



**THE ROLE OF THE UNITED STATES IN
PURSUING COMPENSATION FOR HOLOCAUST
VICTIMS AND HEIRS, AND THE HISTORICAL
BASES FOR U.S. LEADERSHIP**

September 23, 2020

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1. Introduction

The United States has led the world in keeping alive the memory and lessons of the Holocaust. These efforts began even before World War II ended, and U.S. leadership has been steadfast in the eight decades since that time. Secretary of State Pompeo observed in his Foreword to the Justice for Uncompensated Survivors Today (JUST) Act Report that as “World War II ended in Europe, the United States led the effort to seek a measure of justice in the form of restitution or compensation for individuals whose assets were stolen during the Holocaust. The effort began while Allied troops were liberating Europe and continues to this day.”¹ As Secretary Pompeo recognized, U.S. leadership can be traced back even before the end of the Second World War, when in 1943 the U.S. began to craft a post-War structure to restore property torn from its owners, through the immediate post-War era when the renowned “Monuments Men” sought to restore art and other valuables stolen by the Nazis. Those efforts continued through the modern era, a period notable for U.S. support of restitution from Swiss banks, German and Austrian financial and industrial institutions, and a wide range of European insurers, railroads and other governmental and private entities. The U.S. has led a global movement – embodied by such watershed initiatives as the 1998 Washington Conference on Holocaust-Era Assets and the 2009 Terezin Declaration – placing the U.S. firmly on the side of Holocaust knowledge, justice, and victims.

The government of the United States also has chosen to shine a bright light upon the singular catastrophe that was the Holocaust by ensuring that young people are educated about what the Nazis did, how they did it, and why. The *Never Again Education Act*, signed into law by the President on May 29, 2020, had nearly unanimous bipartisan support.² The commitment to Holocaust education enshrined in the *Never Again Education Act* also is intended as a bulwark against creeping Holocaust denial and distortion, which the statute defines as “discourse and propaganda that deny the historical reality and the extent of the extermination of the Jews by the Nazis and their accomplices during World War II, known as the Holocaust.”³

The U.S. government not only has expressed its strong support for Holocaust education, but also for Holocaust victims. Indeed, it is the United States that created the very framework upon which Holocaust reparations and property restitution rest. U.S. leadership has helped

¹ See <https://www.state.gov/wp-content/uploads/2020/02/JUST-Act5.pdf>. The JUST Act Report was released to the public on July 29, 2020.

² <https://www.congress.gov/bill/116th-congress/house-bill/943> (Public Law No: 116-141 (05/29/2020) (“Never Again Education Act”). In the House of Representatives, the vote was 393 to 5 in favor of passage, and in the Senate, the vote was by unanimous consent. The Never Again Education Act provides funding for the United States Holocaust Memorial Museum and “requires the museum to develop and nationally disseminate accurate, relevant, and accessible resources to improve awareness and understanding of the Holocaust.”

³ See *Never Again Education Act*, Section 3(5): “Holocaust denial refers specifically to any attempt to claim that the Holocaust did not take place. Holocaust distortion refers to efforts to excuse or minimize the events of the Holocaust or its principal elements, including collaborators and allies of Nazi Germany, to blame the Jews for causing their own genocide, or to portray the Holocaust as a positive historical event.”

Holocaust victims receive some degree of moral recognition of their incalculable losses, as well as tens of billions of dollars in compensation and restitution.

The activities of the United States paved the way for the world's foremost Holocaust compensation advocates – the Conference on Jewish Material Claims Against Germany (Claims Conference) and the World Jewish Restitution Organization (WJRO) – and have been pivotal to these organizations' successful efforts on behalf of victims of the Nazis, including many survivors who have resided (and some 80,000 who still reside) in the United States. Over the last 75 years, Holocaust victims throughout the world have received pensions, one-time payments, food, medicine, medical aid, home health care, fuel, companionship, and restitution of art, real estate and other property.

However, a recent amicus brief in support of certiorari filed in the U.S. Supreme Court by the Solicitor General appears to suggest that the United States could be wavering in its decades of commitment to restitution for Holocaust victims. The amicus brief is not reflective of the U.S. government's understanding, in other contexts and over many decades, of how and when the Holocaust unfolded. Without consistent commitment to the historical facts, the wall against Holocaust denial and distortion that the U.S. for so long has helped to buttress is weakened.

The Solicitor General has filed an amicus brief in an art restitution proceeding arising from actions during the Holocaust: *Philipp v. Federal Republic of Germany*.⁴ The brief was signed by the Acting Solicitor General, the Deputy Solicitor General, the Acting Legal Adviser for the Department of State, and other attorneys at the Department of Justice.⁵

This memorandum is not intended to advocate on behalf of any of the parties to the *Philipp* dispute, nor is it intended to express an opinion on the ownership of the artwork at issue in that case. This memorandum has been prepared, instead, to highlight several statements of concern set forth in the amicus brief, and to provide some historical context as litigation moves ahead in the United States Supreme Court (which has scheduled oral argument for December 7, 2020).

Thus, the following statements in the Solicitor General's brief are noted, and their historical and factual import are described in further detail below.

- The brief posits that the Holocaust-era taking of property from Jews was an internal domestic matter for Germany, as opposed to a deliberate measure as part of the Nazis' attempted extermination of the Jewish people. With its emphasis upon "property," the brief focuses upon one phase of what was a multi-stage effort on the part of the Nazis to obliterate the Jewish people. Seizure of property was but one element of the genocide. Because the Solicitor General's broad language is not limited to the issue of whether, *in*

⁴ All Supreme Court briefs in this matter are available at <https://www.scotusblog.com/case-files/cases/federal-republic-of-germany-v-philipp/>.

⁵ See https://www.supremecourt.gov/DocketPDF/19/19-351/153827/20200911202901200_19-351tsacUnitedStates.pdf, September 11, 2020 ("U.S. Amicus Brief").

this particular case, the property was taken illegally, the brief effectively states that the U.S. does not consider Nazi expropriation of property from its Jewish citizens to have been an integral step along the road toward murder. That position would be in stark contrast to the long-held understanding of the government of the United States, as well as Holocaust historians, that looting and genocide were intertwined.

- The brief states that the dispute, which concerns art transferred to the Nazi government in 1935, is a domestic taking and that it involves the German government's treatment of its own nationals. It is of great concern that the United States has taken the position that Jewish individuals in Nazi Germany, in 1935, had full rights and remedies as citizens. This view flies in the face of the most basic understanding of the Holocaust, which the U.S. has long recognized to have started as soon as Hitler came to power in January 1933. By 1935, the Nazi vise was already closing tightly around the Jews of Germany, barring them from working as lawyers, doctors, journalists, performers, or laborers, from operating or engaging freely in businesses, from attending school, from serving in the armed forces, and from any number of other activities available to a German "citizen." Nazi Germany certainly did not consider its Jewish residents to be German nationals.

It is worth noting, for some historical context, what happened to a Jewish lawyer as early as March 1933, when he tried to call attention to a violation of his client's civil rights. As the United States Holocaust Memorial Museum explains:

Dr. Michael Siegel was an attorney in Munich, Germany. On March 10, 1933, he reported to Police Headquarters in Munich to file a complaint against the unwarranted and unauthorized arrest of his client, Mr. Uhlfelder, the owner of a prominent Munich department store.

Upon his arrival at the police station, Dr. Siegel was directed to a room, where he was confronted by Nazi storm troopers (SA), many of whom had been deputized as auxiliary policemen in February 1933. They beat up Dr. Siegel, knocking out some of his teeth, perforating one of his ear drums, and cutting the legs of his pants. The SA then hung a board around Dr. Siegel's neck and paraded him barefoot through the streets of Munich. When they reached the train station, the Nazi storm troopers threatened to kill him, but finally Dr. Siegel jumped into a taxi and sped home to safety.⁶

⁶ Eric Schmalz, "The Story of Dr. Michael Siegel," History Unfolded – The Story of U.S. Papers and the Holocaust, available at <https://newspapers.ushmm.org/blog/2017/12/19/dr-siegel/>. The photographs appearing *infra*, as the USHMM explains, were taken on March 10, 1933, when "a photographer named Heinrich Sanden took photographs of Dr. Siegel as Nazi storm troopers marched him through Munich." *Id.*



Given how this Jewish German attorney (like his Jewish client) was horribly abused just a few months into Hitler’s rule, the Nazi-controlled courts, by 1935, were hardly likely to entertain legal proceedings initiated by Jewish plaintiffs. Rather, such complainants (and anyone brave enough to represent them) presumably would have been subject to the same fate as Dr. Siegel – humiliation, beatings, and if they were “lucky,” barely escaping with their lives. Those who were not “lucky” were left to die in the ghettos and camps, the last stages in an extermination process that began with discrimination and expropriation.

The Solicitor General’s brief presumably did not intend to overlook the broader historical forces underlying the specific dispute in *Philipp v. Federal Republic of Germany*. As we discuss in this memorandum, in laying the groundwork for and furthering its mission of Holocaust compensation, the U.S. has always recognized that the Nazis’ effort to strip Jewish and other victims of their material assets was a foundational step along the road toward annihilation – and one that began as soon as Hitler acceded to power in January 1933. We believe it would be helpful to review the long-standing U.S. role in furthering the twin goals that are also at issue here: advancing Holocaust restitution and presenting accurate Holocaust history.

2. The Claims Conference and the WJRO

This memorandum has been prepared on behalf of the Conference on Jewish Material Claims Against Germany (“Claims Conference”) and the World Jewish Restitution Organization (“WJRO”).

