

Communal Property

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UNITED STATES

Plenary Session on Nazi-Confiscated Communal Property

Mr. Chairman, I want to thank you for agreeing to preside over our sessions on communal property today. As Chairman of the House International Relations Committee, you have proudly been one of the leaders on this issue in the United States Congress. Through the hearings that you have chaired you have brought public attention to the opportunity we have had since the end of the Cold War to right this injustice. You have focused on the progress achieved by the new democracies in Central and Eastern Europe as well as on the obstacles which make early resolution of these claims difficult. Your efforts have provided a real service to the international community.

Earlier in this conference we reviewed the looted gold issue and commenced our dialogue on insurance and art. We now turn to communal property, that is the land, buildings and religious artifacts owned by religious organizations and other community-based groups in Central and Eastern Europe prior to World War II. This property has a significant value; returning it to its rightful owners, or compensating owners, will correct yet another of the injustices of the Holocaust era.

Before going into the communal property issue in more detail, I want to mention briefly the twin issue of private property. In planning this Conference, we concluded that the private property issue was too complex to be dealt with adequately in the time available. I do not want to leave the impression, however, that by omitting private property we are somehow downgrading or ignoring that issue. The contrary is the case. Omitting private claims from the agenda of this Conference acknowledges the complexities which those claims pose and the need to consider that issue in a different context. But it is essential that governments make a start to return private – or pay compensation.

Communal property was one of the early targets of the Nazi regime. By expropriating churches, synagogues and other community-controlled property – such as community centers and schools – the Nazis denied religious communities the temporal facilities which

held those communities together. After the war, the authoritarian regimes that succeeded to power nationalized the property, compounding the persecution of the Nazis. In the former Soviet Union, the communist government expropriated property as part of Stalin's effort to eliminate religion from Soviet life. Religious objects, such as Torah scrolls and artifacts of a religious nature, also fell victim to authoritarian regimes both during and after World War II.

While the circumstances of each parcel of real estate and artifact are different, the component parts of the communal property issue share a common characteristic: governments improperly took this property from the rightful owners without compensation. Now it is our common responsibility to ensure that, finally, justice is done.

Addressing these issues in a forthright and sympathetic manner is part of the broader process of moving to closure on the questions left open after World War II and which merely became more complicated during the Cold War. For those states which gained independence as a result of the collapse of the Soviet Union, dealing with these issues is part of the broader challenge of building democratic institutions and establishing the rule of law.

As many of you know, the issue of communal property restitution has a special importance for me. Since 1995, I have had the privilege of leading a U.S. government initiative to promote the just resolution of this issue. My role as special envoy has brought me both satisfaction and frustration. Satisfaction during visits to communities of Holocaust survivors in Central and Eastern Europe which have endured 50 years of oppression under Nazi and Communist governments. Satisfaction to see that many are rebuilding their communities. Frustration that these double victims – who lost nearly everything to the Nazis and who endured another 40 years of repression under communist governments – continue to see justice delayed.

The U.S. Government encourages the return of communal property, and supports the revitalization of religious and other communities. We want to see schools and community centers included in the process. We encourage governments to establish equitable, transparent and non-discriminatory procedures to evaluate specific claims, and to work closely with local religious communities to resolve those claims. We feel that cemeteries should never be desecrated or used for any other purpose – to maintain in dignity those buried there.

Let me cite one example of a restitution success story which I believe is symbolic of the kind of property transfer which can benefit us all. Part-of the commemoration of the 60th anniversary of Kristallnacht

last month was the re-dedication of a small synagogue in Oswiecim, Poland. The name may not be familiar to many of you but the German name of that town, Auschwitz, is all too well-known. Here, a short distance from the infamous Nazi death camp, the Polish Jewish community has used Poland's new restitution law to reclaim one of the city's former synagogues, used for a commercial purpose in more recent years. Together with a small nearby house, the synagogue will serve as a museum to show the daily life of Oswiecim's once substantial Jewish population during the pre-Nazi period. The restoration of this synagogue in an area which is the symbol of the Holocaust shows how a well-conceived, carefully administered restitution law can work.

Progress has been made on this subject in many countries. Recent legislation in Poland and Hungary has laid a solid foundation for sound restitution programs. Hungary established a public foundation to claim and receive communal property, and also established a fund which will pay Holocaust survivors small monthly pensions. Other countries are actively dealing with this issue.

But while a start has been made, we should be under no illusion about the difficulties of this task. As the Department's Special Envoy for Property Restitution in Central and Eastern Europe, I have visited eleven countries, many more than once, to address this issue.

More recently, my colleague, Ambassador Henry Clarke, visited several countries to gain a more detailed appreciation of the complexities of restituting communal property. We have both been impressed with the progress which has been made in many instances. At the same time, we have observed obstacles which make the resolution of this issue a daunting task.

For example, despite the commitment of national governments to restitution, local governments often block implementation. In some countries laws on restitution apply only to narrowly defined religious properties, leaving out the far more numerous communal properties such as schools and community centers that were and are so important to these communities. The legitimate interests of the current tenants can be used to block progress. Access to records that can help clarify claims is often difficult. Complex and costly legal procedures can discourage claimants. The issue of who should receive and manage restituted property can generate controversy and slow the process.

