OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – BOSNIA-HERZEGOVINA (AS OF 13 DECEMBER 2016)

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A. EXECUTIVE SUMMARY

Yugoslavia (which included present day Slovenia, Croatia, Serbia, Bosnia-Herzegovina, Macedonia, Montenegro and Kosovo) was invaded by the Axis powers in 1941. Bosnia-Herzegovina was incorporated into the so-called Independent State of Croatia (a Nazi puppet state) during the war. After the war, Bosnia-Herzegovina became one of the constituent republics of socialist Yugoslavia.

Following the breakup of Yugoslavia in the early 1990s, Bosnia-Herzegovina declared independence, which the Bosnian Serbs did not recognize. An interethnic civil war ended in 1995 with the **Dayton Peace Accords**. The Dayton settlement divided the country of Bosnia-Herzegovina (BiH) into two autonomous administrative entities, the Bosniak/Croat-controlled "Federation of Bosnia and Herzegovina," (51% of the territory), and the Bosnian Serb-controlled "Republic of Srpska," (49% of the territory). Each entity has its own president and parliament. At the national level, there is a BiH national parliament and a BiH three (3)-member presidency that rotates every eight (8) months. Three (3) peoples of BiH are represented in the national parliament and the three (3)-member presidency: the Bosniak Muslims, the Eastern Orthodox Bosnian Serbs and the Catholic Bosnian Croats.

Out of the more than 14,000 Jews that lived before World War II in the territory of the present Bosnia-Herzegovina, fewer than 4,000 survived. An estimated 28,000 Roma were also murdered. The estimated Jewish population of Bosnia-Herzegovina today is approximately 1,000 and the Roma population is between 40,000 and 50,000.

After the war, in May 1945, Yugoslavia enacted **Law No. 36/45** (on Handling Property Abandoned by its Owner during the Occupation and Property Seized by the Occupier and his Collaborators). The expansive restitution and compensation law addressed property (from any of the six (6) republics) confiscated during World War II where the owners had to leave the country and were deprived of their property against their will, or where

property was transferred under the pressure of the occupier to third persons. The restitution measures were short-lived. As Yugoslavia fell under Communist rule, widespread nationalization – which this time occurred irrespective of race, religion or ethnicity – resulted in a second wave of property confiscations.

Nascent political efforts to establish a restitution policy in Bosnia-Herzegovina in the early 1990s after the fall of Communism were quashed by the start of the conflicts in the Balkans between (1992-1995). The Balkan conflicts crippled Bosnia-Herzegovina's political structure and left more than a million Bosnians internally displaced (IDPs) and an additional 1.2 million Bosnians as refugees overseas. The IDP and refugee situation created an acute and immediate need to address property issues arising from the Balkan conflicts. However, by implementing property laws that addressed only the effects of the Balkan conflicts, the government of Bosnia-Herzegovina did not address lingering restitution issues dating back to the Holocaust era. Specifically, by granting occupancy and ownership rights to tenants occupying nationalized properties at the end of Balkan conflicts, the former owners of the nationalized properties can never get their actual property back. Bosnia-Herzegovina does not have any legislation that specifically addresses the restitution of Holocaust-era private, communal or heirless property. A 2009 **Draft Law on Denationalization –** which would have addressed private and communal property restitution – was prepared but never enacted.

Private Property. Claims by some foreign citizens relating to wartime confiscations and subsequent nationalizations were settled in the post-World War II years through bilateral agreements between Yugoslavia and at least 12 foreign governments. In 1996, the Republic of Srpska passed the **Law on Return of Seized Property** and the **Law on Return of Seized Land**, addressing the denationalization of property. In 2000, a law that would have superseded the previous two denationalization laws in the Republic of Srpska, the **Law on the Return of Confiscated Property and Confiscation,** was passed. However, the **Office of the High Representative of Bosnia and Herzegovina** (an *ad hoc* international institution responsible for overseeing implementation of portions of the **Dayton Accords**) annulled all three laws. No replacement legislation has been enacted in the Republic of Srpska. At the entity level, the Federation of Bosnia and Herzegovina has made various attempts to pass denationalization legislation, but none have been successful. In 2009, at the national level, a **Draft Law on Denationalization** was prepared. It would have placed a priority on restitution *in rem*, but where that was not possible, options for restitution in kind or compensation (in 20-year bonds, shares of state companies, or in isolated cases, cash) would have been available. Since 2009, no progress has been made on the passage of the law.

