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Photo Credits: Chadwick R. Gore

left to right, Stuart Eizenstat and Michael Lewan testify

Property restitution in post-communist Europe focus of Commission Hearing

by Maureen T. Walsh

At a March 25 hearing on "The Long Road Home: Struggling for Property Rights in Post-Communist Europe," the Commission on Security and Cooperation in Europe scrutinized the efforts underway in post-communist OSCE countries to right the wrongful confiscation of real property by former totalitarian regimes. The hearing was attended by Commissioner Reps. Chairman Christopher H. Smith (R-NJ), Michael P. Forbes (R-NY), James C. Greenwood (R-PA) and Rep. Edward R. Royce (R-CA).

Chairman Smith opened the hearing by stressing the importance of property restitution for the individuals who lost their homes, farms, and businesses under Nazi and communist persecution and for religious communities that lost tens of thousands of communal properties, such as churches, synagogues, hospitals, and schools. "For those seeking restitution or compensation," Smith explained, "this issue is not in the end about just land or money, but rather about coming to terms with an unjust history in East-Central Europe. Seizures of property by fascist and communist regimes occurred in the greater context of religious persecution, suppression of religious freedom, denial of the most basic human rights and civil liberties and, ultimately, genocide. Individuals and religious communities that seek property restitution are in large part striving for a measure of justice for the oppression and persecution they and their families suffered in the past. This process will also help to lay the foundation necessary to prevent the history of fascism and communism from repeating itself in this region."

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left to right, Bishop John Michael Botean, Vladislav Bevc, Jan Sammer and Vytautas Sliupas testify

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Two panels of witnesses addressed the issue of property restitution from several different perspectives. The first panel—Stuart Eizenstat, Under Secretary of State for Economic, Business and Agricultural Affairs and the U.S. Special Envoy for Property Claims in Central and Eastern Europe, and Michael Lewan, Chairman of the United States Commission for the Preservation of America's Heritage Abroad—described the U.S. Government's policies and involvement in the restitution of property in East-Central Europe. A second panel—Bishop John Michael Botean of the Romanian Catholic Diocese of Canton, Ohio; Vladislav Bevc, Executive Officer of American Owners of Property in Slovenia; Jan Sammer, Founder of the non-governmental Czech Coordinating Office; and Vytautas Sliupas, organizer of a Lithuanian "Class Action Complaint Group"—provided clear examples of how a few individuals have succeeded or failed to recover property.

Beginning his testimony, Secretary Eizenstat described property restitution as "part of Europe's unfinished business…part of the job of repairing the damage from two of the 20th Century's greatest European disasters," namely the Holocaust and the installation of communist regimes in Central and Eastern Europe. Eizenstat testified that he and his staff have devoted considerable effort to gathering current information on restitution and meet frequently, both in Washington and abroad, with officials from East-Central European countries to advocate further steps in private and communal property restitution that appear appropriate for each country.

Additionally, Mr. Eizenstat presented an extensive series of "best practices" that the Department of State wishes to see post-communist governments adopt to guide the process of returning both communal and individual properties. While acknowledging that standard setting for restitution is difficult given the complexity of the issues, and the diversity of the situation among the countries, Eizenstat asserted that at least some general principles and standards should exist against which countries can be measured.

Among the proposed "best practices" Secretary Eizenstat outlined were the following:

- Governments should establish equitable, transparent, and nondiscriminatory procedures to evaluate specific claims.
- Restitution claims should be resolved before privatization takes place. Eizenstat stressed that, while the United States wants post-communist governments to privatize land and businesses, these governments must be extremely cautious about doing so when the property at issue was confiscated by Nazis or communists and ownership is still in dis-

left to right,
Chairman Christopher H. Smith
and
Rep. Michael P. Forbes preside

pute. Testifying later, Vladislav Bevc made the point that a Slovenian law requiring that restitution be the first phase of the privatization process has been dismally implemented.

• Attention must be given to the implementation of restitution policies at the regional and municipal government levels which, rather than the national governments, often control the bulk of property. For example, a federal government decree in the Czech Republic that provides for the return of wrongfully expropriated property does not cover the local governments. Eizenstat opined that "fairness demands some uniformity of policy and administrative practice."

