

DECLARATION OF STUART E. EIZENSTAT

I, Stuart E. Eizenstat, hereby declare and state as follows:

1. I am currently the Deputy Secretary of the Treasury, as well as the Special Representative of the President and the Secretary of State on Holocaust Issues, positions I have held since July 1999. Prior to my current position, I served as Under Secretary of State for Economic Affairs, and before that as Under Secretary of Commerce and as U.S. Ambassador to the European Union. Since 1995, I have been the Secretary of State's Special Envoy on Property Restitution in Central and Eastern Europe.

2. A number of lawsuits have been filed in recent years on behalf of Holocaust survivors, other victims of the Nazi era, and their heirs to recover, among other things, looted property, compensation for slave and forced labor, proceeds of unpaid insurance policies, and assets deposited in dormant or confiscated bank accounts.

3. As a matter of policy, the United States Government believes 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. This is because the U.S. supports efforts to bring some measure of justice to these victims in their lifetimes, and because the U.S. believes that available funds should be spent on the victims and not on litigation, and, importantly, also because the number of victims who can be covered by a negotiated settlement is often greater than can be achieved through litigation. Much of my work over the past five years has been devoted to effectuating this policy.

4. Most recently, and most relevant to this litigation, I led an inter-agency United States Government team in negotiations resulting in the creation of a fund to make payments to

victims of Austrian companies and the Nazi regime on the territory of the present-day Republic of Austria during the Nazi era and World War II. This declaration sets forth the history of those negotiations and the basis upon which the United States Government has concluded that it would be in its foreign policy interest for that fund to be the exclusive remedy and forum for all forced and slave labor claims against Austria and/or Austrian companies arising out of the Nazi era and World War II (and any other claims covered by the Fund), including those raised in this litigation.

Background of Austrian Fund Negotiations

5. In February 2000, I was asked by the Austrian Federal Government to help facilitate a resolution of class action lawsuits filed in U.S. courts arising from slave and forced labor and other wrongs during the Nazi era. During the subsequent nine months, I co-chaired a series of formal and informal discussions between lawyers representing the victims and the Austrian Federal Government on a proposed initiative to establish a fund to make payments to victims of slave and forced labor (and certain others) during World War II and the Nazi era. The parties' intent was to model this fund on the German Foundation, "Remembrance, Responsibility, and the Future," which the German Government had created after a year and a half of negotiations, which I also co-chaired, among victims' representatives, lawyers for German companies, and the German Government.

6. The parties to these negotiations anticipated that at the conclusion of an agreement concerning the establishment of a fund for Nazi-era forced and slave laborers who worked on the territory of the present-day Republic of Austria, the parties would commence negotiations concerning the establishment of a similar fund for those who suffered from aryianization, theft, or

destruction of property on the territory of the present-day Republic of Austria during this same time period. To date, Austria has committed \$150 million to cover certain claims for apartment and small business leases, household property, and personal effects. The negotiations on the remaining issues are proceeding at this time.

7. A number of other participants have been involved in this effort, including the governments of six Central and Eastern European countries (Belarus, the Czech Republic, Poland, Hungary, Russia, and Ukraine), and the Conference on Jewish Material Claims, a non-governmental organization created to negotiate for and administer compensation for Nazi crimes to Jewish people around the world.¹ Through these participants and the numerous plaintiffs' attorneys, the victims' interests were broadly and vigorously represented.

8. The initiative was publicly announced on February 16, 2000, by the Chancellor of Austria, Wolfgang Schuessel. In May 2000, together with Dr. Maria Schaumayer, I co-chaired a conference in Vienna at which the six Central and Eastern European countries endorsed the initiative.

9. In July 2000, the Austrian Parliament passed a law creating the Fund "Reconciliation, Peace and Cooperation" (the "Fund").

10. In October 2000, the plaintiffs' attorneys, Austria, and Austrian companies agreed on two key points: that the Austrian Federal Government and Austrian companies would

¹ The Conference on Jewish Material Claims against Germany ("CJMC") is an umbrella organization under which various Jewish groups and organizations of Holocaust survivors are represented. Among the participating groups and organizations are the American Gathering/Federation of Jewish Holocaust Survivors, the American Jewish Committee, the American Jewish Congress, B'nai B'rith International, the Centre of Organizations of Holocaust Survivors in Israel, and the World Jewish Congress.

establish a fund, capitalized by AS 6 billion, to make payments to Nazi-era forced and slave laborers who worked on the territory of the present-day Republic of Austria (and certain other victims), and that, in exchange, the plaintiffs would voluntarily dismiss their forced and slave labor claims against Austria and/or Austrian companies arising out of the Nazi era and World War II and any other claims covered by the Fund. The United States Government further pledged to support this effort by filing a Statement of Interest indicating its own foreign policy interests in assisting Holocaust victims on an expedited basis, and in helping achieve legal peace for Austria and Austrian companies with respect to Nazi-era forced and slave labor claims (and any other claims covered by the Fund) in U.S. courts.

11. The parties agreed on eligibility requirements and other procedures to govern the fund's operation. The parties also came to agreement on precise payment levels for various categories of laborers. These agreements were incorporated into draft legislation being prepared by the Austrian Federal Government to establish the fund.

