

The Restitution of Holocaust-Era Jewish Communal Property: An Unfinished Item on the Jewish Diplomatic Agenda

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More than sixty years after the end of the Holocaust, and nearly two decades after the fall of the Iron Curtain, Jewish communities in East Central Europe and the Former Soviet Union are still struggling with the question of how to reclaim the properties which were taken from them during the Nazi and Communist regimes.

Before the Shoah, in nearly every city or town, large and small, in this region, there were properties that were owned by Jewish communal or religious entities and used by local Jews, for whom the institutions they housed were an integral part of daily life. Virtually all of these buildings or sites were looted, confiscated or destroyed by the Germans or their allied regimes during World War II. For the most part, they were subsequently nationalized by Communist regimes, which ruled for some forty years after the war.¹

Since the fall of Communism, there has been an effort by the remaining local Jewish communities in each country, together with international Jewish groups, to obtain restitution of these assets or compensation. In the mid-1990s, the World Jewish Restitution Organization (WJRO) was formed in Israel to help address this and other related Holocaust-era assets issues.²

Why is this being done? For the once-great Jewish communities in East Central Europe and the Soviet successor states, the confiscated Jewish communal property symbolizes a rich heritage lost during the Holocaust and the Communist era. There is a strong moral desire to achieve at least a small measure of justice by having governments return this property to Jewish communal ownership, and for those governments to renounce their claims to assets stolen from the Jewish people. Property reclamation also represents a remarkable opportunity in the ongoing renewal of Jewish life in the region. Either as a venue for communal activities and institutions, or as a source of income, restituted Jewish communal

property has the potential to put communities on the road toward fiscal autonomy and self-sustainability.³

What kinds of properties were taken from these thousands of Jewish communities? This rubric includes anything that was owned by a Jewish communal or religious entity, including synagogues, *batei midrash* [prayer and study halls], *yeshivot* [Talmudic academies], schools, *mikvaot* [ritual baths], old age homes, orphanages, hospitals, rabbinical residences, community offices, cemeteries, *chevra kadisha* [funeral and pre-burial] facilities, as well as apartments, houses and land that had been donated to, or were otherwise owned by, the communities.

As there were no central prewar records of all Jewish communal property, and many were in small towns to which no Jews returned after the war, or from which Jews were chased away by acts of violence or threats, it is difficult to know exactly what was looted. However, according to data from WJRO and the existing local Jewish communities, we can estimate that approximately 21,000 confiscated properties fall under the categories mentioned above. The majority were synagogues and prayer/study halls (around 6,000–7,000), cemeteries (about 5,000) and schools/*yeshivot* (nearly 3,000).

Under most property restitution laws, only buildings or lands which were formally owned by communal or religious entities before the Shoah can be claimed. There were numerous other Jewish sites which were privately owned but used by the community which can not now be claimed. An example would be the many *shtetlbelach* [small prayer halls] located in buildings owned privately by individuals.⁴

Claims for property must be made individually by the officially recognized Jewish community in each country, under the specific laws of each country. The post-Communist governments in each country have generally granted an official status to a “Jewish religious community” under the state laws granting recognition and benefits to “churches.”

The Communist regimes also nationalized the property of all citizens and of all churches and religious faiths. Therefore, if and when a restitution law is enacted, it typically establishes a process for all churches to follow. However, the situation for Jewish property differs in several important ways. First, most of the church properties have generally been in continual use for the past six decades, while Jewish property was never used again after the Shoah, due to the destruction of the communities. In most towns there has not even been a Jewish presence, and the Jewish building was used by the municipality (i.e., the prewar synagogue became a town library or offices or storage). Secondly, the Jewish properties are

in worse condition than those of churches due to their neglect by local authorities. Thirdly, the restitution law may be drafted so that it covers all property which had been nationalized from a church, as the central church (or diocese) in the country owned all the properties used by that faith. However, the Jewish communities in prewar Europe owned many buildings that were “communal” but not owned by a religious body or used for religious purposes (such as a Jewish hospital, orphanage or old age home). Lastly, the law may cover properties which were nationalized by the Communists under laws enacted in the late 1940s; however, most of the Jewish communal property had essentially already been taken by governments, local authorities or even individuals during the Holocaust when the Jewish residents were murdered or deported.

