(xxiii) Agreement of 23 December 1955 between Norway and Poland, providing for lump-sum compensation.

(xxiv) Agreement of 2 December 1955 between Norway and Bulgaria, under which lump-sum compensation was to be paid in instalments.

(xxv) Agreement of 1 February 1955 between Luxembourg and Czechoslovakia, providing for lump-sum compensation.

(xxvi) Agreement between Sweden and Czechoslovakia of 22 December 1956, providing for lump-sum compensation.

(xxvii) Agreement of 30 March 1960 between the U.S.A. and Rumania, providing for lump-sum compensation.

(xxviii) Agreement of 16 July 1960 between the U.S.A. and Poland, providing for lump-sum compensation.

An examination of the above treaties leads us to the following conclusions:

(i) Nearly all the claims for compensation arising out of nationalization have been dealt with or provided for in *bilateral treaties between the Governments concerned.*

(ii) Out of 60 bilateral treaties dealt with in the aforesaid survey, none, except one,[40] of the treaties provides for adjudication by the International Court of Justice, primarily because the Court is not regarded as a suitable forum for the settlement of the large number of related individual cases which have arisen from the operation of the nationalisation measures.

40. U. S.-China Treaty of 1949. See Part IV of the survey given above.

(iii) Only 7 treaties provide for arbitration for settlement of disputes relating to compensation.[41] One of the treaties in this group sets up an arbitration tribunal within the framework of Permanent Court of Arbitration.[42]

(iv) Eight of the treaties examined in this chapter provide for international tribunals which act primarily as channels of negotiations between the States concerned in matters relating to compensation,[43] and only one treaty provides for an international tribunal to act as a conciliation commission between the States concerned.[44]

Several of classical writers on international law have drawn a distinction between arbitral commissions and diplomatic mixed commissions. *Fauchille*, for instance, maintained that the former judged according to law and equity following legal formulae, whereas the latter based their decisions on the common interests of parties following diplomatic formulae, and that they partook of the nature of direct negotiations.

(v) Out of 60 bilateral treaties dealt with in this survey, 15 treaties provide for municipal remedies or establish municipal tribunals for disposing of compensation matters.[45] Some of the treaties in this group provide for national treatment in matters of grant of compensation, while the others provide for a most-favoured-nation treatment.

41. See Part III of the Survey.

42. Arbitration Agreement Treaty made by Portugal with Britain and Spain.

43. See Part I of the Survey.

44. See Part II of the Survey.

45. See Part V of the Survey.

(vi) Twenty-eight treaties referred to in this chapter make no provision in regard to a machinery to dispose of claims for compensation.[46] These treaties invariably incorporate the settlement arrived at between the States concerned in regard to such claims. A large majority of treaties in this group provide for payment of a specified amount of money as lump-sum compensation in settlement of the specified categories of claims, payable either in one lot or instalments over a number of years. Other treaties in this group provide for payment of compensation in kind.

The British Government established a quasi-judicial municipal tribunal to deal with claims for compensation in regard to unjustified expulsion of foreign nationals from the territories in South Africa occupied by the British forces during the Boer Wars. The function of the Commission was to investigate "the claims to compensation which have been made by various foreigners, subjects of friendly Powers, in consequence of their expulsion by the British military authorities from the Transvaal and the Orange River Colony"; to inquire "carfully into the grounds for such expulsion", and to report its findings to the British Government.[47]

The International Law Association, in 1958, considered certain proposals in regard to establishment of a special international tribunal to deal with nationalisation disputes, in particular with the questions of compensation.[48] Some of these proposals were:

46. See Part VI of the Survey.

47. *British Digest of International Law*, Vol. 6, pp. 209 to 230.

48. See *Report of the 48th Conference of the International Law Association*, held at New York in 1958.

(a) Setting up of 'economic tribunals' to hear appeals concerning settlements negotiated by the States concerned.

(b) Establishment of Mixed Claims Commissions to settle differences on the legitimation of claims to compensation, and on the amount and method of this payment.

(c) Setting up an International Arbitral Tribunal to hear and settle nationalization claims *ex aequo et bono*.

(d) Establishing an International Tribunal, which would apply the general principles of law recognized by civilized nations and have jurisdiction over all manners of disputes between States and aliens.

Under the proposals (b), (c) and (d) given above, the access to the tribunals was to be extended to individual claimants.

8. The question of enforceability of the award of the tribunal determining compensation

After having given a final decision, an international tribunal becomes functus office. Thereafter it has no power to supervise the process of execution of its decision, unless specifically required to do so in its terms of reference. Some of the treaties dealing with the matters of execution of the award are:

(a) Article 13 of the Covenant of the League of Nations which required the League Members "to carry out in good faith any award that may be rendered....." and this obligation extended to the awards of any international tribunal, and not solely to the judgments of the Permanent Court of International Justice.

