

## 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 against French and other banks that operated in France during World War II on behalf of Holocaust survivors, other victims of the Nazi era, and their heirs to recover, among other things, looted property and assets deposited in dormant or confiscated bank accounts in France.

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, and improvements to a French governmental commission, each of which will make payments to victims of French banks during World War II. This declaration sets forth the history of those negotiations, information about France's efforts in creating the commission and a related foundation, and the basis upon which the United States Government has concluded that it would be in its foreign policy interest for that fund, commission, and foundation to be the exclusive remedies and fora for all claims against French banks arising out of their activities in France during World War II, including those raised in this litigation.

## **Background of French Banks Negotiations**

5. The background of these negotiations encompasses three sets of simultaneous developments: the activities of the government of France, the activities of attorneys representing claimants against French banks, and the activities of the United States Government.

6. In 1995, President Jacques Chirac of France publicly recognized France's unremitting debt to the victims of the German occupation and the Vichy Regime in France, and pledged that the French Government would take efforts to address all remaining vestiges of that period. One of those efforts was the creation, in January 1997, of the Study Mission on the Spoliation of Jews in France, known as the "Mattéoli Mission," the aim of which was to study the conditions under which property belonging to French Jews was confiscated by the Nazis and Vichy authorities during the period 1940-1944. In April 2000, the Mattéoli Mission issued a 3,000 page report detailing various types of property spoliation that occurred and attempting to quantify the extent of such spoliation. With respect to banking assets, the Mattéoli Mission found that approximately 64,000 people, holding approximately 80,000 bank accounts, were deprived, either temporarily or permanently, of over seven billion francs in assets. While it was able to

determine that some of that amount was restituted, the fate of significant portions of the spoliated bank assets remains unknown.

7. The Mattéoli Mission made several recommendations for addressing these deprivations, two of which are particularly relevant here. First, it recommended creation of a commission to hear claims by individuals who lost property or are heirs to those who lost property that was never restituted. That commission, the Commission for the Compensation of the Victims of Acts of Despoilment Committed Pursuant to Anti-Semitic Laws in Force During the Occupation ("Drai Commission"), was created in September, 1999. Second, it recommended the creation of a foundation to support Holocaust education and memory and to provide financial support to victims of persecution and their families. That foundation, the Foundation for Memory of the Shoah ("Foundation"), was created in December 2000. An orphan's fund was also created for the children of those killed during the Holocaust.

8. Meanwhile, in December 1997 and again in December 1998, attorneys representing individuals with World War II era claims against French and other banks filed class action law suits in the United States against those banks to, among other things, recover unrestituted assets belonging to them or their

antecedents. Those cases proceeded to the point where, on August 31, 2000, a United States District Court denied a motion to dismiss two of the cases, indicating that they would be allowed to proceed.

9. Finally, and also simultaneously, from the Fall of 1998 through the Summer of 2000, I led an inter-agency United States Government team that facilitated a resolution of class action lawsuits filed in U.S. courts against German companies arising from slave and forced labor and other wrongs by those companies during the Nazi era. Those negotiations resulted, in July 2000, in the creation of a German Foundation, "Remembrance, Responsibility, and the Future," to make payments to victims of slave and forced labor and all others who suffered at the hands of German companies during the Nazi era.

10. While the German negotiations were proceeding, I also led an inter-agency United States Government team facilitating similar talks revolving around the role of the Republic of Austria and Austrian companies in the Nazi era and World War II. In October, 2000, those talks resulted in the creation of a foundation in Austria to make payments to those who worked as slave and forced laborers on the present day territory of the Republic of Austria.

11. Subsequent to the conclusion of the German negotiations, I was approached separately by the French Government and by attorneys representing individuals with claims against French banks arising out of the Holocaust. Each of them sought U.S. Government assistance in facilitating a resolution of the pending class action litigation against French and other banks, following the models established in the German and Austrian negotiations.