We have made clear that we support a process of communal property restitution that reflects a commitment to religious freedom and tolerance, a sense of justice, and the concept that property can be expropriated only through due process and for prompt and effective

compensation. I think the governments represented here today share those basic tenets. But while we seek consistent standards for restitution, we also recognize the widely divergent circumstances that exist where this property is located and the need to take these circumstances fully into account. It appears obvious that no single grand solution will work effectively in all countries.

However, my hope is that to guide our efforts we can agree on a system of principles along the following lines:

First, we want to encourage national governments to take the necessary steps to ensure that restitution policies established by the national government are implemented at regional and municipal levels of government. Differences between various levels of government should not thwart the effort to return property to legitimate owners. Having a federal government ourselves, we recognize the constitutional and legal problems which can arise on issues having implications at both national and local levels. Nevertheless, I would hope that we in this Conference could agree that the resolution of this issue requires each country to have some uniformity of policy and administrative practice in this area.

Secondly, as a general principle, communal property should be eligible for restitution irrespective of whether the property had a religious or a secular use. There may be cases of secular property such as extensive agricultural land or factories for which restitution is not possible. Fair treatment may require new legislation which more properly defines and describes property eligible for restitution.

Thirdly, legal procedures for filing claims should be clear and simple. Complex legal procedures delay or deny the justice we all seek in resolving communal property issues. Those preparing claims should have easy access to archives.

Fourthly, we should encourage the establishment of foundations jointly managed by local communities and international groups to aid in the preparation of claims and to administer restituted property, where these are needed to assist the local communities. Such foundations enable international groups to share the burdens, and potentially some of the benefits, of the restituted property.

Finally, elected governments must make provisions for the present occupants of restituted property. In most cases, those now using property wrongfully seized in the past had no hand in its original expropriation. We therefore urge governments to establish procedures that will allow for the restitution of as many properties as possible, and that take into account legitimate needs of the current tenants.

We hope that a consensus on principles can give new impetus to the encouraging initiatives already underway in many countries, and that this intergovernmental forum can be a catalyst for many other belated efforts to address this unfinished business of the twentieth century. With a bit of good will and some imagination, we will be able to implement these or similar principles to resolve communal property claims.

The traumatic events of the 1930's and 1940's followed by the long period of totalitarian communist rule, destroyed trust within religious communities, among religious communities and between religious communities and governments. A successful communal property restitution process will help to re-establish trust, understanding and acceptance at all these levels.

The issue will not simply vanish; the fact that we are discussing it more than fifty years after the war is ample evidence that this question has considerable staying power. What could occur, of course, is that delay and obfuscation could simply run the clock out on Holocaust survivors, most of whom are already elderly. I think I speak for the countries represented here when I say that to delay justice further would dishonor us all. We have a clear obligation, which we must meet now. The right and honorable solution is to deal with this issue in an expeditious manner, and to do so through a process that is transparent, fair and nondiscriminatory. This will take courage, vision and persistence. Given the passage of over fifty years, absolute justice may not be obtainable for either the original owners or the current occupants of disputed real property. But producing a measure of justice for thousands who suffered most will help all of us to come to terms with history as we end the 20th Century and begin a new millennium.

I believe that we should proceed from the premise that this is a problem which can be solved. With that as our starting point, I am confident that we can reach mutually agreeable formulas for bringing this issue to closure. I look forward to a profitable exchange of views in this morning's plenary, and in the breakout session this afternoon.

Mr. Ignatz Bubis

PRESIDENT
EUROPEAN JEWISH CONGRESS

*Statement translated from the original German by the
U.S. Department of State Office of Language Services, Translating Division*

Plenary Session on Nazi-Confiscated Communal Property

Mr. Mikva, Mr. Gilman, Mr. Eizenstat, Ladies and Gentlemen:

Let me first of all ask your understanding for giving my speech in German, because I find it easier to express myself clearly in that language. I shall limit my remarks to matters relating to restitution of real estate property in the Federal Republic [of Germany] and the countries of the former East Bloc.

It is bad enough that it has taken us more than 50 years after the end of the nazi dictatorship to talk about this.

In Western Europe in general, and especially in the Federal Republic, there have been laws on compensation for the injustices suffered and the restitution of assets. As far as real estate is concerned, this has been implemented in an exemplary fashion in the Federal Republic and has long since been concluded. After the unification of the two German states, the Federal Republic undertook treaty obligations to return real properties to their former Jewish owners in the same manner, or to provide compensation, with restitution being given priority vis-à-vis compensation. A large part of these restitutions has already been carried out, and where this was not possible, compensation has been provided. It is true that there are a few cases left to decide, but they, too, are nearing completion. Among the cases yet to be decided are, among other things, emergency sales forced on the Jewish communities by the former rulers of the former GDR.

Formerly, the Jewish communities in Germany were very rich. Today, the new Jewish communities are very poor and consist mostly of refugees or their descendents. Without support from the federal government and the federal states, the existence of the Jewish communities today would be in jeopardy. This, too, is a consequence of

the nazi dictatorship that is still being felt to this day. Without the help of the federal government and the federal states, even the rebuilding of synagogues would be impossible.

