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The first of a series of articles specially written for *JUSTICE* by senior Swiss officials dealing with the manner in which Switzerland is handling the repercussions of the Second World War.

The Swiss Special Fund for Holocaust Victims

Rolf Bloch and Marco Sassoli

The Swiss “Fund for Needy Victims of the Holocaust/*Shoa*” (Special Fund) was established by the Swiss government on 26th February 1997.¹ It was endowed with capital of 273 million Swiss Francs donated by Swiss business circles and the Swiss National Bank. The concept of this Fund was laid down in agreement with those donors and with organisations representing Holocaust victims. Its establishment is one of the steps initiated by Switzerland in order to cope with controversies concerning the role of Switzerland during the Second World War. It is also meant to express the country’s gratitude for having been spared by that catastrophe of human



history. As a humanitarian gesture in line with Switzerland’s humanitarian tradition evidenced, e.g., by the Red Cross, it is meant to compliment efforts to restore assets and to clarify history.

The Fund organs administering the Fund under supervision by the Swiss government comprise as many Swiss members as persons recommended by the World Jewish Restitution Organization (WJRO), and are presided over by the first author of these lines,



who is also the President of the Swiss Federation of Jewish Communities. An 18-member Fund Council has advisory functions, while the 7-member Fund Executive decides on criteria, applications and distributions.

Dr. Rolf Bloch (photo on the left) is President of the Swiss Fund for Needy Victims of the Holocaust/*Shoa*,

Dr. Marco Sassoli (photo on the right) is Secretary-General of the Fund. The opinions expressed in this article are exclusively those of the authors.

¹ By an Executive Ordinance of the Swiss Federal Council, dated 26 February 1997, and taking effect on 1st March 1997, cf. Systematic Collection of Swiss Laws, 611.024.

As we will explain below, individuals may not directly ask for support from the Fund; only organisations may apply for it.

After encountering some difficulties in constituting the Fund organs, the Fund Executive met for the first time on 7th July 1997, at which time the Fund activities and decision making procedures were established and 88% of the Fund's resources were reserved for Jewish and 12% reserved for non-Jewish victims. The Executive also decided to provide priority assistance to "double victims", *i.e.* needy Holocaust survivors living in Eastern Europe and the former Soviet Union, who have not yet received any assistance or compensation. It earmarked an initial sum of 17 million Swiss Francs to be distributed to these victims in a rapid distribution procedure.

No final decisions were taken during the meetings of the Fund organs on 15th September, as the members recommended by WJRO of both organs did not participate. Nevertheless, in the following weeks, the Fund organs started to take decisions by means of a written circulation procedure. The first meeting of the plenary Fund Council took place on 20th January 1998, and a meeting of the Executive was held on 21st January.

Despite initial difficulties in identifying the victims - especially non-Jewish ones - and in taking decisions, the Fund has already begun supporting the first needy Holocaust victims. Admittedly, this has happened at a later stage and in smaller dimensions than was hoped, but the Fund is dependent on applications by organisations. The first application was submitted on 14th October 1997 by the WJRO in the form of a distribution plan for Eastern Europe.

A first amount of 15 million Swiss francs was transferred on 10 November to WJRO in order to implement this plan. Out of this money, the first 80 Holocaust survivors in Riga, Latvia, received an allocation of US \$400 each on 18th November 1997, and 20,000 Holocaust survivors in Hungary followed in the beginning of 1998. A first payment to non-Jewish victims was made on 18th December 1997 in Tirana, Albania, to 23 Holocaust survivors who had been persecuted on political grounds. Presently, payments to Jewish victims on a country-by-country basis continue, through WJRO, while non-Jewish victims are assisted in a less organised way: they receive assistance as soon as one of the many organisations devoted to their interests submits an application for the benefit of a given group of victims.

It is not the purpose of this article to describe the activities of the Fund nor the many practical difficulties that distributing organisations like WJRO encounter every day in their noble task. It also cannot tell the untold tragedies behind the life of every applicant, each of which is worthy of a book.² It only aims to explain some aspects of the Fund which may be of special interest to the Jewish lawyer.

Definition of the beneficiaries

Under Art. 2 of the Fund Ordinance:

[t]he object of the Fund is to support persons in need who were persecuted for reasons of their race, religion or political views or for other reasons, or otherwise were victims of the Holocaust/*Shoa*, as well as to support their descendants in need.