• Owners, or their heirs, should be eligible to claim personal property on a nondiscriminatory basis, without citizenship or residence requirements. Testifying later, Jan Sammer illustrated the disproportionate impact that a citizenship restriction in the Czech Republic's restitution laws has on Czech Americans. Sammer explained that, because he immigrated to Canada rather than to the United States, he did not lose his Czech citizenship and was, therefore, able to reclaim an interest in a home he inherited from his father. On the other hand, two nephews who also inherited an interest in the house, immigrated to the United States and lost their Czech citizenship in the process—by operation of a 1928 treaty of naturalization between the United States and Czechoslovakia. As a result, because the nephews now lack Czech citizenship, they are ineligible to apply for restitution and, thus, the Czech Government has kept the nephews' interest in the house under state ownership.

Eizenstat made the point that, while no country's restitution or compensation policy has yet satisfied all of the best practice standards perfectly, each principle has been adopted somewhere as an important feature of the restitution process. He expressed hope that the East-Central European governments will adopt these principles at an international conference on communal property restitution issues scheduled for later this year. Eizenstat characterized the upcoming conference, hosted by the Polish Government, as a sign that multilateral attention to the process of property restitution, first addressed at the Washington Conference on Holocaust-Era Assets last year, was not a singular occurrence.

As Chairman of the United States Commission for the Preservation of America's Heritage Abroad—an agency established by Congress to encourage the preservation and protection of the cemeteries, monuments, and historic buildings associated with the foreign heritage of United States citizens—Michael Lewan opined that Americans should care about property restitution in Europe because, as a land of immigrants, Americans' values are "rooted in lands distant in miles and time." Lewan explained that Americans whose ancestral roots lie in Eastern and Central Europe are able now to visit their ancestors' churches, synagogues, cemeteries and monuments but what they see is that the Nazi extermination of six million Jews and others extended to physical places as well. Describing communal property restitution as integral to the quest for remembrance and reconciliation, Lewan poignantly testified about recent restitution and restoration projects in Poland of Jewish cemeteries and synagogues destroyed during the Holocaust and

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A portion of the audience at the property restitution hearing

communist-eras. Lewan echoed Secretary Eizenstat's call for Central and East European governments to adopt laws that broadly define which communal properties are eligible for restitution and for local governments to honor those laws.

Bishop John Michael Botean decried the Romanian Government's "unabashed refusal" to return property confiscated by Romania's previous communist regime. Bishop Botean posed the question, "since it was the government of Romania in 1948 which unjustly seized the property of the Romanian Greek Catholic Church, what has the government done to return that which it has stolen?" The Bishop allowed that a bit of progress has been achieved in Romania, albeit in the form of promises rather than results. He estimated that of the more than 2,000 Greek Catholic churches confiscated by the communist government in 1948 and given to the Romanian Orthodox hierarchy, fewer than fifty churches have been returned to their rightful owners. Bishop Botean underscored the importance of focusing on local efforts to achieve restitution rather than only national efforts.

Finally, Vladislav Bevc, Jan Sammer, and Vytautas Sliupas presented a largely dismal picture of the ongoing efforts of American citizens and others to reclaim wrongfully expropriated properties in Slovenia, the Czech Republic, and Lithuania, respectively. Bevc stated that restitution claims by members of the Slovenian Association of Former Owners of Expropriated Property have met with a "systematic obstruction of the law" that reveals the intent of the Slovene Government to "continue the unjust practice of the past." Bevc explained that in 1997, the Slovene parliament enacted amendments to the restitution law that would have, among other things, effectively barred American citizens from asserting claims. The Slovenian Constitutional Court later voided that particular provision.

Bevc, Sammer and Sliupas each described inefficient and corrupt judicial systems biased against property claimants. Specifically, testimony was given that Slovenian lower courts "invariably decide for the government" in property cases, a judge in the Czech Republic was alleged to have told a claimant's lawyer that "we have been told not to return these properties," and, in Lithuania, the communist-trained judges were described as "still following the old soviet standard" which is to say, not respectful of private property rights.

In response to the compelling testimony heard, Chairman Smith indicated that the Helsinki Commission would raise property restitution concerns to the highest level and would seek to get the State Department and consular officers more energized on the issue. Smith also suggested that the issue should be raised at the OSCE Parliamentary Assembly meeting in St. Petersburg, Russia this July.

