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# THE REFUGEE — WAR CLAIMS AND INTERNATIONAL LAW

TADEUSZ B. SPITZER\*

A STUDY OF THE HISTORY of forced mass population movements suggests that the refugee's individual material rights have been either subjugated to the state, wantonly abused, or completely ignored. It makes little difference whether these mass movements are prompted by economic, religious, political, or social pressures when they are accompanied by a threat to life; man obeys his primordial instinct to survive and flees, leaving behind most or all of his material wealth. History repeatedly records such forced emigrations and the resulting injustices. This, then, is the question: how may a refugee gain compensation for losses and/or damages suffered by him personally or to his material property?

Recovery of, or restitution for, a refugee's involuntarily surrendered property is practically impossible. There is no international private law to protect his rights. Neither is there an international court to which he can submit his claims. The problem increases in complexity when one considers the ramifications extending to political science, international relations, world economics, international public and private law, and domestic issues of particular nations.

With the outbreak of war thousands of people fled their homes without identification. In this way they became stateless, and thus could not meet the formal requirements for admission into certain countries. Progress has been partially made concerning the refugee's *political* rights in the last fifty years. The Nansen passports following World War I, were primarily issued for refugees from the Bolshevik Revolution and other stateless individuals.

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The Intergovernmental Committee on Refugees was established by the Convention of Evians in 1938, originally for political and religious refugees from Germany but then extended to similar refugees from other Nazi-occupied countries. Sweden issued its *Fremlingpass* during World War II, and the Dutch government in exile offered still another passport substitute by issuing a statement that visas were not required for entrance into Surinam (Curaçao). These statements obtained from Dutch consulates permitted the refugees to leave Russia, to enter Japan, and from there, if they obtained visas, to immigrate to particular countries, otherwise, to go without visa to Shanghai or Surinam. The United Nations set up the International Refugee Organization (IRO) to repatriate or help refugees resettle in other countries. IRO was dissolved in 1949; its work was transferred to the UN High Commissioner for Refugees in 1951.

These interim actions, important as they were, settled only theoretically the status of the refugee from the standpoint of *public* international law. The Geneva Convention was adopted by about twenty nations. The above short description underscores that part of *public* international law is being taken care of by an international institution which proceeds on a certain program and is responsible to the UN.

The purpose of the following article is, therefore, to consider the aspects of international *private* law which is not covered by any existing agency. Such law should compensate refugees for material damages suffered since World War I and prevent future repetition of the present situation by the formulation of certain principles of international private law.

### The Nature and Character of Private Claims

According to their causes, losses suffered by individual refugees may be divided roughly into two categories:

(1) war damages originated by actions of military personnel;

(2) postwar damages inflicted by mob action, such as vandalism or theft, or other mass or individual criminal activities which exploit the absence of the owner and the new government's inability to maintain public security.

To the same category belong any *dolus* and *culpa lata* of a temporary trustee established by the occupying power or by the new government *in absentia* of the owner. Here also belong acts of the occupying power or the new government which are based on nationalization in any form, expropriation, and outright confiscation, irrespective of whether they are rooted in war demands and/or security measures or in various degrees of ideological differences between the socio-economic systems of individual property and public ownership.

The scope and extent of private claims of the refugee under international law are multilateral. Claims are based on various kinds of damages and losses, some of them are personal in character, material losses *sensu lato*, which should be evaluated in terms of money, and damages and losses which originally are material claims *sensu stricto*.

To the first category belong death of family members and loss or severe deterioration of health. The list of those in the second category is much longer: loss of professional and social position, loss of income from professional activities, loss of

social security and private insurance benefits and endowments, loss of capital values such as real estate, servitudes, and franchises on them, loss of income from real estate caused by damage and destruction of immobile property, destruction or theft of mobile property, cost of resettlement caused by the necessity of leaving the occupied territory in order to save life or freedom, and losses derived from devaluations of monetary systems and inflations of objects and rights following wars. These are but a few of the best known examples of *sensu stricto* (private material) claims.

Not generally known are cases in which refugees have suffered some or all of those damages more than once within a single generation: during World War I, in Russia in 1917, in various European countries following the breakdown of the Austrian, German, and Ottoman empires in 1918, in Hitlerized Germany of the 1930's, in Spain in 1936, and in several countries during World War II. Since then, displaced persons have been victims of material losses in Asia, more recently in Africa. These happenings qualify the problem as one which is world-wide. It should be dealt with under private international material law and under the principles of justice which recognizes man's right to be compensated for losses by those who cause the damage.

### **International Material Rights of Individual Persons**

Recent developments in the fields of communication, transportation, and technology also caused the development of international movements of persons, goods, and money which are artificially suppressed. To deny a refugee the guarantee in the entire field of private claims which exceed

the boundaries of a nation or a state would be in existing conditions a *contradictio in adjectu*. Nonetheless, those rights are suspended in the vacuum of unformulated legislative possibilities and unrespected obligations, uninterrupted by boundaries but interrupted by wars.