Since its founding in 1951, the **Claims Conference** has secured recognition, compensation and restitution for survivors of the Holocaust and heirs of victims. Guided by a team of storied negotiators – including Nahum Goldmann, who founded such other Jewish organizations as the World Jewish Congress and the Jewish Agency, Benjamin Ferencz, the

legendary Nuremberg prosecutor, and Saul Kagan, who survived the Holocaust, returned to the battlefields of Europe as an American soldier, and led the Claims Conference for more than six decades – its mission has always been to secure a small measure of justice for Jewish victims of Nazi persecution. As a result of negotiations with the Claims Conference since 1952, the German government has paid more than \$70 billion in indemnification to individuals for suffering and losses resulting from Nazi persecution. Claims Conference negotiations also have resulted in the creation of funds from German and Austrian industry, as well as financial support from the Austrian government for Nazi victims. In those cases in which the Claims Conference becomes the legal heir to unclaimed property (due to the fact that the Nazis wiped out entire families), the proceeds of the property are used to provide Holocaust survivors with life-sustaining care ranging from home health aides to hot meals to friendly support networks. The Claims Conference remains painfully aware that the destruction of Jewish life during the Holocaust can never be made whole. With that in mind, the Claims Conference has always emphasized and will continue to focus on supporting Holocaust survivors, perpetuating their testimony, and sustaining their memory when we are no longer graced with their presence.⁷

The **WJRO** began its activities in 1993, several decades after the Claims Conference was founded, following the collapse of the Communist regimes in Eastern Europe. The WJRO's central purpose is to address the restitution of Jewish property in those nations. The WJRO consults and negotiates with national and local governments in Eastern and Central Europe (except for Germany and Austria, for which the Claims Conference conducts negotiations). In these efforts, the WJRO seeks and often successfully obtains the return of Jewish communal property and heirless private property, and where restitution is not possible, payment of full compensation. The WJRO also pursues restitution of private property and compensation for Holocaust survivors. Working with local Jewish communities, the WJRO has established local foundations to file restitution claims and uses the proceeds of restitution to support survivors and local Jewish life.⁸

3. The Role of the United States in Establishing and Pursuing the Right to Holocaust Compensation

Even during World War II, and throughout more than eight decades until today, the United States has used its global prestige and international leadership to provide a measure of justice for and compensation to Holocaust victims. As the Department of State recently observed in its JUST Act Report:

⁷ For more information about the Claims Conference, *see infra*; see also www.claimscon.org.

⁸ <https://wjro.org.il/about-wjro/about-us-our-mission/>

The United States remains a recognized world leader on Holocaust-era restitution. Strong U.S. government leadership and advocacy were decisive in the conclusion of many of the major restitution agreements to date. These include, for example, agreements with Switzerland (dormant bank accounts), Germany (slave and forced labor, insurance, property), Austria (slave and forced labor, insurance, private property), France (bank accounts and deportations on the French railway), and restitution agreements and settlements in a number of Central and Eastern European countries.⁹

The Solicitor General’s amicus brief similarly confirms that the “United States deplores the atrocities committed against victims of the Nazi regime and supports efforts to provide victims with remedies for the wrongs they suffered. Since the end of World War II, the United States has worked in numerous ways to achieve some measure of justice for the victims, and with the United States’ encouragement and facilitation, the German government has provided significant relief to compensate Holocaust survivors and other victims of the Nazi regime.”¹⁰

The U.S. has not demurred in the hope that Germany might take the lead, nor has the U.S. ceded this responsibility to other nations or groups. Instead, the U.S. stepped forward - from the very beginning - to help acknowledge and restore something of what was lost during the Holocaust.¹¹

a. The War Years, the Immediate Post-War Period, and the Creation of the Claims Conference

Even as the Second World War raged, and the outcome was not at all certain, the U.S. led the way in 1943 in anticipating a post-war world in which a decade of Nazi plunder would need to be rectified. The U.S. and its allies issued an **Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control**. The

⁹ Executive Summary, JUST Act Report, p. 5, available at <https://www.state.gov/wp-content/uploads/2020/02/JUST-Act5.pdf>.

¹⁰ U.S. Amicus Brief at 1.

¹¹ Portions of this discussion are drawn from, and quote extensively from, a report filed by the Special Masters in the Swiss Banks Holocaust Settlement. *See In re Holocaust Victim Assets Litig.*, Special Masters’ Proposed Plan of Allocation and Distribution of Settlement Proceeds, September 11, 2000, Annex E: Holocaust Compensation, available at https://www.swissbankclaims.com/Documents_New/665994.pdf, approved by the District Court and upheld by the Court of Appeals for the Second Circuit. *In re Holocaust Victim Assets Litig.*, No. 96-4849, 2000 WL 33241660, at *4 (E.D.N.Y. Nov. 22, 2000), *aff’d.*, 14 F. App’x 132 (2d Cir. 2001), reissued as a published opinion, 413 F.3d 183 (2d Cir. 2005). *See generally* www.swissbankclaims.com.

This discussion also is drawn from the Chronology prepared by Special Master Judah Gribetz and Deputy Special Master Shari C. Reig as part of their Final Report to the Court. *See* Judah Gribetz and Shari C. Reig, Special Masters’ Final Report on the Swiss Banks Holocaust Settlement Distribution Process, March 28, 2019 (available at <https://www.swissbankclaims.com/New%20docs/Final%20Report.pdf>) (hereinafter “Swiss Banks Holocaust Settlement Final Report/Chronology”).

statement was a “formal warning to all concerned, and in particular to persons in neutral countries, that [the Allies] intend[ed] to do their utmost to defeat the methods of dispossession practiced by the governments with which they are at war against the countries and peoples who have been so wantonly assaulted and despoiled.”¹²

To that end:

[T]he governments making this declaration and the French National Committee reserve all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the governments with which they are at war or which belong or have belonged, to persons, including juridical persons, resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected.¹³

As early as the summer of 1945, the celebrated “**Monuments Men**” - employees of the **Office of Military Government, U.S. Zone (“OMGUS”)** - began to locate significant items of cultural property. They established collection points that “were run by specialists from the Monuments, Fine Arts, and Archives Section (MFA&A) of the Property Division under the Reparations and Restitution Branch within OMGUS. These officers, familiarly known as Monuments Men, many of whom had accompanied Allied forces in the drive against the Germans across Western Europe, were responsible for locating and rescuing property looted by the Nazis.”¹⁴ As repositories of loot were located, “cultural property was relocated into three central collecting points: Munich for art, Wiesbaden for German property, and Offenbach, near Frankfurt, for books, archives, and Jewish cultural property.”¹⁵ By the time OMGUS had completed its operations in 1949, it had “located, inventoried and returned [to foreign governments] over 1.6 million items,” most of which had been located in the U.S. Zone.¹⁶

Following Germany’s surrender in 1945, the Allies – the United States, the United Kingdom, and the Soviet Union – constructed a reparations formula in the **Potsdam Agreement**. To avoid further weakening the German economy, the Allies did not demand monetary

¹² See <https://history.state.gov/historicaldocuments/frus1943v01/d456>.

¹³ *Id.*

¹⁴ Patricia Kennedy Grimsted, “Reconstructing the Record of Nazi Cultural Plunder - A GUIDE TO THE DISPERSED ARCHIVES OF THE EINSATZSTAB REICHSLEITER ROSENBERG (ERR) AND THE POSTWAR RETRIEVAL OF ERR LOOT,” Chapter 10 (United States of America), at USA-1 (available at https://errproject.org/guide/ERR_Guide_USA.pdf). For further information, see “the ... popularized account by Robert Edsel (with Bret Witter), *The Monuments Men: Allied Heroes, Nazi Thieves, and the Greatest Treasure Hunt in History* (New York: Center Street, 2009), and the resulting Hollywood film released in 2014.” *Id.*

¹⁵ Michael J. Kurtz, “Inheritance of Jewish Property,” in *The Holocaust – Moral & Legal Issues Unresolved: Looted Art*, 20 *Cardozo L. Rev.* 625 (December 1998) (hereinafter, “Kurtz”) at 631.

¹⁶ *Id.* at 632.

compensation but, rather, sought to satisfy reparation claims through acquisition of specified percentages of German industrial capital equipment and shares of German companies.¹⁷

In post-War Germany, the Allies “found two kinds of assets: remnants of valuables that the Germans had hauled in from the Polish killing centers, and capital investments that had once belonged to Jews deported from the Reich. So far as the valuables were concerned, the Allies promptly decided to sell this haul for non-German currency and to turn over 90 percent of the receipts to Jewish relief organizations for rehabilitation. The sales were accomplished with due dispatch, but it was a small operation that netted only petty cash.”¹⁸ The Allies also agreed, as part of what came to be known as the 1946 **Paris Reparations Agreement**, “that heirless assets in neutral countries be made available to persecutees.”¹⁹

One year later, in 1947, the U.S. took the lead in negotiating **peace treaties with non-neutrals including Romania and Hungary**. These treaties included express provisions requiring those nations to return property taken from those who had been “the object of racial, religious or other Fascist measures of persecution”; “heirless and unclaimed property” were to be transferred to Jewish organizations.²⁰

In the case of individual Holocaust survivors and heirs, restitution claims were recognized not long after the end of the War, and U.S. leadership paved the way. The initial program began at the initiative of the United States on November 10, 1947, when **United States Military Government] Law 59**, “providing for the reimbursement of concrete wealth illegally confiscated from the Jews by the Nazis, was [introduced] in the American Zone. This decree covered all those possessions expropriated by the Nazis in the course of their Aryanization of the economy. The reparations included, when possible, the return of the goods in question.”²¹ Following the lead of the U.S., in the British Zone, Law No. 59 of May 12, 1949 was enacted for

¹⁷ See U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II – Preliminary Study (May 1997), prepared under the leadership of Stuart A. Eizenstat, then serving as Under Secretary of Commerce (hereinafter, “Eizenstat Report”), at xxxvi.