Copies of the witnesses' prepared statements are currently available on the Commission website and the complete hearing record will soon be available by contacting the Commission or by viewing the Commission website. *Aaron Groote contributed to this article.* ❑

left to right, Prof. Alexander Motyl, Adrian Karatnycky, Dorothy Taft and E. Wayne Merry present a discussion on political and economic transition

Commission holds briefing on the political and economic transition of post-communist countries

by Orest Deychakiwsky

The findings of Freedom House's just-released book *Nations in Transit 1998*, a study and analysis of 28 post-communist countries, were presented by Freedom House president Adrian Karatnycky and co-editor professor Alexander Motyl at a February 18 Commission briefing. Offering analysis and commentary on the book was E. Wayne Merry, retired senior Foreign Service Officer and former Senior Advisor at the Commission.

Adrian Karatnycky introduced the book saying Freedom House, a non-partisan organization that promotes democracy, civil society, and rule of law, publishes annually *Nations in Transit* to provide people inside and outside of government a basic overview of the trends and directions of democratic and economic reform in the post-soviet nations. The book, said Karatnycky, divided the post-Soviet nations into three categories. Seven countries were defined as consolidated democracies: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, and Slovenia. Four countries were designated as consolidated autocracies and statist economies: Belarus, Tajikistan, Turkmenistan, and Uzbekistan. The remaining seventeen countries, including Russia and the Ukraine, were designated as transitional polities and economies.

According to Karatnycky, the most important finding in the survey is that a strong correlation exists between economic reform and political reform and, despite the arguments of some, the absence of one more often than not impedes the other. For 1997, there was strong correlation between economic growth and success with political and economic reform. The consolidated democracies posted average growth rates of 4.7 percent while the transitional countries averaged 1.39 percent and the consolidated autocracies averaged -2.85 percent. Karatnycky noted that the transitional category encompasses nations with a broad array of reform experiences; however, the study found they all currently have no forward reform momentum and are not transitioning towards a more open system. He cited Russia and Ukraine as prime examples of nations that seem to be stagnating in a middle category that resemble patrimonial and corporatist systems where small oligarchies manipulate the state for their exclusive benefit. Such systems existed for a long time in certain Latin American states and in Indonesia and Malaysia; and, it is important to understand that such a system could have an equally long life span in Russia or Ukraine.

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In light of the loss of reform momentum in many of the transition countries, Karatnycky argued that donor countries need to re-evaluate the effectiveness of their current assistance programs, but should continue to stay engaged.

Professor Alexander Motyl, who is professor of political science and deputy director of Rutgers University's Center for Global Change and Governance, reinforced the idea that a variety of apparently stable systems, many of which are not democratic or market-oriented, have emerged in the post-Soviet space. Motyl suggested that the nations east of east-central Europe have made comparatively little progress in many cases because of the cultural and historical legacy of the last seventy years of totalitarian communism. While nations such as Poland, the Czech Republic and Slovakia have traditions of independence and markets, as well as small but vigorous civil societies, the former Soviet Republics lack such a foundation on which to build free-market democracies. Being a member of the Soviet Bloc, argued Motyl, was a very different experience than being a fully integrated Soviet Republic, and hence the early Western advice of one-size-fits-all reform failed to take into account the serious implications of these differences. Motyl emphasized that in many of the transitional states the most important first step that often was not taken was the establishment of effective rule of law. Above all else, it is imperative that the West not allow these post-Soviet nations to become isolated from the processes of integration and globalization now taking place throughout the world.

Future challenges, according to Motyl, include the potential for an authoritarian, nationalist regime coming to power in Russia, and the expansion of the European Union into Central Europe, which has the potential for creating another institutional boundary between the East and West.

E. Wayne Merry praised *Nations in Transit* and agreed with the conclusion that there is no one-size-fits-all approach to reform and that lasting change must be organic to the particular society. Merry noted the long-term nature of reform in many of these nations, arguing that the West's original expectations of rapid progress through "shock therapy" and emulation of the West were misplaced and naive. A more relevant lens through which to examine the post-Soviet states is the break-up of empires, and the resulting traditional East European problems of nationalism and the protection of minorities surpassing in importance the ideological questions which used to concern the West. With this perspective, the reform process is more similar to the decolonization of the 1950's and the dissolution of the Ottoman and Austro-Hungarian empires after World War I. The United States' largest mistake in dealing with the end of the U.S.S.R., said Merry, was the assumption that the United States was dealing with a situation similar to the end of World War II and the hope that the United States could achieve the same in Russia that it did in Western Europe and Japan. Western policies and beliefs, he said, that the development of market economies would automatically develop democratic, civil societies, were false. Merry also emphasized the importance of civil institutions and rule of law for both political reform and foreign business investment.