#### **The Negotiations and Resolution**

12. These negotiations commenced in November, 2000, with a set of meetings in Washington, D.C. Subsequent meetings were held in December in Washington, in January in Paris, France, and most recently, on January 17-18 in Washington. The participants have included the government of France, attorneys representing French banks, attorneys representing claimants against the banks, the Simon Wiesenthal Center of Paris, and the Conseil Représentatif des Institutions Juives de France ("CRIF"), an umbrella organization of French Jewish groups. Through these participants, the victims' interests and those of the banks were broadly and vigorously represented.

13. The negotiations centered on the question of whether the existing institutions created by the French - the Drai Commission and Foundation - could sufficiently ensure fair

compensation for those who suffered losses at the hands of French and other banks during the Holocaust. At the outset, the parties were far apart on both this question, and on the amount of money necessary to provide such compensation.

14. One of the key issues for the attorneys representing the victims was to establish a mechanism for compensation to those people who, despite the impressive and exhaustive historical work of the Mattéoli Mission, could not point to specific evidence of the existence and fate of their or their families' banking assets. Although the Drai Commission would make compensation awards to claimants on very relaxed standards of proof, there could be no guarantee that all victims would receive some measure of justice.

15. At a negotiating session that lasted well into the night of January 8-9, 2001, the parties reached a major breakthrough. The French banks agreed to create a supplemental fund (the "Fund"), which would make payments to people with little or no documentation of their claims, in addition to maintaining its commitment to pay all well-documented claims through the workings of the Drai Commission. In return, the plaintiffs, through their attorneys, agreed that they would voluntarily dismiss with prejudice all lawsuits currently pending against French banks. In a lengthy negotiating session

all night on January 17 and during the day on January 18, we hammered out an agreement satisfactory to all parties.

1. On January 18, 2001, the parties to the negotiations gathered in Washington to sign a Joint Statement concluding the negotiations, and expressing their support for the Fund, the Draï Commission, and the Foundation. See Exh. A. Secretary of State Albright personally congratulated the parties on the successful conclusion of the negotiations. On the same day, the United States and France signed an Executive Agreement, in which France committed that the operation of the Fund, the Draï Commission, and the Foundation would be governed by principles agreed by the parties to the negotiations, and the United States committed to take certain steps to assist French banks<sup>1</sup> in achieving "legal peace" in the United States for claims arising out of their activities in France during World War II. See Exh. B.

1. The role played by the United States in this negotiation was as a facilitator. The Executive Agreement negotiated is not a government-to-government claims settlement agreement, and the United States has not extinguished the claims

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The term "French banks" includes several non-French banks as well - in the agreements of the parties, the word "Banks" is defined to include all banks that are defendants in the

of its nationals or anyone else. Instead, the intent of our participation was to bring together the victims' constituencies on one side and the French Government and banks on the other, to bring expeditious justice to the widest possible population of survivors, and to help facilitate legal peace. Among these parties, the United States facilitated the essential arrangement by which the French side would establish the Fund, and make certain enhancements to the Drai Commission and Foundation, to compensate those who suffered at the hands of banks operating in France during World War II, and the class action representatives in pending United States litigation agreed to give up their claims. 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, the Drai Commission, and the Foundation being treated as the exclusive remedies for Holocaust-related claims against French banks, and, concomitantly, in current and future litigation being dismissed.

### **The French Institutions**

2. Taken together, the Fund, the Drai Commission, and the Foundation are intended to accomplish a complete disgorgement of any unjust enrichment and assets never restituted to their rightful owners by the French government, banks, and other

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litigation over World War II era activities, as well as all

financial institutions, and will result in compensation to persons who suffered at the hands of French banks during World War II.

3. The Drai Commission will operate as follows. It will undertake a program to publicize world-wide its existence and the availability of its claims procedure and to make its forms and application procedures easily available to claimants at no cost to them. It will also cooperate with organizations representing victims to ensure that potential claimants have knowledge of and access to the Commission. In addition, it will set up offices or contact centers in the United States, in Israel, and in any other countries in which a significant number of potential claimants live, to allow claimants to contact the Commission and make their claims without travel to France.