¹⁸ Raul Hilberg, The Destruction of the European Jews (New York: Holmes & Meier 1985) (revised ed.) (hereinafter, “Hilberg”), at 1160. See also Eizenstat Report, at 60 (“[t]he entire package for the non-repatriables thus comprised \$25 million, plus the proceeds of German assets in neutral countries, all non-monetary gold found in Germany, i.e., the boxes of SS loot collected from Nazi crematories and composed primarily of tooth-fillings, rings, and other such objects, as well as the assets of heirless accounts held in the neutral countries”).

¹⁹ Hilberg, at 1161 n.20. See also <https://history.state.gov/historicaldocuments/frus1946v04/preface>; Swiss Banks Holocaust Settlement Final Report/Chronology: “January 14, 1946: 18 countries enter into the Paris Reparations Agreement, providing for restitution of monetary gold looted by Nazi Germany; allocation of nonmonetary gold located in Germany; and \$25 million of such assets found in neutral countries, for the relief and resettlement of surviving Nazi persecutes.”

²⁰ See Treaty of Peace with Romania, Feb. 10, 1947, Art. 25; Treaty of Peace with Hungary, Feb. 10, 1947, Art. 27.

²¹ Andrei S. Markovits and Beth Simone Noveck, “West Germany,” in The World Reacts to the Holocaust, (David S. Wyman, ed, Baltimore: Johns Hopkins Univ. Press 1996) (hereinafter, “Markovits and Noveck”), at 406-07.

the same purpose, while Decree No. 120 of November 10, 1947 entered into force in the French Zone.²²

As the extent of the destruction of the European Jewish population was revealed, it became clear that entire families had been wiped out. In many cases, no heirs to looted property remained to assert ownership. Again, the United States took decisive action, appointing a new organization to take title to heirless and unclaimed Jewish property. On June 23, 1948, **Regulation 3 to Law No. 59** was issued, recognizing the **Jewish Restitution Successor Organization (“JRSO”)** as the successor body to the heirless property.²³ This was a significant departure from customary principles concerning disposition of unclaimed property; “[o]rordinarily, heirless property falls to the state.”²⁴ Following the lead of the U.S., the Military Government in the British Zone designated the Jewish Trust Corporation (“JTC”) as successor organization.²⁵ Because “French law [did] not provide for the establishment as a legal entity of such a body, it was decided that restitution operations in the French Zone of Germany could best be carried out under the wing of JTC by the creation of a French Branch.”²⁶

The zonal restitution laws initiated by the United States recognized “the principle that heirless property constituted a collective claim of Nazi victims; that it was to be restituted to successor organizations representing collectively the categories to which the victims, most of whom were Jews, belonged; and that the proceeds of such restituted properties were to be used for the rehabilitation and resettlement of the victims themselves.”²⁷ This principle has guided Holocaust reparation efforts ever since.

In March 1951, with the support of the United States, a new era in Holocaust compensation began. Germany formally recognized its ongoing obligation to Holocaust victims and their heirs, and at the same time, an international organization was created that has taken the central role in negotiating and distributing Holocaust compensation ever since: the Claims Conference.

In 1951, the government of Israel sent the four allied powers a diplomatic note seeking “German payments of 1.5 billion dollars for the integration of 500,000 Jewish refugees.”²⁸ For Israel, this issue was “finally put on the agenda ... because of Israel’s urgent needs” in the face

²² Kurt Schwerin, “German Compensation for Victims of Nazi Persecution,” 67 *Northwestern Law Review*. 479, at 489.

²³ See Saul Kagan and Ernest H. Weisman, Report on the Operations of the Jewish Restitution Successor Organization, 1947-1972, (hereinafter, “JRSO Report”), at 6-7.

²⁴ Hilberg, at 1160.

²⁵ Charles I. Kapralik, Reclaiming the Nazi Loot: The History of the Work of the Jewish Trust Corporation for Germany, Vol. II (London: The Corporation 1962-1971) (hereinafter “JTC Report”), at 26.

²⁶ JTC Report, at 3.

²⁷ Lucy S. Dawidowicz, “German Collective Indemnity to Israel and the Conference on Jewish Material Claims Against Germany,” 54 American Jewish Year Book (1953), at 473.

²⁸ Jeffrey M. Peck, “East Germany,” in The World Reacts to the Holocaust (David S. Wyman, ed, Baltimore: Johns Hopkins Univ. Press 1996) (hereinafter, “Peck”), at 471 n. 39.

of a growing influx of refugee Holocaust survivors.²⁹ For Germany, Chancellor Konrad Adenauer favored the concept of recompense both because of “a certain moral urge” and because of “German foreign policy objectives,”³⁰ including the desire to strengthen relations with the U.S. in the face of Soviet expansion. For the U.S., foreign policy goals were significant. The American High Commissioner for Germany, John J. McCloy, decided to “follow a lenient path toward the Nazi war criminals [that] undoubtedly led him to press the Germans even harder for a generous policy of *Wiedergutmachung*, or restitution, toward the Jews and the state of Israel.”³¹

Because the U.S. had been so effective in bringing these divergent interests to the table, in October 1951, 23 major Jewish organizations were able to join together as a central body that would be responsible for representing Holocaust survivors: the Claims Conference. The Claims Conference – which was established and remains based in New York in recognition of the leadership that had been and would be demonstrated by the government of the United States – presented a “collective claim” in the “name of the Jewish people by both the State of Israel and organized Jewry,” with “moneys to be received as reparation” to be “divided by mutual consent.”³²

The Claims Conference – whose “name itself stressed the material nature of the approach to Germany, thus underscoring that there could be no atonement for the Nazi crimes”³³ – sought to accomplish five objectives in negotiating with the German Federal Republic:

- indemnification for individual injuries;
- restitution of confiscated assets;
- relief, rehabilitation and resettlement of victims;
- rebuilding Jewish communities; and
- Holocaust documentation, education, research and commemoration.³⁴

Thus began, because of U.S. leadership, decades of compensation programs for Holocaust victims, leading to billions of dollars in payments and social service assistance to survivors around the world. It was also U.S. leadership that helped to highlight the historical and

²⁹ Shlomo Shafir, Ambiguous Relations: The American Jewish Community and Germany Since 1945 (Detroit: Wayne State University Press 1999) (hereinafter, “Shafir”), at 165.

³⁰ Shafir, at 166.

³¹ Thomas Alan Schwartz, America’s Germany: John J. McCloy and the Federal Republic of Germany (Cambridge, Massachusetts: Harvard Univ. Press 1991), at 175.

³² Nana Sagi, German Reparations: A History of the Negotiations (Jerusalem: The Magnes Pres, Hebrew University 1980), at 86.

³³ *Id.*, at 77.

³⁴ See “Conference on Jewish Material Claims Against Germany – Delegation Statement,” in Proceedings of the Washington Conference on Holocaust-Era Assets (1998) (hereinafter, “Washington Conference on Assets”), at 229.

moral importance of acknowledging and remembering the Nazi horror perpetrated against millions of innocent men, women and children.

b. The Next Era of U.S. Leadership

Although the U.S. was involved with a variety of international activities on many fronts during the decades following the initial discussions leading to the major restitution agreements and institutions described above, the U.S. did not overlook the needs of Holocaust survivors. This vulnerable population remained a priority even as the Cold War and other pressing foreign policy concerns consumed the lion's share of attention.

Thus, in the mid-1970s, after both the German Federal Republic ("West Germany") and the German Democratic Republic ("East Germany", also known as the GDR) had been admitted as members of the United Nations, the U.S. and the **German Democratic Republic** commenced negotiations concerning the possible establishment of diplomatic relations. Recognizing the many Holocaust reparations issues that remained open with respect to victims as well as property with ties to the GDR, the U.S. "obtained a promise from the German Democratic Republic to discuss restitution and compensation issues directly with the Claims Conference."³⁵

Some 15 years later, in 1990, **with negotiations for German reunification** under way, the U.S. actively encouraged the unified Germany to continue the restitution policies that by then had been long intertwined with Germany's post-War identity. The U.S. also supported the Claims Conference's efforts to obtain a new infusion of funds for victims who, until then, for reasons of geography and geopolitics, had received little or no previous compensation. This strong U.S. advocacy led to an agreement in 1992 by the then-unified German government to pay lifetime pensions to what ultimately proved to be tens of thousands of needy Holocaust survivors.³⁶

c. Mid-1990s to Present

In the mid-1990s, the treatment and compensation of Nazi victims came under renewed public scrutiny. As historian Deborah Lipstadt has explained:

³⁵ Karen Heilig, "From the Luxembourg Agreement to Today: Representing a People," 20 *Berkeley J. Int. L.* 176, 186 (2002), citing Benjamin Ferencz, Report to Claims Conference Board of Directors (July 3, 1979).

³⁶ Heilig at 187, citing Letter from Israel Miller, Claims Conference President, to U.S. Secretary of State James A. Baker III (Oct. 10, 1990) and Letter from Israel Miller, Claims Conference President, to U.S. Ambassador to Germany Robert M. Kimmitt (Nov. 17, 1992).

