

**Statement to the House Government Reform Committee
Concerning Holocaust-Era Insurance Issues
by
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U.S. Department of State
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Mr. Chairman, Representative Waxman, Members of the Committee,

I appreciate the opportunity to appear before you today to discuss U.S. policy concerning unpaid Holocaust-era insurance claims included in bilateral agreements with Germany and Austria. The United States Government recognizes the importance of ensuring that unpaid insurance policies, issued in Europe during the Holocaust era, are honored and that related issues are resolved expeditiously.

In the spring of 1998, U.S. state insurance commissioners and Holocaust survivor organizations invited the United States Government to consider supporting their efforts to establish an international commission to resolve unpaid Holocaust-era claims. This request came after several months of groundwork by the National Association of Insurance Commissioners (NAIC), in cooperation with survivor and other Jewish organizations, to determine the dimensions of the issue and possible mechanisms to address it. In October 1998, the NAIC, in cooperation with representatives of several Jewish organizations, the State of Israel, European insurance companies and European regulators, established the International Commission on Holocaust Era Insurance Claims (ICHEIC). They did so with the encouragement and public support of the U.S. Government.

I have the deepest respect for the two initiators of this effort, Neil Levin - then the Superintendent of Insurance for the State of New York and Vice Chair of the NAIC International Holocaust Commission Task Force - and Glenn Pomeroy, then the President of the NAIC and North Dakota Insurance Commissioner. These two men took the lead to seek a measure of justice for Holocaust victims. They met with Holocaust survivors, who told their stories: of purchasing insurance policies as part of their dreams for the future; of the deaths of family members; of their own survival; and of their unsuccessful attempts to receive just compensation under those policies. Mr. Pomeroy and Mr. Levin worked to obtain cooperation from insurance companies that were willing to accept moral responsibility in recognition of the suffering endured by victims of the National Socialist regime. Mr. Levin once described the theme of these efforts to establish the ICHEIC as "voluntary action based on a moral foundation." He and Mr. Pomeroy approached this very complex and important issue in the spirit of justice and reconciliation and urged that all involved should use cooperation, rather than confrontation, as the best means to achieve their goals.

Neil Levin died in the September 11 attack on the World Trade Center. His respect for human dignity continues to inspire us to seek justice. He recognized the great responsibility facing all of us to achieve a measure of justice for Holocaust victims and their families and the tremendous opportunity to resolve these issues by working together, with cooperation as the cornerstone. Our support for his vision - to resolve these issues amicably and cooperatively - is one to which we remain firmly committed.

U.S. Policy on Holocaust Claims

The policy of the United States Government with regard to claims for restitution or compensation by Holocaust survivors and other victims of the Nazi era is motivated by the twin concerns of justice and urgency. No price can be put on the suffering that the victims of Nazi-era atrocities endured, but the moral imperative remains to provide some measure of justice to these victims, and to do so in their remaining lifetimes. Today, more than a half century later, the survivors are elderly and dying at an accelerated rate. The United States believes, therefore, that concerned parties, foreign governments, and non-governmental organizations should act to resolve matters of Holocaust-era restitution and compensation

through dialogue, negotiation and cooperation rather than subject victims and their families to the prolonged uncertainty and delay that accompany litigation.

The United States saw renewed opportunities to seek justice for victims of National Socialism when the events of the late 1980s and early 1990s unleashed the forces that led to the fall of the Berlin Wall, the unification of Germany, and the end of the Soviet Union. These events also made it possible to reach out to the "double victims" of Nazism and Communism, those who had been trapped behind the Iron Curtain and previously had been unable to benefit from the German government's comprehensive postwar compensation and restitution programs. Other factors that spurred the United States to play a role in seeking justice include the increased public awareness of the extent of Nazi-era plunder, the realization that postwar compensation and restitution programs were incomplete, the knowledge that Nazi-era victims were rapidly aging and that many were in desperate need, and that symbolically, the international community needed to address unresolved issues from the 20th century before a new century could begin.

The United States took on the renewed opportunity to seek justice for victims of the Nazi era because we recognized that we could advance the interests of many U.S. citizens who were also Holocaust survivors. However, these issues go beyond a single nation's responsibility, and international efforts to try to right past injustices could demonstrate that the international community will hold those who do wrong accountable. We also saw the chance to engage Central and Eastern European countries in a dialogue that would not only benefit their individual citizens, but also demonstrate in tangible ways that Western democracies have, at their core, fundamental moral precepts, most especially the sanctity of human dignity. Further, we sought to support the relationship between Germany and the newly independent and democratic nations of Central and Eastern Europe at a time when old wounds could complicate their political relations.