To say that an individual is not subject to international law is questionable even under *public* international law. It is much more incorrect under *private* international law. Such inference is rooted in the fact that international law had its beginnings at a time of absolute sovereignty of the state. Today, under democratic principles, the sovereignty belongs to the people, not to the government.

In domestic relations the individual has his independent material rights guaranteed by municipal legal systems within a country. He has no rights guaranteed by any system of international law, nor does he have any means of being represented in case of a dispute between himself and another state except by his own government, which has the duty to protect its citizens against any abuse of their rights by citizens and governments of other states. At the present status of international legislation only governments are subject to international law.

There does not exist any uniform system of ground rules which govern the specific problem of the settlement of claims filed by private individuals for reimbursement of damages caused by wars. Private citizens, in such cases, too often are victims of political expediency, which subjugates justice based on prudence to administrative convenience. This appears to be inconsistent with national and international law whose purpose is to establish, develop, and justify the principles of human behavior. The

actual settlement of individual claims should be left to the judicial branch of the government as separate and distinct cases.

Finding legal remedies for settlement of material damages suffered by masses of displaced and dispossessed persons is complicated by the lack of any agency which would be competent in a jurisdictional sense in these matters. Those questions belong to international private law and to international courts of justice. But there is no international private law binding governments, and there is no international agency which could decide these questions.

In some instances, governments intervene against nationalization and expropriation. However, in similar actions the same governments disregard personal losses of their citizens which occur through acts of force during and after war, and ignore individual claims for reimbursement of the damage suffered. In the cold war of ideological conflicts the damage to citizens and their property by criminal actions often is neglected in favor of political maneuvering.

What is most disturbing about the situation is that little or nothing has been done to correct the wrongs. Damages suffered by private citizens as the result of war have been extensive since 1939. The problem is world-wide and properly belongs to the judicial forum of private international law, because these are private claims of individuals of one country against individuals or governments of another country. Unfortunately, such a private international law has never been codified or sanctioned.

The settlement of private citizens' material losses and damages should become a prerequisite for political treaties. However, it should not be handled by the administrative branches of the contracting

governments. The claims are judicial in nature and belong to an international court of justice.

In *The Elements of Jurisprudence* Sir Thomas Erskine Holland defined administration as the "exercise of political powers in particular cases within the limits of the constitution and within the manifoldly changing activities of the state." Transferred into the realm of international affairs of states, this definition means that the administration of one country should represent the affairs of the state in relations with governmental administration of other countries and with the administration of international organizations. The principle of political expediency prevailing in administrative acts of governments is not applicable in judicial questions. The judicial branch of the government respects principles based on the natural law of ethics, the moral and invariable strength of principles governing the behavior of men and political units, irrespective of specific cases and the expediency of their settlement. Specific cases should be decided on the basis of those principles of justice. The difference between political astuteness, as adjustable to particular cases, and judicial rectitude, as based on moral principles, has been expressed in the philosophy of progressive governments by the fact that administrative officers are variable, while judicial officers are stable for their lifetimes.

Lacking a compulsory judicial system in international public and private matters, the administrative branch of national governments represents both the state and the individual citizen in international judicial problems. This violates the principle of division between the administrative and judicial branches of government established in domestic affairs. The governments of

progressive democracies, while fighting despotism and dictatorship, have become, ironically, agents of unconstitutional orthodox methods in international relations, despite the fact that there exists no right of international sovereignty in the absence of a world government.

This suggests the benefits that might be derived through the formation of a world government with a world constitution and compulsory world jurisdiction based upon a code of public and private international law, which could define the divisional line between the administrative and judicial functions in international affairs.

The above goal is an optimal one and one which would take time to reach. But time is running out for the refugees who were reduced to poverty fifteen or twenty years ago. They need help now.

Governments, in most cases, do what they can to forward individual claims. However, since there is no legitimate judicial authority to represent and decide international private claims, governments are handicapped in that they handle a strictly judicial matter in an administrative environment and by administrative methods. The result is inadvertent error, as exemplified by negotiations submitted to administrative routine, in which governments arbitrarily determine the amount of compensation for damages and losses for their citizens by means of a certain ratio to the total figures claimed, on the theory that claimants exaggerate losses. Such a presumption is a *contradictio in adjectu* of the concept of law and justice. Too often the amount of claims allowed is set by diplomatic negotiations beforehand without regard for evidence and without the knowledge and consent of the claimants.

While the invasion of the judicial field by

the administrative branch of government in the existing circumstances may be considered *malum necessarium*, it would seem to be an abuse of delegated powers for a government to give up major parts of the rights belonging to those who gave the mandate to negotiate but who did not surrender their rights in so doing. It also would seem questionable for an administration to negotiate and not keep a claimant informed of the proceedings. Judicial procedure is public in character. Governments should not act as arbitrators but as attorneys for their citizens, without the right to agree with the other party's attorney to the detriment of a client in the name of administrative expediency.