12. The negotiations to reach these agreements were very difficult, complex, and emotional.

13. On October 24, 2000, the parties to the negotiations gathered in Vienna to sign a Joint Statement concluding the negotiations, and expressing their support for the Fund. Simultaneously, the United States and Austria signed an Executive Agreement, in which Austria committed that the operation of the Fund would be governed by principles agreed by the parties to the negotiations, and the United States committed to take certain steps to assist Austria and Austrian companies in achieving "legal peace" in the United States with respect to forced and

slave labor claims arising out of the Nazi era and World War II (and any other claims covered by the Fund).

14. On November 27, 2000, the law creating the Fund was promulgated and entered into effect. On December 1, 2000, the United States and Austrian Federal Governments exchanged diplomatic notes stipulating, in accordance with Article 5 of the Executive Agreement, that the agreement entered into force on the date of the exchange of notes. The first meeting of the Fund's Board of Trustees took place in Vienna on December 20, 2000.

15. The role played by the United States in this negotiation, like the role it played in the negotiation leading to the creation of the German Foundation "Remembrance, Responsibility, and the Future," was unique. The Executive Agreement negotiated is not a government-to-government claims settlement agreement, and the United States has not extinguished the claims of its nationals or anyone else. Instead, the intent of our participation was to bring together the victims' constituencies on one side and the Austrian Federal Government and Austrian companies on the other, to bring expeditious justice to the widest possible population of survivors, and to help facilitate legal peace with respect to Nazi-era forced and slave labor claims against Austria and/or Austrian companies (and any other claims covered by the Fund). Among these parties, the United States facilitated the essential arrangement by which the Austrian side would establish an AS 6 billion fund to compensate Nazi era forced and slave laborers who worked on the territory of the present-day Republic of Austria (and certain other victims), and the class action representatives in pending United States litigation agreed to give up their Nazi-era forced and slave labor claims against Austria and/or Austrian companies, by voluntary dismissals with respect to such claims (and any other claims covered by the Fund) in United States courts.

The United States further contributed its own commitment to advise U.S. courts of its foreign policy interests, described in detail below, in the Fund being treated as the exclusive remedy for World War II and Nazi era forced and slave labor claims against Austria and/or Austrian companies, and, concomitantly, in current and future Nazi-era forced and slave labor claims against Austria and/or Austrian companies (and any other claims covered by the Fund) being dismissed.

The Fund

16. As established under Austrian law, the Fund will make payments to persons who suffered at the hands of Austrian companies during the Nazi era, as well as those who worked as slave or forced laborers for the Nazi regime on the territory of the present-day Republic of Austria.

17. The AS 6 billion Fund capital will be used for payments to all eligible recipients as follows. Payments to former slave laborers -- those who were interned at concentration camps or similar places of confinement -- will be AS 105,000.² The payments to other forced laborers -- those for whom living conditions were somewhat less harsh -- will be either AS 35,000 or AS 20,000, depending on the enterprise in which they were forced to labor. Children of forced or slave laborers who either traveled to the territory of the present-day Republic of Austria with their parent(s) or were born in the territory of the present-day Republic of Austria also will be

² As of January 12, 2001, AS 105,000 is the equivalent of \$ 7500, AS 3500 is the equivalent of \$ 2500, and AS 20,000 is the equivalent of \$ 1425. The payments will be made in Schillings. The payments to Nazi-era forced and slave laborers provided for by the Fund are designed to be equivalent to the payments to Nazi-era forced and slave laborers provided for by the German Foundation "Remembrance, Responsibility, and the Future," and reflect the parties' attempt to ensure that all Nazi-era forced and slave laborers receive equal treatment through the negotiations in which the United States has participated.

eligible to apply for payments of AS 105,000, AS 35,000, or AS 20,000, depending on the sum to which their parent(s) would have been entitled from the Fund. A supplementary payment of AS 5000 will be made to women who, during their time as forced or slave laborers on the territory of the present-day Republic of Austria, gave birth to children in maternity facilities or were forced to undergo abortions. If an eligible individual has died on or after February 15, 2000, then this individual's heir(s) can succeed to his/her claim. Creation of the Fund will also benefit the heirs of victims that did not survive by setting aside AS 300 million to fund projects devoted to their interests.

18. The remaining AS 380 million of the Fund's initial capital will be used for administration of the Fund and for attorneys' fees. Lawyers in United States court actions can seek fees through an arbitration process, with the total fee award capped at no more than AS 75 million. Thus, counsel representing the victims are eligible to receive less of the Fund capital, on a percentage basis, than the percentage that attorneys in the recently-approved settlement between Holocaust victims and Swiss Banks can receive from that settlement fund.

19. A key point regarding the Fund is that all victims who performed forced or slave labor for Austrian companies or the Nazi regime on the territory of the present-day Republic of Austria (and certain other victims) are eligible to apply for its benefits. The Fund's payment allocation structure reflects the agreement of the parties that all Nazi-era forced and slave laborers who worked on the territory of the present-day Republic of Austria would be covered either by the German Foundation "Remembrance, Responsibility, and the Future" or by the Fund. Indeed, throughout the negotiations, attorneys representing the victims vigorously represented not only the named plaintiffs, but also the interests of heirs and others who are similarly situated.

