

**Agreement between the Government of the United States of America
and the Government of France Concerning Payments for Certain
Losses Suffered During World War II**

The Government of the United States of America and the Government of France (the "Parties"),

Intending to shape relations between their two States in a spirit of friendship and cooperation for the future and to resolve successfully certain issues stemming from the past,

Recognizing that France, following the end of World War II, enacted legislation that provided restitution and compensation for victims of anti-Semitic persecution during World War II under the authority of the occupying German authorities or the Vichy Government,

Noting the July 16, 1995, statement by President Jacques Chirac in which he solemnly recognized France's unremitting debt to the seventy-six thousand Jews deported from France during the Holocaust,

Noting that by decree dated March 25, 1997, the French Government created the Study Mission on the Spoliation of Jews in France, chaired by Mr Jean Mattdoli (the "Study Mission") to conduct a comprehensive and detailed study of the various forms of spoliation visited upon the Jews of France during World War II, and of the scope and effect of post-war restitution efforts,

Noting the significant work done by the Study Mission in identifying public and private archival sources of information relating to the blocking and spoliation of property held by banks and financial institutions doing business in France during World War II (the "Banks") and the ground-breaking work of the Study Mission in quantifying and otherwise detailing how the blocking and spoliation was conducted, and the magnitude of the persecution visited upon 7 Jews in France during World War

Noting the findings of the Study Mission regarding the post-war restitution laws and efforts of the French State, and the Banks, and the extent to which individual asset holders did receive restitution or otherwise renewed possession of their assets,

Recognizing that in February 1999, the Study Mission recommended the establishment of a commission for compensation of victims of spoliation,

Noting that, by decree dated September 10, 1999, the French Government created a Commission for the Compensation of Victims of Spoliation Resulting from Anti-Semitic Legislation in Force During the Occupation (the "Commission"),

Recognizing that, by decree dated July 13, 2000, the French Government established a special compensation program for orphans whose parents were victims of anti-Semitic persecution,

Recognizing that by decree dated December 26, 2000, the French Government approved the Charters and By-laws of the Foundation for the memory of the Shoah (the "Foundation"), which will, inter alia, provide assistance to organizations helping Holocaust victims and heirs in need,

Welcoming the establishment of a fund of US \$ 22.5 million, contributed by the Banks, which will be permitted to make payments to all persons referred to it by the Commission (the "Fund"),

Welcoming the positive contributions of the Banks and the lawyers and other representatives of the victims leading to this Agreement,

Recognizing that the Foundation's funding was designed to accomplish full disgorgement by the French Government, the Banks, and other private and public institutions of any unjust enrichment based on assets left with such institutions and never restituted to their former owners, as well as a substantial contribution in recognition of the suffering of Holocaust victims in France,

Recognizing that the Banks, having committed to pay all claims approved by the Commission and to make a contribution of Euro 100 million to the Foundation, which represents full disgorgement of all assets of Holocaust victims and their heirs, should not be asked or expected to contribute again, in court, or elsewhere, for any claims arising out of world War II,

Recognizing that it is in the interests of both the Government of the United States and the Government of France to have a resolution of these issues that is non-adversarial and non-confrontational, and outside of litigation,

Recognizing that both parties desire all-embracing and enduring legal peace with respect to all claims asserted against the Banks arising out of World War II,

Having worked as partners, in consultation with representatives of the Banks and attorneys representing victims and their heirs, to achieve wide support for the Commission, the Fund, and the Foundation, and for the establishment of all-embracing and enduring legal peace with respect to all claims arising out of World War II asserted against the Banks,

Having conducted discussions in the spirit of friendship, out of respect for international law, and specifically with reference to the Convention on Establishment between France and the United States signed on November 25, 1959,

Noting that the Commission, the Fund, and the Foundation, according to their specific by-laws or rules, will assure broad coverage of victims and broad participation by the Banks, which could not be possible through judicial proceedings,

Believing that the Commission, the Fund, and the Foundation will provide as expeditious as possible a mechanism for making fair and speedy payments to now elderly victims, or, as far as the Foundation is concerned, to organizations representing victims or their heirs,

Having in mind that the Commission, the Fund, and the Foundation cover, and that it would be in the interest of both parties for the Commission, the Fund, and the Foundation to be the exclusive remedies and fora for the resolution of, any and all claims that have been or may be asserted against the Banks arising out of World War II,

Noting that the plaintiffs in the cases pending in U.S. courts arising out of World War II against the Banks, as well as the defendant Banks, have agreed that all such lawsuits be dismissed with prejudice as to the Banks,

Have agreed as follows:

Article 1

1. The parties agree that the Commission, the Fund, and the Foundation cover, and that it would be in the interests of all concerned for these entities to be the exclusive remedies and fora for the resolution of, any and all claims that have been or may be asserted against the Banks, as defined in Annex A, arising from World War II.