#### **The Principle of Equality of International Claims**

To the category of private claims subject to international treatment belong losses and damages caused during the war and occupation, and those caused by a new government which is unable or unwilling to preserve the security of its citizens and/or which has a different political approach to problems of private property.

Regardless of their origin, all types of claims should be eligible for consideration and settlement at the same time and with the same strength as an individual's rights. Any priority in time or importance given to damages caused directly or indirectly by postwar happenings over those caused by war is unsubstantiated from the standpoint of equality before law. When governments give priority to compensation for damages and losses suffered by nationalization over those inflicted by direct war activities, the technical reasoning is that as long as no peace treaty has been signed there can be no consideration for war damage repara-

tions. Extending this reasoning further, damages then might be compensated between those governments which were not at war with each other, but which through postwar political changes caused damages or losses to the owners of expropriated or nationalized rights.

If governments avoid the issue of individual damage claims in the hope that the problem will diminish with time and the death of claimants, then, from the standpoint of justice and law, mankind must be charged with a great liability and governments must be charged with negligence *sensu stricto*.

If there are any reasons to postpone the settlement of some damages and prefer others, then war damage claims should come first for several reasons.

Nationalization and confiscation were caused by changed political conditions following the war and as a result of the war. Logically, therefore, the elimination of the causes which originated the results must precede the elimination of the results, or else the causes will continue to exist and the results will repeat.

Capital investments are subject to nationalization and expropriation. Yet savings, in an economic sense, must precede investment. War damages were inflicted on both savings and investments. Any investment implies a certain risk; savings is a basic principle of economics. Thus, it would seem unjust to give preferential treatment to claims for damages suffered in a risky venture and to postpone consideration of basic economic principles.

Damages by nationalization and expropriation represent only a fraction of actual war damages. These pertain to selected peoples or companies. Total war damages affect masses of dispossessed and uprooted

people. To favor the few and neglect the many is like saving roses while forests are burning.

International law considers war to be a crime because it uses force which damages all phases of life. Crude force has always been condemned in domestic and international affairs. Nationalization and expropriation are the results of conflicts between the rights of the individual and a totalitarian concept of government. The lawfulness of political and socio-economic theories which damage individuals for the sake of the state is a question of national and international reason and justice. From the standpoint of reason, discussions of such wrongs must be postponed when force must be used to repel force. From the standpoint of justice, all wrongs should be treated equally and at the same time with the same strength. Therefore, if any priority must be given, those acts of wrong which violate existing conditions by force should be treated and punished before determining the socio-economic question of the validity of individual rights versus those of the state or the superiority of either.

Different socio-economic theories may be put into practice by various governments. However, this does not mean that governments should abuse confiscatory power. Any government has the right to dispossess its citizens on the basis of eminent domain, but it should pay a just value to the individual owner. Public condemnation of private property is the right of any constitutional government as long as there is a public necessity for such measure and proper compensation for all damage done to the private owner. If the two parties cannot come to an agreement on what is a proper, or fair price, the individual who

feels damaged may appeal to a court of justice.

These arguments and conclusions based on legal, logical, economical, sociological, and, above all, moral considerations, do not alter the fact that all damages should be paid for at the same time, not sporadically nor with priority of one type of damages to the postponement of all others. If political complications cause a delay in the formulation of a peace treaty (a political agreement subject to international public law), then war damages, which are strictly economic matters of private citizens, should be the prerequisites for entering into the discussion of a peace treaty to which several nations are parties. Countries may be able to survive for twenty or thirty years without compensation for the destruction of military and other public objects, but individuals often cannot survive damages or losses to their property for that period of time without extreme hardship.

A closer analysis of these two types of damages points up several distinguishing features.

#### **Damages Originated By Direct War Action**

The principle of international law which recognizes the superior validity or timely priority of reparation claims of the civilian population is found in Article 232 of the Treaty of Versailles. The article reasoned that although Germany should pay for all damages, both to private citizens and nations alike, she might be released from reparations for damages (war costs) suffered by nations. German economic resources were thought to be inadequate to repair all damages and losses suffered by the Allies. In accordance with the Treaty of Versailles, private damages were set at more than 33 billion dollars. However, on July 9, 1932,

an agreement signed at Lausanne "put an end to reparations" which were never paid.

The Lausanne decision poses the following question: Do governments have the right to release a debtor, in this case another government, from the payment of private war damages? The legal argument against an affirmative answer to this question is that governments are only mandataries and should not relinquish any rights of those who gave the mandate. The Treaty of Versailles was ratified by all nations, and the rights of compensation became, at that moment, acquired rights of each private citizen who was damaged and claimed an indemnity. Therefore, the government did not have the right to enter into any agreement regarding the elimination of a provision from the treaty which had become a private right of the individual citizen.

From a legal point of view, the decision to "put an end to reparations" for damages suffered by private citizens was an act of confiscation of private rights of property incompatible with the principle of preference of private initiative and private property over statism and communal property.