The fact that only victims in need may

be supported is in line with the humanitarian nature of the Fund. This fact is, however, difficult to accept for Holocaust victims who are presently not in need but who suffered no less than their needy comrades. Nevertheless, this limitation should not be seen as denying the former the status of Holocaust victims nor as turning the Holocaust into a purely material relief problem. Its purpose is simply to concentrate the assistance given to those who need it most and for whom the sum of about 1,000 US Dollars is not an offence - as it would be for a wealthy survivor - but means the possibility of heating an apartment for two winters or buying the first washing machine of their life, as it does for survivors in Latvia, Hungary or Belarus.

Without prejudice to important discussions among historians, the Fund Ordinance makes clear that the term "Holocaust", as is used there, is not limited to the *Shoa* of the Jewish people. The Fund organs have clarified the term as covering any persecution by the Nazi regime, under Nazi occupation or a regime collaborating with the Nazis, because of belonging to a group, when the aim was to exterminate members of that group. While this clarifies the case of Jews, gypsies and Sinti, mentally handicapped people and probably homo-

2 Future historians will read with interest the many letters to the Fund Secretariat from individuals who ignore that applications by individuals cannot be treated (*cf. infra*, 4) and who tell us the full tragedy of their life. It is the aim of the Secretariat to answer those letters worthy of the greatest writers in a not too standardised way.

sexuals, whom the Nazis wished to exterminate as such, it leaves open the question who are the victims of the Holocaust "for reasons of their political views". Political opinions *per se* are an individual attribute, but the Fund Ordinance implies that they could turn a person into a Holocaust victim. Theoretically, historians could certainly define certain categories of persons whom the Nazi wished to exterminate because they belonged to a certain politically defined group (such as the political commissioners of the Red Army)³ and not simply because of their individual political opinions, speeches or acts. However, it remains to be seen whether such criteria can be applied in practice - whether victims' organisations can identify those falling under these categories - or whether, from a pragmatic point of view, it is not preferable to consider all those who were actually in an extermination camp as entitled to benefit from a presumption that the Nazis victimised them under the Holocaust.

Nature of the Fund

From a legal point of view, the Fund is based on a provision in the Swiss Federal finance law, enabling donors to give means to the State for a specific purpose.⁴ When the competent Federal authorities accept such a donation, a "special fund" is established and administered separately from the general accounting of the State. Such a Fund has no legal personality of its own. However, our Fund organs, once appointed by the State, are completely independent in fulfilling their task. Like all private foundations, the Fund is simply subject to monitoring supervision by the Federal Department of the Interior. As far as our

Fund Secretariat is concerned, it is also administratively assigned to the Federal Department of Finance, which pays the administrative costs, including the salaries of the Secretariat's 6-member staff.

This solution not only has the advantage of avoiding new legislation by Parliament, but also correctly reflects the reality of the legal construction, *i.e.* that the distributed funds are private funds, but that their distribution is one measure taken by Switzerland (and not only by some Swiss individuals) to cope with its responsibility for its actions and omissions during the Second World War.

The support paid out by the Fund is clearly in the nature of humanitarian assistance and is not reparation, restitution, compensation or atonement. Apart from the fundamental impossibility of "repairing" the Holocaust or any individual suffering it has provoked, reparations would have, first, to be paid by Germany and other countries, which were directly responsible for the atrocities. Second, humanitarian assistance treats all those in need equally, while reparations must differentiate according to the suffering. Third, such reparations paid by Switzerland would, in each case, have to take into account the degree of responsibility of Switzerland and, for example, be much higher to those who became victims of the Holocaust because they were sent back to Nazi-controlled Europe by the Swiss authorities or to those not accepted as refugees, than to those who never came into any contact with Switzerland. Fourth, those who ask for reparations would have to prove their suffering and their damage (and that Swiss behaviour was contrary to international law as it stood at the time)⁵, while humanitarian assistance may be

given - as it is by the Swiss Fund - on the basis of a self-declaration by the victim and out of a feeling of moral responsibility for the victims' suffering as well as gratitude that Switzerland was spared from Nazi occupation and therefore from the Holocaust.

Procedures for Applications to the Fund

Victims may not apply directly to the Fund. Only organisations may do so for them.⁶ Every day, the Secretariat receives letters from victims objecting to this rule or enquiring about organizations which they may turn to in order to have their case processed.

The rule, however, makes sense. First, assistance from the Fund is not an individual compensation. Second, if some 200,000 individual requests had to be screened by the Secretariat, a huge bureaucracy would have to be built up. As far as Jewish victims are concerned, this bureaucracy would also parallel existing experienced organisations having the trust of the victims.