One issue that arose in the 1990s between WJRO and local Jewish communities is the question of who should be the heir to all the prewar Jewish communal and religious assets. Should it become the property of the small Jewish community that exists in the country today, which is just a fraction of the original size of the prewar community (and may be in a country with different borders now)? Should the property devolve to international Jewry, or the State of Israel, on behalf of Holocaust survivors and their heirs, as well as those who perished? Although often difficult to achieve in practice, a balance was struck by WJRO and local communities. Through the creation of “foundation” partnerships between local and world Jewry, income from restituted property would first cover Jewish needs in that country while any surplus would go toward assisting survivors from that country now living in Israel or elsewhere.

The local communities, together with WJRO and the partnership foundations, face a difficult and prolonged process of restitution in each country. It generally begins with researching and creating an inventory of prewar communal and religious assets. Then there may be lengthy negotiations to get a satisfactory restitution law enacted. Once a law is passed, formal claims with substantial documentation must be submitted to some type of governmental administrative body.⁵ Then claims have to be argued and defended, either at a hearing before a “commission” or a “tribunal.” Often the outcome of such a hearing will be a negotiated settlement with the municipality or state entity which now owns the property. This might result in the actual return “in kind” of the original property, or the transfer of a substitute building or plot of land, or payment of compensation.⁶

The restitution process is generally a protracted one, fraught with complications. The process, from research to filing and pursuing claims, is costly, especially for Jewish communities that are in a precarious financial state (until they start to get some restitution). Government officials are never eager to return property to Jewish claimants, often due to concerns about negative reactions from local

residents. The restitution process can lead to manifestations of antisemitism in the local media and the internet. Opposition to restitution is often trumpeted by politicians seeking to use the issue to gain political capital. Those who oppose restitution often pointedly ask, “Why is the government doing something special for the Jews?” or “Why do the Jews need so much property?” or “How much of these restituted assets will end up in Israel?” or “What will the Jews do to the tenants of the property once it is returned?”—or even, as Romania’s former president, Ion Iliescu, declared, “[Restitution of Jewish property] is liable to generate sentiments not of a positive nature toward the Jewish population... is it worth continuing to skin those who are living in distress today... And just in order to compensate others? I don’t find that appropriate.”

When properties are actually restituted, they are often in a dilapidated state and can actually be a financial burden on the Jewish community.⁷ For the most part, governments are also quick to give back cemeteries and ruined synagogues (especially in the provinces), which have little or no financial value, to communities that do not have the capacity or financial means to maintain or repair them.⁸

As of the end of 2008, only about 16 percent (or roughly 3,500) of Jewish communal and religious properties throughout the region had either been returned or covered under a compensation agreement (out of the estimated 21,000 cited above). There remain an additional 8,000 cases in which claims have been filed but not yet reviewed or adjudicated. There are approximately 5,500 properties which have not yet been claimed (mainly in countries which still have no restitution law), and an additional 4,000 cemeteries which are still under governmental ownership.

Some countries, which had relatively small Jewish communities, and hence few claims, have completed the restitution process for the small number of prewar communal properties (Estonia and Macedonia). Others have returned a significant amount of (though by no means all) communal property, but the Jewish community is no longer actively pursuing claims (Hungary, Slovakia and the Czech Republic). However, in many other countries significant work remains to be done: In Poland only about 1,400 of 5,544 claims have been adjudicated in seven years; in Romania only about 300 of 1,982 claims have been decided in six years; and in Serbia, under a new law, the community filed 513 claims by September 2008. In Bulgaria and Croatia some properties have been returned, but the government has resisted restitution of the largest and most valuable urban real estate.

There are still no laws providing for the restitution of Jewish communal property in Lithuania, Latvia, Bosnia, Slovenia, Russia, Ukraine, Belarus and Moldova. The Latvian prime minister established a “working group” in September 2008 to

consider this issue. Lithuania remains the most recalcitrant country in dealing with Jewish communal property. Despite numerous public promises by several prime ministers since 2002, and much international pressure, no legislation has even been sent to its parliament for consideration.

The State of Israel has been involved as an observer body of the WJRO and by monitoring restitution activities, mainly through the work of Israeli embassies. It has not, however, actively participated in restitution negotiations. Nevertheless, Israeli government ministers often raise the subject when traveling to European nations or when hosting foreign diplomats in Jerusalem.