Enacting future laws on restitution of Holocaust-era confiscated property is complicated by Bosnia-Herzegovina's adoption of a package of property laws in 1998 and 1999 following the Dayton Accords (including for example, a series of apartment occupancy laws). These laws exclusively addressed issues and rights of internally displaced persons, refugee return, and reintegration following conflicts in the Balkans in the 1990s and said nothing about the rights of persons whose property was nationalized and confiscated during the Communist era and World War II. Any new laws on denationalization cannot

interfere with the property laws enacted as a result of the Dayton Accords. (*See* European Parliament – Directorate-General for Internal Policies, "Private Properties Issues Following the Change of Political Regime in Former Socialist of Communist Countries – Study", April 2010, p. 54.) This means that to the extent any restitution legislation is ever passed, former owners of property would have to choose between alternate compensation (i.e., restitution in kind or financial compensation) and not restitution *in rem*. (*Id.*)

Communal Property. In 2003, BiH passed the **State Law on Religious Freedom and Legal Position of Churches and Religious Communities** at the national level. The law provides the right to restitution for religious communities "in accordance with the law." No law sets out the parameters or procedures for restitution of religious property. The result has been *ad hoc* restitution for those religious communities that apply to local authorities. Yet, reports find that restitution is wielded as a tool of political patronage, which means that the Jewish community – small in size and without political connections – have not received a single property from the state since the current government was established in 1995. The Jewish community in BiH completed a survey in 2005 that identified 130 communal properties formerly belonging to the Jewish community. The **World Jewish Restitution Organization** entered into an agreement with the Jewish community of BiH to create a foundation that in the future will receive and maintain and property restituted to the Jewish community. The 2009 **Draft Law on Denationalization –** which has not been enacted – would have provided for restitution of communal property to religious entities.

Heirless Property. The often-wholesale extermination of Jewish and Roma families in Yugoslavia during the Holocaust had the effect of leaving substantial property without heirs to claim it. Principles enshrined in documents such as the 2009 Terezin Declaration, 2010 Guidelines and Best Practices, and 2015 Statement at the Conclusion of the International Conference on Welfare for Holocaust Survivors and Other Victims of Nazi Persecution, emphasize that heirless property should be used to provide for the material needs of Holocaust survivors most in need of assistance. BiH has not made any special provisions for heirless property from the Shoah era. In fact, according to the terms of the **1945 Restitution Law**, property not claimed within the one (1)-year statute of limitations period became the property of the Committee for National Property (i.e., property of the Yugoslav state).

As part of the European Shoah Legacy Institute's Immovable Property Restitution Study, a Questionnaire covering past and present restitution regimes for private, communal and heirless property was sent to all 47 Terezin Declaration governments in 2015. As of 13 December 2016, no response from Bosnia-Herzegovina has been received.

B. POST-WAR ARMISTICE, TREATIES AND AGREEMENTS DEALING WITH RESTITUTION OF IMMOVABLE PROPERTY

On 6 April 1941, the Axis powers (Germany, Bulgaria, Hungary, Italy, and Romania) invaded Yugoslavia (which included present-day Bosnia-Herzegovina, Croatia, Serbia, Macedonia, Montenegro, Kosovo and Slovenia). With the support and assistance of

Germany and Italy, the Ustaše regime created the so-called Independent State of Croatia (a Nazi puppet state). The Ustaše state lasted from 10 April 1941 to 8 May 1945. Bosnia-Herzegovina was incorporated into the Independent State of Croatia during the war. (*See* United States Holocaust Memorial Museum, "Axis invasion of Yugoslavia".) By mid-1941, the Ustaše regime had passed laws stripping Jews of their property and businesses. Bosnian Jews, Roma, and communist sympathizers were murdered and deported by Croat, German and Bosnian Muslim forces. Many were sent to Jasenovac extermination camp in Croatia.

