidad Jurisdiccional de Los Estados Extranjeros Ante Los Tribunales Argentinos, Law 24.488 (Judicial Immunity of Foreign States to Argentinian Courts)** provides that foreign states are immune from the jurisdiction of Argentinian courts. Certain exceptions to this general rule exist. For example, the law abrogates state immunity in Argentinian courts when the case relates to *property located in Argentina*. (*See* Article 2(f).) However, there is not similar abrogation of sovereign immunity where the case involves *property located in another country*.

Nearly **210,000** Jews immigrated to Argentina between 1901 and 1944. At the end of World War II, in 1947, there were approximately **250,000** Jews in Argentina. Today, Argentina's Jewish community of **240,000** is the largest of any Latin American country and

Searching for Justice after the Holocaust. European Shoah Legacy Institute.

is the sixth largest Jewish population in the world outside of Israel. As of 2004, there were also approximately **300,000** Roma in Argentina.

The umbrella Jewish organization in Argentina is **Delegación de Asociaciones Israelitas Argentinas** (**DAIA**). **DAIA** was founded in 1933 and began operating under its current name in 1935. **DAIA** encompasses more than 125 Jewish institutions throughout Argentina. The organization endeavors to fight anti-Semitism, discrimination, and xenophobia, and also aims to ensure the security of the institutions and members of the Jewish community in Argentina.

Argentina endorsed the Terezin Declaration in 2009 and the Guidelines and Best Practices in 2010.

As part of the European Shoah Legacy Institute's Immovable Property Restitution Study, a questionnaire covering past and present restitution regimes for private, communal, and heirless property was sent to all 47 Terezin Declaration governments in 2015. Argentina sent a response in March 2016. (*See* shoahlegacy.org.)

B. BIBLIOGRAPHY

ARTICLES, BOOKS, AND PAPERS

"2012 Green Paper in the Immovable Property Review Conference" (http://shoahlegacy.org).

Delegación de Asociaciones Israelitas Argentinas (http://www.daia.org.ar/2013/index.php).

The Jewish Agency for Israel, "Argentina" (http://www.jewishagency.org/jewish-community/content/24346).

"Meeting of Special Envoys for Holocaust Issues—'Five years on,'" European Shoah Legacy Institute, September 26, 2014 (http://shoahlegacy.org).

"Orthodox Jew to head Argentina's Jewish umbrella group for first time," Haaretz.com, November 23, 2015 (http://www.haaretz.com/jewish/1.687772).

Raquel Rosenbloom, "Being Jewish in Buenos Aires," Berkley Center for Religion, Peace and World Affairs (http://berkleycenter.georgetown.edu/letters/being-jewish-in-buenos-aires).

"The Statistics of Jews," *in The American Jewish Year Book (1946–47)* (Harry Schneiderman & Julius B. Maller, eds., Philadelphia: Press of the Jewish Publication Society 1946) (http://www.ajcarchives.org/AJC_DATA/Files/1946_1947_13_Statistics.pdf).

Druzhemira Tchileva, "*Emerging Romani Voices from Latin America*," European Roma Rights Centre, May 27, 2004 (http://www.errc.org/article/emerging-romani-voices-from-latin-america/1847).

World Jewish Congress, "Communities—Argentina" (http://www.worldjewishcongress.org/en/about/communities/ar).

THREE

Australia

A. OVERVIEW

Australia declared war on Germany on September 3, 1939 and supported the Allied powers during World War II. One million Australians participated in the war, with about 500,000 serving in the armed forces overseas in Germany, Italy, the Mediterranean region, North Africa, Japan, East Asia, and the Pacific.

There is no evidence that any immovable property was confiscated from Jews or other targeted groups in Australia during World War II by the Australian government or Nazi Germany.

As best as we are aware, Australia is not a party to any treaties or agreements with other countries that address restitution and/or compensation of immovable property, which was wrongfully taken during the Holocaust.