3 The famous *Kommissarbefehl* by Hitler of 6 June 1941 ordered that when surrendering they should immediately be executed, *cf. The Trial of German Major War Criminals, Proceedings of the International Military Tribunal Sitting in Nuremberg, Germany*, HMSO, 1947, Part 6, 315/316, Part 7, 15, and Part 22, 493.

4 See Article 12, para. 2 of the Federal Law of 6 October 1989 on the Federal Budget, Systematic Collection of Swiss Laws, 611.0.

5 On this see Detlev Vagts, "Switzerland, International Law and World War II", *American Journal of International Law*, 91 (1977), 471/472.

6 *Cf. Art. 7 (2) of the Fund Ordinance.*

Furthermore, individual applications could only be processed by the Fund if it either established a capillary network of field representatives where the victims live or if it requested detailed documentation from the victims as proof of their victimisation and need. The former would be a disproportionate investment paralleling existing organisations, and the latter would be incompatible with the idea of a humanitarian gesture and the aim of helping precisely those who did not receive any compensation from Germany because they did not possess sufficient documentation. Thus, Switzerland has learned from the past errors of its banks which asked Holocaust survivors or their descendants for standard documentation about their deposits or inherited title.

It is therefore the victims' organisations which screen individual cases, submit applications and distribute the Fund's support to the victims in need. They request from the victims the documentation and information they deem reasonable. They do not have to submit any documentation with their application to the Fund. They have simply to explain their criteria and take responsibility for the victims whom they will support actually falling within those criteria. The organisations also suggest the form of assistance - one-time or repeated, in cash, kind or as services. They either submit a list of the suggested beneficiaries with their application, or they provide the Fund with the data on the beneficiaries once distribution is completed. The Fund Auditor, ATAG, Ernst & Young, a well established international auditing firm, ensures the necessary auditing and monitoring of distributions.

This description makes it clear that the

victims' organisations have the most important role in this system. In order to fulfil it, they incur costs, which cannot be borne by the Fund, as its assets have to be entirely given to the victims. The Fund is therefore fortunate that the three major Swiss banks have been willing to grant an additional 15 million Swiss Francs for the distribution costs of those organisations. As noted, the costs of the Secretariat itself and of the Fund organs are paid by the Swiss government.

The Role of the World Jewish Restitution Organization

As the preamble of the Fund Ordinance states: "the World Jewish Restitution Organization (WJRO) [is] in special association with the State of Israel ... [the] umbrella Organization to represent the Jewish people in matters of restitution". It has nine member organisations: the World Jewish Congress, the Agudath Israel World Organization, the American Gathering/Federation of Jewish Holocaust Survivors, the American Jewish Joint Distribution Committee, B'nai Brith International, the Center of Organizations of Holocaust Survivors in Israel, the Conference of Jewish Material Claims against Germany, the Jewish Agency for Israel and the World Zionist Organization.

Lawyers will distinguish two fundamentally different roles which WJRO plays for the Fund, which, in practice, are not always easy to separate. On one hand WJRO recommends members of the Fund organs who take decisions on applications and criteria, on the other, WJRO is the main organization which submits applications to the Fund and distributes its assistance.

Under the first aspect, three out of

seven members of the Executive and nine of the eighteen members of the Fund Council are appointed by the Swiss Federal Council on recommendation by the WJRO.⁷ While the Fund Ordinance states that Council members are "representatives of [...] organizations [...] serving the interests of the beneficiaries",⁸ it is clear that all members of the Fund organs serve in their personal capacity, may not receive binding instructions and are under an obligation to treat all victims and all organizations fairly and equally. As the Fund organs have a humanitarian and political task, members who are recommended by WJRO may participate in decisions on applications that are submitted by WJRO. The nine Council members recommended by WJRO form the Council's Sub-group I, which is competent to give advice on all applications for Jewish victims, *i.e.* those submitted by WJRO. While this would be unacceptable for a judicial body, here it permits advantage to be taken of the extensive know-how of WJRO and its member organisations in matters of restitution to, compensation for and assistance to Jewish victims. Furthermore, such involvement of representatives of those concerned in the advice-giving and decision-making process corresponds to Swiss tradition and results in efficient, acceptable and pragmatic decisions.