Before World War II, approximately **14,000** Jews lived in the territory presently known as Bosnia-Herzegovina. By the end of the war, fewer than **4,000** survived. (*See* 2012 Green Paper on Immovable Property Review Conference, pp. 13-14 (Bosnia and Herzegovina).) The current Jewish population in Bosnia-Herzegovina numbers approximately **1,000**.

An estimated **28,000** Roma were killed by either by or with the approval of the Croat Ustaše state during World War II. (*See* European Roma Rights Center, "The Non-Constituents: Rights Deprivation of Roma in Post-Genocide Bosnia and Herzegovina" Country Report Series No. 13, February 2004, p. 30.) Today there are between **40,000** and **50,000** Roma in Bosnia. (*See* Jeane-Pierre Liegeois and Nicholae Gheorghe, "Roma/Gypsies: A European Minority", Minority Rights Group (1995), p. 7.)

In October 1944, after the liberation of Belgrade, Josip Broz Tito formed the Democratic Federal Yugoslavia (DFY) that lasted until the end of 1945. The name was then changed to Federal People's Republic of Yugoslavia (FPRY). Bosnia-Herzegovina became one (1) of six (6) constituent republics in the FPRY (along with Serbia, Croatia, Montenegro, Macedonia and Slovenia).

As a constituent republic in the FPRY, Bosnia-Herzegovina was involved in the **1947 Treaty of Peace with Bulgaria,** the **1947 Treaty of Peace with Hungary**, and the **1947 Treaty of Peace with Italy**. Yugoslavia was not involved with the **1947 Treaty of Peace with Finland** or the **1947 Treaty of Peace with Romania**.

In 1963, the FPRY became the Social Federal Republic of Yugoslavia (SFRY). In October 1991, Bosnia-Herzegovina declared its sovereignty from the Socialist Federal Republic of Yugoslavia (SFRP), and independence in March 1992 following a referendum after which civil war ensued with the aim to partition the republic along ethnic lines. In December 1995, the warring parties signed a peace agreement that ended the civil war, known as the **Dayton Accords**.

The Republic of Bosnia-Herzegovina (BiH) is currently composed of two highly autonomous entities: the Federation of Bosnia and Herzegovina and Republic of Srpska, each with its own parliament and president. At the national level in the Republic of Bosnia-Herzegovina, there is a parliament and a three (3)-member presidency that rotates every eight (8) months. Three (3) peoples of BiH are represented in the national

parliament and the three (3)-member presidency: the Bosniak Muslims, the Eastern Orthodox Bosnian Serbs and the Catholic Bosnian Croats.

BiH became a member of the Council of Europe and ratified the European Convention on Human Rights in 2002. As a result, suits against BiH claiming violations of the Convention are subject to appeal to the European Court of Human Rights (ECHR). BiH is classified as a potential candidate country to join the European Union (EU) and in February 2016 submitted its application to join the EU.

1. Claims Settlement with Other Countries

Following the war, Yugoslavia entered into at least 16 lump sum agreements or bilateral indemnification agreements with 12 countries. (*See* Richard B. Lillich and Burns H. Weston, *International Claims, Their Settlement by Lump Sum Agreements* (1975), pp. 328-334.) These agreements pertained to claims belonging to foreign nationals (natural and legal persons) arising from property that had been seized by the Yugoslavian state during and after WWII. As best as we are aware, claims settlements were reached with:

- **Switzerland** on 27 September 1948
- **United Kingdom** on 23 December 1948 and 26 December 1948
- **France** on 14 April 1951 and 2 August 1958 and 12 July 1963
- **Norway** on 31 May 1951
- **Italy** on 18 December 1954
- **Czechoslovakia** on 11 February 1956
- **Turkey** on 13 July 1956
- **Netherlands** on 22 July 1958
- **Greece** on 18 June 1959
- **Denmark** on 13 July 1959
- **Argentina** on 21 March 1964
- **United States** on 19 July 1948 and 5 November 1964

(*Id*.)