Efforts to Resolve Unpaid Holocaust-Era Insurance Claims

The specific issue of unpaid insurance policies from the Holocaust era began to draw national and international attention in 1997. U.S. state insurance regulators undertook efforts to examine the issues and to identify the appropriate role for the states in the search for justice by helping Holocaust survivors and their heirs resolve claims stemming from policies sold during the Holocaust era. After meeting with leaders of Jewish and survivor organizations and conducting several hearings throughout the country, the NAIC established a Task Force in the spring of 1998 that was headed by Glenn Pomeroy and Neil Levin. The Task Force's goal was to work toward the establishment of an international commission to resolve unpaid Holocaust-era claims. They approached the United States Government with a request to support their work and facilitate the establishment of such a commission through diplomatic efforts in order to bring affected European governments and companies into the process.

We considered this appeal to support the efforts of U.S. state insurance regulators to establish a mechanism to address outstanding Nazi era insurance issues to be consistent with the goals of the U.S. Government and agreed to support the effort as an "observer," not a member. Over the past fifty years, it has been an important policy objective of the United States to help provide some measure of justice to Holocaust survivors and other victims of the National Socialist regime as an expression of our country's commitment to human rights and human dignity. As noted, we continued to support and encourage interested parties foreign governments and non-governmental organizations to resolve Holocaust-era restitution and compensation issues through cooperative means. Therefore, we responded favorably to the NAIC's invitation to support their efforts.

Throughout the summer of 1998, as the Department of State and United States Holocaust Memorial Museum worked to prepare for the Washington Conference on Holocaust-Era Assets later that year, the NAIC Task Force continued the efforts to set up an international commission. In August 1998, several European insurance companies, U.S. state insurance regulators, and representatives of Holocaust survivor and other Jewish organizations signed a Memorandum of Understanding (MOU), creating the International Commission on Holocaust Era Insurance Claims (ICHEIC). Provisions were made to allow for observers from the United

States and other governments, as well as for representatives of additional non-governmental organizations.

U.S. Efforts to Support ICHEIC

The Department of State organized a seminar in Prague in preparation for the Washington Conference to help spur international cooperative efforts to create a fact-based history of the very complex issues relating to insurance policy assets seized and otherwise affected by the Nazi regime, as well as to translate the international community's research into action. Held September 4, 1998, the seminar's central purpose was to share historical research on wartime confiscation, postwar compensation programs and nationalization of the insurance sector in the late 1940s and 1950s. We brought together insurance regulators from the United States, Poland, Hungary, Czech Republic and Slovakia, as well as other government representatives from those countries and from Germany, representatives from European insurance companies and Holocaust survivor and other Jewish organizations. The seminar resulted in a constructive dialogue and helped strengthen international cooperative efforts to move forward and resolve these issues.

Throughout the fall of 1998, the United States continued to encourage support for the cooperative efforts among U.S. insurance regulators, survivor organizations, European regulators, insurance companies, and governments. The U.S. Government publicly endorsed this new international commission at a September 14 meeting of the NAIC in New York City. When ICHEIC held its first meeting in October 1998, the State Department Spokesman issued a public statement of support, noting that the commission brought together many of the interested parties, including important survivor organizations, in a cooperative, non-confrontational process and would work to foster a fact-based effort to resolve claims fairly and promptly, as well as to seek practical solutions to the issue of heirless insurance assets.

The Washington Conference on Holocaust-Era Assets, held November 30 through December 3, 1998, was co-hosted by the Department of State and United States Holocaust Memorial Museum and brought together 57 delegations from 44 nations and 13 non-governmental organizations to examine the historical record and consider how governments and other entities can cooperate to redress injustices that remain from the Holocaust era. The Washington Conference brought unprecedented international focus on the wrenching history of Holocaust insurance claims. Experts and delegates discussed how, through direct and indirect means, the Nazi regime deliberately sought to confiscate the insurance assets of Jewish victims. The Conference noted the German government's efforts to compensate the victims of Nazi persecution in recognition of this massive loss and injustice through postwar compensation programs, with payments amounting to more than DM 102 billion. Part of these payments was for confiscated insurance policies. Other delegates indicated the need to address claims arising from assets and liabilities that were nationalized by former communist regimes in Central and Eastern Europe.