2. France agrees to ensure that the Commission shall provide appropriately extensive publicity concerning the existence of this mechanism, its objectives, and the availability of funds to pay all legitimate claims.

3. France agrees to ensure that the Commission and the Foundation operate in conformity with the principles set forth in Annex B. France assures the United States that the Foundation has been formed. France agrees to ensure that the Banks, as defined in Annex A, will contribute Euro 100 million to the foundation. France assures that the Foundation and Fund will be subject to legal supervision by competent French governmental authorities to the fullest extent permitted by French law; the French Government will ensure that the Commission operates with the maximum transparency and oversight allowed under French law; any person may, to the fullest extent permitted by French law, request that any such French governmental authorities take measures to ensure compliance with the legal requirements of the Commission and the Foundation.

4. France agrees to ensure that the Banks will promptly pay, in full, all claims approved by the Commission.

Article 2

The United States shall, in all pending and future cases in which the United States is notified that a claim described in article 1(1) has been asserted in a court in the United States against one of the Banks, inform its courts through a Statement of Interest, in accordance with Annex C, and consistent therewith, as it otherwise considers appropriate, that it would be in the foreign policy interests of the United States for the Commission, the Foundation, and the Fund to be the exclusive remedies and fora for resolving such claims asserted against the Banks and that dismissal of such cases would be in its foreign policy interest.

Article 3

Annexes A, B, and C shall be an integral part of this Agreement.

Article 4

This Agreement shall enter into force on the date on which the parties agree by exchange of notes.

Done at Washington, on the 18 th day of January, 2001, in duplicate in the French and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF FRANCE:

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ANNEX A: DEFINITION OF "THE BANKS"

"The Banks," as used in this Agreement and all annexes, are defined to include all of the following:

- (1) The defendants in the actions Benisti, et al. v. Banque Paribas, et al., No. 98 Civ. 7651 (E.D.N.Y.); Bodner, et al. v. Banque Paribas, et al., No. 97 Civ. 7433 (E.D.N.Y.); and Mayer v. Banque Paribas, et al., Civ. Action No. 302226 (Cal. Superior Court), other than Barclays Bank and JP Morgan.
- (2) Enterprises, whether situated within or outside of France, which are members of the Association Française des Etablissements de Crédit et des Entreprises d'Investissement, and other financial institutions that receive deposits, other than Barclays Bank and JP Morgan.
- (3) The prior settlements with Barclays Bank and JP Morgan are specifically exempted from the scope of this agreement, and the Banks represent that they will not oppose court approval of those two other settlements based upon the existence of or any provisions in this agreement.

With respect to banks of French nationality, this definition applies to all World war II activities of such banks. With respect to banks of non-French nationality, this definition applies to World War II activities in or relating to France.

It is the intention of the parties that insurance companies are not included within the definition of the Banks.

Annex B : The Commission for the Compensation of Victims of Spoliation Resulting from Anti-Semitic Legislation in Force During the Occupation

The Commission for the Compensation of Victims of Spoliation Resulting from Anti-Semitic Legislation in Force During the Occupation ("the Commission") will continue to investigate and consider all claims by any person for compensation from any bank or financial institution doing business in France during world War II ("the Banks") to decide if the claims are valid, and, if an account can be verified, to determine the amount designed to compensate fully the claimants for material damages for which complete restitution or compensation had not been previously received.

- A. The Commission will undertake a program consistent with the principles in Exhibit 1 to publicize worldwide its existence and availability and to make its forms and application procedures easily available to claimants at no cost to them.
- B. The Commission will investigate and consider claims on relaxed standards of proof. A claimant's application or a simple inquiry by the claimant is to the existence of a bank asset is sufficient to trigger an investigation. The claimant will be permitted to have a designated representative present with the claimant, or in the place of the claimant if the claimant is unable to appear, at all stages of the proceedings.
- C. Following such an investigation and after communication with the claimant or their representative, including an opportunity for the claimant or representative to be heard, if an account can be verified by any means, including because the claim matches a name or account on a list or other document available to the Commission, the Commission makes a recommendation on an award together with the reason(s) for that recommendation. The Commission will not offset or reduce awards except if a particular account or property was previously the subject of compensation. Should the case arise, any offset would be limited to the amount of prior compensation. There will be no offset for compensation previously received for moral or nonmaterial damage.
- D. The Banks commit to make prompt and full payment of all the awards recommended by the Commission addressed to them ("the Awards") - The commitment of the Banks to pay all Awards shall be memorialized in writing.
- E. An interest-bearing escrow account in the amount of \$50 million shall be established by the Banks in the Caisse des Dépôts et Consignations in Paris to assure prompt payment of all Awards. To ensure full and prompt payment of all Awards addressed to them, at all times, the Banks shall replenish the account as necessary to ensure that the amount in the account does not drop below \$25 million, regardless of payment of Awards. Any excess in the account, including interest, after all Awards are made shall revert to the Banks.
- F. Without prejudice to any other consideration it may deem appropriate, the Commission will recognize as sufficient evidence to make an Award any of the following four categories: proof, presumption, indication, and intimate personal conviction.

