

PROPERTY RESTITUTION,
COMPENSATION, AND PRESERVATION:
COMPETING CLAIMS IN
POST-COMMUNIST EUROPE

HEARING
BEFORE THE
COMMISSION ON SECURITY AND
COOPERATION IN EUROPE
ONE HUNDRED FOURTH CONGRESS
SECOND SESSION

JULY 18, 1996

Printed for the use of the
Commission on Security and Cooperation in Europe
[CSCE 104-2-15]



Available via the World Wide Web: <http://www.csce.org>

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1996

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THURSDAY, JULY 18, 1996

COMMISSION ON SECURITY AND COOPERATION IN EUROPE
WASHINGTON, DC.

The Commission met, pursuant to adjournment, at 10:05 a.m., in room 2255, Rayburn House Office Building, Honorable Christopher H. Smith, Chairman of the Commission, presiding.

**OPENING STATEMENT OF HON. CHRISTOPHER H. SMITH, CO-
CHAIRMAN**

Mr. SMITH. The Commission will come to order.

Today the Helsinki Commission takes up one of the most challenging issues confronting post-Communist societies in the OSCE region: How to right the wrongs committed by former totalitarian regimes. More is at stake here than just a desire for cathartic healing. How governments deal with past injustices is usually a telling indicator of their commitment to ensure that the same injustices do not occur again.

The wrongdoing inflicted by the regimes of the Eastern Bloc came in many forms and shapes, and accountability for these crimes may, in the end, also come in many forms. In today's hearing we hope to begin our examination of this subject by focusing on one specific form of abuse perpetrated over the past several decades: the wrongful confiscation of property.

At the end of World War II, Europe was faced with a land grotesquely transformed from the prewar period: tens of millions of people who had died; millions of displaced persons and refugees; landscapes razed by bombing; and whole cities destroyed. While Western countries moved to rebuild and to seek accountability and reparations from Axis powers, East European countries traveled a different path. There, countries slipped into Communist control, and reckoning with the past became a tool of the state.

In some places, such as Hungary, the government was required by the 1947 Paris Peace Treaty to make restitution of Jewish property, but the Communists ignored their obligations. Not only was justice denied for Holocaust survivors, but Communist regimes perpetrated their own brand of injustice and, in fact, were infamous for their complete disregard for private property, for nationalizing factories, for collectivizing agriculture, and for generally stealing property on a discriminatory and arbitrary basis, usually without compensation at all, let alone compensation that was just, fair, or timely.

The establishment of democratically elected governments in most Central and Eastern European countries after 1990 has sparked new hope that the people in this region would be able to address and redress wrongs committed decades ago, including the wrongful seizure

of private and communal property. In many countries, this has entailed a painful examination of individual and national responsibilities.

Unfortunately, efforts to return property to former owners thus far have been uneven and often unsuccessful, with practices varying from country to country, often stymied by complex moral and legal considerations. No country has crafted a model law, and every country that has adopted a restitution or compensation law has some basis upon which it could be criticized.

I realize that extremely complex subjects such as this raise questions of international law and questions of fundamental fairness. I look forward to hearing from our very distinguished panelists, our witnesses today, as to what steps can be taken now to permit the victims of Nazi persecution as well as those who fled Communist persecution after World War II to bring claims for compensation and restitution today.

Our panel of witnesses includes two distinguished people who may know more about this subject than any other two people in Washington, or anywhere else for that matter.

Our first speaker this morning will be Delissa Ridgway, chair of the U.S. Foreign Claims Settlement Commission. The Foreign Claims Settlement Commission is an independent quasi-judicial agency within the U.S. Department of State. Its primary mission is the adjudication of claims of U.S. citizens against foreign governments. Prior to her appointment to this post by President Clinton, Ms. Ridgway was a member of the international law practice group of Shaw, Pittman, Potts, and Trowbridge. I welcome Delissa to this panel today.

Our second witness this morning is Stuart E. Eizenstat, Under Secretary of Commerce for International Trade. Mr. Eizenstat had previously served as U.S. Ambassador to the European Union in Brussels and both then and in his current position also served as the U.S. special envoy on property claims in Central and Eastern Europe. In that capacity, he has worked tirelessly to bring attention to the important subject that we are discussing today.

Mr. Under Secretary, I commend you for your initiatives in that area. This is, as I said, a very vexing and complex area, where even angels, it would seem, fear to tread.

I will make two additional comments about the scope of our hearing today. First of all, Under Secretary Eizenstat has appeared before the Senate Banking Committee, chaired by Mr. D'Amato, and in that setting has already addressed questions related to Jewish assets held by Swiss banks at the end of World War II.

Second, if there is no objection, I will include in the record some of the materials related to the issue of preservation of monuments and cultural diversity, specifically a paper prepared by Phyllis Myers, a non-governmental expert on this subject with State Resource Strategies. The fate of historic and cultural sites is very much related to the issues we will discuss in our hearing, and while we do not have time to cover this subject in depth today, it deserves, I think, to be reflected in the record.

Ms. Ridgway, we will begin with you.

STATEMENT OF DELISSA RIDGWAY

Ms. RIDGWAY. Thank you very much, Mr. Chairman.

The Foreign Claims Settlement Commission appreciates the opportunity to appear before you today to discuss its role in the resolution of property claims in post-Communist Central and Eastern Europe. The Commission is an independent, quasi-judicial Federal agency within the Department of Justice, operating at the intersection of international law and foreign policy.

Our primary mission is to adjudicate property claims by U.S. nationals, both individuals and corporations, against foreign governments. By statute, Commission decisions are conclusive on all questions of fact and law and are not subject to review by any other government official, department or agency, or by any court by mandamus or otherwise. The claims the Commission adjudicates generally are for losses that resulted either from nationalization of property by foreign governments or for damage to and loss of property in military operations during World War II.

The Commission consists of a chair and two Commissioners, together with a small staff of legal and administrative personnel. Commissioner Lacey is with me here today at the table. The Commission and its predecessors, the International Claims Commission and the War Claims Commission, have had a distinguished 48-year history. Those nearly 50 years of experience include the successful completion of 41 claims programs involving the adjudication of more than 660,000 claims and the issuance of awards in excess of \$3 billion.