As best as we are aware, there are no laws in Australia that permit Australian citizens to file claims in domestic courts for the return of immovable property, which is located in another country. Australia's **Foreign States Immunities Act 1985** (Act No. 196 of 1985 as amended) (**FSIA**) provides that foreign states are immune from the jurisdiction of the courts of Australia. The law sets out certain exceptions to this general rule. For example, the **FSIA** abrogates state immunity in Australian courts when the case relates to damage or loss of tangible property that occurred *in Australia* (Article 13(b)) or related to a state's interest in, or possession or use by the state of, immovable property *in Australia* (Article 14(1)(a)). However, the law does not include any similar abrogation of sovereign immunity where the property in question is located *in another country* (in contrast to, e.g., the United States' **Foreign Sovereign Immunities Act**, 28 U.S.C. § 1605(a)(3), which abrogates sovereign immunity "when rights in property taken in violation of international law are in issue, and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States.").

Australia has been described as a "decaying Anglo-Jewish outpost" prior to World War II. (*See* Dan Goldberg, "Jews Down Under Are on the Rise, but for How Long?," *Haaretz*, July 3, 2012 (last accessed December 13, 2016).) However, in the late 1930s, Australia received approximately 7,000—mainly Germany and Austrian—Jewish refugees. After

Searching for Justice after the Holocaust. European Shoah Legacy Institute.

World War II, Australia admitted tens of thousands more Holocaust survivors into the country. Australia's 2011 census put its Jewish population just under **100,000**.

The 2011 census recorded **776** Roma living in Australia. That number is considered low, and it is estimated that the Roma population may be far larger, between 20,000 and 25,000.

The **Executive Council of Australian Jewry** was established in 1944 and works as an advocate for the Jewish community in Australia. Its priorities include providing relief and rescue for persecuted Jews, combating anti-Semitism, and campaigning on behalf of the Jewish homeland.

Australia endorsed the Terezin Declaration in 2009 and the Guidelines and Best Practices in 2010.

As part of the European Shoah Legacy Institute's Immovable Property Restitution Study, a questionnaire covering past and present restitution regimes for private, communal, and heirless property was sent to all 47 Terezin Declaration governments in 2015. Australia sent a response in September 2015. (*See* shoahlegacy.org.)

B. BIBLIOGRAPHY

Department of Immigration and Border Protection, "The People of Australia: Statistics from the 2011 Census" (http://www.border.gov.au/ReportsandPublications/Documents/research/people-australia-2013-statistics.pdf#search=2013%20Statistics).

Executive Council of Australian Jewry Inc. (http://www.ecaj.org.au/).

Dan Goldberg, "Jews Down Under Are on the Rise, but for How Long?," *Haaretz*, July 3, 2012 (http://www.haaretz.com/jewish/news/jews-down-under-are-on-the-rise-but-for-how-long-1.448465).

Jennifer Golub & Renae Cohen, *What Do Australians Know About the Holocaust?*, American Jewish Committee (1994).

J-Wire: Digital Jewish news daily for Australia and New Zealand (http://www.jwire.com.au/).

Jewish Sydney (https://www.jewishsydney.com.au/).

Jews Down Under: An online magazine for Australian Jews (http://jewsdownunder.com/).

Naomi Levin, "Federal Government's Shoah pledge," *The Australian Jewish News*, July 9, 2009 (http://www.jewishnews.net.au/federal-government's-shoah-pledge/4720) (last accessed March 10, 2016).

The Memory of the Holocaust in Australia (Tom Lawson & James Jordan, eds., London: Vallentine Mitchell 2008).

Seth Mydans, "Australia Is Investigating 200 for Nazi Crimes," *N.Y. Times*, February 4, 1988, p. A5 (http://www.nytimes.com/1988/02/04/world/australia-is-investigating-200-for-nazi-crimes.html).

Returned & Services League of Australia, "Australia's Military Heritage: The Second World War" (http://rslnsw.org.au/commemoration/heritage/the-second-world-war).

Suzanne D. Rutland, "Jewish Immigration After the Second World War: 'The Transformation of a Community,'" Israel & Judaism Studies (www.ijs.org.au/Jewish-Immigration-after-the-Second-World-War/default.aspx).

States Immunities Act 1985 (Act No. 196 of 1985 as amended) (https://www.legislation.gov.au/Details/C2010C00145).