Since the mid-1990s the United States government has played an integral role in encouraging countries to enact restitution laws for both private and communal property, and to expedite the review of claims and the actual return of property or payment of compensation. This has been done through the Office of Holocaust Issues in the State Department in Washington, as well as through the resources of local American embassies. In an October 2007 State Department statement to Congress, submitted by the Special Envoy for Holocaust Issues, the US position was described as follows:

The United States has strongly supported efforts to restitute to rightful owners property confiscated by the Nazis in 1933-45 and by the subsequent communist governments of Central and Eastern Europe. Positive action on property issues was one of the criteria used to judge the progress of countries that aspired to North Atlantic Treaty Organization (NATO) membership. The European Union (EU) also recognizes the relevance of property issues in applicant countries.

A successful property restitution program is an indicator of the effectiveness of the rule of law in a democratic country. Non-discriminatory property laws are also of crucial importance to a healthy market economy.

We recognize that *in rem* [in kind] property restitution may not be possible in all cases. Payment of compensation is the obvious alternative.

Property restitution is often complicated and controversial. Changing the ownership and use of buildings and land from one party or purpose to another can cause disruptions that already economically challenged countries can ill afford. There is no single system of property restitution laws and procedures that can be universally applied to all countries. In

encouraging restitution, the US government bears in mind the following considerations:

- Restitution laws should govern both communal property owned by religious and community organizations and private property owned by individuals and corporate entities.
- To document claims, access to archival records, frequently requiring government facilitation, is necessary. Reasonable alternative evidence must be permitted if archives have been destroyed.
- Uniform enforcement of laws is necessary throughout a country.
- The restitution process must be nondiscriminatory. There should be no residence or citizenship requirement.
- Legal procedures should be clear and simple.
- Privatization programs should include protections for claimants.
- Governments need to make provisions for current occupants of restituted property.
- When restitution of property is not possible, adequate compensation should be paid.
- Restitution should result in clear title to the property, not merely the right to use the property.
- Communal property should be eligible for restitution or compensation without regard to whether it had a religious or secular use. Some limits on large forest or agricultural holdings may be needed.
- Foundations managed jointly by local communities and international groups may be appropriate to aid in the preparation of claims and to administer restituted property.
- Cemeteries and other religious sites should be protected from desecration or misuse before and during the restitution process.

In September 2008, the US Congress again spoke out on this issue when the House of Representatives passed Concurrent Resolution 371, drawing attention to the record of countries that have prevaricated. The resolution called on the government of Poland to enact legislation to address the issue of private property and “ensure that such restitution and compensation legislation establishes an unbureaucratic, simple, transparent, and timely process, so that it results in a real benefit to those many persons who suffered from the unjust such confiscation of their property, many of whom are well into their 80s or older.”

The same resolution made note of the fact that Lithuania is “virtually alone among post-Communist countries” in having failed to implement legislation that provides for the restitution of, or compensation for, Jewish communal property seized and confiscated by the Nazi and Communist regimes. It called on the government of Lithuania to:

...immediately implement fair, comprehensive, and just legislation so communities that had communal and religious property seized and confiscated by the Nazis during World War II or subsequently seized by the Communist Lithuanian government after World War II (or the relevant successors to the communal and religious property or the relevant foundation) are able to obtain either restitution of their property or, where restitution is not possible, fair compensation.

Efforts by local Jewish communities and WJRO to press for the enactment of restitution laws and for the expediting of claims have often been supplemented by international diplomatic efforts. For the most part, these have been led by the US government and Congress. In the early part of this decade, as part of their campaign to join NATO and/or the European Union, many countries promised to tackle the issue of restitution. Sadly, most of these promises remain unfulfilled, and now that the nations are firmly embedded in the EU and NATO, there are fewer avenues for diplomatic pressure. Moreover, after most of the post-Communist nations joined the international coalition forces in Iraq and Afghanistan, US leverage on these issues was perceived to have diminished. While the European Union has not been active on restitution issues, the European Parliament and the Organization for Security and Cooperation in Europe (OSCE) have adopted resolutions on the subject. The most recent was a July 2001 OSCE resolution, which urged

OSCE participating States to ensure that they have implemented appropriate legislation to secure the restitution and/or compensation for property loss by victims of Nazi persecution and property loss by communal organizations and institutions during the National Socialist era to Nazi victims or their heirs(s), irrespective of the current citizenship or place or residence of victims or their heir(s) or the relevant successor of communal property.