[I]n contrast to previous decades, most of [the] stories concerned the bystanders rather than the perpetrators or victims. Swiss banks, international corporations, insurance companies, leading museums, the Red Cross, and the Vatican all found themselves under unprecedented pressure to account for their record during the Holocaust. Some opened up their archives in response. Most ‘discovered’ that they had terrible skeletons in their closet, though they may have knowingly kept those skeletons there. Now, however, they could not so easily deny their wartime wrongs and their postwar failings. They had held on to financial assets that rightfully belonged to survivors. These funds sat in their coffers while survivors were rebuffed, often in the most glib and callous fashion.³⁷

The U.S. State Department has pointed out that “[m]uch of the interest in providing belated justice for victims of the Holocaust and other victims of Nazi tyranny during World War II” can be attributed to Ambassador Stuart E. Eizenstat’s leadership. In the 1990s, Ambassador Eizenstat was “Special Representative of the President and Secretary of State on Holocaust-Era Issues. He successfully negotiated major agreements with the Swiss, Germans, Austrian and French, and other European countries, covering restitution of property, payment for slave and forced laborers, recovery of looted art, bank accounts, and payment of insurance policies.”³⁸

Indeed, virtually every Holocaust restitution program in the modern era has been initiated by the United States government.³⁹ Nations throughout Europe (including Germany), as well as the Claims Conference and WJRO, and most importantly, Holocaust survivors around the world, have been fortunate that the U.S. has continued to prioritize issues of restitution and justice.

i. Princz Case

One of the first of the renewed claims to Holocaust compensation involved U.S. service members, who – once again - were supported in their efforts by the government of the United States. **Hugo Princz**, a Jewish U.S. soldier, had been captured by the Nazis during World War II and imprisoned in a concentration camp. After the war, Princz sought compensation from Germany, but was ineligible. On several occasions, from 1984 through 1991, Princz, joined by the United States Department of State and members of Congress, unsuccessfully sought payment from the German government.⁴⁰ Because of the continuing involvement of the U.S.

³⁷ DEBORAH E. LIPSTADT, HOLOCAUST: AN AMERICAN UNDERSTANDING 126 (Rutgers Univ. Press 2016).

³⁸ <https://2009-2017.state.gov/r/pa/ei/biog/218946.htm>.

³⁹ See <https://2009-2017.state.gov/r/pa/ei/biog/218946.htm>, referencing Ambassador Stuart Eizenstat’s 2003 “book on these events, *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II*.”

⁴⁰ See *Princz v. Federal Republic of Germany*, 813 F. Supp. 22, 22-25 (D.D.C. 1992), *rev’d.*, 26 F.3d 1168, 1168-69 (D.C. Cir. 1994).

government, Germany ultimately agreed on September 19, 1995 to pay \$2.1 million to Princz and ten other American Holocaust survivors.⁴¹

Legislation passed by Congress in early 1996 authorized the **Foreign Claims Settlement Commission** (“FCSC”), an agency within the Department of Justice, to establish a program to adjudicate the claims of potential claimants under a second stage of the agreement. Over 1000 people filed claims by the February 23, 1997 deadline, of which 235 were verified. On this basis, the State Department then negotiated a settlement with the German government in January of 1999, which the Bundestag approved in June 1999.⁴²

ii. Class Action Lawsuits

The U.S. government played an important role in class action claims leading to billions of dollars in compensation for Holocaust victims and their heirs. In 1994, Stuart Eizenstat, who was then serving as U.S. Ambassador to the European Union, initiated an inquiry into the Holocaust-era activities of **Swiss banks**. On May 2, 1996, the President of the United States stated in a letter to the WJRO and the World Jewish Congress: “I would like to express my continuing support in the area of restitution of Jewish property... the return of Jewish assets in Swiss banks enjoys the support of this Administration ... it is a moral issue.”⁴³

In late 1996, the President commissioned a special inter-agency task force under the supervision of Ambassador Eizenstat to investigate and prepare a report describing the Allied efforts to recover and restore Nazi looted gold and other assets after World War II. The report (known as the “**Eizenstat Report**”), released in May 1997, detailed Switzerland’s relationship with Nazi Germany and highlighted Switzerland’s handling of looted gold and other assets.⁴⁴ Ambassador Eizenstat issued another report in June 1998, analyzing the role played by other neutral nations during World War II with regard to looted gold and other assets.

In 1996 and 1997, the U.S. Congress began to take a more visible role in Holocaust restitution matters, holding several hearings in the Senate as well as in the House of Representatives.⁴⁵ Among the witnesses was Paul Volcker, who had served as Chairman of the

⁴¹ See Kimberly J. McLain, *Holocaust Survivors Will Share \$2.1 Million in Reparations*, New York Times, Sec. B., p. 5, col. 1, September 20, 1995. See also Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany Concerning Final Benefits to Certain United States Nationals Who Were Victims of Nationalist Measures of Persecution (discussed in the Swiss Banks Holocaust Settlement Special Masters’ Distribution Plan at E-56-57).

⁴² Marilyn Henry, *US Citizens win right to Holocaust reparations*, Jerusalem Post, News, p. 3, January 17, 1999.

⁴³ See Swiss Banks Holocaust Settlement Final Report/Chronology.

⁴⁴ See Swiss Banks Holocaust Settlement Final Report, at 79.

⁴⁵ Hearings were held on April 23, 1996, October 16, 1996 and May 15, 1997 before the U.S. Senate Banking Committee, and on December 11, 1996, June 25, 1997 and August 14, 1997 before the U.S. House Committee on Banking and Financial Services;

U.S. Federal Reserve System, and who was tasked with overseeing an independent audit of the Swiss accounts.

The State of New York also became actively involved in Holocaust restitution matters at that time. On September 15, 1997, then-Governor George Pataki opened the **Holocaust Claims Processing Office (HCPO)** to assist Holocaust victims and heirs residing anywhere in their efforts to recover assets looted during the Holocaust era.

In 1996 and 1997, Holocaust survivors filed several class action lawsuits against the Swiss government, that nation's leading banks, and other Swiss entities. The plaintiffs alleged that the Swiss banks had engaged in a decades-long failure to return accounts to Holocaust victims and their heirs. Plaintiffs asserted claims relating to their unreturned bank accounts, as well as losses relating to slave labor and looting. The class action lawsuits were consolidated before **United States District Judge Edward R. Korman** and were settled under the name *In re Holocaust Victim Assets Litigation (Swiss Banks Holocaust Settlement)*.

In his July 2000 decision approving the parties' \$1.25 billion class action settlement, Judge Korman took note of the crucial role of the United States government in bringing the matter to successful resolution. Judge Korman specifically praised the efforts of the then-Deputy Treasury Secretary, Ambassador Stuart Eizenstat. Judge Korman also noted that the Department of Justice had expressed support for the settlement of Holocaust-related claims in the courts of the United States:

The settlement discussions were facilitated, initially, by former United States Under Secretary of State, now Deputy Secretary of Treasury, Stuart Eizenstat. Subsequently, I became intimately involved in the settlement discussions that led to an agreement in principle in August 1998....

The United States, which participated actively in settlement discussions over a period of many months, through Deputy Treasury Secretary Eizenstat, has expressed its "unqualified support for the parties' class action settlement" and endorsed it "as fair, reasonable and adequate and unquestionably in the public interest." Transcript of Fairness Hearing (Nov. 29, 1999) at 27 (comments of James Gilligan, U.S. Department of Justice, on behalf of the United States). Mr. Gilligan continued as follows:

The United States supports approval of the settlement the parties have reached. It is fair and just and promotes the public interest, as expressed in the policy that the United States government has pursued for the past four years. Because the parties reached for common ground rather than prolong their difference[s], the elderly victims of the Holocaust will receive the benefits of this settlement in their lifetime and much more quickly than would have been possible had the litigation continued. But of equal importance, the United States regards this settlement as an excellent example of how cooperation and the will to fulfil[I] a moral obligation can lead to voluntary resolution of disputes over Holocaust-era claims. **The government anticipates that the settlement here, by force of its example, will promote the U.S. policy of negotiated settlement in other cases and countries**

where Holocaust victims' claims for restitution have not yet been resolved. In particular, the United States is hopeful that this settlement will add a sense of urgency and possibility to resolving the pending class action claims of slave and forced laborers who can no longer wait for years for justice to be done. Id. at 31-32.⁴⁶

Judge Korman further observed:

Mr. Gilligan's prediction that the present settlement would serve as a catalyst for a negotiated agreement of the claims of slave and forced laborers has proven accurate. On March 23, 2000, a final agreement was reached concerning the allocation of an even more substantial settlement fund-- approximately \$5 billion-- in a related litigation on behalf of victims of Nazi slave and forced labor policies, some of whom are also members of the slave labor classes here.⁴⁷

The approximately \$5 billion slave and forced labor agreement (cited by Judge Korman and by the Department of Justice) represents another example of a Holocaust compensation program that could not have been created without the active engagement of the United States. Following class action litigation initiated in the U.S. courts (beginning with a March 8, 1998 lawsuit against the German-based Ford Motor Company) arising from Holocaust-era slave labor claims, in July 2000, the **German Foundation “Remembrance, Responsibility and Future”** was created to compensate the claims of slave and forced laborers, as well as those who had suffered from medical experiments or had property losses.⁴⁸

The United States determined during those proceedings that the issue of Holocaust compensation was important enough to warrant creation of a new State Department office, as well as a formal advisory role for Ambassador Eizenstat. Thus, Ambassador Eizenstat in 1999 was named the **Special Representative of the President and the Secretary of State on Holocaust Issues**. In addition, the State Department created a new office to be headed up by a **Special Envoy for Holocaust Issues**. That position was held initially by J.D. Bindenagel, who was followed by many other dedicated public servants: Edward O'Donnell, J. Christian Kennedy, Douglas Davidson, Nicholas Dean, Thomas Yazdgerdi and Cherrie Daniels.