(b) Articie 94(1) of the U.N. Charter requires the Members to expressly undertake "to comply with the decisions of the International Court of Justice in any case to which it is a party". There is, however, no express provision in the Charter, similar to that contained in the Covenant, requiring Members of the U.N. to execute the awards of other international tribunals. Under Article 94(2), recourse may be had to the Security Council to secure compliance with the judgment of the International Court of Justice.

In this regard it may be useful to examine some of the treaties and conventions providing for enforceability of the award of the tribunal determining compensation.

The following treaties and conventions provide for execution of the awards of arbitral tribunals ;

(i) The American-Netherlands Agreement of 1925 relating to the *Island of Palmas Case*, providing that all disputes connected with the execution of the award should be submitted to the arbitrator.

(ii) Convention between Great Britain and Costa Rica in the Augwlar-Amory and Royal Bank of Canada Claims case of 12 January 1922.

(iii) Article IX of United States-Mexican General Claims Commission Convention.

(iv) Article IX of Franco-Mexican Mixed Claims Commission Convention.

(v) Guatemala and Honduras Treaty, Washington, 16 July 1930.

(iv) Bolivia and Paraguay Treaty of Peace, Buenos Aires, 21 July 1938.

(vii) Arbitration Agreement between U.K. and Saudi Arabia, Article XIV.

(viii) Article 7 of the Protocol between Colombia and Peru of 24 May 1934.

(ix) Article 11 of the Charter of the Arbitration Tribunal, Annex B to the Convention of Relations between the Three Powers and the Federal Republic of Germany, 26 May 1952.

In connection with the question of enforceability of the decision of an international tribunal, it may be stated that States, in general, carry out or abide by such decisions. Many of these decisions are self-executing and require "no positive action by any party. In the vast majority of instances in which positive action has been required, execution has followed as a matter of course. Even in cases in which the losing party has been greatly dissatisfied, it has frequently been willing to comply with the decision in order to uphold the respect due to the process of adjudication".[49] However, in a few cases States have refused to execute the decisions of international tribunals. Even while doing so, the "State refusing to abide by a decision usually adduces arguments to justify its course, *exces de pouvoir* being the stock excuse, and in some cases the argument may be sound. In most cases, the refusal does not preclude a later settlement of the dispute through the channels of diplomatic negotiations".[50] It may also be noted in this connection that resort to force by any of the parties to the dispute to secure compliance by the other party with the decision of an international tribunal is not warranted by international law. Only in regard to a judgment of the International Court of Justice, a party may, under Article 94(2) of the U.N. Charter, "have recourse to

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49. Hudson, in his book on *International Tribunals* (1944), at p. 129.

50. *Ibid.*, at p. 130.

the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment".

9. To whom compensation should be payable

Article V of the Bangkok Principles provides for the right of a refugee to receive compensation. However, the survey made under the previous item (item 7) of the present chapter discloses that in many cases, compensation has been paid in a lump-sum to the State concerned and not to the individual claimants. In such a situation, the task of disbursement of compensation to the individual claimants falls on the said State.

In regard to the question, to whom compensation is payable, solution may differ from case to case. In the case of a person who leaves individually due to fear of political persecution, compensation may have to be paid to the person concerned. The case in point is that of individual refugees escaping from East Germany to Western Europe. However, where there is a mass movement of refugees, as in the case of movements of refugees due to events in the Middle East, or in Czechoslovakia, it is advisable that the payment may have to be made to the authority charged with resettlement of the refugees.

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CHAPTER IX

STANDARD OF TREATMENT

1. Provision relating to minimum standard of treatment of refugees in Bangkok Principles

Article VI of the "Principles concerning Treatment of Refugees", adopted by the Committee at its Eighth (Bangkok, 1966) Session, provides :

"1. A State shall accord to refugees treatment in no way less favourable than that generally accorded to aliens in similar circumstances.

2. The standard of treatment referred to in the preceding clause shall include the rights relating to aliens contained in the Final Report of the Committee on the Status of Aliens, appended to these principles, to the extent that they are applicable to refugees.

3. A refugee shall not be denied any rights on the ground that he does not fulfil requirements which by their nature a refugee is incapable of fulfilling.

4. A refugee shall not be denied any rights on the ground that there is no reciprocity in regard to the grant of such rights between the receiving State and the State or country of nationality of the refugee or, if he is stateless, the State or country of his former habitual residence."[1]

1. For "Principles concerning Admission and Treatment of Aliens" adopted by the Committee at its Fourth Session, appended to Bangkok Principles, See *The Rights of Refugees : Report of the Committee and Background Materials* (New Delhi ; 1967) at p. 220-227.