However, in June 2009, during its term in the rotating presidency of the European Union, the government of the Czech Republic will host an intergovernmental conference on “Holocaust-Era Assets” in Prague, to which forty-seven nations have been invited. The conference will review progress in the decade since the 1998 Washington Conference on Holocaust-Era Assets and will address a number of open issues related to the recovery of assets of victims of the Holocaust. The subjects to be covered include the restitution of Jewish communal, religious and private property; looted art; and the recovery of Judaica and cultural property. The conference also will review progress in Holocaust education, remembrance and research. This will be an important venue for encouraging further action by governments on all restitution issues.

Despite all the difficulties and complexities involved, the reclamation of Jewish communal and religious property remains an important piece of unfinished work in the quest for restitution of looted Holocaust-era assets. This needs to remain a priority for both world Jewry and for European Jewish communities. By continuing to pursue this goal, we can at least achieve some “rough justice” as well as facilitate the rehabilitation of Jewish life in countries ravaged by the Shoah and years of Communist totalitarianism. As Shoah survivors age and pass away, and as we move further away from the fall of Communism, there is only a small window of opportunity in which to really address this issue. However, with the combined and reinvigorated efforts of world and local Jewry, together with the new administration in Washington, and with a supportive stance on the part of the EU, significant results are within reach.

Notes

- ¹ While Jewish communal assets were also confiscated by the Germans and local collaborators in Western Europe, much of that property was returned during the post-war period, first by the Allies under various occupation laws and then under the laws of individual countries.
- ² The member organizations of WJRO are: Agudath Israel World Organization; the American Gathering of Jewish Holocaust Survivors; the American Jewish Joint Distribution Committee; B’nai B’rith International; the Centre of Organizations of Holocaust Survivors in Israel; the Conference on Jewish Material Claims Against Germany; the European Jewish Congress/European Council of Jewish Communities–Joint Delegation; the Jewish Agency for Israel; the World Jewish Congress; and the World Zionist Organization.

- ³ In East Central European countries, restituted property may be sold by the community or leased in order to generate commercial income. As discussed below, as the small communities today do not need to utilize all the reclaimed properties for Jewish activities, they can become an important financial asset, together with any compensation which may also have been paid.
- ⁴ The work to get restitution of, or compensation for, religious and communal property is part of the larger related effort, led by WJRO and others, covering all similarly looted “Holocaust-era assets,” including the private property of individuals and art. Jewish communities and organizations in East Central Europe before the war also owned library collections, Torah scrolls, as well as Judaica and cultural objects, whose restitution are also being sought. The restitution of such objects is beyond the scope of this article.
- ⁵ In some cases, there have been “lump sum” settlements covering multiple claims. In certain countries, properties have been returned by a decree or Executive Order of the prime minister or other officials. In other cases, when the restitution commission and the Jewish communal claimant cannot agree, or if a claim is rejected, the issue ends up in a local court.
- ⁶ In the Soviet Union (except for the three Baltic states which were only annexed in 1940) Jewish assets were confiscated in the 1920s and 1930s by the Communist regimes. The local laws or policies currently limit restitution to usually only one building in each city, often a former synagogue, which must be used for religious activity and cannot be leased or sold in order to yield income.
- ⁷ Properties, especially former synagogues, may have been designated as historical “landmarks” or “monuments,” thereby restricting how the building may now be used. In many cases, shortly after a property is restituted, the Jewish community is told by local authorities that the site (which the same authorities had neglected for decades!) must be repaired or they face fines and penalties.
- ⁸ The American Jewish Joint Distribution Committee (JDC), which works closely with Jewish communities in East Central Europe and the Soviet successor states, has established a “property management program” to assist communities with the handling of their real estate portfolio, in order to achieve the “highest and best use” in a professional and transparent way. The JDC also created a Strategic European Loan Fund (SELF) to provide interest-free loans to Jewish communities in order to enable them to develop, renovate, or improve the condition of properties which can then yield additional income to the local Jewish community.