Operation of the Fund

20. The Fund will be run by a Board of Trustees chaired by Wolfgang Schuessel, the Chancellor of Austria, and consisting of an equal number of representatives appointed by the Austrian Federal Government and Austrian companies, by other governments (including the United States), and by representatives of the victims. The first meeting of the Board occurred on December 20, 2000, and was chaired by the Chancellor.

21. All Fund operations will be transparent and the by-laws and similar procedures governing its operation will be made public. The Fund is subject to legal oversight by the Austrian Federal Government.

22. The Fund will work with six “partner organizations,” which are responsible for collecting and processing applications and making payments. The partner organizations are six geographically-based foundations in Central and Eastern Europe, which will process applications from residents of those countries. Each of these organizations has been allocated specific funds, based on estimated numbers of applicants, to distribute. The Fund also will receive applications from and make payments directly to individuals, including individuals not covered by any of the geographically-based partner organizations.

23. Within two months of the Austrian Law coming into effect -- by January 27, 2001 -- the Fund, in cooperation with the six partner organizations, will give worldwide publicity to the eligibility criteria and the payment categories that it has established. The worldwide publicity will contain information concerning the Fund and the partner organizations, the conditions that need to be fulfilled for awards, application deadlines, and information regarding data verification.

24. The application process will be short, simple, and non-bureaucratic. Applicants have two years to apply, although the Board may extend this period by one year. Determinations of eligibility are to be made on relaxed standards of proof, rather than the higher burdens of proof required in litigation in United States courts. The Fund, as well as each partner organization, must also set up an independent appeals process.

The United States' Interests in the Fund

25. The creation and successful operation of the Fund is in the enduring and high interests of the United States. The United States Government believes, for the reasons set forth below, that all Nazi-era forced and slave labor claims against Austria and/or Austrian companies (and any other claims covered by the Fund), should be pursued through the Fund instead of the courts.

26. First, it is an important policy objective of the United States to bring some measure of justice to Holocaust survivors and other victims of the Nazi era, who are elderly and are dying at an accelerated rate, in their lifetimes. Over one hundred thousand Holocaust survivors, and tens of thousands of other Americans who were slave or forced laborers during World War II, live in the United States. As noted earlier, the United States believes the best way to accomplish this goal is through negotiation and cooperation.

27. The Fund, like the German Foundation "Remembrance, Responsibility, and the Future," is an excellent example of how such cooperation can lead to a positive result. Without question, the Fund will provide benefits to more victims, and will do so faster and with less uncertainty than would litigation, with its attendant delays and legal hurdles. Moreover, the Fund will employ standards of proof that are more relaxed than would be the case with litigation in

U.S. courts. Litigation, even if successful, could only benefit workers subject to the jurisdiction of U.S. courts. By contrast, the Fund will benefit all Nazi-era forced and slave laborers -- from existing and defunct companies, from private and public companies, and from S.S.-controlled companies -- who worked on the territory of the present-day Republic of Austria (as well as certain other victims). Even forced agricultural workers can be paid by the partner organizations. Indeed, as a result of the inclusion in the Fund not only by the Austrian Government and Austrian companies that existed during the Nazi era, but also of Austrian companies that did not exist during the Nazi era, the Fund, in conjunction with the German Foundation “Remembrance, Responsibility, and the Future,” will be able to comprehensively cover Nazi-era slave and forced laborers who worked on the territory of the present-day Republic of Austria (as well as certain other victims).

28. All participants in the negotiations accepted the level of the Fund’s funding, eligibility criteria, payment system, and the allocation of its funding among various categories of victims. No amount of money could truly compensate plaintiffs for the wrongs done to them. But the payments they will receive through the Fund will serve as a recognition of their suffering and will enable them to live with less difficulty than would be the case without the payments. In addition, creation of the Fund will directly benefit the heirs of victims that did not survive by setting aside AS 300 million to fund projects devoted to their interests.

29. The United States, together with the participating lawyers for the victims and all other parties to the negotiations, therefore believes that the Fund is fair under all the circumstances. The creation of the Fund, like the creation of the German Foundation, “Remembrance, Responsibility, and the Future,” the United States hopes, will serve as an

example to other nations and in other cases where resolution of claims by victims of the Nazi era for restitution and compensation has not yet been achieved.

30. Second, establishment of the Fund helps further the close cooperation between the United States and our democratic ally and trading partner, Austria. One of the most important reasons the United States took such an active role in facilitating a resolution of the issues raised in this litigation is that it was asked by the Austrian Federal Government to work as a partner in helping to make the Fund initiative a success. Since 1945, the United States has sought to work with Austria to address the consequences of the Nazi era and World War II through political and governmental acts, beginning with the first compensation and restitution laws in post-war Austria that were passed during the Allied occupation. In recent years, Austrian-American cooperation on these and other issues has continued, and the joint effort to develop the Fund has helped solidify the close relationship between the two countries, which are important to U.S. interests in Europe, and particularly Central and Eastern Europe.