The Commission is presently adjudicating the claims of U.S. nationals against Albania for expropriations of real and personal property by the former Communist regime that took power in that country at the end of World War II.

In addition, just last month the Commission announced the commencement of a Holocaust claims program to adjudicate the claims of persons who were U.S. citizens and who were interned in Nazi concentration camps or under comparable conditions. That program implements a September 1995 agreement between the United States and Germany related to the celebrated case of Holocaust survivor Hugo Princz.

The Commission is also presently registering claims against Iraq in anticipation of legislation that would authorize Commission adjudication of the billions of dollars worth of outstanding claims against that country.

Other Commission programs have adjudicated claims against countries such as Iran, Cuba, China, Vietnam, Ethiopia, Egypt, Panama, and Italy. But a large number of the Commission's claims programs have involved claims for takings by Communist regimes in Central and Eastern Europe, the subject that brings us here today.

The claims that the Commission adjudicates are espousable claims. This concept of espousal is one of the key concepts in the legal framework of international claims. Under international law and practice, claims between a national of one country and a foreign state are deemed to be claims between the two countries which those two sovereigns may settle. Accordingly, the government of the United States has the discretion in certain conditions to take up, or espouse, the claims of one of its nationals against a foreign government for conduct that violates international law. This discretion is vested in the

president and exercised on his behalf by the secretary of state—for example, by the negotiation of government-to-government settlement agreements that settle a block of claims in exchange for a lump-sum payment from the other government to the United States.

There's an important caveat, however. It's a universally accepted principle of international law that a state does not have the right to ask another state to pay compensation to it for losses or damages sustained by persons who were not its citizens at the time of the loss or damage. In other words, it's not enough for a claimant to be a U.S. national at the time of espousal. To have his claim espoused by the United States, the injured person also must have been a U.S. national at the time the taking occurred.

The United States, therefore, cannot espouse the claim of one who was an Albanian citizen at the time his property was expropriated by the Hoxha regime, even if that person is now a U.S. citizen. As a general rule, the remedies available to such a person would be those available under the domestic law of Albania.

This fundamental tenet of international law, which applies with equal force to all countries, is sometimes, we find, very difficult for aggrieved U.S. citizens to accept.

The Commission works closely with the Department of State in the handling of claims that are espoused or may be espoused. We get jurisdiction to adjudicate blocks of claims either through Congress via legislation or by government-to-government settlement agreement negotiated by the State Department.

The developments of recent years toward democracy and market economies in the former Soviet bloc have renewed interest in the Commission's claims programs for takings by former Communist regimes in Central and Eastern Europe. The Commission's programs involving Yugoslavia, the Soviet Union, Hungary, Romania, Bulgaria, Czechoslovakia, Poland, and East Germany are summarized in my written statement beginning at page 9.

I limit my remarks here to a few observations about the Commission's ongoing Albanian claims program, a Commission survey of claims against the Baltic countries conducted a few years ago, and several initiatives that have been undertaken by the Commission in conjunction with the Department of State to assist those U.S. nationals participating in other countries' domestic claims programs.

Albania is the most recent formerly Communist country to settle claims with the United States. The two countries agreed to a settlement of \$2 million in April of last year. The Commission is now adjudicating claims covered by that agreement. To date, we've received approximately 300 claims, many of which date back to 1944 or 1945.

The Albanian claims program starkly illustrates the challenges of adjudicating claims for takings by a Communist regime, particularly when the claims are quite old.

For example, documentary proof of property ownership is nonexistent in many cases. Property recordation systems were not well developed in Albania in the 1940's, and ownership of property frequently was not recorded. What records did exist often were destroyed when the Hoxha regime came into power and ownership of private property was abolished. In many cases there are competing claims to the same property. Laws on matters such as inheritance, restitution, compensation, and privatization are unclear or contradictory.

Establishing the value of property at the time of taking is also problematic. Ordinarily, land values would be established by reference to the purchase and sale of comparable property, but there was little market in property in Albania before the Communists. Property was generally passed from one generation to the next through a family. Sales to third parties were relatively rare. Then, of course, after the Communists came into power, there was no market whatsoever because private ownership of property was abolished.

There are also unconfirmed reports of corrupt officials allegedly willing to forge land records or decide claims in favor of those offering bribes. Indeed, we've been cautioned to be suspicious of all documentation from Albania.

And finally, communication is poor between the central government in Tirana and district officials located through the country. The result is a widespread lack of information about the domestic program and an inability on the part of all to obtain information from district-level officials about the ownership of specific parcels of property in that country.

We are working through these challenges, however, and expect to complete the Albanian claims program in early 1997. At that time, we will certify compensable claims to the Treasury Department for payment from the \$2 million settlement fund if the moneys are available. To date, however, the Albanian Government has not made the necessary arrangements for the establishment of the settlement fund pursuant to the agreement, and this is a continuing concern.

Now I'd like to speak briefly about the claim surveys.

The April 1995 agreement between the United States and Albania was predicated at least in part on a survey of potential claims against Albanian that the Foreign Claims Settlement Commission conducted in 1992. Also in 1992, at the request of the State Department, the Commission surveyed potential claims of U.S. nationals against the governments of the Baltic countries—Estonia, Latvia, and Lithuania—in preparation for normalization of diplomatic relations with those countries.

The survey identified a small number of potentially valid claims which we reported to the State Department. Ultimately, the State Department decided to leave resolution of those claims to the domestic programs in the respective Baltic countries, although a small portion of Estonian and Latvian assets in the United States were temporarily blocked as a bargaining chip to help ensure that U.S. claimants' rights to pursue their claims in those countries were respected.

No similar surveys of potential claims have been conducted with respect to the other former constituent republics of the Soviet Union, but it's probable that U.S. nationals have outstanding claims against at least some of those countries.

Although the work of the Commission focuses on espousable claims, we have from time to time undertaken various initiatives in conjunction with the State Department to assist those who were not U.S. nationals at the time of their losses as they seek restitution or compensation through domestic claims programs administered by post-Communist governments in Central and Eastern Europe.