Governments which accept the principle of priority of private property over statism and communal property reverse themselves in this area and accept the legal concept that claims which originated by nationalization are to be secured first and those for damages suffered during the war to be secured eventually or contingently. From the standpoint of jurisprudence, such reasoning demonstrates a lack of logic inconsistent with justice.

#### **Damages Originated by Postwar Political Changes**

During World War II and the fifteen in-



tervening years to date, mass population movements were forced upon peoples either directly by order of the occupying powers or indirectly by the danger of arrest under a pretended excuse. This happened in almost all countries of Europe, in Korea, in the Southeast Asian countries of Cambodia, Laos, and Vietnam, in Pakistan, India, and China, in Congo and in Cuba. It may happen in Algeria and other African countries.

The damages and losses to the people forced to leave these lands are enormous. Compensation in such cases is possible only by the adoption and enforcement of a legal principle governing such claims from the standpoint of international private law. It would solve not only similar problems of the past but would also serve as a deterrent to future infringements on the rights of private citizens. The problem inevitably will arise again in the next decade unless it is settled now. Africa and Latin America are areas in which a recurrence of the problem seems most likely to occur. To avoid complications in the future it is imperative that legal principles of international law be established else political upheavals will take precedence over justice.

Another abuse of administrative power is the expropriation of property rights of the refugee by governments in those countries which the refugee was forced to flee. New governments annex the property on the assumption that the same has been abandoned by its owner. Squatting means taking possession of property or certain rights without title or legal justification, and maintaining an undisturbed exertion of those rights over a period of time without the permission of the rightful owner. After a prescribed period of time the previous title owner loses his rights to the squatter.

No one, particularly a government, has justified legally the rights of squatting the property of a private citizen except on the basis of fictional rights and changing statutes of limitations, or the right of squatting for a period shorter than it was before the war.

To create the fiction of legality, some governments recently issued new laws substantially abbreviating the period necessary to acquire property of absent owners. Refugees who owned property in these countries but were forced to leave them, often are unaware of the new laws. Moreover, some of the new governments now operating in those countries from which the refugees were forced to flee are either not recognized by other governments or, if recognized, maintain, at best, strained relations. The result is that a refugee often has difficulty in trying to communicate with officials of his native country. In many cases, the refugee-owner has lost contact with his old country because family members and friends have been killed, displaced or have died a natural death.

Squattage is possible only *bona fide*. By no legal standard can nationalization under existing conditions be considered one in good faith. The abbreviated statutes of limitation are rationalized on the convenient assumption that the property has been abandoned. The property cannot be considered abandoned because the owner did not return and take possession of it; he could not return because the state of political tension between his native country and his adopted country makes it difficult or impossible for him to return to the property. A private person cannot hope to solve political problems against the will of a new government in his native country

and without the support of the government of his adopted country.

The right of a new government to abbreviate the preclusive period to the detriment of the original owner becomes a question of international private law when the original owner becomes a citizen of another country. In such situations the problem of ownership cannot be decided upon by unilateral action or legislation of the old country's new government when the second party to the dispute is absent. Granted that in cases of immobile property the principle of *lex rei sitae*, the law of the property's location, is decisive, is internationally acknowledged. However, it is wrong to change this law with the appearance of each new government if it affects citizens of another country.

The conflict between the application of the old principle governing immobile property in the country in which it is located and the modern demand for international capital movements is one of the many problems which could be settled by a codified system of international private law. It means that *res sita* is subject to property changes by legal acquisition with compensation. Any other attitude would eventually work in reverse against those countries which confiscated property in the past and might invest in the future.

Confiscation may have repercussions both domestically and internationally. An example of a domestic nature may involve the confiscation of houses. If a government confiscates houses it destroys the initiative of the private builder. The result is that such governments, already overburdened with financial responsibilities, must assume still another, that of building houses for an increasing population. International repercussions occur where a government which

once used confiscatory power now invests in other countries. There may come a time when the country accepting investments or economic aid points to the investor-country's past and itself exercises powers of confiscation against the present giver.

In some cases where new governments took control of countries, new laws were enacted which maintained that administrators who assumed the duties of the administration of property in the absence of owners were obliged to submit financial and activities reports only for the ten years following the cessation of hostilities. In most cases this meant only until 1955. If a pre-war owner did not demand the statements and payments by that time, the administrator was to be free of any responsibility. This would seem to be an unusual regulation in light of the fact that most of the countries involved in the war still are legally at war in the absence of peace treaties. Moreover, these new governments have abbreviated important legal periods despite the fact that the prewar owners would imperil their civic status in their adopted countries if they attempted to communicate with officials of their native countries. This certainly is not *bona fides*. No government has the right to dismiss the administrator of private property from his responsibilities to the detriment of the rightful owner. Thus, the new government of a country should be responsible for everything that happens after the ten years of the official responsibility of an administrator have elapsed and also be held to assume responsibility for any actions of the administrator before that time.