Delegates at the Washington Conference expressed the view that a positive, cooperative approach to deal with Holocaust insurance issues could help avoid transatlantic tensions of the kind that have at times arisen on other Holocaust-era issues. Delegates representing survivor organizations and American insurance commissioners thanked those on the International Commission for addressing their concerns. Many delegates responded favorably to ICHEIC's proposed humanitarian relief fund. Many delegates called for other companies and countries to join the International Commission. ICHEIC Chairman and former Secretary of State Lawrence S. Eagleburger assured the Conference that he would move quickly to press for expanded membership, an audit to identify unpaid Holocaust-era insurance claims, and an expeditious adjudication of claims, using relaxed standards of proof.

Following the Washington Conference, and as the parties in ICHEIC worked to set up a worldwide claims process, the U.S. Government continued to support Chairman Eagleburger's efforts to bring others into the process. In its capacity as an ICHEIC observer, the Department of State worked with Chairman Eagleburger, survivor organizations and U.S. state insurance commissioners to expand participation in ICHEIC. The U.S. Government actively encouraged other governments to seek observer status with ICHEIC. These efforts

resulted in the governments of Belgium, Czech Republic, France, Germany, Italy, and Poland becoming ICHEIC observers and joining this international cooperative effort to resolve unpaid Holocaust-era insurance claims.

The U.S. Government strongly encouraged all insurance companies that issued policies during the Holocaust era to join ICHEIC and participate fully in its programs. We emphasized that participation in ICHEIC provides the best means of ensuring that valid claims are paid and resolving international moral and humanitarian responsibilities for heirless and nationalized claims or those against companies no longer in existence. When the Dutch government approached us with a request for assistance to offset calls for boycotts against Dutch products, we worked together with representatives of the Dutch government, insurance industry and survivor organizations to incorporate Dutch companies into the ICHEIC process. In the spring of 2000, the Association of Insurers in the Netherlands joined ICHEIC on behalf of the entire Dutch insurance industry and has since concluded an agreement that links the work of the Dutch Sjoa Foundation with ICHEIC.

Our support for ICHEIC is based on U.S. interests in obtaining a measure of justice for victims, while preserving and protecting our political and economic relations with our European friends and allies and the State of Israel. ICHEIC is recognized as an institution charged with establishing a just and fair process that will honor unpaid Holocaust-era insurance policies. Through cooperative means, ICHEIC has successfully established common standards and procedures by working together with victims' organizations, state insurance regulators and participating French, German, Italian, Dutch and Swiss companies.

The United States also brought the entire German and Austrian insurance industries into the process through agreements signed in July 2000 and January 2001. We were able to find creative ways to address German and Austrian concerns while at the same time protecting the interests of U.S. citizens and other claimants, by getting the Austrian and German governments to ensure that ICHEIC standards and procedures would be used in paying all unpaid Holocaust-era insurance claims.

Negotiations Leading to the Creation of the German Foundation

Increasing public awareness and pressure prompted further action to provide a measure of justice to other victims of the Holocaust, especially those who had been compelled to perform slave and forced labor and those who had been deprived of their property. Beginning in 1998, attorneys representing these victims filed class action suits against German industry in U.S. courts. In the fall of 1998, the Federal Republic of Germany turned to the United States Government for help in facilitating resolution of the class action lawsuits. Faced with the prospect of years of lawsuits, leaders of German industry proposed the creation of a foundation to make dignified payments to victims of slave and forced labor and all others who suffered at the hands of German companies during the Nazi era. Because of our strong interest in obtaining a measure of justice for victims of the Nazi era and in preserving and protecting transatlantic political and economic relations, the United States agreed to work with the German government and companies, as well as victims' representatives, to facilitate resolution of the lawsuits in such a way that would provide benefits to the broadest possible number of survivors.

In early 1999, the U.S. and German governments began a series of formal and informal discussions on the proposed foundation initiative that involved representatives of German companies, victims' groups, the governments of Belarus, the Czech Republic, Poland, Russia, and Ukraine, as well as the State of Israel, and class action lawyers. Stuart E. Eizenstat, then Under Secretary of State for Economic, Business and Agricultural Affairs and later Treasury Deputy Secretary, led U.S. Government efforts. The German government was led initially by Bodo Hombach, and later by Dr. Otto Graf Lambsdorff, Special Representative of the Federal Chancellor for the Foundation Initiative.