As concerns the countries of the former East Bloc, restitution is coming along very unevenly. Some countries, as for instance Ukraine, categorically refuse to return former Jewish real estate, be it private or communal. One must take into account in this connection that the expropriations took place as early as in the 1920s, after the formation of the Soviet Union. Other countries, such as the Czech Republic, Slovakia, and Poland, are at least partially willing to return communal real estate, though not private properties. The fairest agreements could be concluded and implemented with Hungary. It is true that there are positive agreements with Romania, but none of them have been implemented so far. I am mentioning all of this in order to make clear how differently compensation and restitution matters are handled in different places.

It may be true that one or the other country can claim that the statute of limitations has run out, however, this should not have anything to do with the moral aspect. Today, hundreds of thousands of refugees are living in foreign countries and are still dependent on assistance by charitable organizations. These people must receive assistance through compensation for heir-less assets.

Another subject is the archives, which very often could shed light on possessions and property. In this regard, I would like to appeal to all countries to open their archives to research in order to facilitate justice.

In conclusion, I would like to thank the initiators of this Conference, especially the Congress and the Senate, as well as the U.S. Administration. Special appreciation is also owed to the Department of State, and especially to Stuart Eizenstat, who began working on this matter years ago, when he was still ambassador to the EU in Brussels.

Thank you for your attention.

Ms. Erzsébet Pék

SECOND SECRETARY, MINISTRY OF FOREIGN AFFAIRS
HUNGARY

Plenary Session on Nazi-Confiscated Communal Property

As the representative of the Republic of Hungary I would like to express my government's gratitude to the United States Holocaust Memorial Museum and the United States Department of State for hosting the Conference. My delegation is well aware of the complexity and difficulty of the issues to be solved. At the same time, we are of the view that this Conference presents an excellent opportunity to evaluate the historical facts and will contribute to finding a just resolution for the Holocaust injustices.

In Hungary, during the five decades under totalitarian political regimes, the property rights of a great number of citizens have been gravely violated. After the historical changes of 1989-1990 it has been the obligation of the Hungarian State to recognize and protect private property and to compensate the citizens for wrongful acts caused by the State. Within this context the Hungarian Parliament has enacted two fundamental laws, Act XXV of 1991 on partial compensation for damages unlawfully caused by the State to properties owned by the citizens aggrieved by the application of regulations enacted after June 8, 1949, and Act XXIV of 1992 for the damages caused by regulations, enacted between May 1, 1939 and June 8, 1949. These acts provided compensation to all persons whose property had been injured either by the racial discriminating regulations enacted after May 1, 1939, or by the measures of nationalization. According to the above mentioned two acts, partial compensation was due not only to Hungarian citizens, but also to persons who had been Hungarian citizens when the injury occurred, to persons who had been aggrieved in connection with deprivation of their Hungarian citizenship, and to those non-Hungarian citizens who had their ordinary residence in Hungary on December 31, 1990. If the claimant had deceased, his descendant, or in absence of such, the surviving spouse was entitled to lay claim for compensation. With the enactment of Act XXIV of 1992, Hungary also fulfilled its obligations under Art. 27. par. I of the Paris Peace Treaty, according to which

Hungary was required to pay fair compensation to persons who aggrieved damages due to their race or religion.

At the same time, the Hungarian Constitutional Court in a decision in 1993 stated that the implementation of Art. 27. par. 2 of the Paris Peace Treaty was still missing. That paragraph of the Peace Treaty obliged Hungary to transfer the claims of the former owners without legal successors to the interest organizations of the victims. The Constitutional Court gave notice to the Parliament to lift this unconstitutional state. In order to execute the above decision of the Constitutional Court, the Hungarian Parliament enacted Act X of 1997 by which the National Jewish Indemnification Fund was established by the Government. For the purposes of the Fund the Government gave indemnification vouchers of 4 billion forints transferable into life annuity, the distribution of which is to be decided by the Board of Trustees. In 1997 life annuity of 900,000 million forints were distributed, in 1998 1.8 billion, and in 1999 2.3 billion is planned in the budget. At the same time the government transferred the ownership of 7 real estates and 10 objects of art and has ensured a yearly budgetary contribution to the operational expenses of the Fund. Through the enactment of Act X of 1997 and the establishment of the Fund the Republic of Hungary fulfilled its obligation taken under Art 27 par. 2 of the Paris Peace Treaty.

A further obligation of the State was to compensate the churches for the damages unlawfully caused by the State. The basic principle of the legislation was to enable the churches to again fulfill their social role freely, without restrictions. In order to create the material and financial conditions, necessary to the fulfillment of their activities, the Hungarian Parliament has enacted Act XXII of 1991 on the settlement of the ownership relations of the properties owned by the churches. In connection with this Act it must be stressed that the measures of nationalization applied after January 1, 1948 affected all churches, and as the Hungarian Government repealed the discriminating decrees after the war, the application of nationalization in 1948 did not relate to Holocaust.

The Act, based on functional principles, made it possible for the churches to submit claims for compensation for damages caused by application of regulations enacted after January 1, 1948, on condition that the claimed real estates were used for religious, educational, social-health care or cultural purposes before the nationalization and the churches intended to use them for the same purposes. In the interest of settling the ownership relations of the real estates, a Commission was set up, comprised of the representatives of the Government and the

concerned churches. On the basis of the claims of the churches the Commission drew up the list of the real estates to be returned. The commission submitted the list to the Government for approval. Having approved, the Parliament determined the sum to be expended on the settlement. The Act made it also possible that the churches, instead of the claimed immovable, could obtain, on agreement, an adequate real estate or financial compensation.