This basic legal situation makes all changes "internationally" illegal in a world which is still technically at war. It calls for uniform regulation by international law, in-

stead of such matters being left to individual countries for decision. In short, unless international regulation and control is established along with the responsibility of governments, the problem will recur and compound the wrong.

### International Legal Status of Individuals

The situation of displaced persons is further complicated in those countries which hold that only those persons who were citizens of that country at the outbreak of the war have the right to protection by their present governments. Other countries stipulate that displaced persons must have been citizens at the time the damage was inflicted. From a legal standpoint, these approaches are debatable. Political conditions in many countries changed during and after the war. The majority of persons who emigrated to other countries and applied for citizenship in the new country received citizenship. Legally, it is irrelevant whether they were citizens of their adopted country at the outbreak of war or at the time the damage was inflicted. It would be unnatural and short of impossible for displaced persons to live even for a short time in a state of suspension regarding their personal, material, and civilian status. They are displaced and dispossessed by one country and at the same time are denied the protection of another.

The international status of any person in the world must be divided into two categories: the political or public, and the material or private.

Granting political asylum to refugees has been recognized since ancient times. Grotius, in his work, *De iure belli ac pacis*, refers to the case of Nauplius, who escaped to the Chalcidians who refused to deliver

Nauplius over to the Greeks.<sup>1</sup> He mentions Gyllipus, the Lacedaemonian, and describes political asylum as being motivated by the "privilege granted by the law of nature to the innocent."<sup>2</sup> Grotius quotes Cicero, Pausanias, Servius, Theophilus, and Statius;<sup>3</sup> and finally, he refers to Aeschylus.<sup>4</sup>

In the third century a class of men known in the Roman Empire as *iuris consult* or *iuris prudentes* dealt with the problem of political asylum before *codices*. Gregorianus, Hermogenianus, and Theodosianus of the fifth century and the *Digesta* or *Pandecta* of Justinian in the sixth century absorbed it as a principle of a man's political rights in the field of international law. More recently, America's Thomas Jefferson said: "Every man has a right to live somewhere on the earth."<sup>5</sup>

If the status of displaced persons in regard to their material rights is not clarified by a similar principle of international law as it has been accepted for centuries regarding man's political rights, the legal situation will remain completely confused:

(a) the government of a refugee's newly adopted country will not consider the new citizen to be eligible for compensation for damages suffered in his native country out of a lump sum which the adopted country may obtain from the refugee's native country, if the refugee was not a citizen of his adopted country at the moment the damages and losses were inflicted. This is unjust because the establishment of the time of the damage or loss is almost impossible

<sup>1</sup> 2 GROTIUS, *DE JURE BELLI ET PACIS* 339 (Whewell transl. 1853).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Id.* at 354.

<sup>4</sup> *Id.* at 358-59.

<sup>5</sup> Message to Congress, 1801.

to prove, because of the refugee's absence from the place of the damage and finally, because of the elapse of almost twenty years. Therefore, the first requirement should be replaced by a *presumptio iuris et de iure* that if he later becomes a citizen of the new country or took a permanent residence in it, his rights to protection should work retroactively.

(b) Such a solution is necessary because new governments of the refugee's native country could presumably refuse individual compensation for private claims on the following reasoning:

(1) Previous citizens are now citizens of another country and a treaty between the two countries has been concluded with an agreement to take over a proportionate reimbursement of the total claim, including reimbursement of all those persons who acquired citizenship after the outbreak of war or after their property suffered damage or loss. Thus the payment ought to be made from the lump sum which is the final settlement between the two countries.

(2) Even if the old country would accept the claims of its previous citizens for individual treatment, it would refuse to acknowledge any damage and compensation for those claims which were originated by nationalization and confiscation to which its own citizens were subject.

(3) If a new government accepted the responsibility for nationalization acts against the property of former or absent citizens, it could nullify responsibility by claiming past taxes and re-evaluating them in terms of the country's inflated currency. Proper interest on the taxes accrued during the intervening years might represent twice as much as the taxes themselves. This probably would consume the deflated value of the property so that it would be sold at

auction to cover the taxes. Revenues raised in this manner would leave little, if anything, to the original owner.

(4) If an auction should leave some balance to the previous owner, the refugee's native country probably would not transfer the equivalent of that amount to the refugee's credit in his adopted country, because of exchange provisions. It probably would deposit the balance in a foreign account within the native country of the refugee. In other words, the old country would set up a double standard: concerning rights of former citizens, the refugee would be classed as a foreigner; but regarding duties he would be considered a citizen. Such a double standard is contrary to legal principles.

(5) If the new governments of the native countries extended an invitation to former citizens to return to the native country and to live there from the deposited capital, the solution in most cases would have no practical meaning, because of political reasons.

(6) The new government of the native country could take the stand that its former citizens should file their claims with the government of that country which started the war and that refugees should wait for compensation until a treaty has been signed. This works extreme hardship on the refugee, some of whom have exhausted their resources after twenty years of waiting.