2. Specific Claims Settlements Between Yugoslavia and Other Countries

a. Claims Settlement with the United States

On 19 July 1948, Yugoslavia and the United States concluded **Y-US Bilateral Agreement I** (Agreement Between the Government of the United States of America and the Government of the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals). In **Y-US Bilateral Agreement I**, Yugoslavia agreed to pay USD 17,000,000 " . . . in full settlement and discharge of all claims of nationals of the United States against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property and rights and interests with respect to property, which occurred between September 1, 1939 and the date hereof". (**Article 1.**) The United States, through its **Foreign Claims Settlement Commission ("FCSC")**, awarded nearly USD 18,500,000 to U.S. national claimants in

the **First Yugoslavia Claims Program**. However, under the terms of **Y-US Bilateral Agreement I**, only USD 17,000,000 was available for payment. Successful claimants therefore received 91% of the principal of their awards.

On 5 November 1964, a second agreement, **Y-US Bilateral Agreement II**, was concluded between the two countries (Agreement between the Government of the United States of America and the Government of the Socialist Federal Republic of Yugoslavia Regarding Claims of United States Nationals). In **Y-US Bilateral Agreement II**, Yugoslavia agreed to pay USD 3,500,000 in full settlement of claims of nationals of the United States "on account of the nationalization and other taking of property and rights . . ." which occurred subsequent to the 19 July 1948 Y-**US Bilateral Agreement I.** (**Article 1.**) The United States, again through the **FCSC**, awarded nearly USD 10 million to U.S. national claimants in the **Second Yugoslavia Claims Program**. Only USD 3,500,000 was available for payment based upon the terms of **Y-US Bilateral Agreement II.** The payments to successful claimants were thus only 36.1% of the principal of the awards.

For more information concerning the **First and Second Yugoslavia Claims Programs,** the **FCSC** maintains statistics and primary documents on its Yugoslavia: Program Overview webpage.

b. Claims Settlement with the United Kingdom

On 23 December 1948, Yugoslavia and the United Kingdom entered into a bilateral agreement, **Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Yugoslavia regarding Compensation for British Property, Rights and Interests affected by Yugoslav Measures of Nationalisation, Expropriation, Dispossession and Liquidation ("Y-UK Bilateral Agreement I").** According to **Articles I** and **II**, Yugoslavia agreed to pay the United Kingdom GBP 4,500,000 (where payments were to be made in part after the conclusion of an Anglo-Yugoslav Money and Property Agreement and in part after the conclusion of a long-term trade agreement) in settlement of "all claims of British nationals arising, on or before the date of signature of the present Agreement, out of various Yugoslav measures affecting British property." Claimable "British property" under **Article II** included all property, rights and interests affected by "various Yugoslav measures" which on the date of such measure(s) were owned "directly or indirectly, in whole or in part, by British nationals, to the extent to which they were so owned". **(Article IV.)**

On 26 December 1948, Yugoslavia and the United Kingdom entered into a second bilateral agreement, **Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Federal People's Republic of Yugoslavia regarding the Terms and Conditions of Payment of the Balance of Compensation for British Property, Rights and Interests affects by Yugoslav Measures of Nationalisation, Expropriation, Dispossession and Liquidation ("Y-UK Bilateral Agreement II").** According to **Article I,** GBP 4,050,000 (the amount which was to be paid under the terms of **Y-UK Bilateral**

Agreement I after the conclusion of a long-term trade agreement between Yugoslavia and the United Kingdom) would be paid installments between 1950 and 1957. The long-term trade agreement was concluded on the same day as **Y-UK Bilateral Agreement II,** 26 December 1948.