1. If the commission is unable to substantiate the existence of bank assets, but is presented with credible evidence that suggests there may have been such assets and there is no evidence of restitution it will refer the claim to the organization chosen to administer the "Fund" described in paragraph 2 below for payment. One example of credible evidence shall be an affidavit stating credible facts containing the elements set forth in Exhibit 2, unless the Commission determines that there is clear and convincing evidence of manifest bad faith, for example, that the claimant did not reside in France during the appropriate period or that the account had previously been restituted.

2. There shall be a fund of \$ 22.5 million contributed by the Banks and administered in an interest-bearing account in the Caisse des Dépôts et Consignations in Paris by the Fonds Social Juif Unifié, and supervised by a Board of five members, two to be appointed by France, two to be appointed by the United States, and one to be appointed by plaintiffs' attorneys. (the "Fund"). Reasonable administrative costs of the Fund shall be paid out of interest accruing on the Fund. The Fund shall make, within thirty days of a referral, per capita payments of \$1,500 to all persons referred to it by the Commission by July 18, 2002. Once all banking-related claims filed with the Commission by that date have been processed, if there are any remaining moneys in the Fund, additional payments will be made to the recipients of the first payment pro-rata up to

an additional amount of \$1,500. The Fund shall make supplemental payments up to the per capita amount to persons as to whom no specific account balance has been determined by the Commission who receive Awards below the per capita amount from the Commission. Excess funds, including interest, remaining after the payment of additional payments referred to above shall be paid to the Foundation for the Memory of the Shoah.

G. Access to lists of holders of blocked accounts shall be open to organizations representing victims according to the terms of Decree No. 2000-1023 of October 19, 2000. A budget of \$500,000, payable out of interest accruing on the Fund, shall be approved for one such organization designated by plaintiffs, attorneys.

H. The Commission will set up offices or contact centers with the support of French embassies and consulates. To this end, it will cooperate with appropriate international Jewish organizations, including in the United States, Israel and other countries where significant numbers of claimants live. Representatives of the Commission will visit such offices or contact centers on a regular basis as necessary to meet with claimants.

I. The Commission will give priority treatment, and particular consideration, to claims of survivors and those claimants who indicate personal hardship.

J. The Commission will issue public reports after two months and each six months thereafter that detail its activity (number of cases, results of cases, amounts awarded, etc.) as well as the criteria established through Commission decisions and the procedures for processing claims. The Commission will also issue a confidential report, setting forth on a case-by-case basis the results of each case, the bases for decisions if denied, and the amounts awarded. This report will be transmitted to the United States Government.

K. Any claimant whose claim is decided by a panel of Commission members is entitled to appeal to the full Commission on the basis of new facts, new evidence, or material error. Any claimant whose claim is decided in the first instance by the full Commission is entitled, on the same bases, to seek reconsideration of that decision.

L. The Commission will, on a regular basis, welcome representatives of Holocaust victims and representatives of the Government of the United States for exchanges of relevant information.

M. The French Government will ensure that the Commission operates with the maximum transparency and oversight allowed under French law. In accordance with French law, the Commission's activities are subject to audit by the Cour des Comptes.

II. The Foundation for the Memory of the Shoah

The Foundation for the Memory of the Shoah ("the Foundation") serves as a mechanism ensuring full disgorgement of any remaining assets as well as recognition and moral reparation for those who did not survive.

A. The Foundation's annual giving will contribute in a significant amount to organizations with humanitarian/social purposes in France and outside France.

B. The Foundation's by-laws provide that the board of the Foundation will include representatives of the French Jewish Community and other French and non-French eminent persons.