(c) The new government of the country which started the war would have its own reasons for refusing to pay reparations to citizens of the attacked country, namely:

(1) That diplomatic and consular relations between the two countries have not been restored.

(2) That it should not pay damages to

the country of the claimant's prewar citizenship because the claimant is now a citizen of another country.

These are but a few of the complications which might hinder the refugee and his claims. Primarily the complications are political in nature and have no relationship to justice. In effect, they make claimants who became citizens of other countries ineligible for any international protection.

The intent of law, whether national or international, has always been that damage and loss must be repaired and repaid by those who caused the wrong. This intent has been distorted by denying private citizens the right of claiming reparations on an international level and by leaving the settlement of private claims to administrative bargaining instead of international judicial decision. Therefore, it becomes imperative to *establish the principle of continued legal identity of an individual as a party, subject to international private law.*

During the past twenty years many changes have occurred all over the world so basic that a *restitutio in integrum* of properties is now in most cases either impossible or is of no material value because of completely changed living conditions. The only way in which damages might be partially repaid is the compensation of material losses suffered through war action and through changes in political, economic, and social conditions resulting from war.

### **The New Country's Duties Toward A New Citizen**

While for the time being there is no protection of a displaced person in his old country, the country of his present residence should assume protection regardless of the time of acquisition of citizenship. In this connection, Jefferson's principle could

very well be paraphrased to "Everybody must have his material rights secured in the world."

The inclusion of all who are now citizens of a contracting government, not only those who were already citizens before the outbreak of war or at the moment of inflicted damage or loss, can be justified by international law which protects the personal and material rights of anyone who lives in a country, regardless of whether he is a citizen. This legal principle is supported by the fact that some of the countries did not exist before World War II, while others lost their existence as independent political units. Such basic changes offer sufficient motivation for the demand that the country in which a refugee resides should be responsible for his protection. The responsibility of the adopted country is increased by the unavoidable interdependence of the political, social, and economic relations of the many countries of the world, which are enhanced by the technological progress in communication and transportation, both handicaps to human relations in the past. The new world demands movements of money, goods, and people in quantities never before experienced.

Along with these general reasons which support the contention that Jefferson's paraphrased thesis should become an axiom, there are other more specific motives sustaining this contention regarding the refugee who suffered damages during and after World War II.

(1) During and after the war, all immigrants, including those from enemy countries, had to serve in the armed forces of their new countries, regardless of whether or not they obtained citizenship. If they refused, they forfeited their rights of ever becoming citizens. Under such conditions,

the refugee's duties to a new country must be qualified as absolute.

(2) Any individual must pay taxes in the country of his residence even if his income originates in foreign countries; the lone exception is in special treaties, the purpose of which is to avoid double taxation. This tax concept also is an absolute duty.

(3) Everyone who lives in a country, whether permanently or temporarily, must obey that country's laws, rules, and regulations, both legal and administrative, personal or material, civil and criminal. This, too, is an absolute duty.

Consequently, if immigrants or even temporary residents have duties toward their new country, then that country would create a dangerous precedent if it denied protection to the immigrant during this period of time. Law in general and international law in particular is double-edged.

Before the outbreak of World War II, most countries whose citizens suffered losses or damages were subject to regular diplomatic relations, and their citizens were subject to reciprocal international protection. The outbreak of war did not change these mutual relations, at least not when both contracting countries were combatants against a common enemy. The fact that some of these countries came under the influence of different political systems of government during and after the war is no reason to punish their former citizens who are now residents of countries with different systems of government. This is a question of reciprocity in international relations.

The continuation of normal and friendly relations between countries which joined the Allied Nations has been maintained without interruption since the Treaty of

Versailles in 1919. Therefore, there would seem to be little reason to eliminate from protection all those persons who were not yet citizens of a newly adopted country when the last war broke out, or at the moment when the damages or loss of property was inflicted. This would be an unjustifiable discrimination against the former citizens of a friendly nation who are now residents or citizens of the adopted country. Such a situation would be contrary to the concept and spirit of international law.

Neither the native country nor the newly adopted country of a refugee would gain or lose by recognizing the rights of the individual, as payments made by either the native or the adopted country to its former or present citizens, respectively, should be subject to reparations paid by the aggressor. Thus, by not accepting continued protection from any one of the countries in which the refugees were once or are now citizens, only the damaged refugees would stand to lose, because their claims would not be recognized by any country. In this way, the aggressor country would gain by not paying the damage of the particular refugee who was not a citizen of the adopted country at the moment of the outbreak of war or the infliction of damage. Such a stand lacks any reasonable motivation from the standpoint of plain justice and is contrary to the spirit of any law, national or international.

The foregoing discussion points out the partial and temporary solution which could be accomplished by the immediate elimination of the requirement of the adopted country that citizenship of the claimant at the moment of damage must be proved in order to make him eligible for protection by the adopted country. Anyone who is residing permanently in a country which is

entering negotiations regarding war and postwar damages and losses, whatever their reason and nature, should have the right of protection. This would eliminate, at least for the time being, the vacuum existing in international private law which is in conflict with fairness, logic, and justice. It also would bridge the gap which will exist as long as the legal identity of an individual in international material disputes remains unestablished.