In September 1996 negotiations started between the Government of the Republic of Hungary and the representatives of the Holy See on the financing of the civil and religious activity of the Catholic Church and among others on the settlement of the ownership of the former Catholic property. The Agreement was signed on 20th June, 1997 by the Prime Minister of the Republic of Hungary and the competent state secretary of the Holy See. According to the agreement, the Catholic Church renounced its compensation claim of 42 billion forints, on condition that the Hungarian Government pay annuity which is to be used for financing its religious activity.

The Agreement served as a basis for a comprehensive legislative process, involving the settlement of the ownership of the churches, according to which the Parliament modified the above Act, making it possible for the churches that their claims which were to be compensated not in kind, but not yet returned, or compensated can be transferred into annuity on the basis of an agreement between the Government and the concerned church. According to the claims submitted by the churches till 30th June, 1998, the basis of the annuity of the Catholic Church is the above mentioned 42 billion forints, 6.66 billion of the Hungarian Reformed Church, 4.2 billion of the Hungarian Evangelical Church and 13, 511 billion of the Association of the Hungarian Jewish Communities. The first agreement on the transfer of the claims into annuity was signed with the Association of the Hungarian Jewish Communities in October of this year.

The total number of the claims submitted by the churches is 7221. About 1000 cases were settled by direct agreement. The number of claims settled by government decision exceeds 1065. On the basis of the above decisions, 20 billion forints were paid between 1992-97 and the Government undertook to pay further 14 billion forints as compensation due till 2001. 3380 of the submitted claims remain to be settled. 1200 of these claims were renounced by the Catholic Church for the above-mentioned annuity. The Agreement between the Government of the Republic of Hungary and the Association of the Hungarian Jewish

Communities settled 157 claims. Preparation of similar agreements with the other churches is in progress.

Mr. Saul Kagan

EXECUTIVE VICE PRESIDENT
CONFERENCE ON JEWISH MATERIAL
CLAIMS AGAINST GERMANY

Plenary Session on Nazi-Confiscated Communal Property

Last month the world marked the 60th anniversary of the burning of the synagogues in Germany and Austria by Nazi mobs. This was the most extreme demonstration- of the Nazi plans to destroy the Jewish communities of Germany and Austria. As we know now, the Nazis intended not only to murder the Jews but to destroy their communities – the schools, synagogues, the old age homes, and all of the institutions of the millennium of vibrant Jewish life, culture, and traditions in Europe.

As the Third Reich conquered most of Europe, the design to destroy Jewish lives and life was brutal and merciless. The three million strong Jewish community of Poland was practically obliterated. This was the largest Jewish community in Europe and the heart of the Jewish world at that time.

As the war ended and the world awoke to the immensity of the Holocaust and began to confront the human and social carnage, we were faced with two enormous tasks: first. to bind the wounds and resettle the survivors, and, second, to establish the principle that one should not profit from murder and pillage. To paraphrase the biblical admonition: "You shall not murder-and inherit."

Immediately after the war the major Jewish organizations turned to the victorious Allies, primarily to the United States to secure restitution for Jewish property in Germany. As a result of these efforts the United States military government introduced in November, 1947, 51 years ago, the first property restitution legislation on German soil. One of the historic achievements of this law was the recognition of the principle that heirless and unclaimed property of Nazi victims should not become the property of the successor state of the Third Reich. This was a revolutionary development in international law acknowledging that ordinary legal principles could not be applied when dealing with the consequences of this enormous tragedy.

The United States military government law provided for the designation of a successor organization to recover heirless and unclaimed

property in the American occupation Zone and to use the proceeds for the benefit of survivors. Following the enactment of this law, we established the first Jewish successor organization, which recovered private and communal property in the American occupation zone. Later, similar laws were enacted by British and French military government for their respective occupation zones, as well as West Berlin. No such legislation was enacted in the Soviet zone of occupation. One of the first things we did was to use proceeds to buy prefabricated housing for the concentration camp survivors living in tents in Israel in the first year of its independence.

After the German Federal Republic came formally into existence in 1949, and thereafter, the principles of the Allied restitution legislation were subsequently incorporated into its national law.

A major task for the successor organizations was the recovery of the property of the Jewish communities and organizations such as synagogues, old age homes, hospitals, schools, cemeteries, and other institutional property.

We turned over to the newly constituted Jewish communities the buildings that they needed for the use of their community, such as synagogues and community centers. We also established the principle of sharing the proceeds with the local communities and the needs of the survivors who were rebuilding their lives and communities elsewhere.

Four decades later, upon the unification of Germany, the Claims Conference succeeded in obtaining restitution legislation along similar principles for property subject to forced sale or confiscation during the Nazi period in the former East Germany. Following the precedent of West Germany, the Claims Conference worked out with the Central Council of Jewish communities in Germany a sharing agreement for the proceeds from the sale of the assets of the former Jewish communities and organizations of East Germany.

Although the task of recovery of Jewish communal property in the former East Germany is far from complete, the principles and experience that guided us in Germany can serve as a model for similar measures in the many other countries that have not as yet fully faced the historic and moral responsibility to return Jewish communal property.

This is the challenge which the governments concerned must meet promptly. The legal principles and the methods for restitution of such property have already been tested. The needs of the local Jewish communities and Holocaust survivors around the world are great.