As has been described by former Special Envoy Douglas Davidson, the German Foundation was

the product of an executive agreement concluded in the summer of 2000 [July 17, 2000] between the United States and Germany. Following the signing of this agreement, the

⁴⁶ *In re Holocaust Victim Assets Litig.*, 109 F.Supp.2d 139, 142, 147-48 (E.D.N.Y. 2000)(emphasis added).

⁴⁷ *Id.*

⁴⁸ See Swiss Banks Holocaust Settlement Final Report/Chronology; see also *Gesetz zur Errichtung einer Stiftung “Erinnerung, Verantwortung und Zukunft”* [Law on the Creation of a Foundation “Remembrance, Responsibility and Future”], Aug. 12, 2000, BGBl. I at 1263, last amended by *Gesetz*, Sept. 9, 2008, BGBl. I at 1797.

German Bundestag enacted [the law establishing] the foundation as the vehicle to make humanitarian payments to former slave and forced laborers and other victims of National Socialism. It was jointly funded by the German government and German industry. Between 2001 and 2007, the Foundation paid roughly 4.5 billion euros to nearly two million forced and slave laborers in almost one hundred countries. Once these payments were completed, the foundation became a grant-making institution through the establishment of a “Remembrance and Future” fund. This fund, as the law puts it, . . . “foster[s] projects that serve the purposes of better understanding among peoples, the interests of survivors of the National Socialist régime, youth exchange, social justice, remembrance of the threat posed by totalitarian systems and despotism, and international cooperation in humanitarian endeavors.”⁴⁹

The German slave labor settlement was followed by additional Holocaust-era compensation programs, facilitated by the government of the United States. In **March 1997**, a class action lawsuit was filed in a New York federal court against European insurers seeking recovery of Holocaust-era insurance policies. With U.S. assistance, that lawsuit eventually resulted in an international agreement on August 25, 1998, establishing the **International Commission on Holocaust Era Insurance Claims (ICHEIC)**.⁵⁰

Further examples of the U.S. involvement in Holocaust-related class action lawsuits and other restitution matters are set forth below.

iii. Looted Art: The Washington Conference and Congressional Action

The U.S. played a crucial role in creating a new framework for restitution of items looted from Nazi victims, particularly art. On November 30, 1998, the United States convened the **Washington Conference on Holocaust-Era Assets**. The Conference was attended by 44 nations, and focused particularly upon art, real property and insurance. On December 3, 1998, participants endorsed the “**Washington Conference Principles on Nazi-Confiscated Art**,” intended to develop a consensus on non-binding guidelines to assist in resolving issues relating to art expropriated by the Nazis. The U.S. took additional decisive action, in 1998 establishing

⁴⁹ Swiss Banks Holocaust Settlement Final Report, at 93-94 (citing Amb. Douglas Davidson) (available at <https://www.swissbankclaims.com/New%20docs/Final%20Report.pdf>). From its inception and through the present day, the United States holds a designated seat as one of the Trustees on the Foundation Board. The United States Department of State also is authorized, under the German law establishing the Foundation, to appoint an American attorney to hold a second U.S. seat on the board.

⁵⁰ The parameters and compensation principles governing ICHEIC were established pursuant to a Memorandum of Understanding among the National Association of Insurance Commissioners in the U.S., insurance regulators, European insurance companies, representatives of Jewish organizations, and the State of Israel.

the Presidential Advisory Commission on Holocaust Assets in the United States (and submitting its report in 2000).⁵¹

That same year, in 1998, Congress – indicating that interest in Holocaust restitution was not confined to the executive and judicial branches, but also was shared by the legislative branch – enacted the **Holocaust Victims Redress Act**, which encouraged nations to return assets seized by the Nazis, including works of art.⁵²

In 2016, Congress enacted the **Holocaust Expropriated Art Recovery Act (HEAR Act)**, which extended statutes of limitation for Nazi art-looting claims.⁵³ A direct line can be drawn to the HEAR Act from the Washington Principles, which “continue to exert a moral force. With bipartisan support, Congress in 2016 created a unique federal statute of limitations preempting other defenses related to the passage of time and providing six years to file a claim only after a claimant has discovered the identity and location of the artwork.”⁵⁴

iv. Other Holocaust Restitution Efforts Encouraged by the U.S.

The U.S. government has taken a leading role in investigating, and in many instances, seeking resolution of, claims arising from a variety of other Holocaust-era losses. The U.S. also has expressed ongoing interest in providing services and support to Holocaust survivors, especially those who are financially needy. Thus, for example⁵⁵:

- In September 1999, the **U.S. House of Representatives Banking Committee** held hearings on **French financial institutions’** treatment of Holocaust-related claims.
- In October 1999, the **U.S. Presidential Advisory Committee on Holocaust Assets** indicated that U.S. forces responsible for safeguarding the assets of Hungarian Jews that had been looted by the Nazis and loaded onto a freight train (the so-called “**Gold Train**”), had been “neither careful nor selfless custodians” of these assets. Subsequently, in January 2001, this commission reported that 2,200 books and other

⁵¹ <https://govinfo.library.unt.edu/pcha/>. The Commission reached agreement with the Association of Art Museum Directors, resulting in a commitment from the “American museum community” to investigate and disclose the provenance of possibly Nazi-looted art.

⁵² Holocaust Victims Recovery Act, Pub. L. No. 105- 158, § 201, 112 Stat. 15, 15 (1998).

⁵³ Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, § 2, 130 Stat. 1524, 1524.

⁵⁴ Stuart E. Eizenstat, “Art Stolen by the Nazis is Still Missing. Here’s How We Can Recover It.,” Washington Post, Jan. 2, 2019 (available at https://www.washingtonpost.com/opinions/no-one-should-trade-in-or-possess-art-stolen-by-the-nazis/2019/01/02/01990232-0ed3-11e9-831f-3aa2c2be4cbd_story.html).

⁵⁵ All the examples herein are set forth in the Swiss Banks Holocaust Settlement Final Report/Chronology, and/or elsewhere as noted.

looted objects had been brought back to the U.S. and were in collections at the Library of Congress, universities and museums.

- In October 2000, the U.S. helped to arrange and participated in the **Vilnius International Forum on Holocaust-Era Cultural Assets**. This was a follow-up to the Washington Conference of 1998 and resulted in the Vilnius Forum Declaration.⁵⁶
- In January 2001, the U.S. entered into separate agreements with **Austria** and with **France** providing for restitution and compensation for looted bank accounts and other assets, as well as funding social welfare programs benefitting survivors.
- In June 2009, the U.S. helped to arrange and participated in a conference in Prague, attended by representatives of 48 other nations and more than 20 non-governmental organizations. The Prague Conference focused on looted real estate, art and Judaica, Holocaust education and remembrance, archival access and survivors' social welfare needs, and issued the "**Terezin Declaration**" setting forth restitution goals. The Terezin Declaration reaffirmed the Washington Conference Principles on Nazi-Looted Art and specified the ways by which "...art and cultural property of victims of the Holocaust (Shoah) and other victims of Nazi persecution was confiscated, sequestered and spoliated, by the Nazis, the Fascists and their collaborators through various means including theft, coercion and confiscation, and on grounds of relinquishment as well as forced sales and sales under duress, during the Holocaust era between 1933-45 and as an immediate consequence..."⁵⁷
- In October 2009, the U.S. government filed a "Statement of Interest" with the U.S. District Court overseeing the **Swiss Banks Holocaust Settlement**, expressing the government's interest in and recommendations for the distribution of any residual funds that might remain. The Statement of Interest observed that the "foreign policy interests of the United States, which favor providing crucial resources to the neediest Holocaust survivors both here and around the world, may be considered by the Court as it determines how best to allocate the remaining Settlement fund."⁵⁸
- In November 2011, the U.S. House of Representatives Foreign Affairs Committee heard testimony on a bill that would allow survivors to bring suit in U.S. courts based

⁵⁶ <https://www.lootedart.com/MFV7EE39608>

⁵⁷ http://holocausteraassets.eu/files/200000215-35d8ef1a36/TEREZIN_DECLARATION_FINAL.pdf

⁵⁸ Statement of Interest of the United States, October 27, 2009, filed in *In re Holocaust Victim Assets Litig.*, available at https://www.swissbankclaims.com/Documents_New/Oct272009.pdf (emphasis added).

upon Holocaust-era **insurance** claims; other hearings also have been held, most recently in September 2019.⁵⁹

- In June 2015, the U.S. State Department completed negotiations and agreed to oversee distribution of a \$60 million fund established by the French National Assembly to compensate Holocaust survivors who were transported to ghettos and concentration camps via the **French national railroad**.
- In October 2015, the U.S. government earmarked \$12 million over 5 years specifically for **assistance to U.S. Holocaust survivors**.
- In May 2018, the President signed the Justice for **Uncompensated Survivors Today (JUST) Act** into law following unanimous passage by the Senate and the House of Representatives. The JUST Act required the State Department to report on the progress European countries have made on Holocaust-era property restitution issues. The State Department’s JUST Act Report, which includes information on art and cultural property, was publicly released on July 29, 2020.
- In February 2019, the Secretary of State raised the issue of Holocaust-era property restitution in a joint press conference in Poland with the Polish Foreign Minister.
- In August 2019, 88 Senators signed a bipartisan letter urging the Secretary of State “to act boldly and with urgency” to encourage Poland to resolve the issue of private property restitution.