As far as we are aware, the claims processes established under **Y-UK Bilateral Agreements I** and **II** is complete. We are not aware of how many claims were made under the agreement, how many claims were ultimately successful, or whether Yugoslavia paid the UK the full agreed-upon settlement amount.

The original text of the two (2) Agreements is available for download in English from the website of the Foreign Commonwealth Office, UK Treaties Online.

We do not have more detailed information for the remaining lump-sum settlements or bilateral indemnity agreements.

C. PRIVATE PROPERTY RESTITUTION

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

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

(Terezin Best Practices, para. b.)

Laws passed by the Ustaše regime of the so-called Independent State of Croatia (a Nazi puppet state) during World War II stripped Jews from their property and businesses.

1. Early Post-war Restitution and Subsequent Nationalization and Confiscation Measures

Law No. 36/45 (on Handling Property Abandoned by its Owner during the Occupation and Property Seized by the Occupier and his Collaborators) from 24 May 1945 was the first law enacted in Yugoslavia addressing property confiscated during World War II.[1]

[1] Another property-related law was the Decree on Transferring Enemy Property into State Property, on State Control over Property of Absent Persons and on Sequester of Property Seized by Occupying Authorities. It was passed by the presidency of the AVNOJ (Anti-Fascist Council for the National Liberation of Yugoslavia) on 21 November 1944. Scholar Ljiljana Dobrovšak describes the law as requiring

> all property of the German Reich and its citizens in the territory of Yugoslavia [] be transferred into state property, and the same applied to property of individuals

Amendments to **Law No. 36/45** were included in **Law No. 64/46** (on Confirmation and Changes to the Law on Handling Property Abandoned by its Owners during the Occupation and Property Seized by the Occupier and his Collaborators) (amended by **Law Nos. 105/46, 88/47** and **99/48).**

Law No. 36/45 has been described as granting restitution "in all cases of properties, whose owners had to leave the country during occupation, of which they were deprived against their will, or which were transferred under the pressure of the occupant to third persons, regardless of who is in their possession, or the basis of possession." (Nehemiah Robinson, "War Damage Compensation and Restitution in Foreign Countries", 16 *Law and Contemporary Problems* 347-376 (Summer 1951) ("*Robinson"*) (describing the terms of the law), p. 364.) The law provided for restitution *in rem*, except when restitution was contrary to interest of the economy, reconstruction or military security, in which case compensation would be paid. (*Id.*)

The law was expansive in its scope of property to be returned (it included real estate, businesses, securities and property rights) but a few provisions seriously marginalized the law's effect. (*See Robinson,* p. 364.) First, **Law No. 36/45** only applied to citizens of Yugoslavia. Moreover, the law denied restitution to all Yugoslavian citizens living abroad who refused to return. (*Id.*) The law permitted relatives of the former owner to recover property but a court could decide to assign the relatives only part of the total former owner's assets. (*Id.*)

All restitution claims were resolved through the courts. (*Id.*)

Within one (1) month of **Law No. 36/45** coming into effect, all properties coming within the provisions of the law had to be registered with and transferred to the **State Committee for National Property** (Državna Uprava narodnih dobara). (*Id.*, p. 365.) Until the court determined ownership, the state would administer the property. However, after one (1) year, if the property remained unclaimed, it would be transferred to state ownership. (*See* European Parliament – Directorate-General for Internal Policies, "Private Properties Issues Following the Change of Political Regime in Former Socialist of Communist Countries –Study", April 2010 ("2010 European Parliament Study"), p. 48 (in "Bosnia" section of the report but describing laws of Yugoslavia at the time).) In

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> of German nationality. Excluded property was only the property of Germans who fought in National Liberation Army and Partisan units, and of those who were citizens of neutral stats and did not show hostility towards the liberation war. All property of war criminals also became state property, irrespective of their citizenship, and the same applied to all persons who were sentenced to have their property seized by military or civilian courts. The state also took the property of absent persons, i.e. those who were forcedly taken away by the enemy or emigrated on their own.

