Book Review: The Hungarian-Rumanian Land Dispute

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Recommended Citation
Borchard, Edwin, "Book Review: The Hungarian-Rumanian Land Dispute" (1929). Faculty Scholarship Series. 3657.
https://digitalcommons.law.yale.edu/fss_papers/3657
On the whole, the book is one of unusual usefulness, and will be a great value, not only to counsel for trade associations, but also to laymen concerned with their activities.

GEORGE W. WICKERSHAM


This volume constitutes an analytical study of one of the most complicated problems arising out of the readjustment of political and property relations consequent upon the Peace Treaties. As part of the spoils of war, Rumania received from the Allies the province of Transylvania, carved from Hungary, and other territories. Rumania also received the unprecedented privilege (of doubtful wisdom but less doubtful immorality) of confiscating in old Rumania the private property of enemy subjects, which the Allied Governments had equally reserved to themselves. But in the annexed territories, after much negotiation, a different régime was provided for. There, the privilege of confiscation, called "retention and liquidation," was denied to Rumania. Nevertheless, she undertook to inaugurate what was called a system of land reform, by which estates over approximately 75 acres were to be divided up, distributed to the peasants, and compensation paid to the expropriated owners in the form of paper lei in 50-year bonds, estimated to be worth about one per cent of the gold value of the property. In Transylvania the Rumanian legislation added a condition that the law was to be applied to "absentees," who were defined as persons who had been "absent from the country between December 1, 1918 and March 23, 1921." Inasmuch as Transylvania was then occupied by Rumanian troops and Hungarians had for the most part fled, particularly those who later opted to retain Hungarian nationality, it would seem that the law, while in form of general application, would strike most particularly the Hungarian optants. Hungary protested that the agrarian law, as applied to these owners of land, was a violation of the Treaty of Trianon, forbidding "retention and liquidation" of Hungarian property in Transylvania, as well as of the Minorities Treaty between Rumania and the Allied Governments. Rumania denied that the restriction as to "retention and liquidation" imposed upon her, applied to anything but exceptional war measures, for example, the sequestration of the property of alien enemies, and had no application to agrarian land reforms, which applied to all inhabitants.

That dispute through all its vicissitudes from 1921 down to the present day is traced in this useful book. The dispute has troubled the Council of the League of Nations since 1922, and is not yet settled. After abortive efforts at a diplomatic settlement before the Council of Ambassadors and the Council of the League, the expropriated Hungarians finally brought an action before the Mixed Arbitral Tribunal, on the ground that the expropriation constituted a "liquidation" prohibited by the Treaty. Rumania demurred to the jurisdiction of the Tribunal. The Tribunal held that it had jurisdiction, because the agrarian measures might constitute a liquidation; and the Court set the case down for hearing on the merits. Rumania then withdrew its national judge from the Mixed Arbitral Tribunal. The issue now reached proportions be
Beyond a local dispute. Hungary requested the Council, under the Treaty, to appoint a substitute judge. Instead, the Council referred the matter to a Committee of Three, which further complicated the dispute by attempting in its Report to condition the appointment of a substitute judge upon the acceptance by the parties, and presumably by the Tribunal, of certain principles which Hungary considered adverse to its interests. The question arose whether the Council had power thus to take a legal issue out of the hands of a Court. Hungary at all times demanded a decision or an advisory opinion from the Permanent Court of International Justice; Rumania always declined this solution. Hungary now refused to accept the Report of the Committee of Three. The Council, after postponing the matter for several sessions, then suggested the appointment of five judges on the Tribunal, but seemed to desire a preliminary acceptance of the Report of the Committee of Three. There the matter stands. The Council on several occasions has sought to drop it, but it has always come back. Perhaps direct negotiations will ultimately settle it.

The author is a learned Hungarian, who has done graduate work in International Law in the Harvard Law School and is now teaching at Columbia. Although impressed with the validity of the Hungarian case, he nevertheless presents the Rumanians' argument at considerable length. He does not undertake to pass upon the merits of the case—a question extremely difficult to determine—whether the application of the agrarian law does constitute a prohibited "retention and liquidation" of Hungarian private property; but he does maintain that the Rumanian should not have refused to permit the matter to be judicially determined, and that the Council should not have interfered with the independent judicial function of a Mixed Arbitral Tribunal, by laying down conclusions of law for the guidance of the Tribunal. These particular questions have engaged the attention of innumerable students of International Law; and volumes literally have been published on the subject. The reviewer is among those who have reached the conclusion that on the question of procedure at least, the Hungarian method should have been supported, and the Council should have used its influence to bring the matter to impartial judicial determination. The author's analysis of the Report of the Committee of Three is commendable. On the question of the jurisdiction of international Tribunals, it would have been well to refer to the penetrating monograph of Dr. Erich Kaufman, written in connection with the present dispute. The author states (p. 114): "Whereas both national and international law admit that private property may be expropriated in the public interest, this rule is subject to the condition that just compensation be given." The reviewer is doubtful of the validity of this proposition. The national law of a number of states has departed from this condition, as witness the Constitution of Poland, Czechoslovakia, Latvia, and some other states. As to international law, it is equally uncertain, where a measure is applied in good faith to all inhabitants of the state without discrimination, and not with a view to spoliation. (See Sir John Fischer Williams in 1928 British Yearbook of International Law, p. 1.) What makes the Rumanian legislation in Transylvania suspect is the fact that the conditions attached would make it seem to apply in fact, if not in form, especially to the Hungarian optants. The most important documents in the case are printed in an Appendix (pp. 159-261). Altogether, the volume is an informative and able presentation of the issue.

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