The problem is not a question of selected countries or persons. Its factors and consequences accompany uprooted and dispossessed persons all over the world, whether they are stateless or citizens of a particular country. Because of the magnitude and worldwide extent of damages to these people, a problem exists that is international in character, and needs international principles of law to be solved.

Small local and individual injustices create international injustices which lead to war. Establishment of international principles of law might serve as deterrents to aggressors. Thus, aside from the refugees, any country involved in a war would benefit, if such an international principle were established.

### Conclusions

The proper solution to the problem of the refugee and his losses is possible only by the acceptance of righteous, internationally approved principles based on justice or, at least, legality and objectivity, not on casual expediency. No government can morally ignore the settlement of private claims for damages and losses which occurred during and after war.

International private law should establish certain remedies to eliminate the lack of protection available to private citizens

against damages resulting from international adventures and crimes, the incapacity of new governments to maintain security in their own countries following wars, and the unwillingness of governments to compensate private individuals for damages caused by wars and postwar actions.

This is a proposed solution:

A. In the field of the substantive material law of international principles:

(1) The definition of the private character of claims of individual persons for damages and losses suffered during, after, and because of war.

(2) Equality of international private claims, whether caused by direct war action or by acts consequential to political changes.

(3) International legal status of individuals.

(4) The right of the individual to represent his material claims internationally.

B. In the field of the adjective international private law, regarding its procedures and the establishment of proper instances for the handling of private claims, the problem must be divided into two major phases, because of the complexity and slow progress of international relations:

(1) Phase One: the acceptance of Arbitration Tribunals for settlement of material claims of private citizens and stateless persons. Such tribunals have certain precedents.

(a) The Hague Conference created in 1899 the Permanent Court of Arbitration. It provided that for the purposes of arbitration, judges should be nominated by every member country to the convention. For specific cases, judges should be selected from a permanent list of arbitrators available to the Court. They were supposed to be individuals with proper training in gen-

eral and in the jurisprudence of law in particular. They should be known by their "competence in problems of international law and [should be] of the highest moral reputation."<sup>6</sup> These requirements created a class of experts in international law similar to the *iuris consulti* or *iuris prudentes* of the Roman Empire in the third century.

(b) The second Hague Convention of 1907 accepted as an obligation of all contracting parties the use of the Permanent Court of Arbitration "for the recovery of contract debts claimed from governments of one country by the government of another country as being due to its nationals." This Convention eliminated the application of force and demanded the compliance with the results of such an international arbitration.<sup>7</sup> Similar tribunals were effectively used after World War I.

Along these lines, the problem of refugees could be handled successfully without waiting until all of the obstacles of political issues were resolved. The only requirement would be to handle both the substantive and adjective law in a judicial manner: not by transferring the creation of such arbitration commissions to members of political delegations constituting the General Assembly or the Security Council of the United Nations, but by relying more on the selections made by the International Court of Justice in The Hague, which is fully equipped to handle the matters in a judicial manner, and with the necessary guarantee as to the objectiveness of its legal decisions.

The world-wide economic importance of

these losses affecting the postwar recovery of many people, and the bitterness of the common man caused by the involvement of his private material claims in the struggle for political power calls for an improvement of conditions. From the standpoint of jurisprudence, the present situation is a malfunctioning of world justice caused by the usurpation, under the pressure of circumstances in which no other agency is legally competent, of the judicial powers of private citizens in their own governmental administration *sensu stricto*.

This alone would be a sufficient reason to apply the arbitration of the International Court of Justice in handling this type of claim by private citizens. This is the closest the adjective international law comes to dealing with such problems in a judicial manner. It would fill out, at least temporarily, the gap created by the lack of any judicial authority competent to handle the rights of private persons.

(2) Phase Two: the establishment of an International Court of Justice for the settlement of international private claims in general. If political issues delay the acceptance of the judicial competence of an International Court of Justice in *public* disputes, there is no motivation for the delay of the application of the normal judicial decision and acceptance of the competence of the International Court of Justice in international material claims of *private* citizens.

The moral aspect should be paramount in considerations regarding the questions of who is responsible and who is eligible for reparations of various kinds. From this standpoint, the problem should be solved internationally as a principle of codified international law. World War II must be ended by principles and methods aimed at

<sup>6</sup> Convention for the Pacific Settlement of International Disputes, Hague, 1899.

<sup>7</sup> Convention Respecting the Limitation of the Employment of Force, Hague, 1907.



the preservation of justice in the world and the elimination of crime among people and nations. The tragedies of the war must result in a strengthening of the world system by an international law established on hard crystals of righteousness and high morals, not on the shifting sands of pseudo-political expediency.