It is clear from these many examples that the United States has never shied away from its support of Holocaust survivors, including their right to recognition and compensation. Rather, since 1945, the U.S. has played an integral role in pursuing and implementing some measure of material justice on behalf of Nazi victims. This nation has not deferred to other countries, nor has the U.S. based its interests on the citizenship of the victims, whether during the Holocaust or thereafter. Rather, *the U.S. has considered it a moral imperative to stand for restitution, compensation, recognition, and remembrance of the Holocaust – those who survived and those who perished.*

⁵⁹ While there have been different viewpoints concerning the proposal, centered mainly upon whether litigation in the U.S. would be precluded by or otherwise run afoul of the ICHEIC insurance agreement, the congressional hearings indicate the U.S. government’s ongoing interest in matters relating to Holocaust compensation, including the consideration of legal remedies in the U.S. courts.

4. The Inextricable Relationship Between Nazi Looting and Genocide

The scope of Nazi looting is nearly incomprehensible. In its JUST Act Report, the U.S. Department of State observed that the Holocaust was an era of not only mass genocide, but mass looting too. The Holocaust was “one of the most horrific atrocities in world history, resulting in the genocide of six million Jews – including one and a half million children – and the targeted killing of millions of other Europeans by the Nazis and their collaborators for ethnic and political reasons.”⁶⁰ At the same time, it was also “one of the greatest organized thefts in history, providing a source of revenue to the Third Reich and the Axis Powers while attempting to wipe out all vestiges of Jewish life and culture in Europe. The efficiency, brutality, and scale of the looting remains unprecedented, encompassing businesses, land, residences, and cultural/religious properties such as synagogues, sacred religious items, cemeteries, schools, and community centers.”⁶¹

The JUST Act Report noted that “Holocaust survivor and Nobel laureate Elie Wiesel put this shameful history into perspective at the June 2009 Prague Holocaust Era Assets Conference that produced the Terezin Declaration”:

Just measure the added ugliness of their hideous crimes: they stole not only the wealth of the wealthy but also the poverty of the poor. . . Only later did I realize that what we so poorly call the Holocaust deals not only with political dictatorship, racist ideology and military conquest; but also with...financial gain, state-organized robbery. . .⁶²

The JUST Act Report reflects the long-standing recognition of the U.S. government that during the Nazi era, genocide and looting were intertwined:

The Holocaust was not only the greatest genocide in world history but also the greatest theft in history of a people’s entire possessions and cultural and religious heritage – a theft of Jewish movable and immovable property, financial assets, insurance benefits, art, Judaica, and Jewish cultural property.⁶³

This year, 2020, marks the 75th anniversary of the liberation of Auschwitz in January 1945. It is also the 75th anniversary of the Nuremberg Trials that commenced at the end of 1945. In proceedings before the International Military Tribunal at Nuremberg, American prosecutors emphasized that the theft of property was part of the broader Nazi scheme of genocide:

I now turn to another phase of the program that I mentioned earlier, that is the **conspirators' plan to confiscate the property of Poles, Jews, and dissident**

⁶⁰ Executive Summary, JUST Act Report, p. 3, available at <https://www.state.gov/wp-content/uploads/2020/02/JUST-Act5.pdf>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Stuart E. Eizenstat, Former Deputy Treasury Secretary and Under Secretary of State, USA, Holocaust Era Assets: Conference Proceedings Prague, June 26—30, 2009, at 69.

elements. As I previously mentioned, the evidence will show that **these plans were designed to accomplish a number of objectives. Insofar as the Jews were concerned, they were part and parcel of the conspirators' overall program of extermination.** Confiscation was also a means of providing property for German settlers and of rewarding those who had rendered faithful service to the Nazi State. This phase of their program likewise made available dispossessed Polish farmers for slave labor in Germany and operated to further the conspirators' objective of preventing the growth of another generation of Poles.⁶⁴

From the Nuremberg Trials of 1945, through the JUST Act Report of 2020, the U.S. has well understood the true meaning of the Nazi looting of the Jews of Europe. This unrestrained thievery was not akin to a property taking. It was not incidental and it was not an aberration. To the contrary, the U.S. – along with the world's leading Holocaust scholars – recognize that the Nazis carried out their attempted extermination of the world's Jewish population through a series of calculated steps, including, crucially, rampant, continuing, inexhaustible looting. These measures began as soon as Hitler acceded to power as German Chancellor in January 1933, and the first and essential targets were the Jews of Germany. From that date, until the Allied victory in 1945, the Nazis embarked upon their hideous mission to deliberately strip Jews of all that they had: their right to fully participate in society and practice their professions; their citizenship; their assets (from businesses and real estate to kitchen tools to scraps of clothing); their communities; and ultimately, their lives. Looting was integral to genocide.

These fundamental historical facts have guided the United States in its decades-long mission to right at least some of the material wrongs of the Nazis' all-out effort to eradicate Jews from the face of the earth.

a. Nazi Looting of Jews Was a Deliberate Step Along the Path Toward Annihilation

The eminent Holocaust historian Raul Hilberg, in his seminal work, *The Destruction of the European Jews*, provided a framework to explain the Nazis' deliberate steps ultimately leading to the Jews' extermination. Hilberg demonstrated that the genocide of the Jews began with political and legal discrimination, and then progressed to expropriation, isolation, ghettoization, and finally annihilation.⁶⁵

⁶⁴ <http://www.vozmezdje.su/pro/np/full/days/1945-12-14/eng/2/> (emphasis added).

⁶⁵ Raul Hilberg, *The Destruction of the European Jews* (Revised ed. New York: Holmes & Meier 1985).

The Jews were deprived of their professions, their enterprises, their financial reserves, their wages, their claims upon food and shelter, and, finally, their last personal belongings, down to underwear, gold teeth, and women's hair.⁶⁶

The British barrister and legal scholar Norman Bentwich similarly described the Nazis' carefully staged process of dehumanization, with the theft of Jewish property interwoven with the singular goal of eradicating the Jewish people:

The robbery by the Nazis of the Jewish population in Germany, Austria, and Czechoslovakia, and in the countries occupied by the German army during World War II, is unparalleled in history.... [T]he principle was simply to take from the Jews every scrap of material possessions and the means of subsistence; and it was executed with German thoroughness and with a macabre show of legality. Stage by stage their immovable and immovable property was confiscated, and they were excluded from all professional and economic life, used as slave labour in the war till they dropped, and then done to death. When the extermination culminated in the gas chambers of Auschwitz, the dentures, and the hair of the victims were duly collected and listed.⁶⁷

Renowned German Holocaust historian Götz Aly, who has emphasized the economic aspects of the Nazi genocide, has pointed out that Hitler very deliberately ensured the allegiance of the German people by plundering and then distributing the assets of Jewish and other victims.

While anti-Semitism was a necessary precondition for the Nazi attack on European Jews, it was not a sufficient one. The material interests of millions of individuals first had to be brought together with anti-Semitic ideology before the great crime we now know as the Holocaust could take on its genocidal momentum.⁶⁸

The government of the United States has not previously contested the historians' view that plunder was a predicate to genocide, nor has the U.S. considered Nazi looting to be simply a run-of-the-mill "taking" of property, best left to the immediate parties to work out the details. To the contrary, the U.S. has long recognized that once the Nazis took power, a "taking" was far more than a property dispute. It was a critical component of the Nazis' effort to obliterate Jews – and their memory.

⁶⁶ *Id.*, at 83.

⁶⁷ Norman Bentwich, Nazi Spoliation and German Restitution, 10 *Leo Baeck Institute Yearbook* 205-07 (1965). *See also, e.g.*, Avraham Barkai, From Boycott to Annihilation: The Economic Struggle of German Jews, 1933-1945 (William Templer, trans., London: University Press of New England 1989).

⁶⁸ Götz Aly, *Hitler's Beneficiaries: Plunder, Racial War, and the Nazi Welfare State*, originally published as *Hitlers Volkstaat* by S. Fischer Verlage, Frankfurt, in 2005, translation published 2006 by Henry Holt and Company, at 6.

Thus, leaving no question as to where the U.S. government has stood, in 1998, as noted previously, Congress enacted the Holocaust Victims Redress Act. That statute, which “encouraged nations to return Nazi seized assets,” is particularly notable in that “Congress ‘f[ound]’ that “[t]he Nazis’ policy of looting art was a critical element and incentive in their campaign of genocide against individuals of Jewish . . . heritage.”⁶⁹ Similarly, in the 2016 Holocaust Expropriated Art Recovery Act (HEAR Act), which extended statutes of limitation for Nazi art-looting claims,” Congress determined that ““the Nazis confiscated or otherwise misappropriated hundreds of thousands of works of art and other property throughout Europe as part of their genocidal campaign against the Jewish people and other persecuted groups.”⁷⁰

In addition to recognizing the significance of Nazi looting for purposes of understanding the scope of the Holocaust, the U.S. government also has made clear that the Holocaust began to unfold in January 1933, as soon as Hitler came to power. From that point on, Jews living in Nazi Germany were the “other,” deemed separate and apart from the German bloodline and the German people.

b. The Starting Date of the Holocaust Was January 1933, When the Nazis took the First Steps Ultimately Leading to Genocide

Nazi confiscations as one of the first steps toward the genocide of the Jewish people began from the earliest days of the fascist regime. The U.S. government has long recognized, and has not previously sought to dispute, that Jews began to suffer from ever more restrictive measures set in motion immediately upon Hitler’s accession in January 1933. Jews were not considered “citizens” of Germany; they were *persona non grata* from that point on – until their near-extermination. As recognized in the Final Judgment of the International Military Tribunal against Major War Criminals (following the U.S.-led Nuremberg Trials), Hitler made no secret of his belief that only members of the German “race” were “citizens” – a definition that most assuredly did not include Jews:

On 12 September 1919 Adolf Hitler became a member of this Party, and at the first public meeting held in Munich, on 24 February 1920, he announced the Party's program. That program, which remained unaltered until the Party was dissolved in 1945, consisted of 25 points, of which the following five are of particular interest on account of the light they throw on the matters with which the Tribunal is concerned: . . . "Point 4. Only a member of the race can be a citizen. A member of the race can only be one who is of

⁶⁹ *Philipp v. Fed. Republic of Germany*, 894 F.3d 406, 412 (D.C. Cir. 2018) (emphasis added), citing Holocaust Victims Recovery Act, Pub. L. No. 105- 158, § 201, 112 Stat. 15, 15 (1998).