4. The Drai Commission will investigate and consider all claims by any person for compensation for any bank or financial institution doing business in France during World War II and, if an account can be verified, determine the amount designed to compensate fully the claimants for any material damages. It will do so based on relaxed standards of proof. It can recognize as sufficient to authorize payment any of various standards of evidence, including not only proof but also

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banks that are members of a French bank trade association.

presumptions, indications, and even the "intimate conviction" of the Commission. Claimants can be represented by counsel or others at every stage of the process, even if they cannot personally appear.

5. Once the Commission determines an award should be made, it will refer that award to the French banks. There is no monetary limit on such awards. The banks have committed, in writing, to make full and prompt payment of all awards recommended by the Commission, at current value, regardless of the eventual total amount. As good faith evidence of that commitment, the banks agreed during our negotiations to establish an escrow account, initially capitalized at \$50 million and to be replenished so as to ensure the amount in the account never falls below \$25 million, to be used to promptly pay all Draai Commission awards.

6. The Commission has agreed to establish an appeals process. Claimants whose claims are decided by a panel of Commission members are entitled to appeal to the full Commission, while those whose claims are decided in the first instance by the full Commission will be entitled to seek reconsideration of such decisions, in each case on the basis of new facts, new evidence, or material error. These internal

appeals are in addition to whatever administrative and judicial appeals may exist under French law.

7. The Commission will also issue regular public reports that detail its activity as well as the criteria established through Commission decisions and the procedures for processing claims. It will also provide a confidential report on the case-by-case disposition of banking claims. That report will be shared with the United States Government. The Drai Commission will also welcome representatives of Holocaust victims and the United States Government for exchanges of information, and it will operate with the maximum transparency provided for under French law.

8. Individuals whose claims cannot be substantiated by the Drai Commission, and whose names cannot be matched to the list of 64,000 account holders prepared by the Mattéoli Mission, but who submit credible evidence that suggests they or their antecedents may have had bank assets that were not subject to restitution, will be referred by the Drai Commission to the Fund. The Fund, capitalized at \$22.5 million contributed by the French banks, will make per capita payments of up to \$3,000 to all persons referred to it by the Drai Commission. The Fund is also permitted to make supplemental payments to individuals who receive awards from the Drai Commission that are lower than the

Fund's per capita payment floor. Interest on the Fund will be used for administrative expenses, and for the costs of an organization selected by plaintiffs' counsel to help facilitate claims, and will accrue to the benefit of the Fund. Any unused portion of the Fund at the end of the claims period will be contributed to the Foundation.

9. The Foundation serves as the primary mechanism to achieve full disgorgement by French banks and other French institutions of any remaining assets that were not subject to restitution. The endowment of the Foundation, which is over 2.5 billion Francs, or approximately \$375 million at current exchange rates, was set at the amount recommended by the Mattéoli Mission, and represents the current value of the amount of assets that cannot be conclusively shown to have been reactivated by the rightful owners. Approximately \$100 million of that was contributed by French banks.

10. The Foundation will have among its objectives the development of research and dissemination of knowledge about the Holocaust and the victims of the Holocaust, as well as other genocides and crimes against humanity, and support for initiatives to give moral, technical, and financial support to those who have suffered from persecution and their families. A significant amount of the Foundation's funds will be used for

grants to organizations outside France, including in the United States.

11. The Foundation will be run by a 25 member Board of Directors, chaired by a Holocaust survivor, Simone Weil. Eight directors will represent the French government, ten will represent Jewish groups in France, including the CRIF, and seven will be eminent persons chosen by the other directors and can include non-French nationals.

12. A key point regarding these institutions is that all victims who suffered injury at the hands of French banks are eligible to apply for restitution. Indeed, during the negotiations, attorneys representing the victims vigorously represented not only the named plaintiffs in their cases, but also the interests of heirs and others who are similarly situated.

#### **The United States' Interests**

13. The creation and successful operation of the Fund, the Drai Commission, and the Foundation 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 French banks arising from their activities in France during World War II, including but not limited to claims relating to aryanization and damage to or loss of property,

including banking assets, should be pursued through the Drai Commission and the Foundation instead of the courts.

14. 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, including many who emigrated from France, live in the United States. As noted earlier, the United States believes the best way to accomplish this goal is through negotiation and cooperation.