31. Austria today is an important factor to the prosperity of Europe, and particularly the new democracies of Central and Eastern Europe. Austria has worked with the United States in promoting democracy for the last forty-five years, and is instrumental to the economic development of Central and Eastern Europe. A new member of the European Union, Austria has supported integration of the European Union as well as efforts to assure that the former communist countries of Central and Eastern Europe continue their democratic development within a market economy. Our continued cooperation with Austria is important to helping achieve these United States interests.

32. Third, the Fund helps further the United States' interest in maintaining good relations with Israel and with Western, Central, and Eastern European nations, from which many of those who suffered during the Nazi era and World War II come. A large percentage of the money allocated will go to the too-long forgotten "double victims" of two of the twentieth century's worst evils -- Nazism and Communism. Some one million citizens of Central and Eastern Europe were forced into labor by the Nazis, over 100,000 of which worked on the territory of the present-day Republic of Austria, and then lived for over four decades under the iron rule of Communist governments and were denied compensation until recent years. The Fund compliments the German Foundation "Remembrance, Responsibility, and the Future" as part of a comprehensive effort to assist surviving laborers in these former Iron Curtain countries, and, indeed, in other European countries.

33. Fourth, the participating plaintiffs' counsel, the defendants, victims' representatives, and various concerned governments are united in seeking dismissal of Nazi-era forced and slave labor claims against Austria and/or Austrian companies in favor of the remedy provided by the Fund, and the United States strongly supports this position. The alternative to the Fund would be years of litigation whose outcome would be uncertain at best, and which would last beyond the expected life span of the large majority of survivors. Ongoing litigation could lead to conflict among survivors' organizations and among survivors and Austrian industry, conflicts into which the United States and Austrian governments would inevitably be drawn. There would likely be threats of political action, boycotts, and legal steps against corporations from Austria, setting back Austrian-American economic cooperation.

34. Although the resolution of this litigation is not part of a “settlement” in name, the Austrian Federal Government and Austrian companies have insisted on dismissal of all pending Nazi-era forced and slave labor claims against Austria and/or Austrian companies (as well as any other claim covered by the Fund) as a precondition to allowing the Fund to make payments to victims. The United States strongly supports the creation of the Fund, and wants its benefits to reach victims as soon as possible. In the context of the Fund, therefore, it is in the enduring and high interest of the United States to vindicate that forum by supporting efforts to achieve dismissal of (i.e., “legal peace” for) all World War II and Nazi era forced and slave labor claims against Austria and/or Austrian companies (and any other claims covered by the Fund).

35. Fifth, and finally, the Fund, like the German Foundation “Remembrance, Responsibility, and the Future,” is a fulfillment of a half-century effort to complete the task of bringing justice to victims of the Nazi era. Although no amount of money will ever be enough to make up for Nazi-era crimes, the Austrian Federal Government has created compensation and restitution programs for Nazi-era acts that have resulted in significant payments. The Fund adds \$380 million to these payments and complements prior programs, for the first time including a significant contribution by the Austrian private sector.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Stuart E. Eizenstat
Deputy Secretary of the Treasury
and Special Representative of the
President and Secretary of
State on Holocaust Issues

DECLARATION OF STUART E. EIZENSTAT

I, Stuart E. Eizenstat, hereby declare and state as follows:

1. I am currently the Deputy Secretary of the Treasury, as well as the Special Representative of the President and the Secretary of State on Holocaust Issues, positions I have held since July 1999. Prior to my current position, I served as Under Secretary of State for Economic Affairs, and before that as Under Secretary of Commerce and as U.S. Ambassador to the European Union. Since 1995, I have been the Secretary of State's Special Envoy on Property Restitution in Central and Eastern Europe.
2. A number of lawsuits have been filed in recent years on behalf of Holocaust survivors, other victims of the Nazi era, and their heirs to recover, among other things, looted property, compensation for slave and forced labor, proceeds of unpaid insurance policies, and assets deposited in dormant or confiscated bank accounts.
3. As a matter of policy, the United States Government believes 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. This is because the U.S. supports efforts to bring some measure of justice to these victims in their lifetimes, and because the U.S. believes that available funds should be spent on the victims and not on litigation, and, importantly, also because the number of victims who can be covered by a negotiated settlement is often greater than can be achieved through litigation. Much of my work over the past five years has been devoted to effectuating this policy.

4. Most recently, and most relevant to this litigation, I led an inter-agency United States Government team in negotiations resulting in the creation of a fund to make payments to victims of Austrian companies and the Nazi regime on the territory of the present-day Republic of Austria during the Nazi era and World War II. This declaration sets forth the history of those negotiations and the basis upon which the United States Government has concluded that it would be in its foreign policy interest for that fund to be the exclusive remedy and forum for all claims against Austria and/or Austrian companies arising out of or relating to the Nazi era and World War II (and any other claims covered by the fund), including those raised in this litigation, but excluding claims for in rem restitution of works of art, as well as claims for Nazi-era forced or slave labor and all other claims covered by the Austrian Fund “Reconciliation, Peace and Cooperation” (“Reconciliation Fund”).