⁷⁰ *Philipp*, 894 F.3d at 413 (emphasis added), citing Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, § 2, 130 Stat. 1524, 1524 (“HEAR Act”).

German blood, without consideration of creed. Consequently no Jew can be a member of the race⁷¹

The International Military Tribunal also understood that from the very first days of Nazi rule, antisemitism “occupied a prominent place in National Socialist thought and propaganda. **The Jews, who were considered to have no right to German citizenship**, were held to have been largely responsible for the troubles with which the Nation was afflicted following on the war of 1914-18. Furthermore, the antipathy to the Jews was intensified by the insistence which was laid upon the superiority of the Germanic race and blood.... **With the coming of the Nazis into power in 1933, persecution of the Jews became official state policy.**”⁷²

This understanding of the Nazi Party’s immediate impact – in 1933 – upon the rights (or, rather, the lack thereof) of the Jewish population has not wavered; indeed, it has continued through the modern era. It is for that reason that Holocaust restitution programs and policies utilize a “starting date” of no later than 1933. To take just a few examples, following the 1998 creation of the Presidential Advisory Commission on Holocaust Assets in the United States, in a 2000 report and 2001 addendum based upon the Commission’s work, the U.S. and the “American museum community” explicitly agreed that “works created before 1946, transferred after 1932 and before 1946, and which were or could have been in continental Europe during that period will be identified and disclosed and all provenance information in the possession of museums regarding those works be disclosed.”⁷³

Subsequently, the American Association of Museums (now the American Alliance of Museums) established the **Nazi-Era Provenance Internet Portal**, a central registry of objects in U.S. museums that could have changed hands in Europe during the Nazi era, expressly deemed to be the period from 1933 through 1945.⁷⁴

In considering various compensation and restitution measures, Congress, too, has determined that the Holocaust began in 1933. For example, in the aforementioned HEAR Act, Congress defined the “covered period” as “beginning on January 1, 1933.”⁷⁵ Under an exception to the Foreign Sovereign Immunity Act, Congress similarly defined the Holocaust as beginning in January 1933.⁷⁶

The federal court overseeing the Swiss Banks Holocaust Settlement earlier had reached a similar conclusion. In a 2003 order, Judge Edward R. Korman of the United States District

⁷¹ See https://www.loc.gov/rr/frd/Military_Law/pdf/NT_Vol-I.pdf (at 174-75).

⁷² *Id.* (at 180-81) (emphasis added).

⁷³ Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945), at 5 (available at <https://aamd.org/sites/default/files/document/Report%20on%20the%20Spoliation%20of%20Nazi%20Era%20Art.pdf>).

⁷⁴ See <http://www.nepip.org/>.

⁷⁵ See HEAR Act § 4.

⁷⁶ *Philipp*, 894 F.3d at 413, citing 28 U.S.C. § 1605(h)(2)(A). The statute defines “covered period” as the term “covered period” means “the period beginning on January 30, 1933 and ending on May 8, 1945.” § 1605(h)(3).

Court for the Eastern District of New York authorized claims administrators to presume that “German account owners and their heirs did not receive the benefit of any of their Swiss accounts closed on or after January 30, 1933,” as that was the date upon which it was historically appropriate to presume that German owners of Swiss bank accounts were acting under Nazi duress, absent evidence to the contrary.⁷⁷ This decision “at the outset of the claims process – to recognize that in Germany, the Holocaust began as soon as Hitler took power in 1933 – essentially anticipated later Congressional statutes concerning the date upon which Holocaust confiscations in Germany began.”⁷⁸

Several Holocaust-related proceedings initially commenced as litigation in the U.S., and subsequently resolved either through class action settlements or by international agreement, similarly recognized (and accepted for compensation) claims arising on or after Hitler’s accession to power in 1933.

- The Settlement Agreement in the Swiss Banks Holocaust Settlement provided for compensation for various types of losses (including claims for bank accounts, slave labor, looting and mistreatment as refugees), all arising during the period “between 1933 and 1946.”⁷⁹
- The German Slave Labor Settlement resulting in an international foundation recognized that “German enterprises” included those either within the 1937 borders of the German Reich, or those outside those borders but with at least 25% German ownership beginning January 30, 1933.⁸⁰
- The ICHEIC agreement established a claims process for Holocaust-era insurance claims, under the leadership of former Secretary of State Lawrence Eagleburger. ICHEIC’s guidelines, which benefited from the input of the interested parties including representatives of the German insurance industry, calculated the valuation of insurance policies based upon the presumption that for those in Germany, the Holocaust began in 1933.⁸¹

⁷⁷ See Order of April 25, 2003, *In re Holocaust Victims Assets Litigation*, available at https://www.swissbankclaims.com/Documents/DOC_47_appendix.pdf

⁷⁸ See Swiss Banks Holocaust Settlement Final Report, Executive Summary, at 37.

⁷⁹ https://www.swissbankclaims.com/Documents/Doc_9_Settlement.pdf (“Definitions: Releasees”) (emphasis added).

⁸⁰ <https://www.stiftung-evz.de/eng/the-foundation/law.html> (“German enterprises referred to in Sections 11 and 16 are those that had their headquarters within the 1937 borders of the German Reich or have their headquarters in the Federal Republic of Germany, as well as their parent companies, even when the latter had or have their headquarters abroad. Enterprises situated outside the 1937 borders of the German Reich in which during the period **between January 30, 1933, and the entry into force of this Law**, German enterprises as described in Sentence 1 had a direct or indirect financial participation of at least 25 percent are also considered German enterprises.”) (emphasis added).

⁸¹ https://icheic.ushmm.org/pdf/ICHEIC_VG.pdf. (see Schedule 1).

German law, too, has incorporated the Allied and U.S. principles recognizing that the persecution of Jews and the stripping of their rights began in 1933. German courts have adopted the rulings of the U.S. Courts of Restitution Appeals, which were charged with analyzing the earliest restitution laws enacted in the U.S. Military Zone of Germany. These early decisions were subsequently followed by the Federal Republic of Germany, when its own courts were considering restitution cases in the 1950s and 1960s. These precedents also later were applied by post-unification German courts deciding cases under the Law Concerning Regulation of Open Property Questions 1990 (*Vermögensgesetz 1990*) – the statute addressing restitution of property of persecutees located in the territory of the former German Democratic Republic.

In a 1998 case at the highest level of review, Germany’s Federal Administrative Court observed:

As early as 30 January 1933 (and not only after decreeing the Nuremberg Laws on 15 September 1935 - cf. Article 3 (3) REAO), all Jewish fellow citizens belonged to a category of persons whom the German government and the NSDAP in its entirety intended to eliminate from cultural and economic life in Germany for the above-cited reasons. This historic event is a universally known fact, which the Federal Administrative Court must take into account without delay in the existing appeal proceedings. It is with good reason that the judgement under appeal refers to the following: The NSDAP had made no secret of their intention to persecute Jews even prior to the so-called “seizure of power” in January 1933. The German government and the NSDAP had already in 1933 proven the seriousness of their intention to exclude Jews from public life e.g. with the “Boycott Day” that took place on 1 April 1933. This was aimed at professors, teachers, physicians and others or at the dismissal of Jewish civil servants owing to the Law for the Restoration of the Professional Civil Service dated 7 April 1933. This event also reflects the established case-law of the Supreme Restitution Courts in Berlin, Nuremberg and Herford) (cf. ORG Berlin, inter alia judgement dated 20 July 1956, RzW 1956; ORG Nuremberg, judgment dated 28 May 1956, RzW 1957, 58; ORG Herford, judgment dated 27 July 1959, RzW 1959, 496).⁸²

It is clear, then, that Jews in Germany were recognized to have been under crushing pressure – and not part of the German nation - as soon as Hitler came to power in January 1933. These historical facts can be readily discerned, because the Nazis were so careful to “legitimize” their actions. The Nazi regime sought the cover of law at every step of the way.

The following timeline demonstrates how, beginning in 1933, the Nazis excluded Jews from the rest of German society, moving meticulously from **boycott**, to **discrimination**, to **expropriation**, to the first **exterminations at Auschwitz**.⁸³

⁸² https://www.judicialis.de/Bundesverwaltungsgericht_BVerwG-8-B-56-98_Beschluss_18.06.1998.html (emphasis added). See also <https://www.bverwg.de/de/230206U7C4.05.0>.