It is tragic that many governments have not as yet responded to this challenge. We expect this conference to bring about the universal

acceptance of the principle that Jewish communal property must be restituted and where in some specific instances restitution may not be feasible, properly compensated.

We expect the implementation of this principle to be encouraged and monitored by whatever mechanism will be evolved as a follow-up to this conference. This will be the ultimate test of the determination of the world community to help restore Jewish life which the Nazis set out to destroy.

Rabbi Andrew Baker

DIRECTOR, EUROPEAN AFFAIRS
AMERICAN JEWISH COMMITTEE

Jewish Communal Property

Plenary Session on Nazi-Confiscated Communal Property

"Why now?" seems to be the question that is most frequently asked. After fifty years have passed, why now is so much attention being given to the question of Holocaust assets. Why now is this conference taking place? Each of us is, perhaps, both asking and being asked this question. There are many answers to "Why now," but no single answer serves to explain it. The passing of eye-witnessed events into history; the last opportunity to address the injustices of the survivor generation; the popularizing through movies and television of stories once ignored; the need to get things straight before the close of the century? We may not be able to answer the question, Why now?, with any satisfaction, but we should be able to say what *now* we can do about it.

Fifty years ago, after the Nazis were defeated it was fair to conclude that much of Central and Eastern Europe would remain irredeemably inhospitable to Jewish life. In Germany and Austria, for example, Allied occupation forces took stock of the small number of Jewish survivors, the adverse conditions, the high level of anti-Semitism still present in society, and determined that no effort should be made to encourage former Jewish residents to return. In fact, those present would be offered assistance to emigrate. Pogroms in Poland and elsewhere which left thousands of returning Jews dead at the hands of their former gentile neighbors sent a similar message. The future for those who survived the Holocaust would be found in other places—primarily in Israel and America.

It is hard not to imagine what we might have been able to do *if* this conference took place fifty years ago. All of those assets which we are discussing this week—insurance policies, bank accounts, looted

gold—could have been directed to the benefit of these survivors when they would have done the most good, as they were starting new lives in new places and when the trauma was most severe. All of the difficulties in the passing years of identifying assets, of sifting through lost and discarded and incomplete records, of trying to match accounts with claimants and their heirs, would have been so much less. The work would have been much simpler; the benefit for Holocaust survivors so much greater. But, fifty years ago, no one was ready to do what we are prepared to do today.

We know there are survivors in need, and they deserve to be helped now. Everyone agrees with this statement, but it appears to be the beginning and not the end of problems and controversy, as help is delayed and as organizations and lawyers and governments vie with each other to be the conduit for this aid. Meanwhile, the cynicism increases and the embarrassing private battles become public news. This, too, will be part of the discussion at this conference, even if it goes on only in the corridors rather than the official sessions.

We know that even now, at this late date, we should make every effort to find the heirs of newly-identified assets. Works of art, insurance policies and bank accounts may still have legal claimants. Fifty years of neglect and resistance make this a difficult and time-consuming task, and the cost may far exceed the actual assets identified. But, if this enterprise really is about justice and not just about money—a sentiment that seems increasingly challenged by the day-to-day statements of some—we need to follow this path.

Still, there is something wrong if all we succeed in doing is reckoning the accounts fifty years late. There ought to be some things we can do *now* that go further. After all, the very changes that have occurred in many of the countries represented at this conference are much greater than just open archives and a willingness to look at history. The problems we are examining and trying to redress can also be a bridge to the future. This possibility may be most evident in the difficult and still largely-unresolved area of Jewish communal property restitution.

It was only in this last decade that one could even imagine the possibility that what was once Jewish property in the Communist nations of Central and Eastern Europe might again pass into Jewish hands. But, the euphoria which greeted the fall of the Berlin Wall and the successful and largely peaceful revolutions which brought democracy to these countries was not easily shared in the Jewish world. More frequently, our assessment resembled those reached in 1945. After the destruction

of the Holocaust and decades of Communist tyranny and state-sponsored anti-Semitism, what future could there be for Jewish life in these countries? These were still inhospitable places, to be sure. And if Jewish communal property could now be restituted, the heirs—or at least the proper heirs—would be found in America and Israel. Not only were these the places where the majority of Jewish survivors had settled, but they were still the places where the Jewish future was thought to be located.

In these last half-dozen years we have acted in various and contradictory ways. We have provided support for the communal, religious and educational revival of Jewish life in Central and Eastern Europe, and we have encouraged the brightest of them to make *aliyah* to Israel. We have put political and moral pressure on their governments to restitute Jewish property, and we have fought with local Jewish communities over this property. In the meantime, very little has happened in the area of restitution, but a great deal has happened nonetheless.

In almost all of these countries Jewish life has “revived.” We can still debate the long-term prognosis, but they’re off life-support systems and out of intensive care. They are small; they are poor; they are disadvantaged. Let us acknowledge after all that these communities, too, are *survivors*. But, they believe they have a future in their respective countries, and they are acting on that belief. They face enormous challenges, and they still confront anti-Semitism in the societies around them. But, they also, for the most part, have governments that want to see them succeed. And they have at least some fellow citizens who believe it is in their own best interests to build a pluralist society in which Jews and other minorities can feel at home.