Background of Austrian Property/Aryanization Negotiations

5. In February 2000, I was asked by the Austrian Federal Government to help facilitate a resolution of class action lawsuits filed in U.S. courts arising from slave and forced labor and other wrongs during the Nazi era. During the subsequent nine months, I co-chaired a series of formal and informal discussions between lawyers representing the victims and the Austrian Federal Government on a proposed initiative to establish a fund to make payments to victims of slave and forced labor (and certain others) during World War II and the Nazi era. The parties’ intent was to model this fund on the German Foundation, “Remembrance, Responsibility, and the Future,” which the German Government had created after a year and a half of negotiations, which I also co-chaired, among victims’

representatives, lawyers for German companies, and the German Government.

6. The parties to these negotiations anticipated that at the conclusion of an agreement concerning the establishment of a fund for Nazi-era forced and slave laborers who worked on the territory of the present-day Republic of Austria, the parties would commence negotiations concerning the establishment of a similar fund for those who suffered from aryanization, theft, or destruction of property on the territory of the present-day Republic of Austria during this same time period.
7. In early October 2000, as a pre-condition demanded by the victims' representatives to concluding an agreement concerning forced and slave labor claims against Austria and/or Austrian companies, Austria committed \$150 million to cover certain property claims. Specifically, this \$150 million will be paid on an expedited, per-capita basis to survivors of the Holocaust originating from or living in Austria for claims for apartment and small business leases, household property, and personal effects, excluding *in rem* claims for works of art and potential claims against the Dorotheum.³ Austria's commitment with regard to these claims is set forth in the Framework Concerning Austrian Negotiations Regarding Austrian Nazi Era Property/Aryanization Issues ("Framework Agreement").
8. On October 24, 2000, the parties to the negotiations gathered in Vienna to sign a Joint Statement concluding the negotiations, and expressing their support for the Reconciliation Fund as the exclusive remedy for all Nazi-era forced and slave labor claims against Austria and/or Austrian companies on the territory of the present-day

³ The Dorotheum is an auction house in Vienna through which property aryanized during the National Socialist Era and World War II was sold.

Republic of Austria. Simultaneously, the United States and Austria signed an Executive Agreement, in which Austria committed that the operation of the Reconciliation Fund would be governed by principles agreed by the parties to the negotiations, and the United States committed to take certain steps to assist Austria and Austrian companies in achieving “legal peace” in the United States with respect to forced and slave labor claims arising out of the Nazi era and World War II (and any other claims covered by the Reconciliation Fund). The Executive Agreement entered into force by exchange of notes on December 1, 2000.

9. After being publically announced earlier that day by the Chancellor of Austria, Wolfgang Schuessel, negotiations commenced in Vienna during the evening of October 24, 2000, concerning the creation of a General Settlement Fund (“GSF”) to address all property/aryanization claims against Austria and/or Austrian companies arising out of the Nazi era and World War II, and all other Nazi-era claims against Austria and/or Austrian companies not covered by the Reconciliation Fund. I co-chaired these negotiations with Ambassador Ernst Sucharipa. The participants in these negotiations included the United States, the Austrian Federal Government, Austrian companies, and representatives of the victims, including the Conference on Jewish Material Claims, a non-governmental organization created to negotiate for and administer compensation for Nazi crimes to Jewish people around the world.⁴ Through these participants and the numerous plaintiffs’

⁴ The Conference on Jewish Material Claims against Germany (“CJMC”) is an umbrella organization under which various Jewish groups and organizations of Holocaust survivors are represented. Among the participating groups and organizations are the American Gathering/Federation of Jewish Holocaust Survivors, the American Jewish Committee, the American Jewish Congress, B’nai B’rith International, the Centre of Organizations of Holocaust

attorneys, the victims' interests were broadly and vigorously represented.

10. In January 2001, the plaintiffs' attorneys, Austria, and Austrian companies agreed on two key points: that the Austrian Federal Government and Austrian companies would establish a fund, capitalized by \$210 million to make payments for all claims against Austria and/or Austrian companies arising out of or relating to the National Socialist Era or World War II, excluding claims for *in rem* restitution of works of art, and further excluding claims covered by the Reconciliation Fund, and that, in exchange, the plaintiffs would voluntarily dismiss all such claims filed in U.S. courts. The United States Government further pledged to support this effort by filing a Statement of Interest indicating its own foreign policy interests in assisting Holocaust victims on an expedited basis, and in helping achieve legal peace for Austria and Austrian companies with respect to Nazi-era property/aryanization claims (and any other claims covered by the GSF) in U.S. courts.
11. The parties agreed on eligibility requirements and other procedures to govern the GSF's operation. The parties also came to agreement on levels of capital distribution among and evidentiary standards for different varieties of property/aryanization claims.
12. The negotiations to reach these agreements, like the negotiations to reach agreement concerning the Austrian Fund "Reconciliation, Peace and Cooperation" concerning Nazi-era forced and slave laborers who worked on the territory of the present-day Republic of Austria, were very difficult, complex, and emotional.
13. On January 17, 2001, the parties to the negotiations gathered in Washington to sign a

Survivors in Israel, and the World Jewish Congress.

Joint Statement concluding the negotiations, and expressing their support for the GSF as the exclusive remedy for all claims arising against Austria and/or Austrian companies arising out of or relating to the National Socialist Era or World War II, excluding claims for *in rem* restitution of works of art, and further excluding claims covered by the Reconciliation Fund.