In December 1999, following the personal involvement of the President of the United States and of Chancellor Schroeder, the parties agreed on the amount of DM 10 billion to fund the proposed foundation that would make payments to those who suffered at the hands of

German companies during the Nazi era. Negotiations continued through early 2000, and on March 23, 2000, agreement was reached on the allocation of the DM 10 billion.

During the course of the negotiations, the President concluded that it would be in the United States' foreign policy interests for the Foundation to be the exclusive forum and remedy for the resolution of all claims against German companies arising out of the Nazi era and the Second World War.

On July 17, 2000, the United States and the Federal Republic of Germany signed an Executive agreement which committed Germany to operate the Foundation under the principles to which the parties to the negotiations had agreed, and committed the United States to take certain steps to assist German companies in achieving "legal peace" in the United States for claims arising out of the National Socialist era and World War II. These principles were incorporated into the law creating the Foundation that was passed by the Bundestag, or German Parliament, in July 2000.

Victims' interests were broadly and vigorously represented throughout the negotiations, and all parties accepted the Foundation, "Remembrance, Responsibility and the Future" as a worthy result. On July 17, 2000, all parties to the negotiations signed a Joint Statement expressing their support for the Foundation. The class action lawyers who participated in the negotiations agreed to dismiss any Nazi era lawsuits against German companies. The United States agreed to support this effort by filing a statement of interest indicating its foreign policy interests in seeing the claims dismissed. The U.S. Government has filed statements of interest recommending dismissal on any valid legal ground in court cases brought against German companies for wrongs committed during the Nazi era and committed to do so in future cases that would be covered by the Foundation agreement. (However, the United States has not extinguished the claims of its nationals or anyone else.)

The Foundation "Remembrance, Responsibility and the Future"

The Foundation is capitalized with DM 10 billion, German industry and the German government each providing DM 5 billion. Approximately DM 8.1 billion was allocated for payments for former slave and forced laborers. DM 200 million was set aside for pro-rata payments for property claims, with an additional DM 300 million in a humanitarian fund for individuals unable to document specific claims. DM 150 million, plus an additional DM 50 million from interest, is for the payment of insurance claims and ICHEIC administrative costs, and an additional DM 350 million is for the ICHEIC humanitarian fund. DM 700 million will go to a Future Fund, which will promote tolerance and education about the Holocaust. DM 200 will be used for administration and attorneys' fees.

A Board of Trustees oversees the Foundation's operations, which are guided by a three-member Board of Directors. The 26 members on the Board of Trustees include representatives of the German government, the U.S. Government, the State of Israel, German companies, victims' organizations and plaintiffs' attorneys. The Foundation is subject to legal oversight by the German Government and audited by two agencies of the German Government.

Provisions for Insurance under the German Foundation

Because the Foundation would cover Nazi-era insurance claims, the United States Government consulted regularly with ICHEIC throughout the negotiations leading to the establishment of the Foundation. Following the March 23, 2000 agreement on allocation of the Foundation's DM 10 billion capital, the U.S. Government confirmed to ICHEIC Chairman Eagleburger the amounts allocated for insurance as well as the relevant provisions in draft German Foundation legislation, seeking and receiving his agreement to link ICHEIC with the Foundation.

The U.S.-German Executive Agreement of July 17, 2000 provides the framework for the treatment of claims made against German insurance companies, with details of implementation left to the responsible parties. The Executive Agreement provides that

insurance claims that come within the scope of the claims handling procedures adopted as of July 17, 2000, by the International Commission on Holocaust Era Insurance Claims (ICHEIC) and are made against German insurance companies shall be processed by the companies and the German Insurance Association (GDV) on the basis of such procedures and on the basis of any additional claims handling procedures that may be agreed among the Foundation, ICHEIC and the German Insurance Association.

Reflecting the allocation agreed to among the parties during the German Foundation negotiations, the July 2000 German law establishing the Foundation provides DM 200 million for the settlement of unpaid insurance policies issued by German insurance companies, their foreign portfolios and subsidiaries that are claimed through the ICHEIC, as well as for the associated costs, as well as DM 350 million for the ICHEIC humanitarian fund. A reserve amount of additional DM 100 million can be made available for the payment of claims from the Foundation's Future Fund, should the DM 200 million prove insufficient.