The full text of the briefing will be published by the Commission and made available to the public. *John Rudy contributed to the preparation of this article.* ❑

Jehovah's Witnesses trial resumes in Moscow

by John Finerty

In a crowded courtroom in northwest Moscow, and with dozens of Jehovah's Witnesses, foreign diplomats, and human rights activists gathered outside the closed doors, the third session of the trial of the Moscow Jehovah's Witnesses Congregation opened on February 9. Under the provisions of Russia's 1997 Law on Freedom of Conscience and Religious Associations, the procuracy of the northern administrative district of Moscow has accused the congregation of "instigation of religious strife," "harming families," and "pressuring individuals not to accept blood transfusions" (Jehovah's Witnesses reject blood transfusions as unbiblical). If found guilty, the congregation could be "liquidated." Under such a precedent, other regions and municipalities could follow Moscow's example, and Jehovah's Witnesses could again find themselves "illegal" and forced underground, as they had been under the Soviet regime. There are an estimated 250,000 Jehovah's Witnesses in Russia, with approximately 10,000 in Moscow. The denomination has existed in Russia for over 100 years.

While in the first week of the trial Presiding Judge Yelena Prokhorycheva appeared to conduct the trial in a reasonably fair manner, there was a surreal quality to the proceedings as judge, prosecuting attorney, and defense attorneys engaged on the second day of the trial in debates over Holy Scripture and the creed of the Jehovah's Witnesses. The prosecution has charged Jehovah's Witnesses with causing harm to families by not celebrating many traditional holidays. At one point, a prosecuting attorney claimed Jehovah's Witnesses also harmed families by "preaching too much," although she could not state specifically how much preaching qualified as "too much." When Judge Prokhorycheva asked the prosecution for proof that literature distributed by the Jehovah's Witnesses causes religious discord, the prosecution replied "the minds of Russian citizens are not prepared for such information." As of Friday, March 5, the judge had ordered a panel of experts to study the group's literature, a move that will probably delay a final verdict.

Early in the trial, Judge Prokhorycheva accepted a motion by defense attorney Galina Krylova to dismiss from the prosecution team a representative of the "anti-cult" group "Committee for Rescuing Youth from Totalitarian Sects." The Committee has been one of the most vocal opponents of the Jehovah's Witnesses.

The Moscow City Department of Justice has entered the case in support of the northern district procuracy. On the other hand, the Department of Humanitarian Cooperation and Human Rights of the Russian Foreign Ministry has stated that it views the trial as "a clear human rights issue" and has written to the federal procuracy to express its concerns. ❑

The Nikitin saga: not to decide is to decide

by John Finerty

On February 4, the Russian Supreme Court rejected an appeal by attorneys for environmental activist Alexandr Nikitin to drop espionage charges against him. Nikitin, a former Russian naval officer, was arrested in February 1996 and charged with revealing state secrets in connection with his contribution to an environmental study published by the Norwegian environmental group "Bellona." It took a series of seven successive indictments by the St. Petersburg Procuracy before the case was taken to court last October.

At the end of that trial, the judge declared that the prosecution had failed to prove Nikitin's guilt and ordered that the case be re-investigated (see previous *Digests*). The Supreme Court decision upholds the lower court ruling and essentially gives the security services and procuracy the opportunity to begin the case anew. According to press reports, Nikitin stated upon learning of the decision, "the thing that really worries and troubles me is that the investigation could now stretch on for a long time, without an end" (Associated Press, February, 4). Nothing that has occurred in this case so far would give rise to any other conclusion. ❑

left to right: Lawrence Otway; Shani Rafti; Andrzej Mirga; George Kaslov; Joy Kanwar; Councilman Lloyd Henry; David Crowe

NY City Council convenes hearing on Romani issues

by Erika B. Schlager

On March 5, the New York City Council Subcommittee on Immigration convened a hearing on Romani issues. The hearing was chaired by City Council member Lloyd Henry (45th District, Brooklyn) and also attended by Council member Una Clarke (40th District, Brooklyn). The hearing was organized with assistance from the NY-based non-governmental organization The Lawyers Committee for Roma Rights and Recognition (LCRRR).