14. The agreement among the parties will take effect when the United States and Austria exchange diplomatic notes expressing Austria's commitment that the operation of the GSF will be governed by principles the parties agreed upon during the negotiations, including the Austrian Federal Government's obligation to propose legislation establishing the GSF (including a Claims Committee and an *in rem* Arbitration Panel) and to amend various social benefits laws, and the United States' commitment to take certain steps to assist Austria and Austrian companies in achieving "legal peace" in the United States with respect to all claims against Austria and/or Austrian companies arising out of or relating to the National Socialist Era and World War II, excluding claims for *in rem* restitution of works of art, and further excluding claims covered by the Reconciliation Fund.
15. The role played by the United States in this negotiation, like the role it played in the negotiation leading to the creation of the Austrian Fund "Reconciliation, Peace and Cooperation" and the German Foundation "Remembrance, Responsibility, and the Future," was unique. The agreement negotiated is not a government-to-government claims settlement agreement, and the United States has not extinguished the claims of its

nationals or anyone else. Instead, the intent of our participation was to bring together the victims' constituencies on one side and the Austrian Federal Government and Austrian companies on the other, to bring expeditious justice to the widest possible population of survivors and heirs, and to help facilitate legal peace with respect to Nazi-era property/aryanization claims against Austria and/or Austrian companies, and any other claims not covered by the Reconciliation Fund, excluding claims for *in rem* restitution for works of art. Among these parties, the United States facilitated the essential arrangement by which the Austrian side would establish a \$210 million fund to address all Nazi-era claims against Austria and/or Austrian companies, with the exception of those claims covered by the Reconciliation Fund and claims for the *in rem* restitution of works of art, and the class action representatives in pending United States litigation agreed to give up their Nazi-era property/aryanization claims against Austria and/or Austrian companies (and any other claims covered by the GSF), by voluntary dismissals with respect to such claims in United States courts. The United States further contributed its own commitment to advise U.S. courts of its foreign policy interests, described in detail below, in the GSF being treated as the exclusive remedy for all claims against Austria and/or Austrian companies arising out of or relating to the National Socialist Era or World War II, excluding claims for *in rem* restitution of works of art, and further excluding claims covered by the Reconciliation Fund, and, concomitantly, in such claims being dismissed.

The GSF

16. Pursuant to the Exchange of Notes between the United States and the Federal Republic of

Austria, the Austrian Federal Government will propose the necessary legislation to the Austrian Parliament by April 30, 2001, to establish the GSF. Austria will undertake its best efforts to ensure that the legislation is passed by June 30, 2001.

17. The GSF is intended to benefit victims of Nazi-era persecution, including heirs and victims' communal organizations, and will be capitalized with \$ 210 million, plus interest accruing over a period to begin 30 days after all claims filed as of June 30, 2001, have been dismissed and continuing until the capital of the GSF has been exhausted on approved claims.
18. The GSF legislation will establish an independent three-member Claims Committee (the "Committee") for all Nazi-era claims against Austria and/or Austrian companies, including claims against defunct companies and companies not subject to jurisdiction in U.S. courts, but excluding claims for *in rem* restitution of works of art, and further excluding claims covered by the Reconciliation Fund. The United States and Austria will each appoint one member of the Committee; these two members will then appoint a Chairperson.
19. The GSF legislation will provide that 50% of the funds allocated for distribution from the GSF will be reserved for a "claims-based" process and 50% of such funds will be reserved for an "equity-based" process. The GSF will distribute the funds allocated for the "claims-based" process on a pro-rata basis and the funds allocated for the "equity-based" process on a per-household basis.⁵ A claimant may submit an application to the

⁵ Household on the present-day territory of the Republic of Austria between March 12, 1938, and May 9, 1938.

Committee either under the “claims-based” process (which claim may include multiple properties) or under the “equity-based” process. If an entire claim is rejected under the “claims-based” process, a claimant may submit an application under the “equity-based” process. Claims under both the “claims-based” and the “equity-based” processes may be made for 24 months following the entry into force of the GSF law.

20. The GSF legislation will require the Committee to establish simplified procedures. The Committee will review all applications using relaxed standards of proof, and will make all decisions on a majority basis, except those concerning the reopening of cases that have been finally decided by an Austrian court or administrative body under Austrian restitution legislation or that have been settled after 1945, in which cases the Committee may award

payments only where the Committee unanimously determines that such decision or settlement constituted extreme injustice.

21. Under the “claims-based” process, the Committee may receive claims for the following categories of property: (i) liquidated business, including licenses and other business assets; (ii) real property; (iii) bank accounts, stocks, bonds, and mortgages; (iv) moveable property not covered by the \$150 million referred to *supra* ¶ 7; and (v) insurance policies. Under the “claims-based process,” the Committee may award a payment of no more than \$ 2 million for any approved claim. The GSF will establish simplified and expedited internal appeals for decisions made under the “claims-based” process.
22. Under the “equity-based” process, the Committee will make per-household payments for

the categories of property covered by the “claims-based” process (using even more relaxed standards of proof than the “claims-based” process) or any Nazi-era claims not covered by the Reconciliation Fund or the Arbitration Panel, *infra* ¶ 24. The Committee will award no more than one “equity-based” payment per household.