15. The Drai Commission, the Fund, and the Foundation are an excellent example of how such cooperation can lead to a positive result. These fora will, without question, provide benefits to more victims, and will do so faster and with less uncertainty than would litigation, with its attendant delays, uncertainty, and legal hurdles. Moreover, the Drai Commission and the Fund will employ standards of proof that are far more relaxed than would be the case with litigation. Litigation, even if successful, could only benefit those able to make out a claim against a bank over which they could obtain jurisdiction in the United States. By contrast, the Drai Commission, the Fund, and the Foundation will benefit all those with claims against banks that were active in France during World War II,

regardless of whether such banks are still in existence today. The creation of the Fund by the banks, the commitment by the French banks to pay all awards recommended by the Commission, and the participation in the Foundation not only by the French banks but by the Government of France and other financial institutions, allow comprehensive relief for a broader class of victims than would be possible in United States judicial proceedings.

16. All participants in the negotiations accepted the level of the Foundation's funding, which was intended to accomplish full disgorgement of any assets never restituted to their rightful owners, the level of funding of the Fund, and the procedures adopted by the Drai Commission for prompt resolution of all claims brought before it. In addition, the Foundation will be dedicated in part to efforts to ensure that crimes like those perpetrated during the Holocaust never happen again.

17. The United States, together with the participating lawyers for the victims and all other parties to the negotiations, therefore believes that the resolution of these cases through the Drai Commission, the Fund, and the Foundation is fair under all the circumstances. This resolution, like the previous resolutions in Germany and Austria, 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.

18. Second, establishment of the Fund, and recognition of the Drai Commission and the Foundation, helps further the close cooperation between the United States and its important European ally and economic partner, France. One of the reasons the United States took an active role in facilitating a resolution of the issues raised in this litigation is that we were asked by the French Government to work as partners with them in helping to make their efforts a success. In recent years, French-American cooperation on these and other issues has been very close, culminating in the joint effort to resolve these complex issues. This has helped solidify the ties between our two countries, ties which are central to U.S. interests in Europe and the world.

19. France is the oldest ally of the United States, and a major political partner on the international scene. As a member of the United Nations Security Council, NATO, the European Union, the Organization on Security and Cooperation in Europe, and the Council of Europe, France plays a critical role on issues that directly affect U.S. national interests. France has collaborated closely with the United States in critical areas such as the Middle East peace process, the Balkans, and reform

of the United Nations. France is a major component of the European Union, with which the U.S. has trading relations amounting to more than a trillion dollars a year. We work closely with our French allies over a broad agenda -- political, economic and social -- and need their cooperation in achieving many of our goals, including with respect to Holocaust assets. Given the many challenges the U.S. will face in the future and the importance of the relationship with France, it is essential that we work to diminish any potential irritants between the two countries.

20. Third, the participating plaintiffs' counsel, the defendants, victims' representatives, and the French government are united in seeking dismissal of this litigation in favor of the remedy provided by the Fund, the Drai Commission, and the Foundation, and the United States strongly supports this position. The alternative 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 between survivors and French banks, conflicts into which the United States and French governments would inevitably be drawn. There would likely be threats of political

action, boycotts, and legal steps against corporations from France, setting back European-American economic cooperation.

21. Dismissal of all pending litigation in the United States in which Holocaust-related claims are asserted against French banks was accepted by all 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. Therefore, in the context of the Fund, 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 Holocaust-related claims against French banks.

22. Fourth, and finally, the Fund, the Drai Commission, and the Foundation are a fulfillment of a half-century effort to complete the task of bringing justice to victims of the Nazi era. Since the liberation of France in 1944, France has made compensation and reconciliation for wrongs committed during the occupation and Vichy regime an important part of its political agenda. Although no amount of money will ever be enough to make up for all Nazi-era crimes, the French Government has over time created significant compensation and restitution programs for Nazi-era acts. The Fund and the Foundation add another \$400 million to that total, over and above whatever claims are

ultimately paid through the Draai Commission, and complement these prior programs.

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

Dated: \_\_\_\_\_

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