However, their survival will depend on their resources. And these resources will need to come from the restitution of communal property. So far, the efforts have been difficult and the results have been disappointing. In some countries we have seen only a handful of formerly religious properties returned to the Jewish community. Even in the best of situations the gains have been modest.

Last year, legislation was enacted which provides for the return to the Jewish community in Poland of former religious property. Property is reclaimed through a cumbersome and costly process, and much communal property is excluded under the law. Instead, it involves primarily synagogues and cemeteries, and the latter, which are in need of repair and restoration, are a financial burden, not a benefit to the small community.

Legislation was never adopted in the Czech Republic. Its Jewish community identified only two hundred communal properties--a fraction of the pre-war total--for which it sought restitution. While the Federal government offered verbal support, decisions were left to individual municipalities, and after several years about half of these properties have been returned. Only in these last few days, has the government created a commission to examine ways in which the Jewish community might receive back or receive compensation for the remaining properties.

In Hungary, which has the largest Jewish community of Central Europe, an agreement was reached only this October, which provides for financial compensation in the form of an annual payment, determined to be a percentage of the communal property value. This will provide the Jewish community with several million dollars a year to help it address the needs of over 100,000 Hungarian Jews.

In these communities and in others, restitution efforts were initially aided by the work of the World Jewish Restitution Organization, which drew public attention to this need and assisted in the cataloguing of former Jewish properties. The WJRO also enunciated the position that world Jewry is the correct heir to the full pre-war assets of Jewish communities that had numbered in the millions. But, such assets are not now being and perhaps never will be restituted to the local Jewish communities or to international Jewish organizations. Nevertheless, this has not precluded tensions to grow and adversarial relationships to develop. What should have been a collaborative and cooperative relationship has all too often turned into a fight over who is the rightful owner of property not yet being returned.

It is correct to insist that the governments in these new democracies have a moral obligation to return all former Jewish communal and private property, and no one should dispute that heirless assets ought to be the inheritance of the Jewish community worldwide. But, at the very least and in the "short term" which is unfortunately not very short, resources should first be directed to aid the reviving Jewish communities and to maintain the cemeteries and other historical sites of pre-war Jewry in Europe.

Perhaps, this is the area in which the surrounding non-Jewish world can also play a role. Reclaiming these sites, reclaiming history, is also a means of reclaiming memory and educating ourselves and others. This is critical for a new generation of Jews who choose to make their homes in Central and Eastern Europe, but valuable, too, for their non-Jewish neighbors. In the end, tangible assets must pass to the rightful inheritor. But, these other "assets"--the assets of history, the assets of

memory, the detailed knowledge that a culturally rich and vibrant Jewish community once flourished where now only small remnants, but at least and remarkably so small remnants, live on--these assets can be shared. If we work together, we can also make them a bridge between Jews and non-Jews, a bridge between present and future generations.

Mr. Jerzy Kichler

PRESIDENT, UNION OF JEWISH RELIGIOUS CONGREGATIONS IN POLAND
POLAND

Restitution of Jewish Communal Property in Poland (Status as of November 23, 1998)

Break-out Session on Communal Property: Progress and Challenges

1. INTRODUCTION

The continuity of the Polish Jewish communities was interrupted by World War II and by the changes that came into being soon after the end of the War. In 1945, the Polish Communist government permitted the re-establishment of Jewish communities as cultural societies only. Regulation #3 of February 6, 1945 denied them legal personality. Thus, unlike the situation in other Soviet satellite countries, where Jews were permitted to own some communal property, all Jewish communal property was legally considered abandoned property and on that basis confiscated by the State.

2. CURRENT STATUS OF THE JEWISH RELIGIOUS CONGREGATIONS

Nine Autonomous JRCs (in Warsaw, Krakow, Łódź, Wrocław, Katowice, Bielsko-Biala, Gdansk, Szczecin, and Legnica), and seven affiliates connected with different JRCs (in Walbrzych, Dzierżonów, Żary, Bytom, Częstochowa, Lublin, Poznań) exist today. Their number, after a steady downwards trend over the last 30 years, has again started to grow, when last year the Warsaw JRC and the Poznań affiliate were set

up. The Union of Jewish Religious Communities in Poland is a coordinating body for all the JRCs.

The Communities and their affiliates operate synagogues, prayer houses, and kosher kitchens, run welfare and educational programs. Since up to now they had no independent revenue, all this activity was made possible through grant and organizational support from the Joint Distribution Committee and the Ronald S. Lauder Foundation. The former supplies the main budget of the JRCs, while the latter supplements it and runs youth clubs, summer and winter camps and a school and a kindergarten in Warsaw. A second school will open this fall in Wroclaw. The JRCs also take care of Jewish cemeteries and historical monuments they have title to.

There Union has prepared a program of reviving of Jewish life in Poland, which postulates the setting up of Jewish Community centers and schools in all the main towns where Jewish communities exist, as well as expanding services for the sick and elderly, with new day-care centers, retirement homes and medical facilities. The program covers also the preservation of unused Jewish cemeteries and historical monuments.

3. LEGAL SITUATION

The Law on the relationship between the State and the Jewish Religious communities was submitted by the Government to Parliament on February 20, 1997, passed and signed by the President soon thereafter, and effective as of May 11 of the same year. It was published in the Official Gazette (*Dziennik Ustaw*) on April 24, 1997 as Item #41.