23. The GSF legislation will provide that the Committee will evaluate insurance claims under the claims-handling procedures of the International Commission on Holocaust Era Insurance Claims (“ICHEIC”). Insurance claims will be paid on a pro-rata basis. The Austrian Insurance Association will make lists of Holocaust-era policy holders publicly accessible. An amount of \$25 million will be allocated for payment of insurance claims out of the GSF. In the event that the Committee exhausts the \$25 million allocated for insurance claims and additional claims are outstanding, the Committee may use an additional amount up to \$5 million from the “claims-based” process to pay insurance claims.
24. In connection with the establishment of the GSF, the Austrian Federal Government will propose the necessary legislation to the Austrian Parliament by April 30, 2001, to establish, fund, and authorize a three-member Arbitration Panel (“Panel”) to consider, on a case-by-case basis, the *in rem* return of publicly-owned property, including property formerly owned by Jewish communal organizations. The United States, with prior consultation with the victims’ representatives, and Austria will each appoint one member; these two members will appoint a Chairperson. Potential claimants for *in rem* restitution of publicly-owned property include survivors, heirs, and victims’ communal organizations. The Panel will make recommendations to the competent Austrian Federal

Minister for *in rem* restitution. The United States and Austrian Federal Government will consult on a regular basis concerning the implementation of the Panel recommendations. Where *in rem* restitution, although merited, is not practical, the Panel may make recommendations that the claimant be awarded a comparable property. The Panel will make its recommendations within six months of receiving any claim. The Panel legislation will allow applications to be made to the Panel for at least 24 months after the enactment of the Panel legislation. There will be no cap either on the amount, or on the value, of publicly-owned property that may be claimed and/or restituted under the Panel legislation. The *in rem* return of works of art will be excepted from the scope of the Panel legislation.

25. The Austrian Federal Government will expeditiously make changes to certain pension and social benefits laws to assist victims of National Socialism. The value of these changes will be approximately \$112 over the next ten years.

26. The Austrian National Fund will provide all administrative support for the Committee. The costs of the “claims-based” and “equity-based” process will also be covered from the budget of the Austrian National Fund, and, where appropriate, out of the capital of the GSF. The administrative costs of the *in rem* process will be paid by the Austrian Federal Government. Attorneys’ fees will be paid out of the GSF’s initial capital. Lawyers in United States court actions can seek fees through an arbitration process, with the aggregate fee award capped at no more than \$3.6 million. Thus, counsel representing the victims are eligible to receive less of the GSF capital, on a percentage basis, than the

percentage that attorneys in the recently-approved settlement between Holocaust victims and Swiss Banks can receive from that settlement fund.

27. The GSF legislation will require that the GSF, in conjunction with the Austrian National Fund, provide extensive publicity concerning the benefits that the GSF will offer and procedures for applying for such benefits. The Austrian National Fund will consult with the United States concerning the proposed publicity plan.
28. A key point regarding the GSF is that all victims with Nazi-era claims against Austria and/or Austrian companies not covered by the Reconciliation Fund are eligible to submit claims to the GSF, including claims for *in rem* restitution of publicly-owned property, but excluding claims for *in rem* restitution of works of art. Indeed, throughout the negotiations, attorneys representing the victims vigorously represented not only the named plaintiffs, but also the interests of heirs and others who are similarly situated.

The United States' Interests in the GSF

29. The creation and successful operation of the GSF is in the enduring and high interests of the United States. The United States Government believes, for the reasons set forth below, that all claims against Austria and/or Austrian companies arising out of or related to the National Socialist Era and World War II, excluding claims for *in rem* restitution of works of art, and further excluding claims covered by the Reconciliation fund, should be pursued through the GSF.
30. First, it is an important policy objective of the United States to bring some measure of

justice to Holocaust survivors and other victims of the Nazi era, who are elderly and are dying at an accelerated rate, in their lifetimes. As noted earlier, the United States believes the best way to accomplish this goal is through negotiation and cooperation.

31. The GSF, like the Austrian Fund “Reconciliation, Peace and Cooperation” and the German Foundation “Remembrance, Responsibility, and the Future,” is an excellent example of how such cooperation can lead to a positive result. Without question, the GSF will provide benefits to more victims, and will do so faster and with less uncertainty than would litigation, with its attendant delays and legal hurdles. Moreover, the GSF will employ standards of proof that are more relaxed than would be the case with litigation in U.S. courts. Litigation, even if successful, could only benefit claimants subject to the jurisdiction of U.S. courts. By contrast, the GSF will benefit all those with Nazi-era property/aryanization claims -- against existing and defunct companies, against private and public companies, and against S.S.-controlled companies -- as well as those with claims not covered by the Reconciliation Fund. Indeed, as a result of the inclusion in the GSF not only of Austrian companies that existed during the Nazi era, but also of the Austrian Federal Government and Austrian companies that did not exist during the Nazi era, the GSF, will be able to comprehensively cover all Nazi-era property/aryanization claims against Austria and/or Austrian companies, and all other claims not covered by the Reconciliation Fund.
32. There was broad consensus among the participants in the negotiations concerning the level of the GSF’s funding, eligibility criteria, payment system, and the allocation of its funding among various categories of claims. No amount of money could truly

compensate plaintiffs for the wrongs done to them. But the payments they will receive through the GSF, and through the enhanced social benefits the Austrian Federal Government has committed to provide, will serve as a recognition of their suffering and will enable them to live with less difficulty than would be the case without the payments. In addition, creation of the GSF will directly benefit the heirs of victims who did not survive by ensuring the eligibility of such heirs to bring claims to the GSF on the same basis as survivors.