Witnesses included Lawrence Otway, director of the LCRRR; George Kaslov, a Romani activist with the LCRRR; Shani Rafti, an American Rom originally from Kosovo; Joy Kanwar, a law student from the University of Vermont; Dr. David Crowe, an historian from Elon College who has written extensively about Roma; and Andrzej Mirga, a Rom from Poland who is currently a visiting professor at Rutgers University.

During the course of the hearing, it was noted that approximately one-third of the residents of the City of New York are immigrants. It was suggested that there may be as many as 60,000 Roma in New York City today, including recent waves of Roma who have come to the United States since the fall of communism in Central and Eastern Europe. (This figure, a very rough estimate, is based on estimates from a variety of social science disciplines.) The hearing was intended, according to Council member Henry, "to examine ways of overcoming prejudice against the Romani people and enhance their opportunities for a firmer and more mutually beneficial relationship between Rom culture and the wider society." Mr. Henry also noted that council resolution number 401, adopted by the New York City Council on July 28, 1998, recognized the persecution of the Romani people and commemorated "Zigeuner Nacht," the night in August 1943 when all the Roma in Auschwitz—2,897 men, women, and children—were killed in a single night.

George Kaslov spoke as an activist and an elder within the New York area Romani community. Joy Kanwar described the system of "elders" and "courts" among Vlach Roma (i.e., Roma who trace their ancestry to the area of modern Romania and Moldova, where Roma were enslaved for approximately five centuries). David Crowe described the general situation for Roma in Central and Eastern Europe and two legal cases he is involved in as an expert. The first case seeks to ensure that Roma victims of the Holocaust are considered among the non-Roma eligible to receive compensation under a Swiss gold settlement; the second case is a more typical asylum application from a Bulgarian Roma family. Shani Rafti, who had just returned from the Kosovo area, described the particular vulnerabilities of Roma in the Balkan conflict. Roma, he asserted, were often the first sent to the front lines by Serbian, Croatian, and Bosnian governments; now, Roma are victimized by both Albanians and Serbs in their dispute over Kosovo. Rafti also showed slides taken during his visit to Pristina, where he was distributing humanitarian aid. Andrzej Mirga discussed Romani education issues from a European perspective.

Much of the discussion focused on the history of Roma in Europe and the contemporary problems they face there. When asked what specific problems Roma face in New York City, the speakers singled out racial profiling by police, the failure of New York City schools to accommodate Romani culture, and housing discrimination as their chief concerns. ❑

OSCE in 1999

Here is a working calendar for major OSCE meetings and activities for the remainder of 1999, subject to revision.

April 27-30: Human Dimension Seminar on "Human Rights: The Role of Field Missions," Warsaw (This is the annual human dimension seminar organized by the Office for Democratic Institutions and Human Rights. All 54 fully participating states may participate, as well as non-governmental organizations.)

May 17-19: OSCE Seminar "Co-operation Among International Organizations and Institutions: Experiences and Prospects in South-eastern Europe," Sofia, Bulgaria

May 25-28: 7th Economic Forum, Prague. NGOs may participate.

June 14: One-day supplemental meeting on human dimension issues: gender issues. To be convened by the Permanent Council in Vienna with reinforcements from capitals; open to non-governmental organizations.

June 22: Ministerial Meeting of Troika (i.e., Poland, Norway and Austria), Oslo, Norway (NB: Mediterranean partners have been invited to attend this meeting.)

July 6-10: 8th Annual Session of the OSCE Parliamentary Assembly, St. Petersburg, Russia.

Sept. 6: One-day supplemental meeting on human dimension issues: Romani human rights. To be convened by the Permanent Council in Vienna with reinforcements from capitals; open to non-governmental organizations.

Sept. 20-Oct. 1: Review Conference, Vienna, Austria. Exact dates to be determined. Review conferences (a.k.a. review meetings) are held periodically to review compliance by the OSCE participating States in all fields: military security, economic and environmental cooperation, and the human dimension. This meeting constitutes the 1999 forum for the annual review of human dimension issues.

Nov. 18-19: OSCE Summit of Heads of State and Government, Istanbul, Turkey. (This may be preceded by additional meetings in Istanbul that would be open to non-governmental organizations.) It is expected that this meeting will adopt a "document-charter" on security.

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