(Ljiljana Dobrovšak, "Restitution of Jewish Property in Croatia", Limes Plus Journal of Social Sciences and Humanities: Holocaust and Restitution, 2/2015, p. 69 n. 10.)

many instances, the state failed to register the unclaimed properties. This means former owners who did not make timely claims in the 1940s are still listed in property registers as owners even though the property was supposed to revert to state ownership. (*Id.*)
A 2010 European Parliament Study notes that even though BiH has no official rights over some 7,000 currently abandoned apartments with no legal owners, which date back to the World War II era (because the state failed to register them as state property in the 1940s), the state has nevertheless granted occupancy rights in these apartments to political leaders and their colleagues. (*Id.*)

In the end, it has been reported that the few Jews that survived and remained in Bosnia after World War II had trouble securing the return of their property. (Francine Friedman, "Contemporary Responses to the Holocaust in Bosnia and Herzegovina" *in Bringing the Dark Past to Light: The Reception of the Holocaust in Postcommunist Europe* (John-Paul Himka and Joanna Beata Michlic, eds. 2013), p. 99.)

Whatever property was ever actually returned under **Law No. 36/45** was seized for a second time between the 1940s and late 1960s (via sequestration, confiscation, nationalization, expropriation or agrarian reform) by the Communist regime in Yugoslavia.

Researchers have estimated that over 40 nationalization laws were enacted in Yugoslavia during this period. (2010 European Parliament Study, at p. 118.) Nationalization included movable and immovable properties and applied to all persons equally, regardless of race, religion or ethnicity.[2] Municipal and regional commissions carried out the nationalization processes. (*Id.* at p. 121.) Key nationalization laws included **Law Nos. 98/46** and **34/48** (on Nationalization of Private Commercial Enterprises (as amended)) and **Law No. 28/47** (Fundamental Law on Expropriation).

Between 1948 and 1953, in addition to nationalization measures, Jews were also subject to so-called forced donation of property. Property "donation" was considered the price for obtaining exit visas to resettle in Israel.

2. Denationalization Laws

a. National level (2009 Draft Law on Denationalization)

Efforts were made between 2005 and 2009 to pass denationalization legislation at the national level that would apply countrywide. In the end, the law was never passed.

In 2005, the Council of Ministers from the national government established the **Commission for the Restitution of Bosnia and Herzegovina**. The **Commission's** job was to consider possibilities for the restitution of property seized after World War II. As a

[2] There was, however, a law that related specifically to the treatment of Germans and German property. It was also the case that many Jews were charged with collaboration in order to facilitate the seizure of their property by the state.

result of the **Commission's** research, a 2009 **Draft Law on Denationalization** was prepared.

The 2009 **Draft Law on Denationalization** favored restitution *in rem* but when that was not possible, restitution in kind would be made or compensation paid (via 20-year bonds, shares in state companies or in isolated instances, cash). (*See* 2010 European Parliament Study, p. 50.)

Eligible property included land, apartments, offices/business spaces, movable property (with historical, cultural or artistic value), and agricultural or forestry land. (*Id.*)

Eligible claimants included all natural and legal persons, religious communities, foundations and associations. For legal persons, eligible claimants included direct descendants. For legal persons, endowments and associations, the law applies if they are still in business, or to their successors if they can prove legal continuity. (*Id.*)

The law provided a three-year period to file claims after the law came into force.

A Directorate for Denationalization would implement the law from the national-level.