⁸³ All of these entries are set forth in the Chronology appended to the *Swiss Banks Holocaust Settlement Final Report* (<https://www.swissbankclaims.com/New%20docs/Final%20Report.pdf>).

- **January 30, 1933:** Adolf Hitler became Reich Chancellor.
- **March 22, 1933:** Outside the town of Dachau, Germany, the SS (Protection Squads) established the first concentration camp.
- **April 1, 1933:** The Nazis organized a nationwide one-day boycott of Jewish-owned businesses in Germany.
- **April 7, 1933:** The Law for the Reestablishment of the Professional Civil Service banned Jews and political opponents (other than World War I veterans) from the civil service. The Law Concerning Admission to the Legal Profession mandated disbarment of non-"Aryan" lawyers (other than veterans) by September 30, 1933.
- **April 22, 1933:** Aryans who consulted Jewish doctors could not have their medical bills paid, under the terms of the new Decree Regarding Physicians' Services with the National Health Service.
- **April 25, 1933:** Quotas were placed on Jewish students in institutions of higher education, under the Law against the Overcrowding of German Schools.
- **May 10, 1933:** German student organizations supported by the Nazis burned books written by Jews and others.
- **June 12, 1933:** Germany enacted the Law on Treason Against the German Economy, requiring assets held outside of Germany to be repatriated.
- **July 14, 1933:** Germany enacted the Denaturalization Law, allowing the Reich to revoke the citizenship of anyone who settled in Germany after November 9, 1918; the law was used to deprive mostly Eastern European Jews and Romani of German citizenship.
- **September 22, 1933:** The newly founded German Chambers of Literature, Press, Broadcasting, Theater, Film, Music, and Fine Arts denied membership to Jews, effectively excluding Jews from employment in the cultural sector.
- **September 29, 1933:** The German government stipulated that hereditary farms could only be inherited by German farmers who documented that they had no Jewish or "colored" ancestors.
- **October 4, 1933:** The Editor's Law forbid non-"Aryans" from working in journalism.

- **January 24, 1934:** The German government banned Jews from membership in the German Labor Front, effectively depriving Jews of the opportunity to find positions in the private sector.
- **May 1934:** The Nazi newspaper, *Der Sturmer*, released a special edition (printing and selling 130,000 copies) devoted to blood libel accusations against the Jews, including infamous medieval cartoons showing Jews using human blood in the observance of religious customs.
- **May 31, 1935:** Germany banned Jews from the armed forces.
- **September 15, 1935:** At the Nazi party rally in Nuremberg, Germany adopted the “Law for the Protection of German Blood and Honor” (Nuremberg laws), which officially disenfranchised and classified Jews as noncitizens. The population was divided into two classes - Reich citizens, of Aryan ancestry; and state subjects, Jews. Jews could no longer hold government jobs, serve in the army, vote, marry non-Jews, engage in extramarital sexual relations with Aryans, or hire female non-Jewish domestic workers.
- **November 14, 1935:** The first supplementary decree to the Nuremberg laws was issued, defining a Jew as anyone with two Jewish grandparents who was married to a Jew or an adherent of Judaism, or anyone with at least three Jewish grandparents. Persons of “mixed blood” were characterized as “Mischling.” The “Regulation to the Blood Protection Act” banned marriages between Jews and designated persons of “mixed blood.”
- **December 31, 1935:** All Jews remaining in the German civil service were dismissed.
- **November 19, 1936:** Germany enacted the Seventh Implementation Order to the Law of Foreign Exchange Control, which required German owners of foreign securities to deposit their securities with a German bank.
- **October 20, 1937:** Anti-Jewish riots inspired by local Nazis broke out in the free city of Danzig. Half of the city’s Jews left within one year.
- **November 8, 1937:** *Der Ewige Jude* (The Eternal Jew), a Nazi propaganda exhibition, opened in Munich.
- **March 11-13, 1938:** German troops invaded Austria and incorporated Austria into the German Reich (the *Anschluss*).

- **April 26, 1938:** The “Decree Regarding Registration of Jewish Property” (1938 Census) required all Jews in Germany and Austria to register all assets in excess of 5,000 Reichsmarks. Beginning in June, police stations and tax offices compiled lists of wealthy Jews.
- **June 14, 1938:** Jewish-owned commercial enterprises were identified and registered under the “Third Regulation to the Reich Citizenship Law.”
- **June 25, 1938:** German Jewish doctors were forbidden from treating non-Jewish patients.
- **August 17, 1938:** All Jewish men residing in Germany were required to adopt the middle name "Israel." Jewish women were required to take the middle name "Sarah.”
- **September 30, 1938:** All licenses for Jewish doctors, except those treating Jewish patients, were revoked.
- **October 4, 1938:** Germany agreed to Switzerland’s demand to stamp passports of Jews with a “J” (“Jude”).
- **October 5, 1938:** All German passports held by Jews were invalidated by the Reich Ministry of the Interior; Jews were required to surrender their old passports to be marked with a “J.”
- **November 9-10, 1938:** *Kristallnacht* (“Night of the Broken Glass”) riots occurred in Germany and Austria, marked by murders, looting, riots and synagogue burnings. More than 30,000, or more than 10%, of Germany’s remaining Jews were arrested and sent to concentration camps.
- **November 12, 1938:** The German government issued the Decree on the Elimination of the Jews from Economic Life, barring Jews from operating retail stores, sales agencies, and from carrying on a trade. The law also barred Jews from selling goods or services at an establishment of any kind. Cultural events for Jews were banned. Additionally, a fine of 1 billion marks was imposed upon all German Jewry for the Kristallnacht damage (the “*Sühneleistung*” or “atonement fine”); Jews were banned from receiving insurance payments. *Reichsfluchtsteuer* (emigration taxes), enacted in 1931 and levied on people likely to emigrate, were extended.
- **November 30, 1938:** The licenses of all Jewish attorneys were revoked.

- **December 3, 1938:** The German government issued the Decree on the Utilization of Jewish Property, now making compulsory the “aryanization” of all Jewish businesses. German authorities formalized the practice of forcing Jews to sell immovable property, businesses, and stocks to non-Jews, usually at prices far below market value.
- **January 1, 1939:** Jewish businesses were forced to close under the Law Excluding Jews from Commercial Enterprises.
- **January 17, 1939:** The German government prohibited Jews from working as nurses, veterinarians, holistic practitioners, dentists and pharmacists.
- **January 30, 1939:** In a Reichstag speech, Hitler threatened “the annihilation of the Jewish race in Europe” if war were to break out.
- **September 1, 1939:** Germany invaded Poland, marking the beginning of World War II.
- **October 26, 1939:** German authorities placed areas of occupied Poland not annexed directly by Germany or by the Soviet Union under a German civilian administration, the *Generalgouvernement*, and forced Jews into compulsory labor.
- **December 5-6, 1939:** All Jewish-owned property in Poland was confiscated by the Nazis.
- **February 8, 1940:** The Nazis created the Lodz ghetto. Deportations began on February 12, 1940.
- **May 20, 1940:** The Nazis established the Auschwitz concentration camp.
- **October 12, 1940:** The Nazis established the Warsaw ghetto.
- **October 18, 1940:** Registration of Jewish property and businesses began in occupied France.
- **October 22, 1940:** Registration of Jewish businesses began in the occupied Netherlands. Jews were deported to the Gurs transit camp in Vichy, France.
- **February 15, 1941:** Deportations of Viennese Jews to Nazi ghettos in Poland began.

- **June 22, 1941:** Germany invaded the Soviet Union in "Operation Barbarossa." *Einsatzgruppen* squads began to carry out mass shootings during the last week of June 1941.
- **July 31, 1941:** Reich Marshall Hermann Göring spoke of the “final solution of the Jewish question.”
- **September 1, 1941:** Jews over the age of six in the Greater German Reich were forced to wear a yellow Star of David on their outer clothing in public at all times.
- **October 23, 1941:** All Jewish emigration from Germany was prohibited.
- **January 20, 1942:** Nazi officials held a conference at Wannsee, at which they discussed the intended murder of Europe’s 11 million Jews.
- **February 15, 1942:** The first mass gassing of Jews began at Auschwitz.⁸⁴

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The United States has long recognized that this timeline serves as the historical backdrop to all matters of Holocaust restitution. From 1933 on, the Jewish people were viewed as the “other,” apart from the German nation. Each humiliation, each theft of property, each forced relocation, and each deprivation of liberty, was an intentional and inevitable step toward the attempted extermination of Europe’s Jewish population. The United States not only brought about an end to that unspeakable time, but also took the central role in ensuring that the victims of that era would be recognized, compensated and cared for throughout their lives, and to this day.

5. Conclusion

The Nazis’ theft of property from German Jews was not an internal domestic matter for Germany. Rather, it was a core component of the Nazis’ plan to eradicate the Jewish people. These efforts were well under way by 1935. German Jews at that point were by no means “citizens” of the nation that wanted to destroy them, and that had begun to target the so-called Jewish “race” as soon as Hitler came to power in 1933.

For eight decades, the U.S. has strongly advocated on behalf of Nazi victims and has shown an unwavering commitment to accurately presenting the facts of the Holocaust. The

⁸⁴ This timeline, of course, continued for several more years until the Nazis’ defeat at the hands of the Allies.

Solicitor General's September 11, 2020 amicus brief in the *Philipp* matter is not reflective of the U.S. position toward Holocaust compensation and Holocaust history more generally. By reiterating that German Jews were "nationals" of Germany and that their disputes with the Nazis were "domestic" matters, the brief unfortunately threatens to give momentum to those who would distort the Holocaust.