For example, the Commission, together with the State Department, conducted a public information campaign to educate potential claimants about restitution laws enacted in Germany, Czechoslovakia, and Albania in 1990, 1991, 1992, and 1993.

Another example is the Foreign Claims Settlement Commission's provision of documentation to individuals pursuing claims under Czech and Hungarian restitution and compensation laws to enable them to prove their eligibility to participate in the domestic claims programs in those countries.

Another noteworthy development is the new provision included for the first time in the U.S.–German and U.S.–Albania settlement agreements. That provision obligates those governments to afford U.S. nationals the same rights afforded nationals of those governments to pursue and receive compensation and restitution or any other remedy available under the domestic claims procedures. In this way, the State Department simultaneously achieved the settlement of the espousable claims and used its leverage to seek to ensure even-handed treatment of those U.S. nationals whose claims were not espousable. This is an important achievement.

It's difficult to know whether this new provision is making a real difference, however, in ensuring the even-handed treatment of U.S. citizens pursuing their claims in Albania and Germany. The Commission has received some anecdotal reports of problems from U.S. citizens participating in the domestic program in Albania. However, the U.S. embassy in Tirana has advised us that it has seen no evidence that U.S. citizens filing claims in that domestic program are being treated unfairly.

The Foreign Claims Settlement Commission has a long history of promoting the international rule of law by providing a forum for the adjudication of the claims of U.S. nationals against foreign governments. Through the work of the Commission and its predecessors, virtually all espousable claims arising from Communist takings after World War II have been adjudicated and significant compensation has been paid. The FCSC would be pleased to provide its expertise to this Commission and to Under Secretary Eizenstat as they address property claims in post-Communist Central and Eastern Europe and would welcome the continued support of both in the fulfillment of the mission of the Foreign Claims Settlement Commission.

That concludes my statement, Mr. Chairman. I'll be happy to answer any questions that you or your colleagues may have.

Mr. SMITH. Ms. Ridgway, thank you for your fine statement and for your very good work on the Commission.

Ms. RIDGWAY. Thank you very much.

Mr. SMITH. Under Secretary Eizenstat, would you now make your presentation? Also, both of your full written statements will be made a part of the record.

STATEMENT OF STUART E. EIZENSTAT

Mr. EIZENSTAT. Thank you, Mr. Chairman. I appreciate your making my full statement a part of the record, and I particularly appreciate the leadership that you and Chairman D'Amato and other members of the Commission have provided in this particular area. Your continued interest and your support in the restitution process is much appreciated and will help, I am sure, to reach a fair resolution of the tragic injustices that have brought us together here.

My task as special envoy has been to promote a just, transparent, and fair resolution of the claims for the properties confiscated or stolen by the Nazis and their sympathizers or by the Communist governments in Central and Eastern Europe. In the past year, I've been to 11 countries in Central and Eastern Europe, as well as to Germany and Switzerland, trying to pave the way for a successful resolution of restitution issues.

I traveled to Germany because of its potential pivotal role in compensating those survivors of enforced ghettos or prison camps who have not been compensated because of a historical irony, which was that the German Government has paid some 80 billion to 100 billion Deutsche marks in compensation, which continues, to those survivors of the Holocaust who have emigrated to the West. But those who were trapped behind the Iron Curtain received nothing during the cold war period because of the risk that any money flowing through Communist government hands would never get to the victims. The problem is that we are now 6 to 7 years after the fall of communism, and by and large, these survivors remain uncompensated.

The other issue is Switzerland, to which you previously referred, and the Swiss bank account issue is something which I have addressed in previous testimony.

On my many trips to the region, I have emphasized a number of central points:

First is the significance that the U.S. Government attaches to this issue, the importance of resolving property claims in ways that are just, fair, and nondiscriminatory, and our willingness to serve as a catalyst to close this difficult chapter of World War II history.

Second, I would emphasize the need for cooperation by all the parties. We do not seek to dictate a solution or to be a negotiating partner. Rather, we urge governments to address the question of promoting restitution and compensation of both communal and private properties in ways that meet the expectations of local communities and are credible to international organizations. We also seek to promote solutions that are fair to U.S. citizens who have had private property confiscated during the Nazi and Communist eras.

Third, although we understand and are sensitive to the financial constraints of Central and Eastern European governments as they struggle to reform their post-Communist economies, these new democracies should avail themselves of this historic opportunity to stand against the enduring evils of Nazi and Communist persecution. We have also stressed that a critical priority should be assistance for those aging and destitute survivors who are victims of the historic anomaly to which I have just referred. Again, of those in the East who survived both Holocaust and Communist tyranny, many remain largely uncompensated. They're desperately in need of income. They are by definition old, and they ought not live out the balance of their lives in the same degradation that they have suffered until today.

The subject of my work as special envoy is focused on the claims of U.S. citizens and others whose property was confiscated by the Nazis and their allies or afterward by the Communists, and these are divisible into three categories, Mr. Chairman.

The first are claims for public or communal property; that is, property owned by the Jewish community. However, this also redounds to the benefit, if I may say so, of the Catholic communities and the Or-

thodox communities in these areas. This property includes synagogues, cemeteries, schools, and hospitals—property that was owned communally.

Second are claims for private property by survivors of heirs.

Third, perhaps the most difficult issues are claims for heirless or abandoned property.

Our initial focus has frankly been on communal property, because the hope has been that, by stimulating action here, we would build momentum in other categories. I want to have raised the issue of private property in all of the countries to which I have gone, but the emphasis clearly has been on communal property.

In many cases the countries I have visited have begun returning at least certain types of communal property. A number are setting up restitution foundations in cooperation with local and international Jewish organizations to organize the restitution process and manage the communal properties that have been returned.

In much of the work that I have done, I have been greatly benefited by the work of our embassies and Ambassadors at post, the Department of State, the World Jewish Restitution Organization, the World Jewish Congress and Jewish Agency, local Jewish organizations, many of the governments in Central Europe, and by the Congress. Together we are, in fact, making progress.