This law grants the Jewish communities legal status similar to that they enjoyed in Poland before World War II, and identical to that which applies to all the eleven recognized cults today. All relevant laws to that effect had been passed in the post-Communist period, the first being that on the relationship between the State and the Catholic church, passed in 1989. This law is based on previous legal solutions dealing with *kehilloth* existing on Polish territory, especially a regulation issued by the President of Poland in 1927.

This law deals mainly with the issues of taxation of the Jewish community, the status of Rabbis and *Hazzanim*, Jewish holidays as paid vacation days, etc. It has historical significance, inasmuch as it will allow the return to the Polish Jewish community of a part of its material heritage, thereby enabling it greater self-sufficiency. The goal of this law

is to make Jewish continuity in Poland possible, and to regulate issues of preservation of the spiritual and material heritage of Polish Jews.

3. RESTITUTION OF JEWISH COMMUNAL PROPERTY

In accordance with Article 29 of the law, property that was in the use of the Jewish community on the day of May 11, 1997, becomes its property, no matter to whom it belonged at that moment, and what was previously located there. On the basis of this regulation, three properties have been returned already, including the Nozyk Synagogue in Warsaw, the premier temple of Polish Judaism.

Article 30 deals with Jewish communal property and the property of other formally registered Jewish religious organizations, held by its owners before the war on what is now Polish territory. These properties can now be reclaimed by member communities of the Union of Jewish Religious Communities in Poland.

Paragraph 1 of that Article concerns that part of current Polish territory which was contained within Polish borders as of September 1, 1939. Here, Jewish Religious Communities may claim ownership of cemeteries and synagogues. In respect to synagogues, a property may be claimed even if it is now an empty plot or if there is another building built over it (p.1). If the actual building or plot of land cannot be returned, financial compensation can be offered. In the case of other relevant buildings used for religious, cultural, educational or charitable purposes, the property can be returned only if the original building is still standing. In the case of cemeteries, only the actual plot can be returned and no financial compensation will be offered. If a property was sold to a third party before the restitution claim had been filed, it cannot be returned.

Paragraph 2 deals with the issue of the Western Territories (former Germany) that were incorporated by Poland after World War II on the basis of treaties made by the Allies. The difference with Paragraph 1 in claiming properties there is as follows: (a) the property has to have belonged to the Jewish community, or another religious Jewish organization on January 30, 1933, i.e., before the Nazis came to power; and (b) the local Jewish community now existing there and claiming it has to prove that the property will be used for religious, cultural, educational or charitable activities (except cemeteries, synagogues and kehillot offices buildings where it must not to be proved). If the property cannot be returned, there is no way to receive compensation.

With the help of the Jewish Historical Institute in Warsaw a list has been made of Jewish cemeteries (about 1,000), still existing synagogues (about 300), buildings of different institutions: hospitals, mikvaot, schools, etc. (about 100).

In order to file their claims, Jewish Religious Communities have to gather the appropriate documentation: proofs of legal status of the property before the war (maps, registers, land registry books, proofs of ownership); certificates of present legal status (documents as above together with the maps presenting changes that came into being – property division, etc.). In the case of properties that used to belong to a Jewish organization other than the Jewish Community, documents that prove its religious purpose have to be gathered (statutes, experts opinion, testimonies).

The gathering of such documents is obviously very difficult due to the effects of the Shoah and other man-made and natural disasters. Therefore, any documentation and testimonies that will lead to the location of Jewish communal property will be very helpful and appreciated.

4. RESTITUTION PROCESS

The return of Jewish property is based on the work of a specially assembled Regulation Commission which functions as an arbitration court. The commission was set up by a Decree of the Minister of Internal Affairs and Administration on October 10, 1997. Its body is composed of six people (three from the said Ministry and three from the Union of Jewish religious Communities).

The period of sending complete applications to the Regulatory Commission is 5 years; the deadline is May 2002.

To date, 217 applications have been submitted to the Regulation commission. Of those, 182 applications have been acted upon, other have been returned to applicant because of incomplete documentation, and decisions have been made in the case of 23 (positively 16, negatively 6, given to voivoda decision 1) – including 5 cemeteries, 8 synagogues. Moreover, the boards of the communities in Warsaw and in Wroclaw were given by the respective Governors (Voivods) legal title to the buildings they use.

The proper implementation of the law is a historical challenge for the community – our future depends on it. The restitution of communal properties should finally bring to an end the suffering and

humiliation experienced by Polish Jews and Jewish organizations during and after World War II.

5. JEWISH COMMUNITIES OF POLAND AND THE WJRO

The law states that, as far as restitution and other relations are concerned, the Jewish Religious Communities in Poland are the sole partner of the Polish State. Only the Communities can file restitution claims. Any changes to that law would require not only amending the act itself, but also probably making amendments to laws pertaining to the relationship of the State to other recognized cults, since all should be constitutionally equal.

Cooperation with the WJRO is a basic requirement for the Jewish Religious Communities of Poland. The Board of the Union of Jewish Religious Communities in Poland (UJRCP) sees in the setting up of a conjoint foundation with the WJRO an expression of our shared responsibility for the heritage of Polish Jews. However, the principles of such foundation cannot violate the continuity of the rights of the communities in Poland, both in respect to their property and to their autonomy, nor can they contradict Polish law.