The Bosnian Economic Institute prepared an economic feasibility study for the 2009 **Draft Law on Denationalization**. (*Id.*, p. 51.) It estimated that most property could be restituted either *in rem* or in kind. That property was valued at approximately EUR 25 billion. In additional, the financial compensation needed for the remainder of the estimated claims was approximately EUR 950 million. (*Id.*)

A 28 December 2009 statement from the Ministry of Justice indicated that the 2009 **Draft Law on Denationalization** would be sent to the Council of Ministers of BiH for adoption "after getting opinions of the relevant institutions". (Ministry of Justice of Bosnia and Herzegovina, "The most important 2009 achievements", 28 December 2009.) No further progress has been made on the law.

b. The Republic of Srpska

i. 1996 Law on Return of Seized Property, 1996 Law on Return of Seized Land, and 2000 Law on the Return of Confiscated Property and Confiscation

In 1996, at the entity level, the Republic of Srpska passed two laws relating to restitution of property: the **Law on Return of Seized Property** and the **Law on Return of Seized Land**. The laws provided for denationalization of property in the Republic of Srpska.

In 2000, the two 1996 laws were replaced by a new denationalization and restitution law, the **2000 Law on the Return of Confiscated Property and Confiscation.**

However, shortly after the 2000 law came into effect, the **Office of the High Representative for Bosnia and Herzegovina (OHR)**[3] suspended the law (as well as the two (2) laws from 1996). (*See* Office of the High Representative, "Decision annulling the RS Law on Return of Confiscated Property and Compensation", 30 August 2000; Office of the High Representative, "Decision annulling the RS law on Return of Seized Land", 30 August 2000.)
The **OHR** considered the propriety of these three (3) laws under its power to make binding decisions on certain issues including the **Dayton Accords** throughout BiH. The **OHR** found that under the annulled laws, the Republika Srpska had assumed financial responsibility for property that could not be returned but had made no estimate as to how much the government would be obliged to pay or where the funding would come from; that new administrative bodies would have to be established for the restitution regime at a time when current administrative bodies were underfunded, understaffed, and underequipped; that there was not sufficient evidence that administrative decisions would be made in a non-discriminatory manner; that courts to which claimants would apply if they disagreed with administrative decisions were already backlogged; and finally that property records on which claimants would need to rely had been lost or destroyed and it was not clear that the government had taken adequate measures to ensure that administrative bodies could function properly in the absence of such records. (OHR Press Release, "The High Representative Annuls RS Restitution Laws", 31 August 2000.)

No replacement legislation has since been enacted in the Republic of Srpska.

The decision by the **Office of the High Representative** did not affect claims decided prior to the date of the annulment, but all on-going proceedings were to cease immediately. We are not aware of the number of properties that were successfully restituted before the laws were annulled in 2000.

c. The Federation of Bosnia and Herzegovina

Several attempts have been made at the entity level by the government of the Federation of Bosnia and Herzegovina to pass legislation addressing property nationalized by the Communist regime, but none have been successful. (*See* 2010 European Parliament Study, at p. 49.)

3. Apartment Occupancy Laws

Since the end of the Balkan conflicts in the 1990s, both entities, the Federation of Bosnia and Herzegovina and the Republic of Srpska, have enacted laws on the sale of apartments with occupancy rights and other laws regulating the privatization of property.

The Federation of Bosnia and Herzegovina's 2008 **Law on Privatization of National**

[3] The Office of the High Representative is an *ad hoc* international institution responsible for overseeing implementation of civilian aspects of the Peace Agreement ending the war in Bosnia and Herzegovina. (Office of the High Representative, "General information".)

Apartments permits current tenants to purchase the previously nationalized apartments they reside in. The law also takes into account former original owners and provides that they instead may apply for compensatory apartments. (For more information on the apartment occupancy laws and their effect, *see* Rhodri C. Williams, "Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice", 37 N.Y.U. J. Int'l L. & Pol. 441 (2005).)

The 2010 European Parliament Study describes this portfolio of apartment legislation as having "partially interfered with the denationalization/restitution concepts at both the state and/or entity level and create[s] serious challenges for legislators to find a fair approach to solve the overlapping rights that would result from denationalization/restitution efforts." (2010 European Parliament Study, p. 50.)