The return of communal property presents a number of difficulties. Some of the countries I have visited, Mr. Chairman, are returning state-held communal property, but not that property which may be controlled by local municipalities. Unfortunately, it is the municipality property which often is the most profitable income-producing property.

Even in instances where state-held communal property is being returned, the process of restitution is often slow and complex. Furthermore, some laws or decrees call only for the return of religious communal property, making an artificial and, I think, inappropriate distinction between religious and non-religious communal property that was often not at all clear before the war.

In some cases, claimants have been required to compensate current owners, something that they find very difficult to do, or to relocate persons displaced by the return, and/or to allow current tenants to remain for lengthy periods of time.

Each of these restrictions causes difficulties and delays.

Private claims are, in many ways, even more difficult and take longer to address. Citizenship and/or residency requirements for claimants are the major stumbling blocks in most of the countries I visited. These restrictions often prohibit U.S. citizens and citizens of other countries who suffered grievously during the Holocaust or lost their property under the Communists from regaining their family possessions and homesteads.

Even when these restrictions are not prohibitive, the claims process for individuals is often extremely complex and time-consuming due either to extensive bureaucratic requirements or inexperienced and overburdened judiciaries. All of the categories of claims that I have mentioned present complex legal questions that need to be addressed. The ability of the U.S. Government to espouse the claims of its citizens must be determined in accordance with international law on a case-by-case basis.

As Ms. Ridgway indicated, in order for the U.S. Government to formally present the claim of a U.S. citizen, the claimant must have been a citizen at the time the claim arose. The act giving rise to the claim must have been a violation of a nation's responsibility, international law, and finally, the claimant must have exhausted judicial and/or administrative remedies. Frankly, Mr. Chairman, few U.S. citizens can meet these stringent tests.

While much of the impetus for the creation of my original mission came from our recognition of the large numbers of U.S. citizens who were victims of Nazi or Communist aggression, the vast majority of these individuals were not U.S. citizens at the time of the taking. To the extent that there were espousable claims, almost all, as has been indicated, have been settled under the terms of existing agreements. Therefore, my mission has been a policy mission to urge a fair and non-discriminatory resolution of claims.

One final difficult issue that has confronted countries in Central and Eastern Europe is how to deal with the current occupants of restituted property. The guiding principle here has to be fairness, and any solution must recognize the need to provide current tenants with the means to relocate without undue hardship. In the interest of time, Mr. Chairman, I'm not going to go over the country-by-country designations which I have made here. I would, however, with your permission, like to describe the situation in Hungary.

I mention this because it is a good example of what a government can do when it puts its mind to it. The Hungarian Government has been very forward-thinking in its restitution program, and I have been impressed by their determination to resolve both communal and private property issues. It has accepted its obligations under the 1947 Paris Peace Treaty, and a 1993 Constitutional Court decision to provide fair compensation for those who lost their property in the Holocaust and afterwards is being honored.

The Hungarian approach is a positive example for other countries to follow. I'm very pleased to note, Mr. Chairman, that this very month, the Hungarian Government reached an agreement with the World Jewish Restitution Organization and the Federation of Hungarian Jewish Communities to create a new foundation to oversee Hungarian compensation and restitution of communal property for Hungarian Jewish communities. The foundation will be endowed with \$26.5 million to pay for compensation to Holocaust survivors who reside in Hungary, and that foundation will also manage the restituted property that will be returned.

The Hungarian Government implemented a property compensation program from 1991 to 1993 in which compensation coupons were distributed to claimants for the purchase of their old property, or another piece of property. There were, Mr. Chairman, no citizenship or residency requirements. Those who missed the 1993 cutoff could still file suit in the Hungarian court. If only this was the situation in other countries.

It is again an excellent model. There is still work to be done. We still have to make sure that the compensation that is promised is being paid. But our Ambassador there, Donald Blinken, deserves an enormous amount of credit. Prime Minister Horn and his government

have been tremendous in this issue and deserve a great deal of praise; and the World Jewish Restitution Organization, Edgar Bronfman and the Jewish Agency have all made important contributions.

Let me conclude, Mr. Chairman, by saying that progress in every country is being made. Often, however, it has been slow, tedious, and with great difficulty. Frameworks for the return of communal property are slowly but surely being erected in most of the countries I visited. Often, it is true, these efforts are limited to the return of religious property, but it is promising that a number of governments, even with this restriction, have told me that they will interpret the term “religious” as broadly as possible.

Joint foundations are being developed by national governments, local Jewish groups, and international organizations that will serve as a repository to manage the restituted communal property restitution. With respect to private property, again, more difficulties are presented. Discriminatory citizenship and residency requirements, overly-bureaucratic claims procedures, inefficient judicial systems, and the issue of how to deal with current occupants present tremendous hurdles that we have to overcome.

Progress is being made, however, and the U.S. Government continues to express at every opportunity its sincere desire to see private claimants, wherever they may be, justly and fairly compensated for their seized and stolen property.

On a final note, I do want to say that things are moving in a positive direction on the Swiss bank account issue; and we are very fortunate to have an ambassador, Madeleine Kunin, a native of Switzerland and a very talented and brilliant individual, someone who will follow up in that process as well.

Mr. Chairman, thank you. I thank you and your staff and the members of the Commission for having this hearing and for giving us the opportunity to highlight this issue.

Mr. SMITH. Thank you very much, Mr. Under Secretary. Again, thank you for your good work on this issue and many others. We do have a vote occurring on the floor, but I will ask one brief question, and then I’ll come back and hopefully other Commissioners will join me in asking additional questions.

Is there any effort being made to try to convene, whether it be an international conference or other kind of forum, that would lead to the establishment of an international standard, such as the way the ILO and others have done, especially when a problem arises that is certainly universal? Dorothy Taft, who was my staff member on the Western Hemisphere Committee, and now staff director for the Helsinki Commission, and I have been in Nicaragua. We saw confiscated properties and know that this is a universal problem, particularly as it relates to Communist countries.

Now Eastern and Central Europe are going through the same thing. Is there any effort to establish an international norm?