In April 1998 a Memorandum of Understanding was signed by Israel Singer representing the WJRO and Jerzy Kichler representing the UJRCP. This Memorandum is the base for the establishing of a conjoint foundation. A negotiating team finished at present a work to elaborate the bill of the joint foundation. With help of the foundation, the process of restitution of Jewish properties in Poland should not only lead to the proper revival of the Jewish community of Poland and to covering the needs of the Communities, but should also enable the participation of all Polish Jewish living outside of Poland in that process.

Mr. Michael Lewan

CHAIRMAN, UNITED STATES COMMISSION FOR THE PRESERVATION
OF AMERICA'S HERITAGE ABROAD
UNITED STATES

Break-out Session on Communal Property: Progress and Challenges

"May we live in interesting times." The sentiment expressed by the old Polish proverb certainly applies to all of us concerned with the return of communal property. Today, more than a half-century since the defeat of fascism and a decade after the fall of communism, the nations of Eastern and Central Europe and grappling with their past. They need help. This is truly a time for strong and supportive American leadership and friendship.

My name is Michael Lewan and I have been appointed twice by President Bill Clinton to Chair the United States Commission for the Preservation of America's Heritage Abroad. The Commission was founded in recognition that the United States, as a nation of immigrants, has its values rooted in lands distant in miles and time. As a people, we believe that the fabric of our society is strengthened by visible reminders of our ancestral past. The history, culture, politics, sociology, economy, and religion of our forefathers have stamped upon our souls an indelible mark of character. As the years go by, Americans need to see the sites, hear the echoes, touch the tombstones, feel the pain, and relive the joy of our ancestral past. How else can we understand the present or prepare for the future?

The Commission's charge is to encourage the preservation and protection of communal properties. Specifically, the buildings, monuments, collections and cemeteries connected with the heritage of Americans from the 22 countries that comprise Eastern and Central Europe and the former Soviet Republic. Americans who trace their family roots to these cultures are, for the first time, able to visit the churches, synagogues, cemeteries, and monuments to which they have binding ties.

What they see often shocks and saddens them. The Nazi extermination of six million Jews and so many other innocents extended to physical places as well. Schools, libraries, museums, and social halls

were all expropriated. Synagogues, churches, and cemeteries were especially sought out for vandalism or destruction.

The Communists continued this wanton behavior. Buildings and graveyards were bulldozed to make room for development. Those sites that escaped were left to suffer the ravages of time and nature. Many, if not most, important sites passed into oblivion.

Some did survive. Today there exist hundreds of synagogues, churches, cemeteries, and other places in desperate need of attention. They stand now not as a reminder of death and decay, but as a testament to the strength and substance of those vital, vibrant souls that once prayed, sang, studied, danced, and lived within their walls. Some sites are artistic treasures and deserve restoration on that basis, some are sacred and demand the highest degree of devotion.

Our Commission has spent much time and energy preserving and protecting Jewish cemeteries. To take care of the dead is the highest calling. A mitzvah. An obligation. The Book of Ruth teaches, "Blessed is he by God, for his kindness to the living as well as the dead." (Ruth 2:20).

Central to our work as participants in the Holocaust Assets Conference must be the legal and spiritual status of these Jewish cemeteries. The United States Commission for the Preservation of America's Heritage Abroad stands undivided in this regard. Jewish cemeteries are sacred; they cannot be sold; their soil must not be disturbed; their sanctity must be respected by all.

It is my hope that in its deliberations on the status of communal properties that special consideration is given to cemeteries. Clearly there are challenges. As economies of the region prosper, these sacred plots of land will become increasingly valuable. Pressures to sell and develop these sites will grow. Legitimate social service needs will be held as a reason to destroy these old graveyards. These are monetary temptations that must be resisted.

The Commission acknowledges that few if any Jewish citizens remain to care for these sites, and that the Diaspora cannot provide the needed resources to tend the graves. With this in mind, the Commission respectfully recommends that "national communal property restitution" laws be passed that returns all cemeteries to the remnant Jewish communities. This will protect them from sale or unbridled development.

We also suggest that a certain percentage of funds realized from the sale or lease of other communal property be set aside for the perpetual care of these cemeteries. This we believe is the framework for

a right and proper solution. It respects not only the land on which so many are buried, but indeed is a symbol that on this land once lived a people that contributed mightily to the fabric of their society, their religion and their country.

The United States Commission for the Preservation of America's Heritage Abroad will continue to use all its influence on governments, NGOs and all parties involved to ensure that we find the ways and means to preserve and protect these sacred places for all eternity.

The historic and moral importance of the Commission's work is clear. We must help the emerging democracies of Europe settle old debts and begin anew by building on the foundations of yesterday to create a better tomorrow.

Tomorrow...Listen to the haunting words of Elie Wiesel, "Teachers and their pupils; mothers and their infants; rabbis and their followers rich and poor; learned and illiterate; prince and beggar all pushed inexorably toward death. "Father," a young boy asks, "is it painful to die?" Father replies, "Think of something else my son, think of tomorrow."

My friends Jew and Gentile alike, we are that tomorrow.

So, as we continue our work to repair, restore, recompense, and return, let us commit together to use whatever resources come available to build a future that honors the past. For the age-old values, traditions, and observances so critical to survival must never be lost as new generations make their way.

This is our legacy. This is our burden. This is our tomorrow.