Enacting future laws on restitution of Holocaust-era confiscated property is complicated by BiH's adoption of a package of property laws in 1998 and 1999 following the Dayton Accords. These laws exclusively addressed issues and rights of internally displaced persons, refugee return, and reintegration following conflicts in the Balkans in the 1990s and said nothing about the rights of persons whose property was nationalized and confiscated during the Holocaust or Communist eras. Any new laws on denationalization cannot interfere with the property laws enacted as a result of the Dayton Accords. (*Id.*, p. 54.) This means that many former property owners will never get their property restituted *in rem*, because of the rights granted to tenants to purchase properties they were living in after the Dayton Accords. To the extent any restitution legislation is ever passed, these former owners would have to choose between alternate compensation (i.e., restitution in kind or financial compensation). (*Id.*)

Since endorsing the Terezin Declaration in 2009, Bosnia-Herzegovina (including any of its constituent entities) has not passed any laws dealing with restitution of private property.

D. COMMUNAL PROPERTY RESTITUTION

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

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

(Terezin Best Practices, para. b.)

During the Communist era, communal property (as well as private property) was nationalized in Yugoslavia. Almost all property owned by the Bosnian Jewish community was nationalized. By law, these properties came under "social ownership" and were

"given" to the state so that they could be used for other purposes. For example, in 1966, the Il Kal Grande synagogue (later known as the Il Kal Vježu) became the Sarajevo Jewish Museum.

1. 2003 State Law on Religious Freedom and Legal Position of Churches and Religious Communities

The **2003 State Law on Religious Freedom and Legal Position of Churches and Religious Communities** provides the right to restitution for religious communities "in accordance with the law." (*See* "Bosnia and Herzegovina" in Property Restitution in Central and Eastern Europe, Bureau of European and Eurasian Affairs, 3 October 2007 ("U.S. State Dept. Report 2007").) However, there is no specific law that sets out procedures and parameters for the restitution of religious property. (*Id.*) As a result, religious communities applied for and have been granted restitution of communal property on an *ad hoc* basis and at the discretion of municipal officials. (*Id.*) A 2007 U.S. State Department report on communal property in BiH noted that restitution has been wielded as a tool of political patronage, which means that religious communities – including the Jewish community – are dependent on politicians to restitute their property. (*Id.*) Owing to the Jewish community's small size and lack of political connections, it has not benefited from the *ad hoc* restitution policy in BiH. (*Id.*) In fact, since the current system of government was established in 1995, not a single property has been returned to the Jewish community. (*Id.*; World Jewish Restitution Organization, "Background on Restitution in the former Yugoslavia", February 2014.)

In May 2005, the Jewish community in BiH completed a survey of Jewish communal property in the country. The survey identified 130 communal properties formerly belonging to the Jewish community. (World Jewish Restitution Organization, "Background on Restitution in the former Yugoslavia", February 2014.) The Jewish community entered into an agreement with the **World Jewish Restitution Organization** to create a foundation that in the future will receive and maintain property restituted to the Jewish community. (*Id.*)

A 2009 **Draft Law on Denationalization** would have provided for restitution of communal property to religious entities. If restitution *in rem* was not possible, alternate compensation would be made either by restitution in kind, or financial compensation (in the form of 20-year bonds, shares in state companies, or in isolated cases, cash). No progress has been made on this law since late 2009.

Since endorsing the Terezin Declaration in 2009, Bosnia-Herzegovina (including any of its constituent entities) has not passed any laws dealing with restitution of communal property.

E. HEIRLESS PROPERTY RESTITUTION

The Terezin Best Practices "encourage[s] [states] to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by

Nazis, Fascists and their collaborators." Heirless immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

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

(Terezin Best Practices, para. j.)

Since becoming a signatory to the Terezin Declaration in 2009, Bosnia-Herzegovina (including both of its constituent entities) has not passed any laws dealing with restitution of heirless property.

In fact, according to the terms of **Law No. 36/45**, property not claimed within the one-year statute of limitations period became the property of the **State Committee for National Property** (i.e., property of the Yugoslav state).

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