Mr. EIZENSTAT. Well, unless Ms. Ridgway is aware of any, I am not. However, your suggestion is a very interesting one. I would not want to make it in lieu of the work we are doing on a country-by-country basis, but as a supplement, the notion of trying to establish international norms, both for communal and private property, not only in

the Nazi or Communist environments, but more broadly, would be a very interesting proposition and something that would be worth our work.

There is no habeas forum for this. The WTO, obviously, would not be appropriate. This is not a trade issue. The U.N. possibly could be an appropriate forum, but the U.N. has its own difficulties. The ILO tends to deal with individual labor standards rather than communal property issues, but perhaps it could be placed under that rubric. But I think it is something very much worth thinking about. It's a very constructive and creative idea and one that certainly we should give more thought to.

Ms. RIDGWAY. A very interesting idea, Mr. Chairman.

Mr. SMITH. On that note, we'll recess this hearing for a couple of minutes. I'll be right back.

Ms. RIDGWAY. Thank you.

[Recess.]

Mr. SMITH. We'll resume the hearing. Secretary Eizenstat, you wanted to begin with a comment?

Mr. EIZENSTAT. Mr. Chairman, in terms of further reflection on your very interesting suggestion of trying to develop an international set of standards and international forum, it occurs to us that one possibility would be the very Helsinki process of which, of course, your Commission is a key part. The Helsinki process, after all, is established for these types of issues.

The OSCE might possibly sponsor a conference which would involve over 50 countries, almost certainly all the ones involved here, that could explore the issue, and begin a dialog. This is only a suggestion that you might consider and a possibility, but when you are asking for possible fora, this certainly would be one potential forum for the exploration of a multilateral set of standards.

I certainly think that a multilateral set of standards is far preferable than our trying unilaterally to establish standards that might be contrary to existing international practices.

Mr. SMITH. Thank you very much, Mr. Secretary, for that very good suggestion. I think we need to put our heads together and try to develop some plan of action on that. You mentioned a moment ago that few U.S. citizens can take advantage of the foreign claims settlement process because either they were not American citizens at the time that their properties were confiscated, or they find themselves in the situation that they're not citizens in the country that did the confiscation in the first place.

Do we have any numbers—Ms. Ridgway, you might want to comment on this as well—as to how many people fall between those cracks and how many people really are out in left field with no real recourse?

Ms. RIDGWAY. Let me answer your question this way, Mr. Chairman. There are easily thousands of individuals whose claims had to be rejected by the Foreign Claims Settlement Commission because they were in the process of becoming U.S. citizens but had not yet become U.S. citizens because of the waiting period. So we know about that group of people.

We, of course, don't know, can't express a view on the impact of the residency requirements in the domestic claims program. I would not know how many people would be captured in that group. Thank you.

Mr. EIZENSTAT. We have no precise numbers, but we get a steady stream of letters to the State Department from people who have very compelling cases of actual property that they own, but who would not have been U.S. citizens at the time, and likewise, are not citizens of the particular Central European country. It may be their property, their family's property. They can make clear claim and title to it, but the assertion of that is really precluded because they fall into this big black hole which you're referring to, and because we do get a steady stream, We have gotten scores already.

One would assume that the numbers potentially could be in the thousands of people who have immediate family or relatives who have property. Just think of the number of people just in Poland alone, whose families would have had property confiscated during World War II or during the Communist era, Polish-Americans, Jewish, and Catholic. That would be a very significant number.

Mr. SMITH. In terms of determining value, we all know, even in this country, if you live inside the Beltway, there's a certain guide to the identical home that's come to be much less expensive just 40 miles out, and certainly when you're talking about decades. How is value of a home or a property, I should say, determined?

Ms. RIDGWAY. Well, I can speak to that question for the Commission. We look at the value of the property at the time of the taking plus interest, of course, and some of the ways that we look to in determining value would be purchase price, for example, where that is available as an indicator; tax value; insurance value; mortgage; and production value in the case of agricultural property. We have to be very flexible in the use of approaches, particularly where some of these Communist economies are concerned, as I was discussing with respect to Albania.

Mr. EIZENSTAT. I would add simply that in most of the countries that have any kind of private property restitution, it simply depends on what they themselves have determined, under their own national laws, to pay, and that varies.

Mr. SMITH. In terms of proving prior ownership, what kind of test, especially since I have been advised that the Baltic states do keep some relatively good property records. Many of these countries are likely not to have kept them, and if they did, they might be lost, torn or tattered. How do you go about proving a claim?

Ms. RIDGWAY. Speaking for the Commission, as we discussed in our statement, this is indeed a problem in some of these countries. Albania specifically is the example that we have given in our written statement. We are very flexible in that area in terms of the evidence that's accepted, and we accept a wide range of secondary types of evidence.

Occasionally there are photographs of property, contemporaneous correspondence between parties that will reflect the existence of property, tax records, or mortgage records. Sometimes it even comes down to affidavits of third parties, the village elder, court documents in the country at issue, or sometimes just the credibility of the claimant who appears before the Commission to talk about his property and the loss of that property.

Mr. SMITH. Before you answer, Mr. Secretary, how many work hours does an average claim presented to you and to the President take?

Ms. RIDGWAY. Give us a moment on that.

Mr. SMITH. OK. Mr. Secretary?

Mr. EIZENSTAT. Yes. I would just add two points. First, with respect to communal property, the World Jewish Restitution Organization and/or the Jewish Agency for Jewish communal property has been providing, in a number of countries, aid for reviewing records on communal property going back to archives. It has been our experience in most of the Central European countries, the 11 that I have visited, in the overwhelming number, the records are actually quite good, and surprisingly available for communal property.

With respect to private property, we have not had that much experience with it, but there is no reason to believe that this is an insurmountable barrier. It does take time, but records in many of these countries are surprisingly good, and they are available. The biggest burden is not the record-keeping problem. I want to emphasize that. The biggest burden is the restrictions that are imposed by the Central European governments which require citizenship and/or residency to make the claim. That's the biggest problem by far.