As an applying Organization, WJRO does not simply submit applications for a determined number of victims listed in

7 Cf. Arts. 4 (1) and 5 (2) of the Fund Ordinance.

8 Cf. Art. 5 (1) of the Fund Ordinance.

an annex to the application, as do organizations for non-Jewish victims. Rather, in each country where Jewish Holocaust survivors live, WJRO sets up a system to screen all cases of Jewish victims and to provide them with assistance from the Fund. In each country, this system involves local Jewish communities and survivors' organisations. In order to ensure that the criteria applied, the amount paid out and the time of payment is the same for all needy Jewish victims living in the same country, the Fund organs have accepted the principle that all cases of Jewish victims have to be handled simultaneously in the same country and that they will all be assisted through the described WJRO system. It is the very essence of the idea of establishing such a system that applications by other, smaller organisations for Jewish victims cannot be treated directly by the Fund organs,⁹ but that their cases have to be integrated into the national systems. Such a *de facto* monopoly of WJRO for Jewish victims puts a great burden on WJRO, including the obligation to treat all cases of Jewish victims fairly and equally. This obligation has been accepted by WJRO. The Fund organs, including the independent Fund Auditor, will monitor how it is respected.

Conclusion

The Fund helps to build up a worldwide system to collect applications by needy victims of the Holocaust, through their organisations, and to distribute support by the Fund to victims, through these organisations. Such a system has not existed before and it takes some time and much effort in organisation and coordination until it is operational everywhere. Time, however, is pressing,

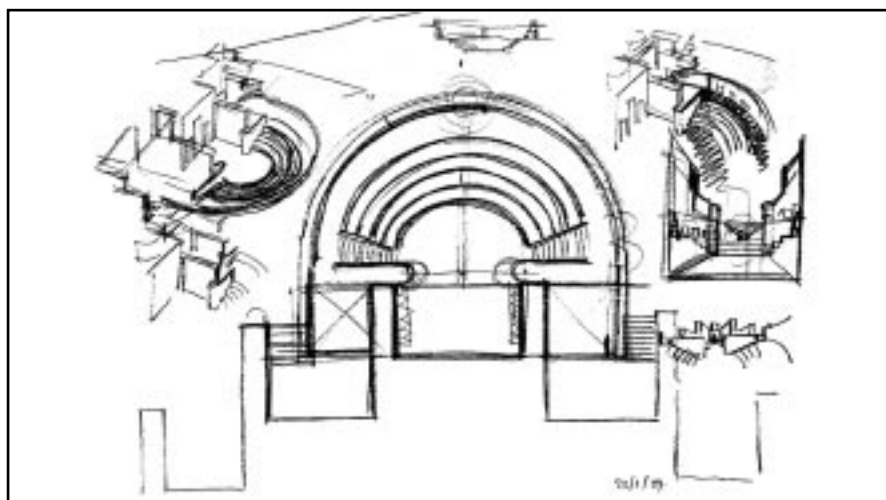
because Holocaust victims, 54 years after the fall of the Nazis, can no longer wait.

Against this background, at a legal level, the solutions found by Switzerland in establishing the Special Fund are *sui generis* in all respects: it is private in its resources, public in its nature; it is co-administered and implemented by organisations representing the victims, but run under the constraints and guarantees of Swiss public law; it is run jointly and with a common aim by representatives of two sides which were and, unfortunately, continue to be on other issues counterparts in controversies; its procedures did not exist - as a lawyer would have wished - before first applications could be treated, and they have had to be established, refined and changed "on the job", while the first victims were paid out, because otherwise, many victims would have died before the Fund became operational; it assists people in need, not as would normally be the case through projects, but through individual payments, which is justified, because only those who lived nearly 55 years ago,

during the unimaginable Holocaust, are assisted; finally, it provides humanitarian assistance, but not charity, because the very limited amount given, which would be an offence as compensation, is not only meaningful help for those who will be able, e.g., to heat their apartments or buy medicine during the last years of their life in Hungary, but this assistance is also an expression of deep respect for those who survived the Holocaust and a way of honouring of the memory of the millions who perished.

For this, all the efforts of the Fund organs, who would never have thought how difficult it is to distribute money, and of the implementing organisations who knew it and now face it, are worth undertaking.

9 Although Art. 7 (2) of the Fund Ordinance states: "Any organization devoted to the purposes of the Fund [...] can apply to the mechanisms of the Fund". One can, however, argue that the systems established by WJRO are "the mechanisms of the Fund".



Architectural sketches of the court rooms in Israel's new Supreme Court building, courtesy of Yad Hanadiv