The question remains: which power will enforce the decisions in such cases? In his criticism of the Dumbarton Oaks Proposals, this writer suggested that the United Nations require for membership the insertion in the national constitutions of applying countries provisions that they will abandon wars, arms production and national armaments, and will settle all disputes before a proper judicial forum of the United Nations, which will carry out the decision "by forces established by the United Nations to prevent or end aggression or to *enforce its decision*."<sup>8</sup>

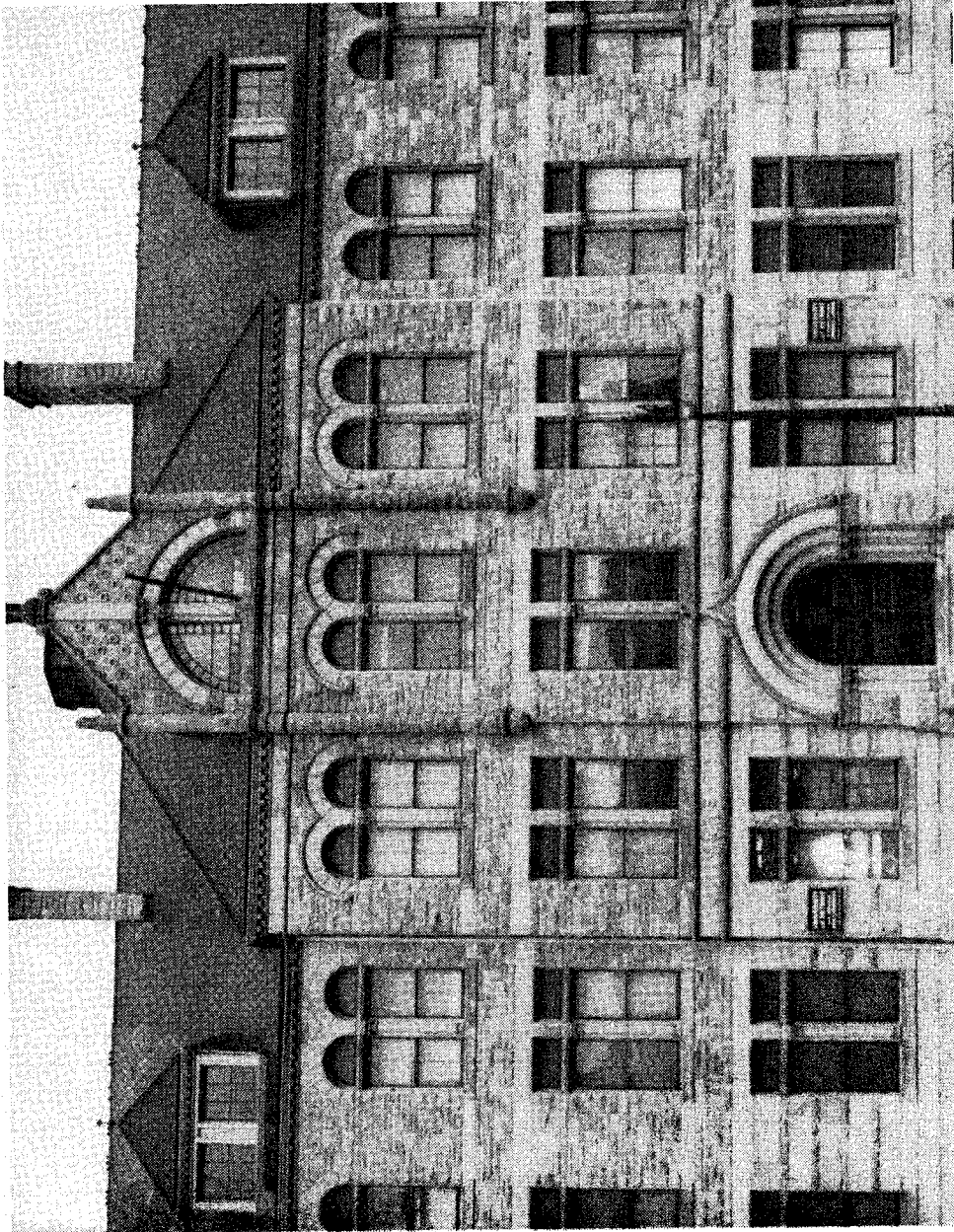
<sup>8</sup> Spitzer, *Dumbarton Oaks Project of World Democracy*, DALHOWSIE REVIEW (April, 1945); see also HOLBORN REVIEW (April, 1945).

As the judicial branch of the United Nations, the International Court of Justice would issue decisions in disputes among nations. The decisions would be enforced by the proposed police force of the United Nations. The same court would be competent to decide, and the same police force would be empowered to execute decisions of the court in private material claims of refugees.

Nations, their governments, and individuals condemned by such a court should be required to pay damages, however long it takes. There should be no omission or curtailment of any private compensation for damages; the abridgement of legitimate claims is unjust and impractical because it creates resentment and social ferment in those who suffered the damages and merely encourages those who commit the crime and escape full punishment.

Just decisions of an International Court of Justice would create a firm belief in the security and confidence in international justice among peoples of the world.





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