Ms. RIDGWAY. I would just second what Under Secretary Eizenstat just said. Even in Albania, which I think is one of the more challenging examples, even in their domestic program, the absence of documentation is a problem, but not an insurmountable one. They are finding ways to deal with it just as we are. On your earlier question concerning the amount of time it takes to process a claim, it really varies wildly. Some of them individually take as many as 50 or 60 hours.

Of course, cases that can be disposed of immediately on jurisdiction where it's very clear that the individual was not a U.S. national at the time of taking, those cases require almost no time. We occasionally have very difficult cases that present lead issues, difficult issues of law perhaps that may take considerably in excess of that. So it varies dramatically.

Mr. EIZENSTAT. One other thing, Mr. Chairman, that the Commission and the OSCE could be very valuable in doing: Let's take the example of Slovakia. Slovakia has what appears is a model law passed in 1993 for restitution; but, in Slovakia, virtually nothing happens. I don't think it is a question of ill-will on the part of the government. I have been there a couple of times.

I believe that they want to do the right thing; but their bureaucratic processes, their administrative processes, their judicial processes are so new to them in the post-Communist era, with inexperienced people, and inexperienced judges, that it simply is very frustrating to get anything done. We see this repeated time and time and time again in other countries as well. So it would be useful, again, for the Helsinki process to encourage these countries.

Now, I may just mention one other thing that has been a potential positive, but without a follow through. The European Parliament, toward the end of last year, passed a resolution in Brussels calling on all Central and Eastern European countries to develop efficient laws and processes for the restitution of confiscated property, both communal and private, and to do so as soon as possible.

Now, the importance of this goes beyond the resolution itself. Most of these countries aspire to be members of the European Union. They need to improve their private property laws and ownership laws so that they reach European norms. If we could get a more coordinated effort on the part of the European Union, this would also be helpful.

One other thing that I would like to say that could be helpful, and here again, you, Mr. Chairman, and the Commission could be very helpful. I have, frankly, been largely a one-man band. I have had this as a second job. I have put in a lot of time and a lot of effort. I have got very good support from our posts and the State Department, with its very limited resources, has been helpful. But it is, nevertheless, not a systemic process.

What I think is necessary is now to move this to a more systemic level in our relations with Central and Eastern Europe, doing so diplomatically, but when there are visits of senior officials. I last night flew to New York to have dinner with the President of Poland. But constantly, we have a steady stream of prime ministers, foreign ministers, and others who come from these countries. They come to see the Hill, they testify before the Foreign Relations Committee or they'll meet with you privately. They meet with the Secretary of State; they meet at the White House.

This issue needs to be put on the agenda so that these countries know that this is a matter that the State Department, the White House, the Congress believe to be important. That will do more than anything to push this process along. One can only beat the drum as a one-man band so often in 11 or 12 different countries. This now has again to be systematized as part of our regular dialog.

It doesn't mean it has to be the No. 1 issue that's raised, but it needs to be a talking point so that these senior ministers know that this is an issue that the Congress, the White House, the State Department continue to care about in a meaningful way.

Mr. SMITH. Is there available, through your office—and perhaps we have some of this in ours—a profile of the outstanding cases, say, for example, the Czech Republic?

Mr. EIZENSTAT. Well, we certainly have a profile of the letters that have been sent to us by individual citizens and the responses back, which by and large, refer to the distinction that Ms. Ridgway made; namely, most of these people were not U.S. citizens, obviously, at the time the confiscation occurred, either during World War II or during the Communist era. They've only since become U.S. citizens. We could easily give you a catalog of those.

Mr. SMITH. A catalog of the most up-to-date, ongoing information would make a good point. All of us have frequent contact with these diplomats and traveling parliamentarians, foreign ministers, and prime ministers. If the issue is not a talking point when they interface with members of Congress and the executive branch, except for your good work and Ms. Ridgway's, it's just not going to be an issue. The more empowered we are with information that's accurate and up-to-date, the more effective we can be.

I know this has become part of the dialog with countries like Nicaragua. It very quickly became an issue where we were talking about linking our foreign assistance to whether or not there is progress in the adjudication of these cases. In terms of who occupies these properties, does it read like a who's who of former Communist officials or is it just more random?

Mr. EIZENSTAT. No, no. This is, by and large, not a situation where a few Communist bosses are sitting in. You may have a synagogue or a religious day school that may have been converted into an apartment, and it's being occupied by tenants and owned by a particular landlord, and that's what's so difficult.

Let me give you an example in Sofia, Bulgaria. Bulgaria has, by and large, done a pretty good job on the restitution issue. There are, however, 200 private properties in Sofia, including one major hotel which the Supreme Court of that country has determined is about 49 percent owned by the Jewish community, but there are others. There are about 200 properties in Sofia.

Despite a 1992 national decree from the Prime Minister, the Mayor of Sofia simply refused to abide by the decree. Now, the new mayor, Mayor Sofianski pledged to me that he was going to change that, abide by that decree, but he has so far done nothing. In part it's because of the difficulty of finding alternative locations for the people who are in those apartments.

Now, there are solutions. One solution is to pay compensation in lieu of getting the property back, but again, these are countries that don't have big treasuries. So this is a very daunting problem. But again, it's, by and large, not a situation where some fat cat Communist boss is simply occupying it. These are often occupied by average citizens who have to have other places to live.

With respect to the implementation, I mentioned Slovakia. There are programs which are funded by AID, for example, the Commercial Law Development Program that we use throughout Central and Eastern Europe to encourage these countries to develop commercial codes, tax codes, and other laws to bring them up to Western standards, Mr. Chairman; and there's no reason why that program might not be used for purposes of upgrading their property laws as well.

In all of this, we have to recognize that time is a factor, particularly for the survivors. They're generally in their mid-70's, and there is a time urgency.

Mr. SMITH. I appreciate that. That's a very good point. We had received a complaint from Susan Benda, whose house was ripped off, stolen during the Nazi occupation. She and her brother are trying, using the 1994 Czech Restitution Law, to get some significant redress in this regard; yet now they have run into—and you alluded to this a moment ago—the parliament passed a law that on its face looks like it is seeking to truly resolve the issue, only to run into a bureaucratic morass that just ties them up in knots.