33. The United States, together with the participating lawyers for the victims and all other parties to the negotiations, therefore believes that the GSF is fair under all the circumstances. The creation of the GSF, like the creation of the Austrian Fund “Reconciliation, Peace and Cooperation” and the German Foundation, “Remembrance, Responsibility, and the Future,” the United States hopes, will serve as an example to other nations and in other cases where resolution of claims by victims of the Nazi era for restitution and compensation has not yet been achieved.
34. Second, establishment of the GSF helps further the close cooperation between the United States and our democratic ally and trading partner, Austria. One of the most important reasons the United States took such an active role in facilitating a resolution of the issues raised in this litigation is that it was asked by the Austrian Federal Government to work as a partner in helping to make both the Reconciliation Fund and the GSF initiatives a success. Since 1945, the United States has sought to work with Austria to address the consequences of the Nazi era and World War II through political and governmental acts, beginning with the first compensation and restitution laws in post-war Austria that were

passed during the Allied occupation. In recent years, Austrian-American cooperation on these and other issues has continued, and the joint effort to develop the Reconciliation Fund and the GSF has helped solidify the close relationship between the two countries, which are important to U.S. interests in Europe, and particularly Central and Eastern Europe.

35. Austria today is an important factor to the prosperity of Europe, and particularly the new democracies of Central and Eastern Europe. Austria has worked with the United States in promoting democracy for the last forty-five years, and is instrumental to the economic development of Central and Eastern Europe. A new member of the European Union, Austria has supported integration of the European Union as well as efforts to assure that the former communist countries of Central and Eastern Europe continue their democratic development within a market economy. Our continued cooperation with Austria is important to helping achieve these United States interests.
36. Third, like the Reconciliation Fund, the GSF helps further the United States' interest in maintaining good relations with Israel and with Western, Central, and Eastern European nations, from which many of those who suffered during the Nazi era and World War II come. Those who are eligible to make claims under the GSF include the too-long forgotten "double victims" of two of the twentieth century's worst evils -- Nazism and Communism. Some one million citizens of Central and Eastern Europe were forced into labor by the Nazis, over 100,000 of which worked on the territory of the present-day Republic of Austria, and then lived for over four decades under the iron rule of Communist governments and were denied compensation until recent years. The GSF

complements the German Foundation “Remembrance, Responsibility, and the Future” as part of a comprehensive effort to compensate survivors and heirs with Nazi-era property/aryanization claims in these former Iron Curtain countries, and, indeed, in other European countries.

37. Fourth, the participating plaintiffs’ counsel, the defendants, and victims’ representatives are united in seeking dismissal of Nazi-era property/aryanization claims against Austria and/or Austrian companies (and all other claims covered by the GSF) in favor of the remedy provided by the GSF, and the United States strongly supports this position. The alternative to the GSF would be years of litigation whose outcome would be uncertain at best, and which would last beyond the expected life span of the large majority of survivors. Ongoing litigation could lead to conflict among survivors’ organizations and among survivors and Austrian industry, conflicts into which the United States and Austrian governments would inevitably be drawn. There would likely be threats of political action, boycotts, and legal steps against corporations from Austria, setting back Austrian-American economic cooperation.
38. Although the resolution of this litigation is not part of a “settlement” in name, the Austrian Federal Government and Austrian companies have insisted on dismissal of all pending Nazi-era property/aryanization claims against Austria and/or Austrian companies (as well as any other claim covered by the GSF) as a precondition to allowing the GSF to make payments to victims. The United States strongly supports the creation of the GSF, and wants its benefits to reach victims as soon as possible. In the context of the GSF, therefore, it is in the enduring and high interest of the United States to vindicate that

forum by supporting efforts to achieve dismissal of (i.e., “legal peace” for) all property/aryanization claims against Austria and/or Austrian companies arising out of or relating to the Nazi era or World War II (and any other claims covered by the GSF).

39. Fifth, and finally, the GSF, like the Austrian Fund “Reconciliation, Peace and Cooperation” like the German Foundation “Remembrance, Responsibility, and the Future,” is a fulfillment of a half-century effort to complete the task of bringing justice to victims of the Nazi era. Although no amount of money will ever be enough to make up for Nazi-era crimes, the Austrian Federal Government has created compensation, restitution, and other benefit programs for Nazi-era acts that have resulted in significant payments. With the \$150 million the Austrian Federal Government has committed for certain claims of survivors in the Framework Agreement, the GSF adds \$210 million plus interest, increased social benefits amounting to approximately \$112 million over the next ten years, and an arbitration process for *in rem* restitution of publicly-owned property, including property formerly owned by Jewish communal organizations, to these payments and complements prior programs.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Stuart E. Eizenstat
Deputy Secretary of the Treasury
and Special Representative of the
President and Secretary of
State on Holocaust Issues