Exhibit 1

Notice Principles

1. Mail to a worldwide list of Jewish organizations, for distribution to their members, a package, explaining the benefits available to claimants and the claims procedure.
2. World-wide publication, including advertisements in main Jewish publications and major national publications according to a list communicated to the Commission by plaintiffs, attorneys.
3. Internet publication
4. Toll free telephone number
5. Translation of notice (published and mailed) into French, English, German, Hebrew, Yiddish, Spanish, Polish, Italian, Russian, and other languages as appropriate.
6. Budget and process for responding to inquiries from claimants. Claims forms and procedures will be mailed upon request.
7. The Wiesenthal Center should be listed as a source of information and assistance to claimants, in the advertisements.

EXHIBIT 2

AFFIDAVIT

1. My name is
My mother's name was/is
My father's name was/is
2. During the Second World war, my family lived at from until
3. I believe that my family had one or more bank accounts in a bank located in France during the Second World War.
4. I believe that restitution has never been made for one or more bank account(s) (or other bank-related assets, such as the contents of safe deposit boxes) to myself or other members of my family.

I am enclosing all copies of all documents, if any, relating to my residency in France during the Second World War, and/or the existence of bank-related assets.

6. The information I believe supports my statements above, to the extent available, includes the following:

I confirm that to the best of my knowledge and belief, the above is true and correct.

Dated:

ANNEX C: ELEMENTS OF U. S. GOVERNMENT STATEMENT OF INTEREST

Pursuant to Article 2 of the Agreement, the United States will timely file a Statement of Interest and accompanying Declaration of Deputy Treasury Secretary Stuart E. Eizenstat in all pending and future cases, regardless of whether the plaintiff (s) consent (s) to dismissal, in which the United States is notified that a claim has been asserted against the Banks arising from their activities in France during World War II. This does not apply to in rem actions for art and items of cultural significance.

The Statement of Interest will make the following points:

1. It would be in the foreign policy interests of the United States for the Commission, the Fund, and the Foundation to be the exclusive fora and remedies for the resolution of all claims asserted against the Banks arising from their activities in France during World War II, including without limitation those relating to aryanization and damage to or loss of property, including banking assets.
2. Accordingly, the United States believes that all claims asserted should be pursued (or in the event Foundation funds have been exhausted and/or the Commission is no longer accepting claims, should timely have been pursued) through the Commission and/or the Foundation instead of the courts.
3. Dismissal of the lawsuit would be in the foreign policy interests of the United States. The United States will recommend dismissal on any valid legal ground. The United States will explain that, in the context of the Commission, the Fund, and the Foundation, it is in the enduring and high interest of the United States to support efforts to achieve dismissal of all World War II-era cases against the Banks. The United States will explain fully its foreign policy interests in achieving dismissal, as set forth below.
4. The United States' interests include the interest in a fair and prompt resolution of the issues involved in these lawsuits to bring some measure of justice in their lifetimes to the victims of Nazi persecution and world war II and, in this case in particular, the occupation of France; the interest in the furtherance of the close cooperation this country has with our important European ally and economic partner, France; and the interest in achieving legal peace for claims asserted against French banks arising from their activities in France during World War II.
5. The Commission, the Fund, and the Foundation are a fulfillment of a half-century effort to complete the task of bringing justice to victims of the Holocaust and victims of Nazi persecution in France. They complement significant prior French compensation and restitution programs for acts, including the spoliation of property, arising out of the Occupation of France.
6. The creation of the Fund by the Banks, the commitment by the Banks to pay all awards recommended by the Commission, and the participation in the Foundation not only by the Banks but by the Government of France and other institutions, allows comprehensive relief for a broader class of victims than would be possible in United States judicial proceedings.
7. The structure and operation of the Commission will assure swift, impartial, dignified, and enforceable awards that the Banks have committed to pay promptly and in full; appropriately extensive publicity will be given concerning the Commission's existence, its objectives, and the availability of funds; and the Commission's operation is transparent.
8. The Commission, Fund, and Foundation are fair and equitable, based on: (a) the advancing age of the plaintiffs, their need for a speedy, non-bureaucratic resolution, and the desirability of expending available funds on victims rather than litigation; (b) the Foundation's level of funding, which is intended to accomplish full disgorgement of spoliated assets that might still be in the possession of the Banks; (c) the procedures adopted by the Commission for the prompt resolution of claims submitted to it; (d) the Commission's mandate to accomplish complete restitution for all claims presented to it, regardless of the overall amount, and the commitment of the Banks to pay all awards directed to them by the Commission; and (e) the legal hurdles faced by plaintiffs and the uncertainty of their litigation prospects.
9. Plaintiffs face numerous legal hurdles and difficulties of proof. The United States takes no position here on the merits of the legal claims or arguments advanced by plaintiffs or defendants. The United States does not suggest that its policy interests concerning the Foundation in themselves provide an independent legal basis for dismissal.