Apparently she has to go through an expensive and cumbersome court proceeding. The Ministry of Finance, we think, are the ones who have imposed this. What can be done to help Ms. Benda and others like her? It's one thing to have a good law or what appears to be—on its face—to be a good law and quite another one to have a bureaucratic maze that one has to go through.

Mr. EIZENSTAT. Well, first, we'd be glad to look at that particular case. It would depend again on whether she was—she presumably was not a U.S. citizen at the time, and so she's subject to whatever the particular law in the Czech Republic is, and here, one has to admit to a certain feeling of sort of mixed success. The Czech Republic, in many ways, economically is at the very top of the Central European countries, per capita income, GDP growth. They have a very strong economic performance.

They've also done many positive things in the restitution area. For example, they passed, in 1991, a property restitution law covering Holocaust-related claims. In 1994, they established a one-time pay-

ment. Modest, but nevertheless, a one-time payment for Czech Holocaust victims. In that same year, Prime Minister Klaus issued a decree on the return of state-controlled Jewish communal property.

However, that is only half the glass. The other half is unfilled. The problem is that for much of the income-producing communal properties in municipal hands, you have to go mayor-by-mayor, city council-by-city council to get these back and most of the income-producing property, that is communal property that's been converted into hotels, hospitals, clinics, things that are producing income that would be very useful for the survivors to have as well as the Jewish community to rebuild its shattered roots, remain in the hands of mayors who don't want to give them up for obvious reasons.

With respect to private property, again, the frustration is that you need to be a citizen and a resident. I'm sure this is Mrs. Benda's problem. The Czech law makes it difficult even to claim dual citizenship, and it is these kind of discriminatory restrictions which, of course, the United States does not have on the ownership or claim of property and which many other countries don't, which will make it more difficult for her and others to make claims.

I suspect we have gotten more letters from Czech-Americans than perhaps any others, and it's very frustrating to have to give them bad news so often.

Mr. SMITH. Looking at the intent, the consequences of many who were wronged. Many continue to stay in that category of having been wronged. Do you sense that there was a deliberate attempt to try to make this not work, to give the appearance of being generous and trying to rectify past wrongs while not really having the tools available to make it happen?

Mr. EIZENSTAT. No. In almost every country I have gone to, I would say virtually in every country I have gone to, I have met either with the presidents, the prime ministers, the foreign ministers, other senior ministers. I think there is a genuine interest now in resolving this issue, in coming up to Western norms. They recognize that the spotlight is on them, that they're new democracies, they want to rectify the past. Some like Hungary have gone much further than others, but countries like Estonia have done very nicely.

Even those like Slovakia, where there is a slow process, or the Czech Republic where there's this mixed record, I do believe that the senior ministers want to do the right thing, that they want to see this issue solved; but they simply lack the legal structures, the bureaucratic capability, the administrative capability, and then they do have these very restrictive laws.

Now, let me say on this, because here one has to be quite frank, on the communal property, there is a genuine desire to get this behind them and resolve it as quickly as possible in almost all countries. At the same time, there is a real fear on private property restitution, that there will be this horde of people coming in, taking their property, taking it out of the country, taking assets out of the country, displacing current residents from property.

There is a mortal fear in many of these countries, I think in particular, Poland, that this will occur; and there's no question but that on the private property side, that even senior ministers are very concerned with dealing with this issue. They're very concerned with how they're going to handle it.

Mr. SMITH. In terms of institutional churches like the Russian Orthodox church, which had taken ownership of a number of the Catholic churches in Russia and Ukraine, what has been the cooperation there?

Mr. EIZENSTAT. Well, I was in Ukraine, and there is a very significant conflict between the Orthodox, the Russian branch and the non-Russian branch of the church, over some major church properties, church properties which, by the way, are magnificent. Some of the churches there are beyond description in terms of their beauty and their value.

In one case, the monarch from one of the branches of the church died, and he was buried on the sidewalk outside one of the churches that this particular group was claiming, just, in effect, staked their claim to that particular church. So there is a great lack of cooperation. This often impedes getting Jewish communal property back because the country, like the Ukraine, doesn't want to have to deal with the political problem of sorting out the differences between the different branches of the Orthodox church.

Mr. SMITH. Let me ask both of you, are there any NGOs that are exclusively committed to this issue? What got me involved in the Nicaraguan issue initially years ago was a group called the Americans with Confiscated Properties in Nicaragua. The NGO kept very detailed accounts of people who were trying, those who succeeded, what methodology they used.

When the Nicaraguan Government came up with a compensation scheme, they were Johnny-on-the-spot with an analysis as to what was good or ill about that scheme. It seems that highly motivated NGOs who don't have portfolios of all human rights or, like yourself, just an unbelievable basket of things to carry, could be very helpful in resolving this.

Mr. EIZENSTAT. Well, I'll let Ms. Ridgway deal with her situation. From my perspective, the NGO that has solely dedicated itself to this issue is the World Jewish Restitution Organization in terms of Jewish communal property. There is no similar NGO that I'm aware of that has committed itself solely to the return, for example, of Catholic or Orthodox church property. But the World Jewish Restitution Organization is solely in the business of dealing with the restitution issue.

It's very important, by the way, that the WJRO be represented adequately on these foundations. In Poland, for example, there is legislation now pending to create for the first time a legal process for restitution. Poland is farthest behind almost all the Central European countries in terms of even having a legal framework, but there is a desire to pass a law. The President and the Prime minister are very dedicated to it.

They want to create a foundation, but currently as the bill is drafted (it's still in committee), the foundation would be controlled only by the local Jewish community, which is a 3,000-person community of mostly aging people; and the question of their capability to manage a large amount of property coming back is doubtful. It's very important that the WJRO be included as a part of that foundation, as they are in, for example, Romania and Hungary.

The Jewish Agency doesn't spend full-time on this, but they've also been very valuable in providing assistance, particularly to the elderly survivors; and this is a very significant activity of theirs. The Joint Distribution Committee has been working very heavily with survivors and the Joint Distribution Committee, as well as an NGO that has been active here.