Implementation of the Insurance Provisions under the German Foundation

Negotiations to implement the provisions for insurance under the German Foundation are ongoing and are the responsibility of the parties involved, namely the ICHEIC, the German Foundation, and the GDV. The governments of the United States and the Federal Republic of Germany are not a part of the ongoing negotiations, and Chairman Eagleburger has made it clear that the parties themselves must reach satisfactory agreements, without intervention from governments on either side of the Atlantic. Although ICHEIC, the Foundation and the GDV are not obligated under the Executive Agreement to reach agreement on any specific additional procedures, the U.S. Government has maintained that, as a practical matter, it remains essential that agreement be reached on additional procedures in order to ensure the support of ICHEIC and state and local regulators for the process to honor unpaid German insurance policies.

Although the United States is not a party to the negotiations to implement the insurance provisions of the German Foundation, we nonetheless have continued to work actively, under the leadership of Deputy Secretary of State Richard L. Armitage, to create an environment conducive to successful negotiations and to support efforts to reach agreement quickly on outstanding issues. The Deputy Secretary has on several occasions urged all parties to demonstrate flexibility and work towards early agreement. Our strategy is to encourage the parties to put proposals on the table. We do not advocate positions of any one side but rather encourage them to come together to resolve the issues and reach agreement by consensus.

Acting under the Deputy Secretary of State's direction, over the last several months I have engaged separately with all parties to the negotiations in meetings in Washington, New York, Berlin, London, Paris, and Zurich, as well as through countless telephone and conference calls, to work towards rapid conclusion of the negotiations. In my discussions with officials from ICHEIC, German and non-German ICHEIC member companies, Jewish organizations, the Foundation and the GDV, as well as U.S. state insurance regulators, I have urged them to be willing to compromise, to demonstrate flexibility, to put practical solutions on the table and to resolve outstanding issues so as not to allow these matters to undermine the interests of Holocaust survivors and broader issues of international cooperation.

Given the advanced age of Holocaust survivors and the need for them to receive a measure of justice in their lifetimes, the U.S. Government is concerned that the provisions for insurance under the German Foundation are not yet operational. It is distressing that, more than one year after the law creating the German Foundation took effect, and some five months after the Bundestag declared that "adequate legal certainty" had been achieved for German companies operating in the United States, thus allowing for payments to begin to surviving slave and forced laborers, the insurance negotiations have not yet been completed. The United States Government calls on the German Foundation, the German Insurance Association, and all parties within ICHEIC - the insurance companies, representatives of Jewish organizations, and the U.S. state insurance regulators - to come together in the spirit of cooperation that was envisioned by the initiators of this worthwhile effort, and reach agreement now on all outstanding issues. Holocaust survivors and their families deserve at

least some measure of justice that has been too long denied, and only by bringing all aspects of the "Remembrance, Responsibility and the Future" Foundation into full operation can this be achieved.

Austria

An effort similar to that under the German Foundation - to address Nazi-era property issues, including those related to unpaid insurance policies, on the territory of present-day Austria - was concluded in January 2001. In addition to the \$150 million Austria agreed to provide to Holocaust survivors for confiscated apartment and small business leases and the contents of these apartments and businesses, Austria and Austrian companies agreed to contribute \$210 million to fund the General Settlement Fund, which will address all remaining Nazi era property issues. The United States facilitated these negotiations involving the Austrian government, Austrian companies, and a wide array of victims' representatives. The United States has undertaken similar commitments with respect to the Austrian Fund as it has undertaken concerning the German Foundation. Under this agreement, Austria agreed that the General Settlement Fund would provide for \$25 million to cover claims against those Austrian insurance companies that are not already covered through ICHEIC or the German Foundation, and that claims will be processed using ICHEIC claims-handling procedures, including valuation, standards of proof and relevant decisions by the chairperson.

Conclusion

The Administration of President George W. Bush has affirmed its commitment to seeking justice for Holocaust victims, survivors, and their families through support for the agreements reached in 2000 and 2001. Deputy Secretary Armitage restated our policy at the annual meeting of the Conference on Jewish Material Claims on July 18, 2001, stressing that the U.S. Government has supported ICHEIC since its founding three years ago. He affirmed in June 2001 to ICHEIC Chairman Eagleburger that we continue to believe the ICHEIC should be viewed as the exclusive remedy for unresolved insurance claims from the National Socialist era and World War II. He also stated that we support the efforts of all parties to resolve these issues in a cooperative and in a non-confrontational manner outside of litigation.

Mr. Chairman, Representative Waxman, you have my sincere thanks for the opportunity to appear before you and the Committee to discuss the importance of resolving Holocaust-era insurance issues.