Ms. RIDGWAY. I would just echo what the Under Secretary said. There are a number of Jewish organizations that are playing a major role, both on persecution claims and property claims related to the Holocaust. I would add the Conference on Jewish Material Claims to that list. There are probably others that should be added that may not be devoted exclusively but are playing a major role.

There is also a professor at the University of Wisconsin, a man named David Stanfield, who has been in Albania for a number of years now. We came across his path when we were there last fall and recently met with him when he was in Washington. He is presently consulting with AID and is working very closely with the Albanian Government, working on establishing property registration procedures, recordation procedures, and those kinds of issues in that country, and he really has a wealth of knowledge on the subject.

Mr. SMITH. Thank you. In terms of the countries, as you go down the list country by country, have any of the countries set priorities for the return of property beginning first with themselves in terms of properties that they may have wrongfully taken over and to return those back either for communal purposes, or to individual private owners that lost that property?

Mr. EIZENSTAT. Well, I would say that, again, if you look at the summaries that we have made, there are a number of countries, the Czech Republic, Slovakia, Hungary, which have legal processes that are in place to deal with those properties that were confiscated. By the way, there are some countries which have recognized, Bulgaria as an example, that their Fascist governments during the war were responsible for confiscation, and they've tried to rectify that as well.

I think again, most of these countries do recognize they have a responsibility, particularly in terms of the Communist era nationalizations, to try to return that property; but it is a very daunting task to undo 50 years of Communism and try to return properties to their rightful owners that were confiscated during the Communist era, let alone the Nazi era. So I think that they, by and large, all have a desire to do the right thing. It's a question of priorities and some, like Hungary, have simply given a higher priority to it than have others.

Mr. SMITH. Let me ask, in terms of the caseload, Ms. Ridgway, in terms of the cases resolved, how many have actually gotten properties back or its compensation in the normal route, and in those cases where someone accepts compensation but then a new law like the Czech law comes on the books or some other law that might allow them to actually get the property back, can it be reopened, or once resolved, is it a closed case?

Ms. RIDGWAY. The Foreign Claims Settlement Commission only has authority through the executive function to provide compensation pursuant to government-to-government agreements. We never are able to provide for restitution of property. That's a remedy available typically through the domestic claims program.

Mr. SMITH. Once you do provide compensation, what happens if they seek restitution?

Ms. RIDGWAY. Well, let me back up. Once a settlement agreement is concluded with a country, those claims are released. All claims within the scope of that agreement are released without regard to whether or not they have actually been raised, which makes the outreach function of the Commission very important. When an agreement is concluded, it's important to apprise everyone who falls within the scope of that agreement of the availability of compensation so that they can come in and claim within the appropriate timeframe and get compensation.

So their claim is released without regard to whether they come forward or not. Once those claims are released, there is no opportunity, unless the other government decides on an *ex gratia* basis to make it available, for them to pursue, as an alternative, a local remedy in any claims program in that particular country.

Mr. SMITH. Ms. Schlager, do you have any questions?

Ms. SCHALGER. I would be interested in asking Under Secretary Eizenstat about a decision of the U.N. Human Rights Committee—we only learned of this decision ourselves this week, so I don't know if you would be familiar with it. But we understand that the U.N. Human Rights Committee heard a case that was brought by a number of Czech-Americans as well as some citizens of other countries regarding the Czech restitution law and these individuals were excluded because they did not have Czech citizenship, which is a requirement.

In making a decision on this case, the U.N. Human Rights Committee noted that citizenship was not an original requirement for property ownership and that many of those who were forced to leave Czechoslovakia, that is to say, the act which has led to their property confiscation, were victims of political persecution.

The Committee argued that while property rights, as such, are not covered by the International Covenant on Civil and Political Rights, a law providing for the restitution of property must do so on a non-discriminatory basis. Therefore, the committee concluded that the conditions required for restitution by the Czech Republic's law, specifically the requirement of citizenship, was discriminatory.

Now, this seemed to be a persuasive line of reasoning and I'm wondering if it is helpful to you as you examine these issues.

Mr. EIZENSTAT. Well, it's certainly something we'd like to see. I'm not aware of it, but I very much would like to see it and its line, Mr. Chairman. This is interesting, that actually when claims have been filed in a variety of courts, that in at least two or three of the countries that I have referenced in my prepared testimony, the constitutional courts have actually stricken those laws which require citizenship.

This affords an opportunity, on a country-by-country basis, to go back and get the parliaments to try to amend their laws. Those courts have generally, however, not struck down residency requirements. They have struck down citizenship requirements, and I would certainly like to compare this decision of the U.N. Human Rights Committee.

One other thought, again, when we are thinking of international fora, because I'm more and more taken by your notion of trying to find one, one other potential forum, in addition to the Human Rights

Committee because they've evidently already looked into it, would be the Council of Europe. The Council of Europe has specifically a human rights focus, and many of these Central European countries are members. Some like Russia have just recently gotten in, and, if this could be one of the criteria that are followed, that would be very useful as well.

Mr. SMITH. Any others? Thank you very much for your testimony and for your answers to the questions. They're very provocative.

Mr. EIZENSTAT. We appreciate your leadership.

Mr. SMITH. We need to make this a priority much more than I think we have. Although some have been doing it—and I thank the good work of our staff on this—I can assure you I will do everything I can to try to give this a boost. As a matter of fact, earlier we were both thinking along the same lines when you talked about the resolution that had passed in the European Parliament. Perhaps it's time to send to the Congress a resolution to bring focus on this issue.

Mr. EIZENSTAT. That's certainly another possibility.

Mr. SMITH. It's not an issue.

Mr. EIZENSTAT. It had an effect when it was passed in Brussels, and that's certainly a possibility.

Mr. SMITH. OK. We'll get to work drafting a resolution right away. Hopefully we can get it through real quickly. Again, I want to thank you again for your excellent testimony and your fine work. The hearing is adjourned.

Ms. RIDGWAY. Thank you very much, Mr. Chairman.

[Whereupon at 11:30 a.m., the Commission adjourned.]

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